this, because Quirew! tells Baker, if the last Poft did not bring an Addition of three to fix, Mrs. Jones may see what is still wanting for the pur- chase she intends to make.

Now suppose, by Quirew! and Howell, are meant Dillon's Secretary; and by Baker and Har- nell, Kelly is intended; and that by the Addition of three to fix, is meant a Remittance of Money, by Wine are meant Soldiers; and by Mrs. Jones is meant my Lord Bishop of Rochester. Yet can what Dillon's Secretary writes to Kelly, or what Kelly writes to Dillon's Secretary, affect the Bishop of Rochester? If it can, it is in the power of any two Men, one referring here, and the other beyond Sea, to take away the life of any Man breathing. But suppose we can make it appear, as most certainly we shall, that by Mrs. Jones cannot be meant the Bishop; then what be- comes of this part of the Charge?

The next thing to support this Charge, is, a passage in an Extract of a letter dated the 1st of May, written from Quirew! to James Baker, in which 'tis said, that Mrs. Jones cannot take a better Time to have himself fitted with an easy Saddle, &c. If an Extract of a letter can be of any Weight, and the Contraftion put upon it is to be allow'd; then the Bishop is turn'd General, or at least a Colonel. For by Neyne's Information and Plunket's Cyphefs, Soldiers, and Soldiers, are Irish Soldiers, and Regiments: for the Bishop is re- presented as undertaking to raise a Regiment of Irish Soldiers, and to mount on Horseback him- self to command them.

As to the third thing charged, which was to raise a Rebellion at the Breaking up of the Camp; there is no Pretence of Evidence. So that, upon the whole, there does not appear to be any pretence for that part of the Parendle to the Bill, which charges the Bishop with having been deeply conversed in forming, dwelling, and carrying on the Conspiracy.

The next thing charged against his Lordship, is, that he was concerned in a Correspondence abroad, and some Transaffions at Home for bringing in the Pretender.

Now as to this, I would obverse, that there is not one Word against his Lordship of any criminal Act; that the' ll his Papers have been feild, yet there appears not any Letter, or Paper, under his Hand, of a criminal Nature; nor any letter prec'd to be written or receiv'd by him, which is criminal: Neither is there any Charge of any Meeting or Confederation with any Persons for carrying on this Conspiracy. Indeed he is mention'd as a Member of a Club, call'd the Bursford-Club, of which the Earl of Orrery was feld to be Chairman; which Club (as I apprehend) was never heard of till Layr's Trial. This Accusation I knew to be false; and never met with any one that believed it: Therefore shall not trouble your Lordship with any further Observa- tions upon it, than just to take notice, that theo' he who made the list hath joined me with per- sons of great Quality and Honour; yet I presume to say, that my Proffission in the Law, as well as my Religion, has given me such a Sense of my Duty, that no perons whatsoever are great enough to draw me into a plot against his Ma- jesty and the Government.

I beg leave to observe that this Charge is found- ed, partly upon the Hearfe of Panter and Ney- ne, and partly upon the three letters dated the 20th of April 1722.

As to the Hearfe of Evidence, Panter deposed, that they told him, that the Bishop of Rochester and Lord North and Grey had the principal Di- visions of the Conspiracy; that 20000l. had been raised by Commissions, and that they had put into the Management of the Bishop, and that it was calld the Military Gilt. Now can this be Evi- dence in an Indictment, or Affidavit, for the most mi- nute Paffage, or in any Case? Can it be imagin'd, that so much money could be raised among the Ju- cles? or that such a Sum could be given, and not one Contributor discovered? Can it be imagin'd, that such a Sum should be communicated with one Man? Or that my Lord Bishop would be that Man, who would have the Care and Trouble, and run the Hazard, of such a Sum? To which it may be added, that, at least, the only Person living, by whom any Person living is said to have paid this, who is now in Cufody, ready to be examin'd upon Oaths, and denies every Word of it.

As to Neyne's Examinations, he speaks only what Kelly told him; and can what Kelly told him affect the Bishop? Besides, none of his Exa- minations are upon Oaths, or so much as sworn by him; (whereas the Examination of Glinnet, that was given in Evidence against Sir John Fre- mery, was upon Oaths:) All of them appear to be taken after he was in Cufody, under great Perfor- mance, and Circumstances; and, it appears, none of them was taken the Day before he was dropp'd himself: And moreover, that only one of them was read, which was extract'd out of three Examinations, mark'd A, B, C, and said to contain the Sub- stance. We define all the Three Examinations may be produced, and read; and then it will appear, whether that one contains the whole Sub- stance; or whether there be none Things very material omitted. And it will likewise appear, that there is such Inconvenience in them, as will take off their Credit. For in one place he says, he saw Kelly make use of the Cyphers; and that Kelly owd't with great Freedom they were for carrying on a Correspondence with the Pretender and his A- gents; and yet in another place he says, That Kelly never owd't him self as to the plot now on foot; that indeed he had been several letters from Paris and other places, but they contain'd nothing material. So that it must be supposed, either that there was no Treforamтельно Con- correspondence carry'd on by Kelly; or that Neyne was not so great a Confident of Kelly's as he pretended.

Neyne says, he drew three Memorials; and the last was in December 1721, to the Regent for five thousand Men; that all the Memorials were drawn by the Order of, and dictated by, one Henry Wathin, whom he did not know, but took to be the late Earl Marlborough, that Henry Wathin, whom he took to be Earl Marlborough, was in Eng- land at the time of writing, and that he lay with him several Nights.

'Tis very extraordinary, that the Earl Mar- lborough should trust a mere Stranger to draw three Memorials, and one of them for five thousand Men to invade the Kingdom; and that afterwards he should lie with him several Nights, and not know who he was.

In one of his Examinations he says, the Heads of the Memorials were given him by Kelly and Wathin; in another he says, they were all drawn by
1723
and others, for a Trefonable Conspiracy.

by When: And 'tis observable, that the rough Drangels, or a Copy of any one of them, is not produced; which certainly, he that intended to turn Evidence, and to soon after become an Informer, would have done, if there had been any such.

The Committee are pleased in their Report, Page 38, to take Notice, that Nyeus said, Kelly told him, that a Lord of the Council gave the Bishop Notice of his being to be taken up, some Days before it happen'd; and are pleased likewise to say, that he afterwards confessed, (as they were informed) that in that, and other his Examinations, he endeavoured all he could to create Disf

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fidence and Suf?cience among his Majesty's Servants. And what Credit can be given, after this, to one, who had so little Regard to Truth, as to say any Thing, that's never to falsify; or to wink at a Par
dice, as to create a Misunderstanding among his Majesty's Servants? especially if one considers how probable it is, that the Remorse he had upon his Conscience, occasion'd by the Evidence he had given, and his Dread of the Shame of being forg'd, when he came upon his Oath, to deny what he had said when he was not upon his Oath, were the Reasons of his making away with himself. And we shall call some Witen?ees, who will give a full Account of him.

We shall call one, who but lately depos'd before your Lordships, that Nyeus told him, he had said several Things to a great Man, which the nei-

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warder would nor could forsake without being per

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I must humbly beg your Lordships Pardon, for being so particular in a Matter which I had so lately an Occasion to mention: But this is the Hinge upon which the Weight of the whole Charge against the Bishop turns, and therefore I doubt not but your Lordships will excuse me.

The next Charge against my Lord Bishop arises from three Letters, dated the 20th of April, 1722. One signed J. Jones, innocuously the Bishop; to Clowers, innocuous Dillon: The second signed Higgyn, innocuous the Bishop; to Mygrawes, innocuous Lord Marr: The third to Jackson, innocuous the Pretender; and signed 1728, innocuous the Bishop. These letters are said to be wrote by Kelly, and dictated by the Bishop.

Now as to these letters, I beg leave to obser

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fice there is nothing Criminal appears to be in

any of them. But then 'tis objected, that two of the Perfons are attainted of Treason, and are Agent's of the Pretender, and 'tis High Treason to write to them: And the third is the Pretender himself.

Supposing Clowers were Dillon, and Mygrawes were Marr; yet writing to them in private Matters, not criminal in themselves, nor relating to the Pretender, is not Treason.

But how comes the Lord Marr to be an Agent for the Pretender? He quitted the Pretender's Service many Years before; and from the Time of his quitting the Service, till after the Date of those letters, had a Penfion from his present Majesty. I believe the Council for the Bill, and all Mankind, will be at a Loss to tell by what Law writing to one, who had quitted the Pre-
tender's Service so many Years, and who had subsisted ever since by a Penfion from his Majesty, can be an Offence.

Indeed, if it be proved that Jackson is the Pretender, I admit Writing to him is Treason: But if it be proved (as it will beyond all Difpute) that by Jackson neither is nor can be meant the Pretender; and that my Lord Bishop neither did nor could write or dictate any one of these letters; then the whole Charge against my Lord Bishop, founded upon those letters, falls to the Ground.

The next Thing I would observe, as to those letters, is from the Report, Page 42, where the Committee are pleased to observe, that the letter to Clowers is, great Part of it, out of Cypher; which seems to allow that the other Part was in Cypher. Therefore it was very necessary, I think, to have printed the letters in the Cyphers and Observers, in which they were written; and also as they are decipher'd: Then the Persons accus'd would have had an Opportunity of employing Men skill'd that way, to see if they were rightly decipher'd. This was done done in Calmun's Cafe.

The French Papers, in the Appendix, are print

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ed first in that language, and then as they are translated; which was not so necessary as Printing the letters in Cypher in this Cafe: Because almost every one understands French enough to tell, at first Sight, whether a French letter be rightly translated; but 'tis impossible for a Man of the great Skill in the Art of deciphering, to tell, upon a sudden at the Bar, whether a letter be rightly decipher'd: So that all the Man hath in the World, is to depend upon the Skill and Integrity of the Decipherers. Nor are they infallible; for the Witen?ees who decipher'd the letters, admit, that there are some Words in them which they could not decipher; and those Words may give a Turn to the whole Senfe of the letters. Nay, Mr. Wiffen said, that one of the Numbers he could not decipher stood for two Words; He was likewise pleased to say, it was impossible that the Number he could not decipher could make an Alternation in the Senfe; which is very extraordinary for a Man to forsake: But if one Word could not make an Alternation in the Senfe, surely two might.

The writing these letters is charged upon Kelly, which cannot affect my Lord Bishop, unless they were dictated by him, or written by his Direction, or Privyty, of which there is no Pre

tence of Proof. And therefore I shall next offer to your Lordships some Observations upon the Arguments and Circumstances all'd to support this Charge.

It is observed in the Report, that the Perfon who wrote these letters, speaks of himself as being in ill Health, in great Pain, under some fad and melancholy Circumstances, which he expects will soon blow over; and from thence 'tis in
der'd it must be the Bishop, because his Wife was then ill, and died in six Days after; and that he him'self was at that Time afflicted with the Cont. One of the Gentlemen, who was Counsel for the Bill, said, These were Circumstances, that did not happen to any two Men in the World at the Time of the Act, and gave us to infer to influence one other Circumstance, which, I believe, did not happen to any one Man in the World; which is, writing a Letter of Petition, when his Wife lay a Dying.

Why these Circumstances must necessarily in
tend the Bishop, more than any other Person that was fick, and under Miffortune, I cannot apprehend. That ill Health must necessarily imply the Cont; and that it must be intended, that no Man
had the Gout the 20th of April, but the Bishop; that unluckily Circumstances necessarily imply a Man's Wife being sick or dying, and that so Man had a Wife sick or dying, but the Bishop; is, in my humble Apprehension, a new way of arguing.

Another way of proving these letters to be wrong by the Bishop, is by the Names and Figures subfribled. For one letter is subfribled, Tre Jones, and another letter is subfribled, T. Illington: And the Report observes, that wherever Jones and Illington are named, the Bishop is to be condemn'd for having the Bishop to be unfrock'd by those Names, you confound it nor is there any Pretext of Evidence. And if we flew (as we infaullibly shall) that by those Names the Bishop could not be meant, and that he could not write, or dictate those Letters; then the Inferences against the Bishop from those Letters, and the different Correspondence under those Names, become of no Force or Weight.

A third letter is subfrib'd, 1738; which the Despesbarres say denotes a Perfon, whose proper Name begins with an R. And the Report is pleas'd to infer, that it might be the Bishop of Rochester. Now why 1738 denotes a Perfon, whose Name begins with an R, the Despesbarres only know: And we are as much at a Loss to know, why by a Name beginning with R, must be intended the Bishop of Rochester. If that Number appear'd to denote a Name beginning with R, and if no Name began with that Letter but the Bishop of Rochester; there would then, I confess, be some Weight in the Observation.

That Jones and Illington are not the same Perfon, appears from the letter of the 10th of May, from Hatfield to Howell; where, within the compass of two Letters, they are distinguished. For in one Line he faid, Jones promis'd to be a good Customer; and in the next Line but one he faid, Illington is gone in the Country; which plainly shews them to be distinct Persons. Besides, in the Papers mention'd in concerning the Duke of Norfàle, his Grace is several times denoted by the Name of Jones: In Layne's lift, Sir William Ellis is described by that Name; and in Plunket's lift Jones stands for the Germain.

The Evidence to prove Jones and Illington to be the Bishop, and the Intimacy between the Bishop and Kelly, is the Prefent of a Dog called Harlequin.

The Evidence stands thus. — Rep. 40. E. 35.
Hatfield, who is suppos'd to be Kelly, in his letter of the 30th of April to Howell, who is suppos'd to be Dillon's Secretary, writes thus.

'Mrs. Jones died last Week; pray present my Refpects to Mr. Mulgrave (meaning Mr. Wick.)

'and let him know, I received the Prefent fent by the young lady; that he had a leg broken in the Journey: However I will take all the Care imaginable of him; and inform Mr. Jones of it, to whom I know anything from that Quarter will be very acceptable.'

Hatfield, in his letter to Mulgrave of the 7th of May 1722, says; Mrs. Illington is in great Tribulation for poor Harlequin: However his Obligations to the lady are as great, as if he had come safe.'

From these letters 'tis infer'd, that by Jones and Illington the Bishop is meant; and that a young lady at 1735 was a Prefent for the Bishop: And 'tis urged, that Mrs. Barnes in her Examination of the 23d of May, says, 'The Dog was not designed for her, but for the Bishop of Rochester.' That Kelly told her, the Dog was for the Bishop; and that Kelly promised to get the Dog for her from the Bishop, in cafe it did not recover its Lamenets.

It is admitted, that Mr. Kelly brought such a Dog from France, that Mrs. Barnes had it, and that its leg was broken: But that it was deign'd for the Bishop, or that the Bishop ever had, or saw it, there is no Pretext of Proof; and my Lord Bishop utterly denies it; and Mr. Kelly hath formally deny'd it to your Lordships. And instead of its being a Prefent from a young lady to the Bishop, Mr. Kelly says he bought it of a Surgeon at Paris, to give it to Mrs. Barnes.

There is one Explication in the letter of the 7th of May, which is remarkable; and, in my humble Opinion, enravets and destroys the Force of all those letters relating to the Dog: For it was written four or five Days after the Bishop's Lady was bury'd; and it says, 'Mrs. Illington was in great Tribulation for poor Harlequin.' Mr. Kelly was suppos'd to write that letter, and was suppos'd to be a Friend of the Bishop's; and could a Friend, could any Man of Common Sense, be guilty of such a foolifh and ridiculous Explication? Could any Man say of one of my lord Bishop's Character, who was in the utmost Affliction for his Lady, that he was in great Tribulation for a Dog's Leg? 'Tis evident, he who wrote that letter, did not know the Bishop's melancholy Circumstances: 'Tis likewise well known, that the Bishop never had a Dog, nor ever had one.

The next Method of proving Letters upon the Bishop, is by Similitude and Comparisons of Hands, not by comparing any Paper written by him with any other Writing; but by producing a letter suppos'd to be written by Mr. Kelly in August, and by proving that the three Letters written in April, were copy'd and copy'd; and that, on searching the Bishop's melancholy Circumstances: 'Tis likewise well known, that the Bishop never had a Dog, nor ever had one.

It was to be hoped, that, since Mr. Sidney's Cafe, the Evidence by Similitude of Hands in criminal Prosecutions would never have been offer'd; He was convicted on such Evidence, and for that Reason his Attache was record'd in Parliament. And therefore, I humble my hopes your Lordships will not in your Legislation. Capacity admit that to be Evidence in this Case, in which the same Capacity you were pleas'd to condemn in Mr. Sidney's.

In 1695, Crofby was indicted for writing treasonable letters; and the Evidence was Similitude of Hands: Which Evidence was disallow'd by the Chief Justice Holt, and Crofby was acquitted.

In Francis's Cafe, my Lord Chief Baron Bory declared Similitude of Hands to be an Evidence: And if it was not admitted in those Cafes, where Papers, were produced, and proved to be of their own Hand-writing, and the Papers with which they were charged were produced, and compared with those other Papers; we presume, your Lordships will not allow it in this Cafe, where it is carry'd farther than ever it was attempted before.

The Proof, as to this Point, stands thus. — Three Clerks of the Post-Office swear, that the north east leaf of the Letter is open'd; that they took Copies of them, and seal'd them up again, and feast them forward; that
that four Months after, another Letter came to the Office, which was flipp’d: That is produced; and they all swear, they believe the three Letters were the same Hand-writing with the Letter produc’d. Now that Men, who never saw a Hand but once, and that whose Hands few letters put in a Month, should be able to swear, that three letters, which were written in April, 1720, were of the same Hand-writing with a letter which was flipp’d fourMonths after, is strange and incredible.

I beg leave farther to observe, that the Clerks of the Post-Office own they did not compare the Copies of the three letters with the Originals. And was ever a Copy allowed to be read, unless the Person who produced it swore that he compared it with the Original, and that ’twas a true Copy? It is remarkable, that Clark, one of the Post-Office, said, It was impossible to write a Hand, that had any Resemblance to those letters; but yet, he said, the Figures bore a Similitude to the Hand-writing: So that our Hand cannot be like another; but Figures may be like a Hand-writing. It is also observable, that the letter produc’d is proved to be Kelly’s Hand-writing, only by Hithersi the Meffenger; who says he had him in his Nobody a Week, and saw him write several letters; and by Malone, who proves Mr. Kelly’s Hand by a Supercription in French, and yet owns he cannot read French: Whereas, we shall ease by three politic Witsnells, that this is not his Hand. Besides, they might have produced the letter which he wrote to my Lord Townshend, which is admitted to be his Hand.

We shall likewise prove by several Witsnells, That at the Time when the three letters are said to be written, the Bishop was at Bromley, and so lame with the Gout, that he could not sit for Hand or Vest; that his Lady was dying; that no Person was admitted to him, but two or three Servants; and that Mr. Kelly was not at Bromley at that time, nor for three or four Months before, or after. And therefore ‘tis impossible the letters should be written, or debated, by the Bishop. The Evidence of Wind the Coachman, confirms this. For however Mr. Kelly, till he was carry’d to see him in the Tower; and that Kelly was not at Bromley; that Stranger was at Bromley from the 12th of April till the 26th, when the Bishop’s Lady died; and that he may have known it, if there had; that the Bishop never sent the Coach for Kelly, or any other Person in Berry’s Road, or any Place near Post-Mall. So that by this, the Examinations of Elizabeth Levett and Nims are quite destroyed. But ’tis objected, that a Man might put his Horfe at an Inn, and come to see the Bishop, and would not know it. Can it be imagined, that Kelly, who is supposed to be fo particular a Friend of the Bishop’s, would leave his Horfe at an Inn? But we shall examine other Witsnells to this.

It was objected, that on the 15th of June the Bells rang, and the Servants had Roies. But it appears, most of them were not in Roies: And if it should be supposed, that he never saw the Bells on the 10th of June, we shall shew that the Bishop knew nothing of the Ringing of the Bells, or of the Roies.

In the Report, Page 20, the Committee of the Commons are pleased to take Notice; “ That Vol. VI.

“on the 11th of June, Kelly sends his Friends at “Paris an Account of his late Misfortunes; “and after complaining of the Neglect in not “balancing him out longer, says, your Old “Friend Rig, indeed, offer’d all that could be “expected from the poor Man;” and infer, “That by Rig is meant the bishop of Ro- “cher.

Can it be imagined, that Kelly would call the bishop G errard’s old Friend who, ’tis not pre- “tended, ever knew him, or saw him? and if poor “Man be taken by way of Contempt; can it be “imagined that Mr. Kelly, a Gentleman of that “good Sense and Breeding, would use such an Ex- “pression of my lord Bishop? If these Words are “taken in the literal Sense, ’tis as improbable; for “the Bishop was not taken for a poor Man: Be- “sides, how could he, who had 200,000 Con- “tribution-Money, and had the Command of the “Military Coast, be said to be poor? And I dare “say, there is nobody but believes, that if my lord “Bishop would have intermeddled on Mr. Kelly’s “behalf, he would Interest enough to procure “whatever bail Kelly wanted; and therefore I “apprehend, that Rig cannot be intended to be the “bishop.

Indeed, no Credit can be given to Cant-Names; for the same Names are used for several Persons: As Lewis in Plunket’s Cypher stands for Mar; and in the Cypher found on Dennis Kelly, it signifies Mr. Cofer. Howley in Plunket’s Cypher, stands for King George: And in the Report 62, there are Compliments from the Pretender and his Son to Howley; which, I presume, they did not mean for his Majesty. Joan is used many times for the Duke of Newcastle. It is said for Sir William Ellis; and it is also used for the “Germanus, as I before observe’d.

That Jackman cannot mean the Pretender, is plain. App. E. 50. A Postcript in the letter from Quin to Mr. Foakes says, “Mr. Cobetti ad- “vises, that the Money you mention, in Clinton’s “Hands, should be equally divided between “Molley (meaning the late Duke of Ormond) and “Jackman, meaning the Pretender.” Now would “any one devoted to the Pretender’s Interest, put “Ormond before the Pretender? Jackman is put for “the Pretender only in Plunket’s List; and yet “’tis observable, that Plunket in all his Correspond- “ence never calls him Jackman, but Jephth, or “Jephtha: And in the voluminous Correspondence “charged on Kelly, he is not once called Jec- “fths; but the usual Names are Jephth and Jephth.

As for the Letter to Dubois, it seems at first “to be a letter written from France TO the bi- “shop, by the Name of Dubois; and after a “Month’s time they find it to be a letter written “BY the Bishop. If so; Writing a letter, and “not finding it, can be no Omission. But how comes “the Bishop to keep that letter safe’d, which he “had written several Months before? The Writer of “that letter owns, he had receiv’d one from Dub- “ois two Months before, by Mr. Johnon, which “was the Name Kelly went by: And ’tis very “strange, that the Bishop should be so weak, as “to mention the Name of the writer. Peron, who, “’tis said, used to write his letters, and by whom “he was suppos’d to carry on his Correspondence. “If it be presum’d that he wrote this letter; it “must also be presum’d, he was out of his Sense “when he did it.

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That letter was not signed, and was dated the 16th of Dec., but no Year; tho’ they have put the Year 1721 to it. For a Month together they never thought the letter to Dubois to be the bishop’s Hand; tho’ they had several of his letters. As to the Observation made by one of the Gentlemen, that the letter to Dubois was seal’d by a particular Seal, and not the Seal with which he seal’d such letters, as He intended all the World should see; that Gentlemen would do well to let us know, what letters were written by the bishop, which he intended all the World should see.

That so many letters were written before 1712, and so few since, was occasioned by his lordship’s great Correspondence about Matters of Learning at that Time, and his being from that Time often afflicted with the Gout, so that he could not write many letters, and consequently receive’d but few. Besides, He was made bishop in 1713, and Dean of Westminster; so had not Time to write much himself, but kept a Secretary.

As the Matters before mention’d to be charg’d against my lord bishop, arose from letters suppos’d to be written by him; I shall next consider the Charge against Him, which arises from letters suppos’d to be written to Ellem.

There are Two Letters mention’d in the Report as written to Him; one of the 11th by Mufield, interpreted to be lord Marrs, wrote to Illington; the other of the 25th of July from Digby, inter- preted Dillis, to Mrs. Wufhan.

Now I would observe, That it is not pretend’d, that either of those letters was ever receiv’d by the bishop; fo consequently must be inter- cept’d: Therefore it would have been proper, to have produc’d the Letters, and to have prov’d the Hands.

As to the letter from Mufield, ’tis only a Conformity of Consequence: And ’tis infer’d that it must be the Bishop, because his Lady died a lit- tle before. The letter says, ’We must submit with Reformation, to what is just and great God thinks fit to order; but you know such Things so much better than I do, that I will not trouble you with anything more. From these last Words it is infer’d, That this letter was written to a Clergyman, and consequently the Bishop.

What Weight this way of Reasoning will have with your lordships in criminal Prosecutions, is humbly submit’t: But it must be observ’d, That this letter is said to be an Answer to the letter, said to be written the 20th of April to Mufgrave. And as we have fow’d, that it was impossible the bishop should write or dictate either of the letters of the 20th of April, the Answer must fall with the letter. But from hence the Observation is natural, and undenia- bly true; that if Jones, who wrote the letter to Mufgrave of the 20th of April, could not be the Bishop; and Illington, to whom Mufield wrote, be the same as Jones; then neither Jones nor Illington can denote the Bishop.

As to the letter from Digby to Mrs. Wufhan, who is interpret’d to be the bishop, it was written the 6th of July, X. S. wherein Digby says, I cannot on any reasonable Grounds complain of your Silence, because I am informed of the Situation of your Health, and the Concern your Family are in, by Bankrupts, and Law-

It must be observ’d, that on the 7th of July O. S. G. W. in his letter to Digby says, Saw Mrs. Wufhan yesterday; she was never better in her Life than now.” It is strange, that Digby the Week following should take Notice of the ill Situation of Mrs. Wufhan’s Health.

’Tis plain both these letters can’t be Genuine, and therefore no Credit can be given to such a Correspondence.

One Way of fixing the intercepted Corre- spondence, and the Cant Names mention’d therein, upon the bishop, is, by the Correspondence of Times, and other Circumstances, as to his lordship being in Town, and out of Town: And there are several Mistakes in them. For in Muffield’s letter to Mufgrave of the 7th of May, he says, Mr. Jones is come to Town only for a Day: If that be to be understood of the bishop, it is not true; for he came to Town the 5th of May, and did not go out of Town till the 10th.

In the letter from J. H. to Dissewell, of the 18th of Jones, ’tis said, Mr. H. Rig, and Rep. are in Town. Next Day, ’tis said, by Rig is meant the Bishop: Which cannot be, as the bishop was then in Town. So in a letter to Majonewne, of the 19th of July, ’tis said, Rig is in the Country. Whereas the bishop was then in Town. This is the more observable; because the Report, taking Notice of the bishop’s being ill of the Gout, says, Page 41. This Particularity, as also several others, which will be taken notice of as to the bishop’s being in Town, or in the Country, at the respective Times men- tion’d in the intercepted letters, have been care- fully inquir’d into. And in the next Paragraph, the Report, taking notice of the letter to Muf- grave of the 7th of May, which says Mrs. Jones is come to Town, says, ’This agrees with the In- quiry.’ And yet it will plainly appear, that there are such Mistakes, as to Thole Times, as I have before mention’d.

I hope I may have leave to observe, that these Mistakes escaped the Observation of the Honourable Committee of the House of Commons; and that tho’ the letter of the 7th of May, in the Appendix, says, Mrs. Jones is come to Town, only for a Day; yet in the Report, the Words only for a Day are left out.

All the Circumstances before mention’d are made use of to fix the Names of Jones and Illing- ton upon my lord bishop; and therefore the next Paragraph but one in the Report is very ob- servable: Which is this.

‘These several Circumstances, joined to Ney- me’s Declaration, that Kelly had told him, the bishop were sometimes by the Name of Jones, and that Carter had told him, the bishop, sent by the Name of Illington, threw, that where- ever Jones and Illington are named in Kelly’s Correspondence, the bishop of Rochester is to be understood by those Names.’

So that the whole Proof of the Correspondence, charged to be carry’d on by my lord bishop under the Names of Jones and Illington, is reduc’d into this; that Neyme Declared that Kelly and Carter Told him the bishop went by those Names.

I beseech your lordships, Is this Proof? Is this Evidence sufficient to deprive a Reverend Prelate of all his Ecclesiastical Preferments? And to send him into perpetual Banishment? Do
the Lives and Liberties of Englishmen stand upon so weak a Foundation? If they do, I presume to say they are very precarious, and the most inno-
cent Man alive cannot say he is safe.

I beg your Lordships Indulgence to observe further, that this heavy Charge against my Lord Bishop is supported only by Innendoe: And with what an Eye Innendoe has been always look'd upon in criminal Cases, many Inferences may be given.

I shall trouble your Lordships but with one; which is full to this Purpose, and of the greatest Authority: I mean the Revolution of your Lord-
ships in the Cafe of Sir Samuel Barnardiston in 1683. He was prosecuted for writing letters, alleged to be seditious, and highly reflecting on the Government, and the publick Justice of the Nation; and was found guilty, and fined 1000l. He brought a writ of Error against In-
nendoe, and your Lordships were pleas'd to revere that Judgment; for that the Information being grounded on Letters, which in themselves were not criminal, but made so by Innendoe, your Lordships were pleas'd to declare, that Innendoe and forced Confessions ought not to be allow'd; for all Attestations shall be plain, and the Crimes ascertain'd.

Now if it can be support'd, without any Evi-
dence, that the Lord Bishop wrote the letters charged to be written by him; even then this Cafe is the fame with Sir Samuel Barnardiston's. For the letters are not criminal in themselves; nor can be made so but by Innendoe, and strict'd, forc'd Confessions. Nay, I presume to say, there is not one Part of the Charge but subsists purely by
Innendoe, and forc'd Confessions.

I will trouble your Lordships with insinuating only one letter; which is that of the 20th of April, written to Mr. Jackson, and subcribed 1738. With the Innendoe it is thus. 1738. Innendoe a person wholly proper Name begins with an R, Innendoe the Bishop of Rochester, did write to Mr. Jackson, Innendoe the Pretender; that, notwithstanding this Opportunity, Innendoe an Opportunity of raising a Rebellion in England at the Time of Elections of Members of Parliament, had elaps'd; I, Innendoe the Bishop, agree with you, Innendoe the Pretender, that another, Innendoe another Opportunity of raising a Rebellion in England, may offer before the end of the Year. Innendoe at the breaking up of the Camp. Your Lordships will please to observe what a Superstition of Innendoe (if I may so say) there must be to support this Charge; and without Innendoe no Part of the Charge against the Bishop can be maintain'd: And therefore I humbly hope that the same Reasons which induced your Lordships to reverse the Judgment against Sir Samuel Barnardiston, will prevail upon you to reject this Bill.

To what I have objected, I imagine it will be answered, That your Lordships are now acting in your Legislative Capacity; and that in your legislative Capacity you are not bound by the Forms of Law: But I humbly submit it, whether you will not think fit to proceed according to the Rules of law, tho' not according to the Forms of

Mens Lives, and Properties, are to be try'd and determined 'sudem Allegata & Proventa; and the Proof in such Cases must be legal Proof. And I apprehend with great Defiance, that when your Lordships proceed in your Legislative Capacity in other Inferences, you proceed according to the Rules of Law: As in Bills for enabling persons to fill, or settle Estates; or for making Rivers navigable. If the Title or Property of any Person come in question, your Lordships are pleas'd to hold the parties to strict legal Proof: And why not in Bills of Attainder? Are Bills of Attainder (whereby Mens Lives are forfeited, their Estates confiscate, their Bland corrupt, and their Fa-
milies undone) of less moment than Bills to en-
ble Persons to settle their Estates for the benefit of their Families? I humbly apprehend that your Legislative and Judicial Capacities are here fo un-
ited, that they cannot be separat'd. For a Bill of Attainder is a Condemnation by Parliament, and your Lordships always hear and judge whether a Party be guilty, before you condemn him. Will you then be pleas'd to judge, and determine upon the Proof in one Case than in another? Can it be conceived that your Lordships will not act by the same Rule in both your Capacities, or that you will not have an equal Tenderness and Regard for the Lives, Liberties, and Estates of the Subject in one Capacity, as in the other?

When a Man flits from Justice, he gives Judgment against himself; and when a Person accused doth by corrupt or indirect Means conceal or con-
vey away the Witnesses against him, then he is the Cause of his own Death. The Court and legal Proof cannot be bad: And that may be a Reason, why less Proof should be admitted. But in Cases not attend-
ed with either of these Circumstances, to say that less than legal Proof is sufficient for a Bill of Attain-
der, is to affirm that PRIVATE OPINION alone, without Proof, is a sufficient Foundation to pass a Bill of Attainder, and how harfily that would found in the Ears of Englishmen, is humbly submitted to your Lordships.

My Lords, by our Law a Judge cannot go according to his own private Opinion; but must be go'd by the Evidence given before him in Court. For the Rule is, Nil referre, quod non est in Fideic". And it's Mens Rights and Liberties were to be deter-
min'd by private Opinion; how precarious would the Lives and Estates of Englishmen be? The moxt innocent Man could not be safe; the wituot Man could not forsee, where it would end; and Eng-
land must no longer boast of the Excellency of her Laws.

It is a Rule, both in Law and Reason, that Novus jus debet procedere ex diebus: And yet that may happen to be the Bishop's Cafe. For the Charge in the Bill is general: intending to raise a Rebellion, and holding treasonable Correspondence in order to bring in foreign Forces: But there is no particular Fact charged upon him. Now if he should be indicted for either of those Species of Treason; and particular Over-dicts of such Tre-
ason should be alleg'd, as buying Arms, and lifting Men for the Pretender, and the Over Acts should be proved by well Witnesses, he might be condemn'd and executed for it. For he could not plead this Bill in Bar to such Indictment; because the Indictment would not be for the same Facts, there being no particular ones charged in the Bill. And yet it may happen (as I fear) that my Lord Bishop may be indicted and try'd for a Treason mention'd in this Bill: as the Cafe of Haupt- des and Ezchavers, which I lately mention'd. For Mr. Hampden was try'd for meeting and conspiring to raise a Rebellion, was fined 4000l.
May it please your Lordships,

I am of Council for this Reverend Prelate; and however unceessary I know Apologies to be before your Lordships, who are always ready to hear what the youngest and most inexperienced Person has to offer; yet it becomes me to make nothing for my ill Appearance at your Lordships Bar, not from want of Confidence; and it was the Defire of this Reverend Prelate, rather to make his Defence by such weak Hands as mine, as if he was perfounded, that his Cause needed not the Attitude of Art or Experience, in order to move the Paffions, or to impose upon the Reason of his Hearers; which he knows to be but an impotent Help to Persuasion, in comparison of Truth and Innocency. He appears before thee, (who hopes) will regard plain Facts and positive Law; and Truth, notwithstanding all the Diadvantages of an unskilful Pleader, will, he hopes, at last prevail.

For my own part, since your Lordships have allotted me for your Council, I shall be under no Apprehensions of Danger or Displeasure in performing my Duty to him, in humbly offering every thing I think necessary for his just Defence: and I will not doubt, but I shall be fully and favourably heard. And this it is his Lordship's Misfortune to be already prejudiced in another Place, and to be condemned without hearing, by some few vulgar mistyled Apprehensions; yet he hopes better Things of you, my Lords: he does not doubt, but that your Lordships, who in Matters of less Importance proceed with Calmness, Justice and Prudence, will be careful not to deviate from those Measures in a Matter which demands the greatest Caution and Deliberation.

It is the Case, the Reputation, the Liberty, the Fortune, and (I was going to say) the Life of a most learned Prelate; because some Circumstances of this Bill are so cruel and extreme, that it is little better than if it had affected Life itself.

Every one that is a Friend to this Bill, must allow, that it is not to be offered without an evident and cogent Necessity. But, I hope, my Lords, that the Grounds and Suggestations of it were true, and duly proved, yet that there is no such Necessity.

In order to discover whether there be any such Necessity or not, I shall consider the End proposed by this Bill, and then weigh the Means whereby by his hope to attain that End, and whether this Bill be a Means necessary or convenient to attain it.

The End, I hope, is the Security of the Government, and the Execution of Justice, and it ought to be pursued by all regular and lawful Means; and therefore, before I come particularly to the Crimes supposed in this Bill, or the Proofs which have been offer'd to make them out, I shall beg leave to say something as to the Manner and Method of this Proceeding. Not that I shall presume to question your Lordships Power in such Cases: But, as on the one hand we must admit your Lordships may, and have in some Cases exerted your legislative Capacity, in declaring That a Crime which was not fo before, or by inditing particular, or extraordinary Punishment on common and ordinary Crimes, yet on the other hand, till that is done, I hope I am at Liberty freely to represent the Inconvenience, the Injustice, and the Imprudence of making such a Declaration, or of pushing such a Law, in the Cafe now before you. If it should become a Law, your Lordship must disipate it no longer, but submit to it as just, whatever Hardships he may, in the Retirement of his own Heart, conceive introduced upon him by it. But, thanks be to God, there be yet no Law, and that I am at full Liberty to represent the Injustice and Inconvenience of this Bill; and to say, this is not a proper Occasion that needs or calls upon your Lordships to exert your legislative Power.

I might here enlarge upon the Injustice of all Laws made ex post facto, and for one particular Cafe or Person, and no other; that they are against the Common Law, and the Common Right which every one is entitled to, in the Place or Community where he lives; because Laws, in their Nature, ought to be Rules for the General Order, and Safety of Society; and Natural Justice would forswear in all such Cases stop the Precipitancy of your Lordships Resolution, by this Question: Against what Law hath he transgress'd? If he hath transgress'd any publick known Law, he is undoubtedly subject to undergo the Pains or Penalties enacted by it, when the Proof is duly and fully made which that Law requires. But if there is no such Law yet in being, or if there is no such Proof as that Law requires to uphold him guilty, will your Lordships introduce a new Law, or a new Sort of Proof to make him Man? If these Methods are to be taken, the most innocent Man is not safe, and the wisest Man cannot judge what is an Offence, or in what Degree; what Proof is necessary for his Defence, or how he is to be try'd. And in vain does the Legislature every Session provide Laws.
Laws, if a particular Law or a particular Proof is still to be made for every particular Purposé, not only contrary to the Tenor of all the former; but such as is not to be a Rule or Law in any other future Cause whatsoever.

Thus much I am sure may be justly urged in any Place of Judicature in the World, against all such Laws in general; but much more as to the particular Laws, as we have, which my Lord Bacon calls wife and alms, that give to God, that give to Caesar, that give the Subject, that which belongeth to them. Not like those of other Countries, imposed upon the Subject at the Will of the Prince, before Probation or Trial, whether they are fit and convenient for the Genius of the People; nor the Production of one Man, or of one Parliament in any one Age, but the Wisdom and Experience of many Generations.

And I am sure one of the greatest Excellencies of this Law, beyond that of other Nations, has been always esteemed the common and ordinary Method of Trial. It has been always accounted the Birth-right of an English Subject to be tried by his Peers, according to the known Course of the Laws.

And therefore, the better to shew the Difference, and to evince the Hardship of this extraordinary Proceeding, I shall a little consider the Nature of the ordinary Trial; and th'o' I might do this in the Language of Magna Charta, and of many eminent ancient Writers of the Law, I rather shew my Lord Chief Justice Hale's, that great and good Man, who was happy Mediator between the Petrogamies of the Crown, and the public Liberties, which he could never recover, but by Polttery, without the deepest Honour. He says 'tis the best Trial in the World, and one of the first Principals upon which our Constitution is erected. Here a Man has a legal Exception to any one of his Triers, if they have any Dependence upon either of the Parties, are prejudiced or prejudiced before they hear the Evidence. All the Evidence is given generally, in the Presence of the Judge, Jury, Counsell, and Parties; not in private, before a Commissioner or a Clerk, (as in Chancery, or by the Civil Law) where oftentimes a Witness's delivers that, which he will be ashamed to tell the world, and whereas a crafty Clerk will oftentimes make a Witness speak what he really never meant, by dressing up his Evidence in his own Terms, Phrases, and Expressions. Or a Man may depose in Writing, what the Fear of being palied, or perhaps a better Recollection would not let him adhere to in open Court, where he has an Opportunity to correct, amend, or explain his Testimony.

Besides this, (says that learned Judge) a Jury must all agree in their Verdict, and are not to be concluded by a Majority; and therefore, th'o' in some Cases, the Law don't positively require two, nor one Witness, even one, yet the Credit of a Verdict is great, where twelve Men on their Oaths unanimously agree.

The Council on the other Side may be apt to reply upon me, with the frequent Abuses and Corruptions of Juries. My Lords, I do agree, that may happen to be the Case; or it may happen, that some more knowing or over-bearing Man among them, may sometimes govern all the rest. But if the same may happen, and often does in every Society, or Number of Men, and the belt regulated Bodies in the World, surely that can never be a Reason to deprive a Man of his common Right, and to lay aside a most valuable Institution.

I am afraid, my Lords, this little has been too much upon a Point that so little needs it: but the Love of one's Country, and its ancient legal Constitution, is an inherent Prejudice, which every one is at to judge; and the Advantage of this Privilege, every one that hears me, (I doubt not) is in the Heart sufficiently convinced of, and would boldly insist on it as his Birth-right in any Cause of his own, where his own Property, his Reputation, his Life, or his own Liberty was in the least concerned.

It is urged by the Counsel for the Bill, and indeed by the Bill itself, that this is an extraordinary Cause, and requires an extraordinary Remedy, where the Offender has taken Care, by subtle Contrivances, to keep out of the Verge of the Law, and the Reach of all ordinary Proceedings. But if such a cruel artificial Suggestion be allowed to be a good Reason to deprive a Man of the Benefit of the Law, no Man's Life or Liberty is Life. The same may be suggested of every Offender, and in every Offence: That a Man endeavours to evade the Punishment of the Law. The same may be said with more Justice of every one that pleads Not Guilty, and insinuates on his Trial, that he endeavours to evade the Law, because such an Accusation or such an Indictment is found against him. And yet the most rigid Caluiti never yet maintained, that any Man (tho' he knew himself to be a most guilty Criminal) might plead Not Guilty, and insist on his Trial.

But if this cruel Artifice is to prevail, and this should be a Reason to exercise such an extraordinary Proceeding: Will he to all Men of Sense and Ingenuity. Nay, my Lords, if such a Notion is to take Place, the Billshp is in a much worse Condition, than if Neyene were alive, or any other Witness had been deposed, viz. more against him, all of which we should have had Advantage of. For, when once the Jury's Oath was given, and then, his Accusation or Indictment must have been found upon the Oaths of twelve Men at least, he would have had his legal Trial, and his Challenges. This I say upon a Supposition that the Gentlemen of the other Side may not allow his Lordship to be a Peer of the Realm; but if they do allow his Right of Peerage before your Lordships Bar, and consequently that he is intitled to a Trial by his Peers, yet still he would have had his legal Exceptions to the Teftimony of the Witnesses; there must have been two positive Witnesses to the same Overt-Act; and his Accusation must have been found by twelve Men at least upon their Oaths; and, after all, if his Lordship should have been found Guilty, he might more in Arret of Judgment. All which Beside the Overt-Act, utterly deprived of, by this Method of Proceeding.

We shall be told (I doubt not) by the Counsel for the Bill, that your Lordships fit now in a Judicial Capacity; that you are Judges of the Faéh, as well as of the Law. No Man will doubt, but your Lordships have a Judicial Capacity, and have at all Times must worthly exercised it; but yet I must beg leave to doubt, whether your Lordships are now properly acting in that Capacity or not? You have a Power, 'tis true, in this
Method of Proceeding to condemn this Reverend Prelate, if Guilty; but not to have and acquit, if you are ever so well satisfied of his Innocency: and whether it be your Lordships Pleasure to pass or reject this Bill, I desire to know of the learned Council, whether it may be pleaded in Bar of a Prosecution in the Courts below, that he was under the covert of the Rules of Law, or whether your Lordships Resolutions on this Bill (whatever be) would be any legal Espostof to any other Bill in a future Seisfon. No, my Lords, I humbly apprehend, it would not be a good Bar or a legal Plea, either at Common Law, or according to any Rules or Usage, of Parliaments; and therefore we hope your Lordships will not do that, which after all cannot be a complete or a final Judgement, and by that means draw this Reverend Prelate into the Danger of a double Trial. Which, I am sure, is not only contrary to the Rules of Law, but also of Natural Justice. I have the more Contenance in saying this, not only from Hamyns's Cafe, but from the known Cafe of Fitz-Harvis, who pleaded this very Matter to the Jurisdiction of the Court of King's Bench, that he was impeached for the same Crime by the Commons of England: but it was the Opinion of the Judges, with the Advice of all our Judges, that he might, notwithstanding, be tried there: and in fact, was tried and condemned by the Court of King's Bench, though the Impeachment was still depending before your Lordships House. But if your Lordships be resolved to proceed in your Legislative Capacity, and your Lord Bishop mutt, also, be in Danger of the ordinary Method of Trial; yet suffer me to say what has been done, in former Times, by former Parliaments, on the like Bills: and how light ever other Authorities may seem, we hope your Lordships will have some Regard to your own Usage and Resolutions. There have been too many Iniances, I confess, my Lords, but tho' that can be in any Degree justify'd, may be reduced to thefe few. They are such as pass'd against Persons dead, or who fled from Justice, and did not render themselves by the Time appointed, or they have pass'd against such as were in actual Rebellion, in direct Opposition to all Methods of Trial, and in Defiance to all Courts of Justice; or against such whole Treasons were flagrant and undeniable, but their Persons above the reach of inferior Courts and Commissions. Those few Sacrifices to the Heat and Necessity of the Times have been most of them revok'd with Infamy and Detestation, when Men were afterwards at Liberty to hearken to the Voice of Law and Reason, and began to consider they had only prepared Shackles for themselves. Those few melancholy Iniances, procured without due Trial by an Excess of Prerogative, of Persons that have been forth-coming, principally because it was the Will of a Prince; are not to be mentioned without Horror and Detestation. Such as those, says my Lord Coke, anfert obtinio & patect, i.e. adhere to the fixed and unalterable Rules of Justice he forgot, if he be palpable; or else draw a Veil over them, and let them be buried in perpetual Silence.

But in all other regular Times, a free Trial in the ordinary Cours of Law has seldom been denied, even where the Facts have been so notorious as (one would think) almost to need no Trial, and to evident as to need no Proof; as the Regicides, except such as fled from Justice were admitted to Trial, no less than Twenty Nine before one Commission of Oyer; and every one heard with their Pretences. This is no less true of the Four False Petitions, that flabb'd a Prime Minifters in the Execution of a High Commission, tho' he be confeff'd the fact, both before the Council and Court of King's Bench, and justified it as a publick Service to the Nation, in the most daring and impious Manner, was brought to Trial, without superfluous any of the ordinary Methods and Circumstances of Justice. Indeed where some flagrant Crimes Law have legally prov'd and determined in the Courts below, Parliaments have sometimes thought fit to add to, or heighten the Degrees of Punishments. It was so resolv'd in the Cafe of the Gunpowder Plotters 5 November, that they were at first to be try'd at Law, and then the Parliament (it need be) to add a Confirmation to it. Nay, that Resolution went farther; it says they were not competent Judges of it, before it was found in the Courts below.

I might mention the Opinion of Judge Davies, the Mirror of Justice, Lord Chief Baron Alkin, Re, who the Parliament's former Court of Oyer, and that the proper Subject of their Oyer is such Offences for which Right cannot otherwise be had, and to deal with Delinquents too high for the ordinary Courts. And, as I am before your Lordships Bar, I am very proper to mention the Resolution of your Lordships Predecessors, in the Cafe of Fitz-Harvis, who as I before mentioned was impeach'd by the Commons of High Treason; they relinquit to take him out of the Hands of ordinary Justice, and directed him to be proceeded against according to the Course of the Common Law.

And what Opinion subsequent Parliaments have had of my Lord Strafords Bill of Attainder, before appears from the Words of the Act of Reversal, by ordering all the Records and Proceedings relative to it to be cancell'd and destroy'd, that no Remains of so evil and unjust a Precinct might be visible in after Ages, or brought into Example to any one's Prejudice. Bar in even in that detestable Iniance, such Informations and Evidence were not admitted, the Witnesses were all examin'd, visum esse, upon Oath, and he was first adjudged Guilty, by way of Impeachment at the Bar of the Lords, before there was any Order for a Bill. The very same Method was observ'd in the Cafe of Archbishop Laud, and Articles fully proved against him, as they thought. If it had not been so, even that House of Commons, as bad as they were, and as thinly as they were after the Blood of those Noble Persons, probably would not have ordered those Bills. But yet this latter Iniance of Archbishop Laud, never had the Royal Assent: and 'tis well known in History, what desperate Measurers were made use of to induce the Lords to pass it; and at last I think there were but few of your Lordships whole House, that were present when it was passed. But if this Bill should pass, we must not bring Guilty and condemn those Iniances; for this will, in effect, re-erect them, and many others, which the Wil-
And if this Case bears no Proportion nor Si-
mitidues with that of Sir John Fenwick; I am
sure it has much less, or rather none at all, with
any of those before mentioned. For the hope, after
so long and full a Discovery of the Conspiracy,
and those many judj Methods of Preparation,
and, against it, the Danger cannot now be so great or
cogent, as to require to so precipitate a Resolution.
His Person, your Lordships fee, is safe and forthcoming,
and the Courts of Law in their usual and
open Course; and at this Time filled with such
heard and resolute Judges and Ministers of Jus-
tice, that they are equal and able to deal with the
much blood and daring Cause.
There can be less Reston therefore, none at all
we hope, for your Lordships at this Time to
exert such an extraordinary Method of proceed-
ing.
But there is this further Objection against proceed-
ing by Bill, that it makes not only your
Lordships pronounce Judgment against one of
your own Members, and a very terrible one too;
but it makes the King himself, without hearing
the Word of the Defence, in Person, pronounce
a Judgment upon his Subject, who for his own
greatness Tempers must be averred to be which the
Common Law therefore has wisely left to be
pronounced by his Judges, in those Courts
where he is always supposed to be present.
But in this Instance, there is something which must be
still more ungrateful to him; in that it is to ex-
clude a Branch of prerogative which his Majesty
might delight in, and it must be some Surprize
to every good Subject to find his Royal Judgment
so highly curtailed.
There is another Thing, which, I persuade my-
self, your Lordships will fully consider; that if this
Method of Proceeding by Bill be encouraged
and grow familiar, it will put an End to one
considerable Branch of Jurisdiction, which your
Lordships were hereafter so justly jealous of, as
to not admit at any time the least Competition.
The Lower House will hardly care to appear
any more before your Lordships as Accusers or
Professors of their own Offices, and the least
invasion of your Judicial Capacity. And every such Bill
(e specially against a Member of this House) is a
direct Infringement and Diminution of that
high and valuable Privilege, and will open a Door
to some other Mischiefs to the Peaace: which
I have much rather your Lordships would fagon
prevent yoursel es, than I express it. It has been always
doubted without Doers, whether your Lordships
could begin such a Bill against a Commoner; but
I think it may be more fully doubted, whether
the Lower House can begin such a Bill against
one of your Lordships: and, if this Bill should
have no other Consequence, it will stablish
this so far, as to bear no Question hereafter. My
Lord s, I need not say, how much more proper
it would have been, for the Lower House to have
left this Matter intire to your Lordships; be-
cause it has been so often revolvd by your
Lordships and Judges, that the House of Commons have
had Power of Jurisdiction against it, and has been
one, but in Matters concerning that House,
Whereas this is a Case of Peac e, the Punish-
ment, and the Exclusion of a Member of this
House. There is an Instance on your Lordships
Journals, where the Lord Pareeck voluntarily
surrendred his Title and Dignity of Viscount to
the King by Fine, and yet your Lordships una-
inomously
nimely revers'd that Judgment, and declared, that no Place could judge of, or intermeddle with Dignities or Rights of Peersage, but your Lordships own Houfe.

And thofe my Lords of that Reverend Bench, will surely confider what a fatal Blow this Bill will give to the Discipline and Polity of the Church of England. They have more than ordinary Reafon to be jealous of increasing fuch Precedents, and of introducing Methods of depriving Bishops and Deans, hardly known to former Ages. The ancient Canons have already prefcribed Methods of judging, cenfuring, and depofing Bishops, and the Caufes where and when thofe Methods are fit to be exercised. I don't fay the Parliament cannot do this, or any thing like which they think proper; but the Metropolis, their Lordships know, is intwined with this Power over his Saffragns, or a Provincial Synod. And 'tis plain, the Law of England takes Notice of no other Power, that can regularly deprive. For to mention but this Inflance, in an Affaire should be joined, whether a Bishop be deprived or not, the Court where fuch Affaire arifts, could only write to the Archbifhop to certify. And to prove this Affair, I will name but one of thousands of great Ecclelliasticat Authorities, (fince poofibly they may be excepted against, as Perfons who have too much Interett in the Cafe to be impartial) but it is fo laid down by my Lord Chief Baron Atkins, in his great Argument of Ecclelliasticat Commiffions, and by my Lord Chief Justice Holt, and the Court of King's Bench, in the Cafe of Dr. Watson, Bifhop of St. Davids.

All Precedents, my Lords, will increafe; and the Scorn and Contempt of Libertines against your Lordships sacred Order is too great, to drop or to forget a Precedent so grateful and pleasing to them as this will be. Every one knows the Deftruétion of the finaller religions Houfes, only made way for that of the greater. A Time has been when their Lordships Proceffors were all excluded and fequeftred; and it has been attempted, even since the Reformation, to take away by laws and Charters. I am far from apprehending any fuch thing is pretent, and I hope it will never enter into the Heart of any Man. But, my Lords, I confefs I thought as little at this Time of fuch a Bill as is now before you, to deprive a Bifhop and Dean at once, not only of all his Dignities and Benefices, but from the Exercise of any Part of his holy Office and Function: And I will fay, that if this Bill should pas, and by any of your Lordships Af- fent, fuch a Defign will be render'd more easy and familiar, and much more unpitied, by all Mankind.

Give me leave, my Lords, next to obferve, with what Caution and Moderation other Parliaments have proceeded, even in thofe Caufes where they have thought proper to exercife their Legislative Capacity. I pass over the Statute 7 Will. c. 19. for Imprifonment or by Warrants, &c. and many other fuch Caufes, which were too great and intricate for the ordinary Courte of Law, but yet too low and inconsiderable to enter into this Comparifon. But the Statute 8 Will. c. 35. may be named, I am sure, with that now before you, for the Imprifonment of Courte, &c. concern'd in the Affiliation Plot, againft all whom there was fome positive Evidence upon Oath. Theveral of that Parliament can never be queftion'd from an Aff to full of Gratufity, and in fuch strong Terms and Accents of Loyalty to the Kings, yet they did not at once, and at one fling; Stroke, cut through from the Land of the Liv- ing, and utterly deprive them of all the Necessa- ries of Life. The Jiftft Step that Parliament took was to pas an Aff for the Detainment of them for the Space of one Year only, not to the For- feiture and Difpofition of all they were worth, or to the Exceffion of his Majefly's Mercy, but even to leave a difcretionary Power of Bail ing within that Time, to any fix of the Privy-Council, if they judged proper. Their firter Ordinary and Impenfivity occafioning another Aff, g Will. c. 3. to detain them a Year longer, it was still un- der the fame Exception. At the End of that Term another Aff was made, impoiving the King to detain them during his Pleafure, 10 Will. c. 11. After the, two other Aff's paffed, impoiving the late Queen and his present Majefly to detain them. What the particular Reafon of thofe Alterations were, I cannot take upon me to determine, because the Aff's themfelves are wholly ftrange to me; but, my Lords, fuch were the prudence and moderate Steps taken by former Parliaments, even in that bold and wicked Coniparifion. I may alfo juftly take Notice of the Prudence and Clemeney of the late Parliament, when there was fo loud and fo general a Cry for Justice, and when the Nefceffity of the Time feemed to require a more fpeedy and extraordinary Degree of Punifhment than the Common Law was ac- quainted with: but with what Difficulty, with what flow Paces, and with how much tender Circumftances did that Bill pass? Your Lordships will eafily imagine, that the Perfons I here fpoke of are the late Directors of the South Sea Company.

It would ill become me, my Lords, if I had In- clination, to intitle the Difficulties, or to aggravate any of thofe Gentlemen's Misfortunes; but the Service of the Reverend Primate now under Con- fecration, requires me just to mention what a State of Confufion they had reduc'd the King- dom to: How many Thousands have fell, and still feel the pernicious Eftacls of that Scheme? Tho' their Crimes had no particular Appellation, or determinate Punifhment in our Law, yet the * Civil, and the Laws of other Countries could have told us, that Crimes Peculati, the Robbe- ry of the publick Money, was fuch an infamous Transgredion, that the Punifhment of it was Death, both in the Principal and Accelfaries. I hope different and how mild was the Punifhment indiected by the late Parliament, in compofition of that, I need not mention; and every one knows, how tenderly and fparingly that Law has fince been executed upon them, and how much they still enjoy of the Spoils and Planters of the Na- tion.

Let us not then follow every Precedent that has been, but the Just and Prudent Precedents of moderate Times, and of good and peaceable Reigns. Let us not be ambitious to surpass the Proceedings of violent and arbitrary Men, which we or our Polity may have Caufe to repent of hereafter; but let us imitate fuch only as are

* Sal. Rep. 137.

* Dig. 48. 1. 6. Sec. agreeable.
agreement to the Law and Confinement, such as are grounded upon true Reason, and the Princi- ples of exact Justice.

If you are so kind as to apply the Method of these Proceedings in general, and known (in some measure, I hope) that they are contrary to the pub- lick Wifdom, contrary to the known Rules of Law, and the common Right of the Subject, I shall, with your Lordships Favor, next examine the Foundations and Suggestion of this particular Bill. As for those general Masters and Allega- tions with which it is introduced, and upon which the Bill depends. And I have thought it so much
Time, there is no Necessity, as we conceive, to answer to. We are here before your Lordships only as Counsel for this Reverend Prelate, one single supposed Conspirator; and it would ill be- come us in the least to controvert, that there has been a Conspiracy formed and carried on by some Perons abroad and by others at home, after it has been so solemnly resolved by both Houses of Parliament. Nor can we deny, but that Mr. Lloyds has been suspected, and Attainted of it; but are yet to feel, how these Things have any Relation to the Cafe now before your Lordships; or how that unhappy Gentleman's Cafe comes to be connected and made part of my Lord Bishop's, as it is by this Bill. We may justly appeal to every one that heard or read that Trial, whether this Reverend Prelate's Name is so much as mentioned in any one Line of it; whether there are any Grounds to think, from any of those Gentlemen's Papers or Examinations, that his Lordship was privy to, or in the least con- cerned or acquainted with his Perfon, or his In- tentions: And I dare say, his Lordship is as much amazed at the Rhetorics and Folly of his Schemes, as he detests the Wickedness of them. Notwithstanding which, it is his Misfortune to be charged in this Bill as a principal Actor and Director in the framing and carrying on of those very Schemes and Deceptions for which that Gentle- man has been condemned. And as to the Cyphers and Papers of Plots, I am as much as a lost to imagine, upon what Grounds they should be given in Evidence against the Bishop, since 'tis not so much as suggested in the Bill; nor is there any thing throughout the Report or Appendix, that in the least charges his Lordship with any Inter- course or Correspondence with him.

It is strange, my Lords, that Perons Thoughts and Intentions, so widely distant in all other Respects, should yet center in such unnatural Projects, and wild Undertakings, without some previous Difficult, some Confusions, or Ac- quaindance with one the other; and yet as strange and unaccountable as it is, this Reverend Prelate is charged in the very same manner by this Bill, with confuting and endeavouring to cafe an Insurrection, to procure a Foreign Force to invade the Kingdom, and Corresponding with the Pretender, and Persons employ'd by him, knowing them to be afo employ'd. And if their Facts, my Lords, had been duly and legally proved, I should have very little to say in his Defence, but humbly intreat the Mercy and Com- mission of this Honourable House; for they are Offences in themselves so great, that on the one hand they are not capable of Aggravation, nor on the other of Excuse or Diminution, by any thing I can say. But if the Facts have not been proved in the Whole nor in Part, the late Affirm- ation or Allegation of them is only Brutus Vol. VI.
adhere to that Opinion, or to resolve the like in this Cafe, we must submit.

If there is any thing certain in Law, or agreeable to Reason, it is this, That in all Criminal Charges, the Evidence ought to be clear and positive, and that the higher and more heinous the Nature of the Charge is, the more clear and undeniable the Evidence ought to be by which a Man is convicted. Now, I believe your Lordships to consider at one View (as far as it is possible in such various and perplexed Facts) the Methods made use of to prove his Lordship Guilty, and what they have offered to your Lordships under the Name of Evidence. Where Words have been both capable, and sometimes where they have not been capable, of two Senses, an arbitrary and invidious Interpretation has been put upon them. Where Words have been plain and proper for the Occasion, and which confederated separately by themselves, it was impossible to put a criminal Gloss upon, the Writer is supposed to have some mysterious Meaning or double Entendre; or else they are complicated and thrown together with those which, without some criminal Meaning, in other Letters the Names and Words relative to Men, are supposed to be used for those of Women, and the proper and usual Appellation of Women, for those of Men; and because one fictitious Name will not answer all they would have it, the Names are often shifted, one and the same Perfon is supposed to pass under seven or eight different Descriptions: and often two or three Names in the same Letter, within the Comps of two Lines one to the other, are urged to pass for the Disappearance of Perfon. Some Letters which are writ of another, and speak in direct Terms of a third Perfon, they would have to make the Writer himself, tho' as often without any Name, Date, Subscription or Signature at all. Books of Affectations, Manuscripts, and common Mercantile Terms, which seem proper for the Citation and the Occasion of the Correspondence; and the Name of Stocks, which every one knows the true Meaning of, and carries all the Appearance of Reality, are very particular and sought in the current Prices at that time, by a new kind of Metaphor are to be taken in an ill Sense. Others which are only to be informed of the Disappearance of a Friend, the Variations which happen in it, and the Opinion of Doctors upon it, by a strange and arbitrary Contraction are applied to explain every different Purposes: and, as if they were sufficiently even of their own Sufferings, and diftrustful of these Explanations, they call in for Aid several disjointed Fragments, Extracts, and Scraps of Papers, which no Man but themselves can tell what to make of; and when there happen to be some Words which cannot be reconciled with such a Contradiction, or the Uses which they would make of them, they are totally omitted, and we are told they are not material, or not yet decipher'd, or not legible in the Original, but your Lordships and the World must intend them to mean something criminal.

My Lords, if such magical Suppositions, Glos ses, and Intendments, such untural Constructions, false Inferences and Inauduods, are to be admitted as Evidence, and derive the Name of Proof, I must confess, they have given you some.

If the Whimseys and Conjectures of Deyclouds, the Hearlaces and Reports of third, fourth, and fifth Persons, are to take place in your Judicial Proceedings, instead of that plain, honest, and positive Proof, which the Law requires; or if the Number of Facts and the Variety of Circumstances could make them alter or exceed their Nature, I must confess, they have offered for: Things worthy of your Lordships Consideration.

But if it were your Lordships Pleasure to confine Things according to the most natural plain Sense and true meaning of the Words, as others would have understood them, and in such a Sense as the Writer probably meant them, or in that just manner which your Lordships have hitherto done on criminal Prosecutions, no one can say they have shown one Degree of legal or reasonable Evidence, to prove any one Suggestion in the Bill. This I must humbly affirm, and, I think, no one can disprove my Allusion.

Thus far in general of the Proofs that have been offered; but I shall, under your Lordships Favour, speak now more particularly to them. The said shall be so far from abridging or falsifying over anything that has been said, that I am willing every thing those learned Gentlemen for the Bill have been pleased to offer, or that Honourable Committee have observed in their Report, should have its full weight, and be put in the Strongest Light against us.

It has been observed, that there were three several Methods and Times fixed for the Execution of this pretended Conspiracy.

The first was to have procured a regular body of foreign forces to invade the Kingdom, at the time of the late Elections, which was from the middle of March to the middle of April 1722.

But have they indeed your Lordships any Evidence, or even one Passaige in the Report of that Honourable Committee, that particularly charges his Lordship with being privy to any one of these three Designs thus generally and roundly affirmed? He is not charg'd with being privy to the first or any other of the three Memoraux to the Serjent major Forces. The only Passaige that can be pretended to contain any Imputation of that kind, is in the Letter sign'd 1357 to Jackson, which they say, there is reason to believe was from my Lord Bishop to the Pretender: but this we hope in the Course of our Evidence effectually to disprove.

The second Design was to have made an Attempt at the time it was believed his Majesty would go abroad; but all that is intimated in relation to his Lordship, is contained in two or three obscure Passaiges relating to one Jones, in Letters said to have pass'd between Dillius, or his Secretary, and Mr. Kelly: which Passaiges being something ambiguous, are interpreted in an ill Meaning, by Hearlaces from Nyeus and Pautier, and Plankel's Cypher; but cannot, without the greatest Aburdity, be thought to relate to his Lordship.

The third of these Passaiges relates to Remittances of Money, which they intitulate the Bishop was to furnish; but it amounts in the whole to no more than the bare Hearlace of one Man, and an arbitrary Interpretation of some Expressions in the Letters of two others, to either of which his...
Lordship has not in the least been prov'd privy; and the Whole depends upon a Supposition, that Jesus here and elsewhere in the Correspondence means him; which depends again upon another Supposition, that the Bishop did not relate these three Letters of the 9th of April, one of which is signed Jesus's a Supposition which we hope likewise to prove absolutely false, and by that means shake the Foundation of the whole Charge.

The other Passage is in a Letter from Dillon's Secretary to Kelly, about Jones's fitting and providing himself with Saddles, which by the same Methods is explained to mean Soldiers and Regiment, which his Lordship is supposed to have undertaken to procure: and if the Words are to be understood in that Sense, and applied to him, he must likewise be supposed to have undertaken to be at the Head of them; which, considering his Lordship's Function, Age, and Infirmities, is so absurd and ridiculous, that, instead of spending more of your Lordships time in answering of it, I shall only make use of it hereafter, as one Instance (among many others) to show, how much they are mislaid in affirming, that, wherever Jones is named, his Lordship is to be understood.

The third and last Definon, the I must confess the most monstrous, if it were true, because Part of it was the Seizure of his Majesty's Person, was to have been put in Execution at the breaking up of the Camp. But, I am sure, there is not one the least Hint throughout all this voluminous Affair, that his Lordship was concerned or privy to that. And therefore 'tis surprizing to think upon what Grounds his Lordship can be as he is in the dilemma of Bill Charg'd with having been deeply concern'd in forming and directing this Correspondence; which, as your Lordships have heard, consist'd of those three several Definons. The Council, indeed, for the Bill have endeavor'd by divers Methods and Reafonings, by some little Circumstances, and seeming Probabilities, to charge upon his Lordship in general such a Correspondence: And they may all be reduc'd to their three Heads:

1. Hearfays. The three Letters said to be dictated by his Lordship, and written by Kelly to Lord Argyll, Dillon, and the Predecessor.

2. Two Letters said to be written to the Bishop.

3. The Co-incidences of Circumstances, Times, and Names. In the intercepted Correspondence, to induce a Belief of the before-mention'd Hearfays, and Supposed Facts.

To all which I shall endeavour to give some Answs.

But before I enter upon these Particulars, I shall beg leave to obvire to your Lordships, That if such Evidence is to be countenanced, it will be in the Power of any two Men, the one in England, the other beyond Sea, setting an Account of the Circumstances and Motions of a third Person, by an artificial intercepted Correspondence, to raise what Satisfactions of him they please; and yet he be all the while innocent and ignorant of what is doing. Whether that is the Case here, I shall afterwards submit to your Lordships Judgments.

But it is very remarkable, that in all the intercepted Correspondence to and fro, there are no Footseps or Descriptions which any ways point out to, or of whom they are written, but those alone which are supposed to relate to his Lordship; and in them, as the Council obvire, things are said and done in such a manner, and with such particular Circumstances, as lead directly to him, and him only. And this being so contrary to the Caution and Reserve practiced in all other Iniances, carries in it some manifest Marks of Fraud and Contrivance.

This Remark I humbly apprehend to be the stronger, because there has been no Proof of any particular Meetings or Confabulations with other Persons, towards carrying on these Definons. And how a Man can confpire with himself, I know not, except that it is barely alledged he was a Member of the barford Club; the Fallacy of which Assertion that Honourable Committee themselves seem so sensible of, and by that Indulgence and Enlargement which one of those Noble Persons (the one said to be the chief of them) has since met with, is now so well understood, as to need no manner of Documentation.

I may also as justly obvire, that there is no one Witness against this Reverend Prelate of any one criminal Act or Expression, from the Time of his Majesty's Accession to the Throne; tho' one of the Council (as your Lordships may remember) was very particular about the Manner of his Paling of the 9th of June, which the Coachman gave them an Account of for four Years together; and tho' all his Papers were seiz'd, not one Letter, or Paper, under his own Hand, produced of a Criminal Nature, or pretended to have been seen or intercepted. Not any one Letter intercepted that is pretended to have been written to him, much less any prov'd to have been receiv'd by him, the Matter of which appears to be Trea- ronable, or any ways Criminal. My Lords, I must own a great Confiance is drawn by that Honourable Committee, because a great Quantity of Letters and Papers were found dated before the Year 1712. This very Objection was made in the Commission of his Lordship's Pop. desecrets, and a flight Answer falsify'd his Examinants; and the plain Reason is, that his Lordship at that Time had a settled Correspondence with many eminent Men on Matters of Learning, which he esteemed so valuable as to preserve; but since the finishing of those Controversies, he had leas occasion to write, and his Lordship's Memoirs having call'd him up to a more high and holy Station, he had leas Opportunity to write; and he that writes little will receive but little. From that Year therefore (they justly obvire) few of any Confiance were found, and even these few, (if no other than what are printed, and as yet produc'd) we beg leave to lay, are of no Confiance at all, to support the Inherence drawn from them.

The first, I think, is from a great Lady; but to general and uncertain, that it does by no means warrant the Conclussion drawn from it; for it does not so much as appear to have been a Letter, or what it was that was endorc'd. And I beseech your Lordships, what more can be infer'd from Captain Holland's Letter, the contents of which are no more, than that a Neighbour, as

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Captain

Captain Halford was to the Bishop, desires leave to dine with his Lordship on a Thursday, which was his publick Day, in Company of so other People? I must confess they have laid a Stress upon the Character of the Man in their Opening; but nothing more has been prov'd, than that he was in a Ship by some Name different from his own. Another Letter that was said to be found among his Lordship's Papers, was dit
dicted to Dibbat. But this (my Lords) I shall beg leave to refer to for a more proper Occasion.

I shall now consider the four several Charges against the Bishop. First from the Letters which he wrote to Negoe and Pansier's Infor\nmations, all more Hear\nfays, some from living, and some from a dead Person; but positively and expressly denied by the living Perfons, from whom such Informations are supposed to have come.

All that Pansier's Informations I say, relating to this Reverend Prelate, is, That one Skew told him, that the Bishop of Rochester had the Princi\ndal Direction of the Conspiracy; and that 20,000l. had been rais'd and put into his Management. This Skew, it seems, is full in Coffiny, and your Lordships will hear how far he will support this Charge.

The very Accusation itself we beg leave to call absurd and incredible; that such a Sum of Money as 20,000l. could be rais'd and deposited in one Man's Hands, and not yet traced up to none of the Contributors, or to the Hand where it was deposited, especially when it is charged upon a Person not used to deal in Merchandizes, or Remittances. The counsel for the Bill have said that these are all either of a Date subse\ntaneous to his Lordship's Commitment, (and therefore till then thought inconsiderable, and not worth redu\ning into Writing,) or else they are of no Date at all. One of the Two without a Date appears manifestly to have been taken after he was seiz'd, and brought up from Deal in September, which sufficiently shews what just Difficult there was at that Time of his Credit; that on the 27th of September, was on the Day before he drowned himself, and both when he is said to have been under the greatest Terrors and Apprehensions, in that he was not able to make good what ap\pears by the Paper (mark'd E. 1.), and found afterwards in his Pocket) to have been undertaken by him, or required of him. It is not said, as to one of his Examinations, before whom it was taken: Another of them, and the only one they now think fit to make Use of, is an Extract only from three other Papers, and said to contain the Substance of them; but the Papers thems\nelfs, out of which it was extract'd, do no where appear. And there are some Particulars in the Report of that Honourable Committee, which he is said to have confest'd, which do not appear in any one of these Examinations, and are

of such a Nature as to affect the Credit of all he said, and (if produced) would, we doubt not, in other Refracts entirely blast the Credit of his Testimony. And, my Lords, if the Examination of a Man is thus taken to pieces, the Accen\ndants and the Consequences left out, Treason (and what not) may be made and inferred from the most innocent Things and Expressions.

But his Examinations, even as they lie in the Appendix, are full of Inconformities and Aberr\ndities: Inconformities, I mean, not only with Pansier's and the Deposits of other Perous, but with the Facts of the Case. I say, with little pa'ted in Writing in the Conduct of the whole Affair: Negoe says, there were many Bundles of Letters that Mr. Kelly brought with him from France, and which he had seen him write at seve\nt Times. But yet they are much more incon\nformit with themselves; for instance, Negoe says, in his Examination, mark'd E. 7, that he had seen several Letters written by Kelly, and sent to him from Paris, and other Parts, but they never con\n'tained any thing material: And yet in F. 8, he says, the Words, had he seen him make use of them; and that Kelly with great Freedom acknowledged they were for carrying on the Correspondence with the Preten\nder's Agents. Whereas it is utterly incredible that a Man, who had really been so communicative in his Dileverate, and of his Cyphers, should yet be so refer'd to as to hide from him any thing material in his Letters. In the very same Exam\nination (ie F. 8) he was well acquainted with one of the late Earl Marpole, and say he\nser Negoe with him; but after all his Lord\ncy, at last it comes out, that he did not know what he was. There are some other Incon\nformities, which have been already taken notice of by Sir Constanine, which I shall not repeat.

But, my Lords, if the Perous and Credit of Negoe and Pansier were unexceptionable, yet what they say is only Hear\ny, or more Affirma\ntion: And was ever that allow'd as Evidence in any material Point by any Law, or in any Court in the World? This very Reference to the Trials of Langbourn and Lord Ruffet to be no Evidence, and it is the first Time it ever receiv'd so much Consequence as to be read in judicial Proceed\nings; and I dare say, there is no such Practice in the Court of Inquisition abroad. Even common in the Court of Fame and Reputation is but of little Weight in any Cafe that I know of. It may, my Lords, be a sufficient Ground for an Officer of the Peace, in some few Cafes, to arrest a Person, or for a vigilant Ministry to make Enquiries, i.e. to ac\nse or approve a new Act, to had the Bishop, the Bishop's Lordships allow the Hear\ny of one single Man, and only extracts of that Hear\ny, to be of any Weight, nay, to be of more Weight and Author\ny now he is dead, than if he were living; for if he were living, and could only depose by Hear-
no one surely can fay it would be admitted as Evidence; but since he is dead, and we have no Opportunity of cross-examining of him, why ought not his Lordship to have the Advantages of it, as was reliev’d in the Cafe of the 6 King a
again Pain? Or like the known Cafe of a Man
dying in Execution, the Law is satisfied, and his
Creditor is without Remedy? And it cannot be
deny’d, but if one of our Witness’d had died, and
a Perfon had taken Minutes of what he could fay, we fhould not have had the Benefit
of his Testimony; and where there is the fame Rea-
don, there ought in Justice to be the fame Law
and Conduct. And yet this is the Foundation
and Support of the whole Charge against his
Lordship. It is upon this Mr. Gordan’s Examination
ingly that it is affirm’d, among other notorious
Untruths, that the Pretender rely’d more upon
Advises from the Bifhop, than from any other
Perfons. But this, and whatever elè is in them,
with Submission to your Lordships, amounts to
no more than this, that Neyne was heard to fay,
what he heard Kelly fay, what Kelly must have heard
some other Perfons fay, what they had heard
the Pretender fay, what neither they, nor
any one elè, ever had Reafon to fay.

But, my Lords, there is ftille something more
strange in what is now brought forward for the Per-
fons whom you were pleas’d to concur in hearing them all this, and into whole Testimony it must all be reliev’d,
ar now both living, and are fofar from supporting
what’s pretend’d they have heard from
them, that they absolutely deny and contradict
every Word of it. One of them has already done
it (if my Infructions are true) in the most fo-
lemn Manner, at your Lordships Bar, and the
other is now ready to do the fame. And Neyne
was fo confident to himself of the Fidelity of what
he had faid, that he left his Life to avoid the
Punishment that might otherwise have fallen on him,
(for his Flight, my Lords, can admit of no
other Senfe or Conduct.) He could not appre-
 hend himself in Danger, if what he had faid
was true; but on the contrary, had reafon to ex-
pect Rewards, if he could make out the Truth of
his Information. Charity forbids me now, my
Lords, to fay any more of him, unlefs it be
thought requisite to prove the Fidelity of his In-
formation by his own free and voluntary Confes-
ion, often repeated and confirm’d to Strangers
and indifferent Perfons. And (if my Infructions
are true) we have there that will speak more fully
to it.

This is the firft and the principal Part of their
Proof; and if we take away this Foundation,
all the mighty Superstructure raised upon it muft
fall to the Ground, and all their correfpondent
Proofs and concurrent Circumstances muft come
to nothing.

The firft Head of Accufation again his
Lordship, is, from three Letters, fuppos’d to be
dictated by him, of the 20th of April. The firft
is from 1 Cleres, the name of the Bridge, to 2 Mr.
Neyne, and dated 1726, in which he fign’d the Name
of James; the ftrecond to Miftrr, interpreted
Murr, fign’d Allington; a third to Jacobus, explain’d
’to mean the Pretender, fign’d 1728, and some-
times ‘tis printed 1787; and therefore which of
these two is right I cannot tell.

Before I fpeak of the Letters themfelves, I shall
mention one Word as to the Manner of their Con-
veyance: They are faid to be enclosed in a Packet
to one Gordon of Bonkgis, in a Letter from Kelly
himfelf, feft by the ordinary Poft, and fign’d with
his name, which they fay he was immediately
signed and went by. This is fo improbable, that
out of eight or ten Names they are plea’d to
give him, he could bethink himfelf at that
Time of no other Name to fign a Letter enclo-
sing three of the utmost Confequence; and is fo
inconfiftent with that Caution and Subfery all a-
long ininfuated in this Correspondence, that it
almost needs no Confutation. But yet (if my In-
fructions are true) Mr. Gordan, to whom they are
faid to have been directed, and the only in-
different Perfon in the Cafe, and can be under
no fport of Influence from hence, has attrest upon
his Oath, that there was no fuch Letter, or
Packet, ever came to his Hands.

And fupposing these Letters were fent, as they
fuppos’d, to the Perfons they fuppos’d; is there one Pafl-
age in them of fuch a criminal Import, as would
be fufficient to found an Indictment at Law? If
there is not, they are not to be made criminal
by Arguments, Innuendos, and Implications.
The Cafe of Sir Samuel Bemalbyd, already men-
tion’d by Sir Conftinflus, is expressly in Print; and
the Reafon given for the Reversal of that Jui-
gament, by your Lordships, is, that the whole
cause the Information was ground’d upon Letters,
which in themselves were not criminal, but made
fo by Innuendos, and forced Confructions,
There is Crand’s Cafe to the fame Purpofe, be-
fore the Court of King’s Bench, in the Year 1695,
who was indiected of Treafon; and the Over-
Aets laid in the Indictment, were for inviting the
French King to invade the Kingdom, and by
fending Letters and Infructions, how and where
to make the Defcent. The Court thought his
Hand-writing was prov’d, and the Matter of the
Papers of a very odd and fabulous Nature, and
the French King frequently mention’d in them,
and the Indictment fuppos’d them to be contriv’d
for to invite him over; yet they held it not
Treafon.

And the chief Thing that gives any Ground
of Sufpicion, in this Cafe, is, the Perfon to
whom they are fuppos’d to be directed: but I
must submit to your Lordhips, that there has
been no Proof that either Cleres and Miftrr,
or Jacobus, are the very Perfons fuppos’d, or
that his Lordship was privy to the Writing of
one, or the other of them; nor are they capable
of Proof, as we hope immediately to make ap-
pear.

However, for the prefent, fupposing as they
fuppos’d, that Cleres and Miftrr mean
Dilston and Mar, and that fuch Letters were
writ to them by his Lordship without any Dif-
guile, (unles the Matter of them, as I before
faid, were plainly criminal) or unles your
Lordships will fuppos’d (as they fuppos’d) fome-
ting criminal contained in the Words not de-
crib’d; and unless it could have been prov’d that
the Perfons writing or dictating thefe Letters,
know them to be the Pretender’s Agents, and as
fuch address’d to them; I don’t know (my Lords)
how it could be confider’d a treasonable or cri-
minal Correfpondence, either within the Letter
or Intention of Stat’s, 14 17. c. 3. or any other
Law whatfoever.
For tho' the late Lord Marr is an attainted Person, it can't be denied but he is still in many Senes a Subject of England, and is no more disdained of his natural Allegiance, than a banished, or an outlawed Man: and tho' he appeared in open Arms and Rebellion against his Majesty, he was not thought to dreadful a Man, as to have a Correspondence with him made treason or felony; but that was a peculiar Favor, refused for this Reverend Prelate and his Friends. My Lords, I would not be understood to mean, as if the most innocent Correspondence with a Person under such Circumstances, was prudent or convenient; but I think I may affirm (even from the Clause of this Bill) it would not of itself have been criminal. But (according to my Instructions) this Reverend Prelate was little known to that Lord, and never had any Friendship or Acquaintance with him while in England, and cannot be supposed to have contracted such a Friendship since he was abroad.

That Dillen was an Agent of the Pretender's, nothing appears antecedent to these Letters: Nor did Marr at that Time appear to be one of his Agents, when it was so well known (as that Honorable Committee observe) that he was at that Time fled by a Person from the Court of St. James, in France, to be the late Lord Dillen; but the Letter to him of the 20th of April (by whomsoever wrote) was some Months before.

Indeed, if Jocelyn had been proved to mean the Pretender, the Writing to him would be High-Treason plainly within the Statute: but that the Pretender is not, and cannot be understood by that Name, we hope to make appear fully, before we have done, even from the Lights that Honourable Committee have afforded us.

I shall now consider the Nature of the Proof to induce your Lordships Belief, that these Letters were dictated by my Lord Bishop: And the first they offer, is, Because the Matter of them agrees with his Lordship's Circumstances at that Time; i.e. his being ill of the Gout, and the approaching Death of his Lady; which (they say) is morally impossible should it relate to exactly to any one Man else. These two Circumstances must be allowed to be arguments, which Lord Bishop was then under: But one would think (my Lords) they are Circumstances so melancholy in themselves, that they might have been spared, especially considering the little Use or Advantage that can really be made of them. But these Circumstances were no Secrets: every one that knew his Lordship, must likewise know them; and whoever wrote those Letters with a Design to have them intercepted, and impugned to him, (as we hope to shew the Cale truly was) would certainly mention such Matters or Circumstances in them, as might be naturally thought to describe him. Or if they were written without his Knowledge, (as they will be clearly proved to have been) it is no wonder, if the Writer, who perforated his Lordship, should infer all that was proper to fell the Suspicion he intended on him.

Another Proof that they were dictated by his Lordship, they say, is, from the Subscriptions of the Names of Jones, Illingston, and the N° 1738, which are all affirmed to denote his Lordship: And the Reason why that Number belongs to him, is, because the Decipherer has found that Number to denote the proper Name or Title of a Person beginning with the Letter R. If this is his real Opinion, must that needs be the Bishop? Is there no body else, whose Name or Title begins with the same Letter?

But, with Submission to your Lordships, it seems impossible to affirm even thus much with any Degree of Certainty, and it must be only Matter of mere Conjecture. Dr. Wallis, who is allowed to be the Father of the Science, (such as it is) and was the Wonder and Envie of all Foreigners, directly owns, that the Whole was built upon Conjectures; and he that had the least Gnosis, was the least Ass. Such, my Lords, is the Science of Deciphering. And from such uncertain and conjectural Premisses, what certain Conclusion can possibly be drawn? And 'tis plain, Mr. Wille is not so infallible as he pretends to be, by that Number of Passages not yet decipher'd.

When we took our Objection first against the Nature of this new fort of Evidence, the Counsel for the Bill were pleased to cite a Statute in Q. Eliz. Time, wherein they find the Word Cipher is mentioned. I have since looked for that Statute, but could find nothing about it; and, perhaps, may be mistaken in the Statute which they mean. But, my Lords, I am sure they did not mention any particular Trial, where it was ever heard of, or allowed as Evidence. I rather believe, that, according to the Notions of those Times, (for soon after the Statute was made a gainst White) if any Decipherers had appear'd then as Evidence, they must have been in more Danger than the Criminal.

But if there are any certain Rules, or any reasonable Methods in Deciphering, I am sure 'tis highly improbable, that Persons so cunning and wary, as there are all along represented to be, should be guilty of such a fatal Over-sight, as just to sign with such Numbers, that all, it seems, who understand Ciphers, must necessarily know to be intended for the Initial Letter of their Names. It would, my Lords, in my humble Opinion, have been more confident with that Care and Caution, to have made those Numbers stand for letters, which Letters they have been express'd by quite contrary Numbers; and there is no Doubt, but they might have made any others signify the same Thing. However, since the Decipherer has not shew'd us by what Methods he has arrived at this Conclusion, 'tis impossible for us, by any positive or direct Evidence to confute it: But 'tis sufficient for us, to deny on the one hand, what he has on the other hand affirm'd, without telling us the Reasons of it.

That the Names of Jones and Illingston belong to his Lordship, is endeavoured to be proved by some Passages in subsequent Letters, and by re- fining on the Matter of them, which they think is applicable to his Lordship only.

I have already mentioned two of those Insinuations, viz. his Lordship's own Intimation, and the Death of his Lady, which are likewise mentioned in the subsequent Letters, in order to Ex- tenuate the Imputation intended, yet deeper on him. There is a Third, which relates to the Present of a Dog.

That
That such a Dog was fluent does indeed appear; but that his Lordship had received it, or saw it, or had any Letter or Message about it, has not been proved, and he positively denies it; and to whom, or from whom it was really sent, Mr. Kelly can best determine, and his Lordship must refer himself to what he has always affirmed in his Examination; and (if I am rightly informed) since re-affirmed at your Lordship's Bar, that he gave it to Mrs. Barnes, and designed it for her from the first, and for her only.

My Lords, I should apologize for taking Notice of such minute and low Circumstances; but it is the Evidence and Nature of the Proof made use of against us. I should rather have expected, that ingenuous Gentleman (the Dunciad) would have shewn, by some Rules of his Art, that the whole Story of the Dog had been a Fabric or Fiction, and explained it to something that was reasonable and probable, which I am sure this is not, to suppos'd (as the Letters read to your Lordships do suppos'e) Mr. Mar, in one Part of the World, General Dillon in another, wildly distant one from the other, and a learned Preacher, to be in such Tribulation and Concern for a little Dog; which no way suits the Characters of any one of the Persons to whom it is applied; much less the Circumstances of this learned Preacher, who had at that time a much nearer Concern upon him, from the Death of his Wife, and was himself in such great Disorder and Weakness of Body. The speaking therefore of this Present, backwards and forwards, with such particular Circumstances, and the Report of it to indulgently spread many, is not in the least to any Lord Bishop's Appreciation (as some of your Lordships cannot but remember) is absurd and ridiculous upon all other Suppositions, but upon the Design of flattering something on his Lordship, the Point all along in their View.

If the Writer of these Letters had been really and truly informed of his Lordship's Circumstances, he might, perhaps more properly, have affirmed it of his Lady's which 'tis plain, the Writer was not, because he speaks of her as Living 11 Days after she was Dead. And how ignorant of them the Writer really was, appears by another Palpable in that very Sentence where he says, 7 Mr. Jones is coming to Town for a Day only, May 7th.' Whereas his Lordship had been in Town Two Days, and said Three more, as appears even by their own Evidence, Laxfield and Wood.

By these your Lordships may see, how many forced Inferences and Constructions, and what a Train of Absurdities and Suppositions are necessary to support one poor, and (if true) yet inconsiderable Affection, when once we depart from the true and known Rules of Law.

A Third Way of proving these Letters to be the Billers', is from the Hand-writing, which is supposed to be Kelly's, and he is supposed to have been his Lordship's Secretary in these Matters: Both which Suppositions are defective of any proper or satisfactory Proof.

The first is attempted to be supported by the Telifimony of the Clerks of the Post-Office. But before I speak to the Testimony which they have given, I must beg leave to offer one Word as to their manner of obtaining it; and shall endeavour not to transgress your Lordships late Resolution.

And when I mention any Words of that Act of Parliament, it is only to shew the cautious Measures the Legislature took even in imparting this Power to them, and the just Approbations they had of the Autoles and ill Consequences that might attend it. My Lords, I am so far from endeavouring to bring them in danger of a Penalty, as the Counsel were pleased to object, that I am willing to suppos'd those Clerks had proper Warrants at that Time, and for that particular Opening and Detaining. But that is all which the Act gives, and the Words of it are fully satisfied by such a Constructions, without going farther, and extending the Words of the Act to that which was not in the least within the Intention or Purview of it. It don't appear to me, my Lords, I confes, how they are impow'd to take Copies (for all such Acts which are in Restraint of Trade and Commerce, are to be briefly and literally construed;) but I am utterly at a loss to know, from what Words of the Act it can be infer'd, that such Copies shall be received as Evidence in Courts of Judicature; and not only against the Writer himself, but against other Persons too.

A private Act of Parliament (the printed in Rafdal and other authentick Collections of Statutes) has been disallow'd, when it has not been examined with the Record. But, my Lords, I don't know that a Copy of any Thing was ever allow'd as Evidence, but what was made by a proper Sworn Officer, known in Law, and where every one may have Access to it, and therefore, if true, may be disproved by the other Side. But if by the Power of the Act it can be enforced that the Party ever had an Opportunity to disprove it, if falsely copied, when the Original is sent forward? Or, if it were still in their Possession, have we any Power to procure a Sight of the Original? or to have a Copy of that Copy? And therefore, we hope your Lordships will not regard that Part of the Evidence, if it were material. But to consider alfso, my Lords, what it is they have depos'd of these Copies; That the Originals were written in the same Hand with some Papers shew'd them; and which, they were told, were Mr. Kelly's Hand-writing. Your Lordships will no doubt expect, that when they depos'd this fact, viz. the 24th of August, and afterwards the 1st of January last, i.e. the first of these Depositions four Months, the other eight Months, after they had seen the Originals of the 20th of April: For, they were forwarded by the Post, and the Clerks only took Copies of them, and did not detain any one Original for a Specimen till their first Deposition; and surely that was a little of the latest: So that it refus'd fingly upon the Memory of the Clerks for four or eight Months. I think St. James says, That a Man may even hold his own Face to a Glass, but he is in greater case, but he bravely forgets what manner of Man he was: And it is much more imposible for any one so exactly and nicely to remember all the little Strokes and Dashes of the Pen, by which the Sameces or Diversity of Hands can only be made out.

And all Mistro swear's, Is, That he believes it to be Kelly's Hand-writing; and 'tis remarkable, that his Deposition is but in January last, and he left Mrs. Burn's Service in March, so that he could
could not have seen him write since that Time. He don’t say, he ever read any of his Writing, or at most the Superficiation of a Letter: He might, perhaps, see him write at some Distance, as he came in and out of the Room; but surely, that cannot be sufficient to form a Judgment of a Man’s Hand-writing; and I am sure the Improbability is much greater after nine Month’s Time. And Hatchells the Meffenger, from seeing the Superficiation of a Letter to the Secretary of State, has likewise, I think, taken upon him to swear the same thing.

But supposing those Persons had seen Mr. Kelly write frequently, and had, within a more reasonable Distance, swore it to be like his Hand, will any one say, That it is a sufficient, or even a reasonable Proof, in any criminal Case? But because Mr. Kelly is all along affirmed to have acted in these Matters as his Lordship’s Secretary, I must beg your Lordships Patience to consider, How far that Doctrine of Similitude of Hands has prevailed.

Colonel SirroX’s Cafe, was the first wherein it was ever admitted as a Proof in a Criminal Case; but that Judgment was afterwards reversed by Parliament, as manifestly unjust. In Lady Cap’s Cafe, Sed. Rep. 419, which was only an Information of Perjury, yet a Letter under her own Hand was positively denied to be Evidence; tho’ a Witness swore he believed it to be hers. I must own, my Lords, this Cafe at the late Trial of Mr. Layser, was not only denied to be Law, but all Men defy’d to make common Sense of it: But, with the utmost Deliberation to that learned Gentleman, you will be too humble to mention the Words of Sir J. Hatchells upon that Cafe, who was of a different Opinion. At that Time, says he, when the Cafe of Lady Cap was adjudged, besides Penfian and Keyling, two very eminent Judges, there sat in that Court Sir W. Widoftnham, whom all will own to have seen the second bell Judge who sit in Witt- minfter-Hall since the Revolution; and if it is not Evidence in Mifmeanor, much les, says he, in Trespass of High Inference, besides the Restitution of the Thing itself, is supported by the Authority of Lord Coke.

In my Lord Proprietor’s Cafe, his Hand-writing was proved by three Witnesses, that had belonged to him while in the Secretary’s Office, and must necessarily have seen him write a thousand Times: But that was not all; for those Papers were seiz’d on him, seal’d with his own Seal, as he was going to France in the Heat of War, contrary to an Act of Parliament, which at that Time made it lawful. In the Trial of the Seven Bishops, the same Question arose, Whether Similitude of Hands was a Proof in a Criminal Matter? and it was not admitted.

In Francis’s Trial, before all the Judges at the Old-Bailey, it is positively laid down by the Chief Baron, and not contradicted by any others, That it was no Proof or Evidence of itself; and the Letter in that Cafe would not have been admitted, but that it was found by his Butlifke, and a Copy of the very same Letter enter’d in his Pocket- book, which he had owned and explain’d to some Lords of the Council.

In Crosby’s Cafe, the Hand-writing was sworn to by three positive Witnesses, and owned in one of the Papers by the Prisoner himself; yet Lord Chief Justice Holt and the Court held it no Evidence, Because one Hand, says he, may be like another, and Proximations find never take Place in Trespass.

In the late Cafe of Mr. Layser, ’tis well known, that besides the Proof of his own Hand-writing, the Trespassable Papers were delivered by his own Hand to the Witnesses; and was upon that Ground only, they were permitted to be read against him. Besides this, he had said that before the Lords of the Council, which the Court thought amounted to a full Acknowledgement that it was his Writing. But even all this, my Lords, was made use of against him but as concurrent Evidence, because there were two positive Witnesses, cited once, against him, as to the other Overt Acts.

I will mention to your Lordships some Foreign concurrent Authorities upon this Point, to shew, that the Reston and Equity of this Doctrine has been uniform and universal, That Similitude or Comparison of Hands is not a sufficient Proof of it. There is a famous Cafe of Jean Millard, in a Book called, Le Journal du Palais. He had lived 40 Years from his Wife, and then returned and recollected her, after she was married to another. One of his Methods made use of to prove him to be the same Person, was, the Hand-writing of Letters that had formerly passed between them: Which occasion’d this Question before all the famous Judiciaries of France. Whether the Timeliness of skilful Notaries, who fully depose of the Similitude of the Hands, was a sufficient Proof in this Cafe? and it was universally denied. And yet this, my Lords, was a Cafe highly favourable in all Laws; but more highly in those Places, where Marriage is reputed as a Sacrament, and in favour of which they will often allow even the Parry’s own Oath.

Color Fabricius Lib. 4. Tit. 12. Def. 71. says, A Proof by Comparison of Hands is a very dangerous Proof, it must be cou’d in such Cases; that is, if in criminal Actions, in quibus pecuniam majus varietas, aut gradus, aut equivalentiam, aut item; Vizt, an eminent Modern Citizen, Lib. 23. Tom. 4. Sect. 11. to the very same Purpose. And dose Cognizias in his Commentary on the Novels 73. The Romans, says he, never allow’d it, but when no other Proof could be had. And in other Times, when Forgeries became more frequent, they would not allow of it at all, unless the Writing had been acknowledged by the Parties, or proved by two Witnesses who saw him write it.

And then it was necessary to bring both into Court, that the Judges themselves might make the Comparison, and not leave the Witnesses to be the only Judges of it.

But it was never known, and I may defy all the Writers of Law to shew me one Instance, that any Evidence of the Similitude of Hands (which can only be made out by Comparison) was admitted, but where the Papers pretended to be written by the same Hand, were produced and compared: Which is so far from being the present Cafe, that even the attesting Clerks, who are the only Witnesses in the Cafe, never had an Opportunity of comparing the Original Letter (spotted in August last, with any one of the three original Letters dated April 20, or with any
any of the intermediate Letters, which they affir-
mhv to have been written in the same Hand.
And it is to be considered, how much more difficult
it is to distinguish the Hand of one writing in
Figures (which stand finge one from another)
from the Hand of one writing in Words at length
(which are variously connected and combined)
your Lordships will never give them the least De-
gree of Credit.

But at once to put an End to this Evidence
(if my Instructions are true) it has already ap-
ppeard to your Lordships, upon Mr. Kelly's Bill,
That the original Letter of the twentieth of August, flop as a Sample at the Post-Office, and
the only Ground of affirming that Three to
have been his, was not his Hand-writing; and,
if need be, we have the fame and stronger Evi-
dence to produce. Upon the whole therefore, I
think I may affirm, That there is no legal or rea-
sonable Ground to infer those Letters to have been
written by Kelly.

And fourly, my Lords, it was incumbent on
them to prove, as well as to affirm, that they
were written by his Lordship's Direction, before
they can affect him; even tho' the Writer (who-
ever he was) had prefixed to have signed them
with his Lordship's own Name and proper Ap-
pendix; and the only Case in which I do not
think it in the least appear, that Mr. Kelly, or Mr. Carter,
(as is afterwards upon no better Grounds fig-
eggested) was employ'd by his Lordship to carry
on that Correspondence? It has, I confess, been
frequently fait at your Lordships Bar, as well as
by that Honourable Committee, but like other
Charges, without any Shadow of Proof; unless
it be an obvious Package in a Letter of Countezz
from abroad, to one Williams here, D. 27, which
says, They had a Story in France of Wetlin's Clerk
being laid up for Debt: Which, as I shall after-
words shew, could not possibly mean his Lord-
ship's. There is another Package also in the Let-
ter to Doibis, from whence the fame Inference is
made. What unknown Perfon that Doibis is
doesn't appear, or whether it is a real or fictitious
Name; for all their Lifs and Cyphers afford no
thing like it. The Committee are pleas'd to fupp-
site a Letter to the Bishop, and received by him from Abroad; and from thence infer, he
used to receive Letters directed to him by ficti-
tious Names. The Council for the Bill suppose
it a Letter from himself to himself; because the
Hand-writing, they say, (or rather the Letter e)
is something like his Lordship's. It is not figni-
ed by any one, and dated only the fiirthen of
December without any Year; and tho' that Ho-
ourable Committee are pleas'd to affix, in their
Observations on it, 1721. because Tulibuis, they
say, was about that Time at Paris, yet for what
appears from the Letter itself, it might be writ-
ten before his Majesty's Accession, or before the
several Acts of Grace that have been; and if it
had any Criminal Meaning, 'tis improbable his
Lordship would have mentioned the Hand of
Conveyance at length; and much more impro-
bable he should have defrayed all his oth-
er Letters (as the Committee are pleas'd to inumate) and to prefer this only, which is of
no Confiance, but to furnih Evidence against himself, and to explain the Thing most wanted.
Another Proof that it is his Letter, is from a
broken Seal, which, they say, is made by the
Vol. VI. of the Intermediate Letters, which they affirm to have been written in the same hand. If it is to be considered, how much more difficult it is to distinguish the hand of one writing in figures (which stand finge one from another) from the hand of one writing in words at length (which are variously connected and combined) your Lordships will never give them the least degree of credit. But at once to put an end to this evidence (if my instructions are true) it has already appeared to your Lordships, upon Mr. Kelly's bill, that the original letter of the twentieth of August, flung as a sample at the post-office, and the only ground of affirming that three to have been his, was not his hand-writing; and, if need be, we have the same and stronger evidence to produce. Upon the whole therefore, I think I may affirm, that there is no legal or reasonable ground to infer those letters to have been written by Kelly. And fourthly, my Lords, it was incumbent on them to prove, as well as to affirm, that they were written by his Lordship's direction, before they can affect him; even though the writer (whoever he was) had prefixed to have signed them with his Lordship's own name and proper appendix; and the only case in which I do not think it in the least appear, that Mr. Kelly, or Mr. Carter, (as is afterwards upon no better grounds suggested) was employed by his Lordship to carry on that correspondence? It has, I confess, been frequently said at your Lordships bar, as well as by that honourable committee, but like other charges, without any shadow of proof; unless it be an obvious package in a letter of countezz from abroad, to one Williams here, D. 27, which says, they had a story in France of Wetlin's clerk being laid up for debt: which, as I shall afterwards shew, could not possibly mean his Lordship's. There is another package also in the letter to Dobis, from whence the same inference is made. What unknown person that Dobis is doesn't appear, or whether it is a real or fictitious name; for all their lives and cyphers afford nothing like it. The committee are pleased to suppose it a letter to the bishop, and received by him from abroad; and from thence infer, he used to receive letters directed to him by fictitious names. The council for the bill suppose it a letter from himself to himself; because the handwriting, they say, (or rather the letter e) is something like his Lordship's. It is not signed by any one, and dated only the sixteenth of december without any year; and though that honourable committee are pleased to affix, in their observations on it, 1721. because Tulibuis, they say, was about that time at Paris, yet for what appears from the letter itself, it might be written before his Majesty's accession, or before the several acts of grace that have been; and if it had any criminal meaning, 'tis improbable his Lordship would have mentioned the hand of conveyance at length; and much more improbable he should have defrayed all his other letters (as the committee are pleased to intimate) and to prefer this only, which is of no confiance, but to furnish evidence against himself, and to explain the thing most wanted. Another proof that it is his letter, is from a broken seal, which, they say, is made by the vol. vi. of the intermediate letters, which they affirm to have been written in the same hand. If it is to be considered, how much more difficult it is to distinguish the hand of one writing in figures (which stand finge one from another) from the hand of one writing in words at length (which are variously connected and combined) your Lordships will never give them the least degree of credit. But at once to put an end to this evidence (if my instructions are true) it has already appeared to your Lordships, upon Mr. Kelly's bill, that the original letter of the twentieth of August, flung as a sample at the post-office, and the only ground of affirming that three to have been his, was not his hand-writing; and, if need be, we have the same and stronger evidence to produce. Upon the whole therefore, I think I may affirm, that there is no legal or reasonable ground to infer those letters to have been written by Kelly. And though he be, without the bishop's priory or direction; 'tis not so uncommon a thing to pretend acquaintance with persons of distinction, or to make use of their name and authority, to give themselves a greater degree of credit with their correspondents. If this may be so, and ought now to be presumed so, since no man has proved it otherwise; then no man sincerely ought to suffer by the act of another, or to be punished for another man's fault. I believe no one will think it any reflection to hear many of your Lordships names in the cyphers, and afterwards to find a frequent mention of them in the correspondence; or to find his majesty's own name in plucks' cypher, under the signification of hawkesby, and page 62 of the report, compliments from the pretender and his wife to one hawkesby. No man, I say, will apply these, or many other names of persons of honour mentioned in them, to the persons themselves, or imagine these letters were really written by their priory or content. By the same rule of justice, and by a parity of reason, my Lord Bishop's name may be presumed to have been made use of, without his priory or content; and if there is any certain rule or possession in law, it is this, That all pretensions ought to be in favour of innocence. And to the little intimacy there was between his lordship and Mr. Kelly, (if rig means his Lordship, as they suppose, or that letter E. 62. was from Kelly, as they also suppose) it will be sufficient to remind your Lordships of one part of it, where the writer says — 'That Rig and one Skin had been together; but the result of their meeting he knew nothing of. Rig had fixed his supper some where, tho' I cannot find out the place; but you will hear it from Skin, to whom, it's pro—
bible, he may have communicated his Sentences that way. This is, my Lords, if I understand the Meaning of those Words, that 
Kelly, the suppos'd Secretary on all those Occasions, knew nothing of the Matters, or at least much less than 50s, whom Kelly had but just before introduced into Riggs's Acquaintance.
There is another Letter which has likewise been read, No. 47, if it is to be understood to be Mr. Kelly's, as they suppose, and Rig is to mean his Lordship; tho' we are far from admitting the one or the other, which we define to make use of, and amounts to a full and direct Confession, that the Writer (whoever he is) had nothing in his Power or Knowledge to charge him with. I have the more Conscienzy, my Lords, to repeat the Words of this Letter, because that Honourable Committee have let it pass without Exception, Vol. 33, of the Report: Wherein the Writer says, 'He never heard of the Castle Names of Jones and Blount, or who was meant by them: That some Persons in whole Power it was to do for him, had showed no Concern at all for his Misfortunes; that it was well he had no Secrets to reveal, since such Ufage might provoke a passionate Man.' And all the World is now convinced he had not, since no Person seemed to be apprehensive that he could do them any Mischief. My Lords, I say, if this Letter is to be understood as from that Gentleman, we think we are entitled to have the Benefit of his open and candid Declaration.

But however, my Lords, if we should not be allowed to make this Use of it, yet (if my Instructions are true) Mr. Kelly fully affixed this himself at your Lordship's Bar; and even without it, we shall be able to make appear most plainly, in the Course of our Evidence, that Kelly did not, and could not write the Three Letters from his Lordship's Mouth, or by his Lordship's Directions.

The Date of all the Three is 20 April, when this Reverend Preacher (as has been already mentioned to your Lordships) was deprived of the Use of both Hand and Foot: had for a great while been confined to his Room, under the greatest Weakness and Disorder, when his Lady lay in the next Room, on her Death-bed.

These, my Lords, and other remarkable Circumstances in his Family, which distinguish this particular Period of Time, as on the one hand, they have given the Writer of these Pettition Letters Some Advantage towards fixing them on the Bishop: fo, on the other hand, they afford his Lordship a like Advantage (in the most providential Manner, I may say) towards clearing himself from the Imputation of them. Becaue his Servants then attending him, are able to recollect what passed on that Occasion, and to be very positive and particular in their Evidence concerning it.

His Lordship happened then to have Three Men-Servants actually attending on him, and some one of these always, both Day and Night, either present with him in the Room, or waiting in the Passage at his Chamber-Door; and the Weather being warm, and the Room close, the Door was generally wide open: It was then this Reverend Preacher's Misfortune, that he was not able, without their Help, to stir, or even to lift up what he ate or drank to his Mouth. Besides these, there were Two Women-Servants, which constantly attended his Lady in her Room, which is next adjoining, and came frequently to him (once or twice an Hour) every Day with Accounts how she did, the Bishop himself being disabled (for several Days before her Death) to go out of his Room.

And all these five Servants will depose. That for 14 or 15 Days before his Lady's Death, no Stranger whatever visited his Lordship, much less stayed there any Time with him. This (my Lords) the Women-Servants will affirm, as far as their frequent seeing of him gave them Opportunity to make the Observations. His Coachman (to whom Witness against him) has constantly affirmed the same thing, both below as well as before your Lordships. But the three Men (one of which was always in the Room, Day and Night, as I before observed) can be most full and peremptory in their Testimony. So that the Bishop could not possibly dictate these Letters, either to Mr. Kelly, or to any Body else, without the Privity and Observation of some of them.

This being a Negative, it is impossible to be more fully proved in any Case; and nothing but the remarkable Circumstances which happened at that time, to which the Writer of those Letters unhappily pined them down, could have helped us to so strong and undeniable Proof of it.

Whether Mr. Kelly was ever acquainted or vis- ited his Lordship, indeed I am not instructed; their Evidence, I am free, has proved nothing like it, nor is it material, much less criminal. But as to the particular time (12 April) when Mr. Kelly is supposed to have told Mrs. Barnes, and she is supposed to have told Mrs. Lovett, that his Lordship lent his Coach for Kelly, we shall expressly prove the contrary: and besides that it is only Hearsay of Mrs. Lovett from Mrs. Barnes who knows it, and his Lordship's Disaffection at that time to receive Company; I say (my Lords) besides these Circumstances, it is remarkable that the Coachman, and the Baker (who it seems were directed to keep a Diary of every Body that came, and of all that happened in his Lordship's Family) say not one Word of this remarkable Incident, in either of their Depositions. The Coachman has denied that he ever fetch'd Mr. Kelly in his Lordship's Coach since he lived with his Lordship, or ever was at Kelly's Lodgings, or that he ever saw him or Mr. Cane in his Lifetime; and surely their Silence (if there were no thing else in the Case) is sufficient to infer, that he was not there at that time: And all Mrs. Kay and Malton swear is no more, than they don't remember Kelly lay at Mrs. Barnes's that Thursday or Friday (the first only speaks in her written Deposition of a Thursday or Friday about the middle of April). And how is it possible they should remember the Time so exactly, for neither of them belonged immediately to Kelly, but were only Servants to Mrs. Barnes, who had other Lodgers in her House: They did not even make the Affidavits till the 6th of February last; and 'tis no easy Matter to remember such an inconceivable Circumstance of a Lodger (ten Months together) unless they

* D. 47. 3. 9 E. 6. r.
likewife had been instrucred before-hand, to keep Diaries of Mr. Kelly's Movements.

The Third General Charge against my Lord Bishop, is the receiving of Letters from Abroad relating to this Conspiracy.

Two Insults only of this Kind have been produced. The first from Melford (interpreted as Marr) 11th of May, addressed to Tiltington. The other from Digby (supposed to be Dillon) 14th of July, addressed to Mrs. Wylton. Neither of which (do they pretend to say) came to his Lordship's Hands, or if they had, that there is any Lordship's acknowledged, or in any manner relates to this Conspiracy; and consequently could not be (as I before proved) a treasonable Correspondence, within the Letter or Intent of any Law.

That of Melford is a mere Letter of Friendship, and (if from Lord Marr, as they suppose) is to a Person with whom he never had either Friendship or Acquaintance; but really seems designed for no other Purpose but to fix upon his Lordship the Letter directed to Mairr on the 25th of April, (for the same reason interpreted as Marr) the Receipt of which is there acknowledged; and in his Words of Condolence there is something, which 'tis said, points out his Lordship's Character and Function, tho' in my humble Apprehension, no more applicable to his Lordship, either as a Bishop or a Clergyman, than to any other Person; especially if it be considered (as it really is) the Style of a Letter of Compliment. But if the Letter itself, to which this is pretended to be an Answer, should prove to be a mere fiction, the Answer to it (tho' it were Criminal) must fall with it, as a part of the same Contralevement.

As and to the Letter from Digby to Wylton, tho' that Hon. Committee seem to lay some Stress upon it, by printing it at length in their Report, yet there is nothing in it that can affect any Man criminally, but his Lordship not at all; because the passing it in relation to his Health, and the Concerns of his Family, cannot possibly be applied to him. It implies, that he was then in a very ill State of Health (July 25) and his Family in great Disorder; whereas his Lordship (I can speak it, my Lords, upon my own Knowledge, as well as the Testimony of several Clergy of his Diocese, and others) and was then perfectly well, and able to transact all the ordinary Business of his Diocese and Deanery, and had been so for above two Months, having myself the Honour at that time to be concerned with his Lordship in a very tedious and intricate Enquiry; and the Disorder in his Family (if it means the Death of his Lady, for that or nothing is meant by it) had been over a much longer space of Time.

Nor is it probable that such a Misfortune should be made by the Peron (whom the Name of Digby is supposed to denote) if what the Report p. 39, and the Appendix D. 22 and 29, informs us, be true, that two Letters had some time before been written to Digby, or his Secretary; the one (July 4) affording, Wylton was never better in his Life, the other (14 July) affirming he was then perfectly well. But it is still more improbable, if your Lordships will consider what that Hon. Committee have justly obverted, in the very same Leaf, that the Prophesies of these two Correspondents were so foreign and different, as to lay no fort of Foundation for Intimacy or Intercourse between them: and the natural and only Conclusion (we think) from hence, is, that the Letters on this Head, either from this or the other side of the Water, cannot be genuine; and that no fair or regular Correspondent could be guilty of such gross Mistakes.

And of both these Letters from Melford and Digby, your Lordships have (I doubt not) observed, that there is no Presence of Paul about concerning the Hands in which they are written; which purely would have been more requisite, than the Application of seignited Names, to ascertain them. Otherwise any one who was acquainted with such Names might write Letters from the other Side, as coming from the Perons designated by those Names, which they themselves were ignorant of.

And as the Receipt of these Letters by his Lordship has not been proved, to there is not any Information or Presence that he ever answered them, tho' they both bear Date long before his Lordship's Commitment.

This part of the Scheme therefore for charging his Lordship with a foreign Correspondence under fictitious Names, was not so accurately conceived as the former; and seems, by fo many großer Mistakes, to have proceeded from somebody that had a much worse Intelligence concerning his Lordship's Affairs.

I shall here beg leave to take Notice of the Letter taken from one of his Lordship's Servants in the Tower, on which the learned Council have laid such great Stress, because there were no Prophesies of his Innocency in it. If there had been, I suppose they would not have been much regarded. Why therefore should it be any Argument against him, because there is no such thing? Matters are at a very low Ebb, when such Trifles are relied on. But there is another Reason. The Letter I suppose to have been intended for some near or intimate Friends, and to such Persons there was no need of making such a Prophesy. They knew (wherever they were) and were before sufficiently persuaded of his Lordship's Innocency, and that it was impossible he should be guilty of what is laid to his Charge. And by what has already appeared to your Lordships, I may say, this Reverend Prelate had no need of making such an Apology, and that the Perjuries of his Friends were not ill-grounded.

The Fourth Head, to which the Charge against his Lordship may be reduced, is the Coincidence of Circumstances, Times, and seignited Names in the intercepted Correspondence, to induce your Lordships Belief of the before mentioned Hearays and suppos'd Facts, that his Lordship, and he only, is meant by that Correspondence.

And the chief Observation about the Coincidence of Times and Circumstances relates to the three Letters of April 30th, his Lordship's Illness, and the Death of his Lady, and the Pretend of
the Dog, about the same Time. All which have already been accounted for, either as Truths publicly known, turned by ignorant or malicious Correspondents to ill Purposes, or as absolute Falsities, as will appear to your Lordships by our Evidence.

1. As to the Article of Times, of his Lordship's coming and going, it must be own'd, the Reciter of these Letters are sometimes right, but they are as often wrong, and the Missakes are of more Consequence to defray what is inferred from them, than the real Agreement, in point of Time, are or can be, to establish it. There is no doubt, but the Correspondents on this Side (whoever they were, and whether out of Malice or Vanity) appriz'd themselves as well as they could of his Lordship's Motions, in order to give a colour of Probability to what they said of him; and yet it happens, that out of seven Inferences occurring in those Letters, and referred to in the Report, three of them (if not four) are plain and gross Missakes: two only are true in all their Circumstances; and of the other two, it may be doubted whether they answer the Truth in every respect, or not.

First, As to the two doubtful Inferences, one is 49 pag. Rep. D. 29. where June 14th, G.W. writes to Squibell, Mr. Wilton is in the Country, I saw him two Days ago. If these Words mean, that he saw him two Days ago in the Country, (which is the most obvious Sense of them) then the Affir- tion is false; for his Lordship came to Town June 12th, as appeared yesternight by the Coachman's Book: but if they mean, I saw him two Days ago in Town, then the Affirmation may be true.

The other Inference in Report 51, 52. D. 14. somebody writes July 26th to Majorance, that Rig and Stin had been lately together, and that Rig went into the Country the Day after. Now by Depositions D. 48. it appears, the Bishopp went out of Town July 21st, they must have met therefore on the 20th, which don't well answer the Word lately, which one would think importenr 6 or 7 Days more. And therefore these two Inferences we let aside, as neither plainly true nor plainly false. The next three are manifest Mis- takes.

In Hatfield's Letter to Majorance July 7th, it's said, Mr. Jones is come to Town only for a Day, and yet if Jones means the Bishop he had been in Town two Days, and stay'd in Town three Days longer; for he came 5th May, and returned 10th May, as appears by Majorance and Wodd's Examination.

So in a Letter of J. H. to Dishwell, June 12th, it's said, Rig (supposing to mean the Bishop) is, I hear, in the Country; whereas his Lordship was at Wotton 18th June 13th and 19th, as appears by the Coachman's Book.

In a Letter to Majorance, July 19th, F. 59. Rig is again said to be in the Country, whereas his Lordship was at Wotton until that very Day, and continued there till the 21st, as appears by the same printed Depositions.

And the Missakes in these three Inferences are the more remarkable, because they all affirm his Lordship to be in the Country, when he positively was not; whereas it was ten to one, but that even mere Guile had been true, at a Time of Year that every one almost is in the Country, and his Lordship was really ten Days in the Country, to one that he was in Town during the whole Summer.

But, My Lords, I must with some Regret take notice, that none of these Missakes are acknowledge'd in the Report of that Honourable Committee, tho' all the Letters and Papars are transfer'd in it, particularly that of the 7th of May, E. 42. These Words are inserted in the Report, page 47. [Mr. Jones is come to Town] but the following Words [only for a Day] are omitted, and yet the Sentence contains with the [Enquiry made at that Time]; which indeed it does (as far as it is there quoted) tho' not with the Append. E. 42.

What Enquiry of this kind was then made, and with what Views, we cannot say, unless we may suppose it to be made by his Neighbour Lescu, if it was, 'tis strange that he could not depose from his own Knowledge and Observations in May, but only as to what he had heard and was told by Wodd, his Lordship's Coachman, to lately as the 19th of February last. I would reconcile this if it be possible: and the most natural Infe- rence I can draw from it, is that Lescu (or whatever that Inquirer was) had pretended to take some Account of his own at the Time mentioned by the Committee, which, upon Comparison with that of the Coachman's, he found to be manifestly false and erroneous, and therefore would not produce or depose upon that: But we hope his Testimony can receive no Advantage from such a Conduit. And upon the whole it appears, that 'tis no Industry has been employ- ed on the Article of Enquiry, yet as many Mil- tahces, have been made in it, as in any other.

And as for the Coachman's Book, after all it cannot be entirely relied on; because the Entries made in his Book can only relate (as we apprehend) to the Charges of Turnpikes and Ferry- ings, or such other Matters for which he was accoun- table. He had no Reason to take Notice in such an Account, when his Lordship was in the Coach, when Was, and your Lordships have heard, cannot be positive on that Head. And therefore how exact ever his Accounts may be, in respect to those little Disbursements, they can add no Weight to the Observation drawn from them by that Honourable Committee; and tho' great Sterc's has been laid on them, (with Sub- mission to your Lordships) they amount to no more, than that same Person on this false side the Water, writing to some on the other side, are supposed to mention yon Lord's journey, sometimes as in Town, or in the Country: and from thence 'tis infer'd, that they had frequent Access to him, and consequently the Matter of their Correspontence is imputed to him.

I had these Correspondents been exact, my Lords, in all their Accounts of his Motions, surely no such Conclusions could have been reasonably made: but as they are often wrong than right, it follows, they were not so well acquainted with his Lordship or his Circumstances, as (to serve their evil Purposes) they have pretended to be.

Having thus spoken as to the Circumstances of Times, which are thrown in to induce a Belief, that his Lordship was meant by that Correspom-
dence) I shall next offer something as to the Cant Names: And tho' it has been already observed to your Lordships in various Inferences, that the Name of Jacek, Illes, and Pelf are not properly belong to him; yet give me leave (say Lords) to say further, that Jacek is not only a very common Name (for in one Society, I think, I remember no less than sixteen of the Name at one) but that Name is manifestly applied to very different Persons, even in the Papers contained in the Appendix. In Phuket's Cypher Jacek denotes the G ermanus: Twelve or fourteen times it is fupposed to denote the Duke of Nor- fale, in three other Places to denote Sir W. Ellis; and even in the Letters imputed to Kelly, there are two Papers (besides those already mentioned to your Lordships) which cannot with any Reason or Probability be applied to his Lordship: For instance, D. 23. Jacek and Milangis are within the Compass of two Lines plainly distinguished, as two different Persons, and therefore cannot be apply'd to his Lordship. And in the same Letter as well as a preceding Letter, D. 13. Jacek is mentioned as having undertaken to do something for a Boy at Easton; where it is well known his Lordship has no Influence or Acquaintance, and if he had interfed himself there on any such Account, it would easily have been discovered. And this, my Lords, is one strong Inference, to shew the Ignorance of the Writer; even in some of his Lordship's most notorious Circumstances.

A great deal of Pains has likewise been taken, by the help of divers Supposition and Reafonings, to prove that Rig denotes his Lordship. However, I shall take Notice but of one, in the Letter to Gerrard, which is said to be Sir J. D'Obrian, Report 49 E. 47. where something is said of Rig, highly improper, and abfolutely false, if to be understood of the Bishop. An Account is said to be given of the Difficulty Kelly had to get Bail, and it is added—Your old Friend Rig indeed offered all that could be expected of the poor Man. (If my Instructions are true) D'Obrian is a Name his Lordship never heard of before, nor had the least Concern in procuring Kelly's Bail, nor knows to this Day who they are; the only Words applicable to him in this Passage, are those of Poor Man; and his Lordship permits me to say, that he is really such, poor both in Body and Purse, and as poor as his Enemies almost can make him; and tho' he may have Reason (if your Lordships should pass this Bill with all the Seditious intended by it) to be hazardously on his Life, and that he has neglected those Opportunities of enriching himself, which others would have laid hold of; yet he gives me leave, my Lords, to say, he is not afflicted of that Poverty, because free from all unjust Acquisitions, and unworthy Compliances. But that he was a poor Man at that Time, i.e. unable to procure Bail, (which is the Sense that Writer means it in) cannot with any Decency or Justice be applied to one of his Lordship's Interest and Station, if he had concerned himself in it.

Give me leave, my Lords, to take Notice of another Mistake of that Honourable Committee in the very same Letter; I mean, a Passage cited from it which is not in it, to prove that Rig and his Lordship are the same Person; which I should have omitted, but that it breaks at once the Chain of Reafoning there made use of. The Words are, homo for this late Affair may affect him (Rig) I cannot say, and E. 47. is cited for them. Nor E. 47. gives an Account of Kelly's Examination promiscuously with other Matters, and was written June 11th, but the Letter where the Words really are, is E. 49. of the 18th of June (near a Month after Kelly's Examination.) Nor is there a Word in that about the Dog; but it might be proper to confound these two Letters, and connect these two Particulars, in order to make out, that Rig and his Lordship are the same, that they have really no Relation to one the other.

We might add, my Lords, many gross Errors in the Application of Names: but as your Lordships are satisfied with the Justice of those already mentioned, (as I hope your Lordships are) there will be no need to regard the rest; for tho' they have some little Coincidences of Time, yet they are dafted with so many Incongruities, and so many Falsities, that no fair Correfpondent could be guilty of. But there is one which of all others bears hard upon this Reverend Prelate, the most criminal in the Matter of it, and from which he is most dearly concerned to clear himself: i.e. the Letter of April 28th, which has been over and over affirmed by that Honourable Committee, as well as by the Council for the Bill, to be a Letter to the Pretender. If that be so, and had been proved by any Degree of Evidence, to have been dictated by his Lordship, we should have been utterly at a Loss what to have said, in a Cafe that would have been so fully within the Letter of the Law. Part of it, my Lords, we have already sworn to have been charged on his Lordship without the least Proof or Shadow of Evidence; the other Part of the Charge we hope now to prove equally groundless and false.

That the Letter addressed to Jacobin was not to the Pretender (whence elsc it may mean) we think, appears clearly from the Words of it, our Circumstances on this Side; a Phrase not only used by all Writers, but is the confant usuall Style throughout all the Papers in the Appendix, in contradiction to France, which is the other Side, but never to Italy, as the Cafe must be here, if Jacobin means the Pretender. The Inferences in the Appendix are almost infinite.

Another Reason, why we think the Name of Jacobin cannot reasonably be fupposed to denote the Pretender, is from E. 30. where there is mention of dividing Cluets Money between Medley and Jacobin, i.e. says the Rep. p. 54. between Ormond and the Pretender. But it is not to be imagined that a Letter written from one devoted to the Pretender's Interest, should place Ormond before him; this is so unlikely, that even the Committee, speaking in their own Persms at the bottom of this very Page, file naturally into the other Way of placing the Words, the Pretender and Ormond. Besides this, my Lords, there are so many Familiarities (to mention but one, all such pretending People in the Letter itself that it could never come from any one (as we here said) devoted to that Interest, at least not to the Pretender himself, but to some Equal or rather to some Inferior. Jacobin therefore must meancome-
body else, somebody in France, and not the Pretender in Italy; and on this Supposition, every Word, and Phrase of that Letter is better accounted for than on any other.

The Committee of that Honourable House below, have been pleased to order to observe, p. 54, 56, 46, that Jacobin appeared from other Letters to be the same as Malcolm, (which they say means the Pretender) and for this Reason, because [p. 54, E. 30.] Clinton's Money is to be divided between Malcolm and Jacobin. And p. 56, somebody hopes Clinton has sent Malcolm half Money; which proves indeed, that either Malcolm or Jacobin means Malcolm, but which, may be ill a Question, as much as it was before.

That Malcolm means the Pretender, 'tis proved, because application is made to Malcolm, in a Letter from Scotland, for a Patent, and for Power to raise a Regiment, Rep. p. 45, 57. But with Submission to that Honourable Committee, neither of their Inferences prove that Affection; since the mott natural Way of applying in such Cases, is to Persons employed under the Principal, and not immediately to the Fountain Head itself: and if the late Duke of Osmond was to have come over half Summer to head the Scots, and they daily sent promising Messages to that Effect, (as Mr. Stalbye writes from Madrid, Rep. p. 75.) who more proper to be applied to by a Scots Mission on both these Occasions? Malcolm therefore (with Submission to the Committee) more naturally means the late Duke of Osmond.

I may add to this, my Lords, that in the Cypher inserted among the Scotch Papers, I. 12. Dizzi and Lloyd (not Malcolm) is said to be the Name and Designation of the Pretender.

I hope we may be allowed to argue in this Manner, from one Cypher to another, because the same Method has been made use of against us, upon this very Article, both by that Honourable Committee, and the Council for the Bill: for the only Colour there is for interpreting Jacobin to be the Pretender, is taken from Plunket's Cypher, in which (as it is printed) Jacobin is sett over again the Name of the Pretender, and from the Titling to the Draught of a Letter of Plunket's to Jacobin, C. 44, and admitting this Letter to have been sent to that Fact, (as Mr. Stalbye, which has not yet been proved, yet it does not follow, as I observed) because a Letter address'd to one at Rome by Plunket under the Name of Jacobin signified the Pretender, that another Letter directed to one of that Name in France, by a quite different Person, should likewise negligibly signify the Pretender. This, my Lords, I beg leave to say, is no certain or natural Consequence; but it is most certain, that that Draught (considered by itself) was not written upon that Cypher which the Committee refer'd to, in order to have it thought to have been written for the Pretender; for there is but one only of the many Cant Names in the whole Letter, which is to be found in that Cypher. But if your Lordships will be pleased to consider that Cypher a little farther, it will appear, that the very Persons suppos'd to be concerned in dictating this Letter to Jacobin, were utterly strangers to the Correspondence, (for it consists of a hundred and fifty Names) and Mr. Man can find above four that are in this Cypher, or in all that voluminous Correspondence attributed to Kelly; nor any of those four ever us'd in the Letters suppos'd to be writ by Kelly; but in those only us'dsuppos'd to be written to him from abroad.

The Name of Jacobin is not once in all that Correspondence applied to the Pretender: and tho' there be a hundred proper Occasions of mentioning him, it is always us'd without any Appellation. And Plunket himself, in his Examin-ation C. 73, Sect. 14. (when he could not possibly know the Tendency of the Question) not only says positively, that he never writ to any Person by the Name of Jacobin, and does not know who is meant by it, but it is also remarkable (my Lords) that in all the Letters said to be written by him upon that Cypher (after it was formed) he never once styles the Pretender Jacobin, but either Jacob or Jacobin.

The first of these Letters is in May 1721, and therefore that Honourable Committee have with great Exactness placed this Cypher immediately before it, as supposing it about that Time frame'd; for all the preceding Letters are manifestly written upon another Cypher. Now this Letter of the 20th of April, suppos'd to be dictated by his Lordship, was written before that Cypher of Plunket's was form'd, and consequently could not take a Name from a Cypher which then had no Existence.

There is another Observation of that Honourable Committee, which I beg leave to have Take Notice of. They say, that the Cypher made use of in this Letter to Jacobin, is the same made use of in the Letters from the late Duke of Osmond's Agents, and in Letters to Diana Kelly; and yet the Pretender has some other Names in such Letters, but in none of them ever once styles Jacobin. How comes it then, my Lords, that he should be styled so once, in this one Letter, and never before, nor after, by that Writer or by any other?

We have been the longer, my Lords, in removing this Imputation, because of all others it is the hardiest and most unjust upon this Reverend Prelate; and upon the whole, we hope it is fully and effectually done; notwithstanding the Difficulties we had of proving a Negative: and even from those Lights and Materials the Committee themselves have afforded: and if we had had an Opportunity of inspecting the Originals, we doubt not but we should have been able to have proved much better, that this Letter of the 20th of April was directed could not possibly mean the Pretender.

And if that be the Case, as it certainly is, and it appears farther by the Evidence which we shall produce, that these three Letters of April 20. were not, and could not possibly be dictated by the Bishop, the Foundation of the whole Charge is destroy'd, and consequently, all the Superstructure which was built upon it is totally thrown down. Nay, I will venture to affirm, that it is impossible for them to form any Scheme to prove the Bishop wrote those Letters but what is, and will be actually disproved and falsified, by some Part of their own Evidence.

Having thus, my Lords, gone thro' every Part of the Charge, I must crave your Lordships Patience, yet to speak to two Things, which have been much insinuated on by the Council for the Bill. That when your Lordships proceed in a Legislative Capacity, you are not to be guided by the Rules and Notions of Law, and therefore that we are not in this Case to expect an Evidence which is not legal. The other Thing was, that at this time of Day, circumstantial Evidence is insufficient in a Charge.
and others, for a Treasonable Conspiracy.

Chace of High-Treason, as the Cafe now before you is. This (my Lords) we have heard fully and often repeated, as it were to anticipate us in this Objection, which they themselves know to be so justly founded. I have fo far proceeded in Compliment to them, as to argue chiefly on the Facts and Circumstances themselves, and under the very faine Lights they have presented them to us, and hope (my Lords) our Inferences from them have been more just, our Conduction more natural, and our Probabilities much greater than theirs; and even in that View (considered abstractly from what the Common Law, and the Common Justice of the Realm requires) I hope we have fully shewn to your Lordships Satisfaction, and to the Conviction of every reasonable or impartial Person, that there are no Grounds for what is suggested in the Bill; and that all who hear me may justly wonder, how this Reverend Prelate comes to be charged (as he is in the Preamble of the Bill) with being deeply concerned in forming, directing, and carrying on a Conspiracy; when it has not been proved, that he entered into any one Conuftruction concerning any one Measure, gave any one Direction, that he has done any one Command, that he has written, dictated, or received any one criminal Letter: and if we should prove infifting on an Evidence strictly legal, or a Proof according to the Known Rules of Law; give me leave to fly, my Lords, because it is true, there has not been a rational Evidence.

But yet, my Lords, I shall always insist, both as an Englishman, and as Council to this Reverend Prelate, that there ought to be a legal Evidence in this, as well as in all other Criminal Proceedings. If there is any Difference, it is in this only, that as there are certainly many greater Inconveniences to the Subject in this Method of Proceeding, there ought to be a Stronger Proof, and a Conviction more strictly legal. I will always hope, your Lordships will expect a Proof in such heavy Charges, agreeable to the Laws of the Land, and the Rules and Resolutions of other Judges. I am far from thinking your Lordships are circumvented by the Forms of inferior Courts, because they are in their own Nature different from the Courts themselves often vary and differing from one another, and from the Manners of Law, the unalterable Measures of Justice, and the positive Directions of an Act of Parliament, are of another Nature; they are binding everywhere, to all Persons and Authorities, (as long as they continue Laws,) the King himself not excepted. I should beg Pardon, for carrying my Argument so far, but that I am taught by the Bill of Rights that the King himself is bound by the Law; that it is not in his Power to alter, suspend, or dispence with Laws. But if the Doctrine of the Council for the Bill is true, and every one at Liberty to follow the Dictates of his own Judgment, and what Rules he pleases; what Conclusions, Uncertainties, and Arbitrariness must that introduce in all Proceedings! Private Opinion will not only be a Pretext to execute private Malice, Revenge, or Ambition.

I might appeal to every one that hears me, whether he has not at some Time or other, believed some things, as strongly as he did at first this Reverend Prelate to be guilty of what was suggested against him, and his afterwards finding himself mistaken? What is more common than for Men that agree in the fame Notions of Morality, to deduce different Conclusions and Applications from them? (even where Interest or Partiality do not intervene) and therefore the Wifdom of the Law of England is, to determine general Notions of Justice and Right by particular Rules and Applications, in order to fettle that Variety and Incofistency, which without fome eftablifhed Rule must necessarily follow. Where then shall we go for true and proper Notions of Law or Equity, but to thofe great Oracles and Fountains, my Lords the Judges? What better Guide or more certain Rule, can any one of your Lordships prefer to himself, than the confant and uniform Judgment of thofe, whom the Conftitution of this Kingdom have made the proper Dispensers of Justice, and the Interpreters of Law?

"Is your Lordships peculiar Advantage, to be continually afifted by some of your Lords the Judges; and we hope in this Influence (if any Doubt can at all remain) your Lordships will hear their Opinion, with the fame Delerence and Cindor as in former Cases. Let it never be faid, my Lords, that you, who are the Supreme Over of the Kingdom, whose Judgments and Resolutions are Laws to other Courts, and ought to be an Example to all others, in the Judicial Equities of your Proceedings, that your Lordships will not regard the colonial Judgment of the Judges, or the Usages of former Parliaments; and let it not be faid, that because other Courts are bound by a Law, to require fuch and fuch Circumstances to infer an Offence, or such a Proof before they condem a Man, that you (my Lords) will follow your own private Opinion, make what you pleafe to be an Offence, without any Evidence at all, but upon mere Heads, Conjectures, and Suspicions. Who can reafon that melancholy Cafe without Concern, which my Lord Cabot has in his 3d Iflit, of an Uncle that was condemned and executed for the supposéd Death of his Niece, merely upon a Train of Prefumptions and circumstantial Evidence; or Harriquin's Cafe within Memory, where the Father and Mother both suffered upon Prefumption for a supposéd Murder? And with what Shame and Remorfe did that truly Judge fee himself convicted by the Judges, and condemned to death, and so his Son one almost remembers the Charge of Treafon againft this Reverend Prelate's Predecessor. If such a Bill had been thought on, or much stronger Evidence had been received, it might have pass'd before the Truth could have appeared. But happen'd it was for that innocent Prelate, that a quite contrary Method was taken, and his Accusers brought Face to Face to him, by which he quickply discovered the Villany of thole Mifcreants. Private Opinion or Prefumption therefore is such a Proof, that every man has his own way of giving his own Opinion; and the Crime is, in which he is to judge, the Stronger Proof he ought to require: and when one adheres strictly to Justice, and goes according to the Allegatas & Probatas, by the best Rules and Resolutions of Law; whatever Mifakes, Misinformations, or false Evidence may happen in the Cafe, he can never have Cause to repent, and neither the present Age nor Time can blame him.

It was formerly a Quotation, whether the Star-Chamber was bound by the Rules and Resolutions of
of other Courts; and the many Excellencies and extravagant Opinions in this Respect was the Reason that ancient Court was laid aside. And it has been as great a Quellen, whether the Court of Chancery was to be guided by Rules and Precedents. But the better Opinion has always been, that a Judge in Equity ought to regard the Rules and Resolutions that have been in like Cases unless he is resolved to make Decrees totally arbitrary.

For tho' Equity and Reason, in itself, is the fame all the World over, and nothing can alter the proper and intrinsic Notions of it; yet, as the Matters about which it is convergent, are represented in different Circumstances, and, like Streams of Water, will receive some little Tincture from the Soil thr'o which it runs, and there is something in every Man's Temper that will slide into his built formed Notions; it throws the Necessity of some fixed and established Rules, at all Times, and in all Places of Judicature. And therefore, in that high Court of Equity, tho' the Rigor of the Common Law is in some Respects foined, yet there is nothing more known, than that it is not to be impeached in any of its efficient and fundamental Points.

I hope your Lordships will pardon me, if I mention an Author in one of your late Gaming Bills, because, tho' the High Court of Parliament is likewise bound by the Rules of Law, Lord Chief Justice Holt says, The Authority of Parliament, is from the Law; and as it is circumscribed by Law, so it may be exceeded; and if they do exceed their legal Bounds and Authority, their Acts are wrongful, and cannot be justified any more than the Acts of private Men. I might add to this, the Opinions of Panchen, Hales, and Hobart, to the same purpose; that the Rules of Law ought to guide in puffing of Acts of Parliament, as well as in the ordinary Course of Judicature. But when I mention the Senec of a living Authority, that has filled the highest Stations in the Law, and to great an Ornament to your Lordships House, and whose Merits have been so lately distinguished by new Honours, I need cite no more. It was in a Cafe, where the same Doctor was advanced (that the Parliament was not bound to conform to the Rules and Proceedings of other Courts:) In answer to which, that noble Lord with great Truth observed, that those Rules were not to be Patterns to them, only because they were Rules of those Courts, but because they were Reafon, and Reason approved of by long Experience, and they obtain there as Rules for that Cafe; and I hope (says he) that is a Cafe why the House should imitate them, as much as Wifliminghall; or else how can they be tied to go according to Reason, or Justice, when they go before, or transgress those Laws?

Besides their great Authorities, there have been Times, when Parliament has thought themselves bound by the common Rules and Proceedings of Law, and Parliament that were very tender and sensible of their own Power, in other Respects. To not mention several ancient Acts of Reversal, because Judgments given in Parliament were not pronounced according to the known Laws; there is the Act for the Attinder of the Earl of Marth, because he had been in Traitor in procuring the Attinder of another Lord, under pretence of a Letter, which the Record expressly says was no Evidence. And the Record for reviving the Attinder of Roger Mortimer, 52 E. 3. Sir Thomas Halsey, &c. is extant, which Trencher has borrowed, and was objected contrary to the good Laws and Customs of the Realm. And not only the Lawyers and the Histories of those Times condemn them as greatly contrary to Law and Justice, but the Stat. 1 E. 6. cap. 12. is directly levelled at them. For it recites that those Proceedings were terrible and extreme, introduced for particular Policies and Purposes, repeals several Statutes that had been enacted in the preceding Reigns; and, that there might be no more such for the future, reduces all Treasons to the ancient Standard of 25 G. 3. and goes on and cautions, That no Perfon or Persons (i. e. any Lords, as I humbly apprehend, no manner of Persons, in no manner of Place, Court, or Method) shall be convicted for any Office of Treason, Petit Treason, Miprifisons, for which the Offender shall in any way suffer any Pains of Death, Imprisonment, Loss of Goods, or the like, unless convicted by the Testimony of two lawful and sufficient Witnesses. The Stat. 3 E. 6. cap. 11. goes further, and says, There shall not only be the Testimies of two Witnesses, but the Testimies shall be produced in Perdon before the Parliament and shall before his face maintain and aver what they have to say. The Words of this Statue, as well as the former, are as general as they can be, without any Exemption of Place or Proceeding.

But notwithstanding these two Statutes, there was till Occasion for the Stat. 7 W. 3. 2. to ascertain Treasons, and to regulate the Method of Tribals. For there had been several tender complainant Laws introduced by the pretended Zizal of Ministers, with a peculiar Eye to the Prince on the Throne; which tho' others could not apprehend the Justice or Necessity of, yet on their Laws there had been many unaccountable Penalties, undue and irregular Proceedings, in the preceding Reigns, and which Sir J. Halsey remarks as one of the great and immediate Causes of the Revolution. And to shew the Refinement of the Nation on these Proceedings, they were all reversed by particular Acts of Parliament; and to prevent the same for the future, that glorious Statute was made of the 7 W. 3. cap. 3. That Persons accused as Offenders should be justly and equally tried, and not debar'd of all juft and equal Means for the Defence of their Innocency. And whoever calls his Eye over the preceding Trials, will find every Cause of that Statute as it were a particular Provision against the Mildsheds that had been, and to prevent the like for the Time to come.

I do admit (my Lords) there is a Proviso in the End of that Statute, that it shall not extend to any Impeachment of the King in Parliament, and therefore I don't mention it as a Rule to Parliamentary Proceedings in all Respects, as it is to inferior Courts. But farly the Reason and Justice of that Act ought to be a Guide, as far as it is consistent with the Nature of your Lordships Proceedings. And insomuch as it was the Sense of the whole Legislature, and the united Voice of the Nation that at that Time, and on a clear-bought Experience, it is surely so far worthy of your
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and others, for a Treasonable Conspiry.

Lordships Imitation. It can never be confissent with publick Wisdom, to run again into the fame Mitchef from which we are so happily refuced, or to split on the very fame Rocks, on which many of your Lordships noble Ancelors have perifh'd.

And it can never be (with Submittion to your Lordships) be a natural or a reaonable Confrontion of that Provifio to enlarge the Proceedings of Parliament, or to give a greated Latitude than ever they had before. And to remind your Lordships how the Usage of Parliament was, preceding this Statute, I need mention but two or three Infinces out of many. Lord Delamere's Cafe in King James's Time, 1685, where there was one positive Witness and a strong circumstantial Evidence; and yet your Lordships Predeceofors thought that not sufficient to find him guilty. The Lord Stanford's Cafe in the very fame Year, where there was also one Witness, and strong Circumstances, and he was in the like manner acquitted. In the Cafe of the Earl of Pembroke, 1677, for Blasphemy and Abufe of the Sacrament, your Lordships Predecessors declared, That the fingle Testimony of a Commoner, that on Oath, was no sufficient Evidence againft a Peer denying the fact upon his Honour; and upon that fentence did lay him that he might be releafed from his Imprifonment.

And, as I humbly apprehend, your Lordships have thought fit to admit of some of the Regulations of that Act into your Proceedings, fuch of them (as I before faid) as are agreeable and confintent with the Nature of your Proceedings. Your Lordships have been pleas'd to allow Council to a Pri- foner in Treafon, to speak to Matters of Fact as well as Law: You allow a Copy of the Charge againft him perum'd for him to be upon Oath, as well as againft him; neither will your Lordships admit Evidence of a Fact not in the Charge. And furly (my Lords) there is as much Reafon, and as much Equity to require (as that Statute requires in the Courts below) the Testimony of two lawful and sufficient Witnefses. Nay, my Lords, I hope the Reafon is much stronger, becaufe (altho' your Lordships fhould consider your felves as unftrained by the Statute) Yet it is positively requird by both the Statutes of Ed. 6, which are general and with- out Exception, (as I before obfer'd) and because it is agreeable to the Usage of Parliament (as I have likewife fhewn) from that Time even down to the Stat. 7 Will. And if your Lordships are not enlarged by the Statute of King William, and the Statutes of Edw. 6. are full Laws, give me leave (my Lords) to fay, it can never be juft or lawful to take away any Man's Life or Liberty on infs Evidence than what thofe Statutes require, in any Place, or by any Method whatever. Because I am taught by Cufom's, that every juft Law is a Rule of Confience, whether divine or humane; and no Man can fay, his Confience is void of Offence towards God or Man, unless he adits according to the Laws of the one Sort, as well as of the other.

And if your Lordships will give me leave to fancy a cafe out of the Verge of my own Pro- feffion, I will mention a Word out of the Civil Law conformable to this; That is a Law (my Lords) in fome Degree receiv'd by all Nations, as a Scheme of the greatest Equity and Justice.

The Number of Witnefses by that Law, ought to be two at leaft, to make a full Proof, and free from all Exceptions, both as to their Perfonas and to their Depofitions. The Testimony of a single Witnefs is of no Validity, unlefs where other Circumstances concur with the Testimony of the Romanus to condemn any Man, before that he, which is accused, have his Accusers Face to Face. And this (my Lords) is not only the dead Letter of the cafe and the Dig, but the learned Grauus, in his Notes upon thefe Laws, says, It is the general Policy, and obtains at this Day in most Parts of the World. I do own that there are many Cafes that happen with us in the Courts below, where the Testimony of two Witnefses is not in truth, but then, my Lords, it is, when the Trial is by Jury, that is, when twelve Men, coming from the Party's own Neighbour- hood, and consequently must be suppos'd to know something of the Fact upon their own Knowledge, find a Verdict upon their Oaths. But I need not fay, that even in a Trial by Jury, if it is a Cafe of High-Treason, like this now before your Lord- ships, there must be two Witnefses, and nothing less can warrant the Verdict. And further, my Lords, it is a Practice founded on no Manuf- cipt or Law, or this or that Court requires it, but because it is absolutely neccessary for the Discovery of Truth, and for the forming of a right Judgment, whatever is sworn to be true or fally. One Witnefs may mistake, or be prejudged, and yet happen to be conffient with himself; but when there are two separately examin'd, the Truth is much more cafily found out; And who a Criminal may now and then escape for want of such a Proof; yet that would be a far more evil, than where we are in Cafes of Pe- nel, to Circumstances and Prefumption, and to the Malice and Miftakes of one Perfon.

But if, notwithstanding the Opinion of the greatest Lawyers both English and Foreign, your own uniform Usage and Resolution, and the Reafon of the Things itself, your Lordships are re- solved, in this one Inffance, to follow every one his own private and particular Confience; Is every day more hazardous than to take a proceeding with an honest Attenfion, unto thofe fecret Whif- perings, with Temper and Moderation. Let no Man be fway'd by Hopes, over-ru'd by Fears, or transported by Zeal beyond the Bounds of Justice, and through this Reverend Prvate's Side give a Wound to himfelf or Poffivity, which may never be cured. Consider, my Lords, if not for his, yet for your own Sakes, the Circum- stances, the Probabilities, and Evidence on both Sides, with an unbiace'd Confience, and by the Measures of Law and Justice. For the fame Pro- ceedings may fom convenient to certain Times and Occafions, yet unlefs they agree with the Law, with Reafon, and with Justice, no Man ought to think he has any Power to confent. There is a noble Infance on Record of the Lord Digby, and worthy of every one's imitation. He had been, my Lords, one of the moft violent Managers in the Impeachment of the Lord Straf- ford; and yet when the Procuring was waver'd, and a Bill of Attainder brought in, he spoke as violently againft it: That he was fill of Opini- on (he faid) that that Lord was the fame dangero- ous Minister, and great Apolitique to the Con-
moneys, who must not expect to be pardoned in this World till he was dispatched to another; yet he had rather lose his Hand than put it to that Dispatch. He put them in mind of the Difference between Prosecutors and Judges, and how unbecoming that Fervor was in them, now they were Judges, which perhaps might be commendable in them as Prosecutors: That when he gave his Consent to the Accusation, he was affraid, his Crimes would have been fully and legally proved, which if they had, he could have condemn'd him with Innocency, as he had prosecuted him with Earnestness; but as the Case then appeared, no Man could satisfy his Confience in the doing of it. The Parliament, 'tis true, had a Judicial and a Legislative Capacity; the Measure of the one ought to be legally just, the other political and prudential: but these two Capacities were not to be confounded in Judgment; they were not to piece up (says he) the Want of Legality by Matters of Conveniency, to the Ruin of a Man, by a Law made or paper'd.

What can I say more? For it must appear to your Lordships by this Time, that this Proceeding is contrary to the fundamental Laws of the Kingdom, contrary to Publick Wieldom, and unjust in itself: That the Reasons and Suggestion upon which it is grounded have not been proved with any Colour of legal Evidence, or with any Degree of Proof or Probability, which ought to satisfy the Confiance of an honest, reasonable Man. But if the Matters, which I have humbly laid before your Lordships, have not the Weight, which I hope they have; or if I have omitted any thing that is material or necessary for this Reverend Prelate's Defence, Your Lordships, I hope, as Judges, and (consequently in some measure of Counsel for the Prisoner) will, from your own Observation, supply it. Or if I have laid them before your Lordships in an improper Light, or a less effectual manner than others might have done; yet the Case itself will speak better and more strongly than any Words or Exposicion of Facts, which can be made. For Fortune, and the Liberty of a Soil Reverend and Learned Prelate, who is to be ship'd and torn from those Dignities and Preferments which his own high Merits justly call'd him to, and which he has ever since adorned with the greatest Lustre. Upon what slender and insufficient Grounds, Your Lordships have already heard, and I was going to say, without Precedent: but I must own there have been Influences of Depravation, some in the Beginning of Queen Elizabeth's Reign, and some others since the Revolution. But yet they were upon a greater and more surprising, and an Injustice voluntarily incur'd by those Prelates, after the full Knowledge and Publickness of those Laws, by relating to give that Security to the Government, which at those Times was absolutely necessary. And tho' they were peremptory in the last Degree, and their Example might have produced worse Consequences than it did; yet their Punishment went no further. But this is a particular Law, to be introduced for this particular Prelate, insufficient to the foppish Offence, and which is not thought fit to be enacted as a Law for any other Person hereafter; and I with my Lords, I could say, this Act were no further. But this Reverend Prelate is likewise to be deprived, not of his Life indeed, but of all the Conveniencies and Comforts of it, of the Commerce of his Friends and Relations, and of all that is valuable to an Episcopalman. He is to be doomed to the Carce of Cain, and to be turned out of his native Country, full of Age and Infirmities, to the Cruelty of Strangers and Foreigners, and even beyond the reach of his Majesty's most excellent Goodness.

But if your Lordships should pass this Bill, I will still have, I doubt not, the Peace of my own Mind, and this comfortable Reflection, which no Man can take from him: That he shares the Fate of the greatest and most honest Statesman of the last Century: tho' in this Instance also 'tis his Lordship's Misfortune to be very much distinguished. For he, tho' innocent, was afraid of the Violence of the Times, and withdrew from Prosecution. But this Reverend Prelate has been all along forgoing, and, as it were, fearful of nothing, and conscious of nothing but his own Innocence, has fought in all Places to be brought to Trial. That noble Lord's Crimes (or at least his Accusation) were going to be proved in a proper Parliamentary Manner by Numbers of Perfolns: But this Reverend Prelate is to be involved by Implications, Inferences, Conclusions, and the Conjectures of Discerners, in Crimes, which he is here ready to deny, and of which no Man accuses him.

I would not be underfoot, my Lords, by any Thing I have offered in relation to the particular Penalties, as if I thought any one Suggestion of the Bill had been duly proved, so as to deserve this or that Part of the Penalties; tho' I must say, they are all so extraordinary in their Nature, as to deserve your Lordships Attention. And I doubt not, but your Lordships in your Goodness will consider what is already passed, the Length and Cloineness of the Impriornent, which this Reverend Prelate has already full'd as a Forpiled Criminal. Prifons before Conviction are only for the safe Custody of a Man, and not for Punishment; but his Imprisonment has not been so: see the Carcass (if my Infruptions are true) has been attorned with such unheard of Barbarities, and such withering Sufferings, as are a Shame and Reproach to every civiliz'd Nation. The Cafe of College every one has thought hard and barbarous; but 'tis this Reverend Prelate's Misfortune to be distinguished in this also, as well as in every thing else: For that Cafe was before the Law allowed Counsel or Solicitors to afford a Prisoner in his De fence, but now they are allowed by Law, and were actually and duly attorned to my Lord Bishop; and yet part of his Imprisonment has been in the cold, and as he says, in the least of his Sufferings. So that, all these Things considered, his Lordship cannot escape without being a very great Sufferer, tho' your Lordships should utterly reject this Bill.

Your Lordships will also consider the Infruptions of Body, under which that great and noble Mind even now labours before you, which have rendered him almost incapable of attending his Defence. Your Lordships will also consider the Grief and Vexation it must be to appear as a Criminal before this Honourable House, where he has so long sat as a Judge, and under the Supplication of these Crimes which are laid to his Credit, and how grievous it is for one of his Lordship's Character and Function, to be tax'd with Breaches of
of his Duty to God and Man, of Scandal to Religion, of Design of overthrowing Church and State, in favour of Popery; who happens to be the only Clergyman in England, that ever thought it worth his while to draw his Pen in Defence of Martin Luther, the great Instrument of our Reformation from Popery; and who has, upon all other Occasions, appeared the most furious A foe of it. I might add much more of his Lordship's personal Merits, and of those high Abilities so eminently conspicuous in him; but that I know it is some kind of Violence to his Lordship to hear even thus much mention'd.

Yet suffer me to say, That if these Suggestions should be carried into a Law, without any Degree of Evidence or Probability, but rather (as your Lordships will immediately hear) against the Houtest Evidence and Probabilities that are possible of the contrary: I say, if this Bill should pass on such Circumstances, whatever the present Age may think, his Cafe will be a standing Mark of Reproach to it, and he will be the Wonder and the Pride of all succeeding Generations.

I shall add to your Lordships Trouble but one Word more, in Behalf of myself: That your Lordships will pardon any Warmth of Temper, any unguarded Word or Expression that I may have been guilty of in the Course of this long Defence, in a Cafe, which every Englishman naturally considers as his own, and therefore will, in some measure, warm the most even Temper. And that this Learned (and whom I will now call Innocent) Prelate, will accept those little Services I have been able to perform, and will pardon the many Paflings, which I may already have been guilty of, in his necessary and moat just Defence.

After the Bishop's Counsel had done speaking, the Bishop produc'd several Witnesses to be examin'd, and on Saturday, May 11, Sir Coghantaie Phibbs made a short Recapitulation of the Evidence, as follows.

My Lords,

We have done with our Evidence; and hope we have fully answer'd every Part of the Charge concocted in your Council and apprehend there is no one Circumstance left unanswer'd. Particularly, that we have totally destroy'd the Credit of Noyse's Hear witness Evidence: For when the Im probabilities, Inconsequences, and Contradictions of his Examinations are consider'd, and the Tiloy of the perjurers is duly weighed; no Perfon can give the least Credit to what He hath said, without offering the greatest Violence imaginable to his Reputation.

And it is wonderful, that the Council for the Bill should think it should be credited in any Thing: When we have proved, he had the Confidence to declare, that a Right Honourable Person had confidered it proper to persuade Him to accept Persons of Quality of Things He knew nothing of.

If he had not said, when he was to be examin'd, That Right Honourable Person had him first in precon's, and told Him, what Singularities would be afforded Him, and what Advantage He should give? Did he then, (as several of your Lordships have informed Him) give him what Singularities or Equities, and told Him what he should reply to each of them? Hath he not said, that refraining to give Evidence, He was threatened with Ngegate; and that thereupon He gave them Information against my Lord Bishop and Others? Nay, had He not the Impudence to say, that the same Right Honourable Person offer'd Him 2000l. 500l. per annum, and a Place, to accom­­company the preceding Lords, the Earl of Orrery, and this Reverend Prelate? And that being afraid whether He knew any Thing of the Plot, He swore No, not any body else: But that he knew of two other Plots, with none of Mr. Wilsor against the Presby­­ting Lords, the Other of Hodson upon Mr. Wills; and was to get 2000l. of Him. Nay, it is proved He declared that the same Gentleman pres'd Him so hard to accept same Person, that He had it once in his Mind to take up That Right Honourable Person's Sword, and run him there with it; and so make an End of the Plot.

There are things which have been proved upon Noyse: And all these Things being consider'd, I believe the Counsel for the Bill will readily agree with me, that no Credit ought to be given to one Word He has said: And if His Evidence be laid aside, the greatest Part of the Charge against my Lord Bishop falls to the Ground.

My Lords, The Evidence Mr. Lewis gave was very material. For he thye'd your Lordships, that Bracett, who was of the Post Office, was so skilful in counterfeiting Hands and Seals, that he wrote the Supererogation of a Letter, and took the Imprisonment of a Seal, and sealed it again; and did it so well, that in such a Letter, that Mr. Lewis could not distinguish it from the Original.

The Engravers likewise fail, they could take off the Impressions of Seals so well, that they could not be distinguish'd: Nay, tho' the Wax were broken, yet if no Part of the Wax were left, it might be done.

Your Lordships observe how the Engravers themselves were mislaid in relation to some Impressions, which were produced to them: And You further observe, that the Seal in question was a Ciero's Head, which all the Engravers agree to be a very common one: And they had many of them: So that no Objection can be made against my Lord on account of That Seal. Nay, one of the Engravers said, it appear'd to him that the Seals of the two Letters were not the same. As to the Dog, there is Mr. Crawford's Certific­ate, and Birmingham's Affidavit. As to Mrs. Bacon's Evidence, the hath found out now, That there were two Dogs, tho' nobody else ever heard of Two. She said, the first was for the Bishop of Rochester. Now it is plain, the First was sent in March; and it was His Leg that was broken: And Birmingham swears, and Mr. Kelly solemnly affirms, that it was for Mrs. Barns, and not for the Bishop.

As to the three Letters of the 2oth of April, we have proved it impossible that the Bishop should write, or dictate, those Letters to Mr. Kelly. And your Lordships take Notice, how the Butler came to observe the Letters could not be written by the Bishop; and the Servants, tho' under Confinement, and not permitted to see any Body, agree in their Evidence. There is Gordon's Affidavit that he never had such a Pur­­sue: And James Talbot was here in Town the 23rd of April.

Thus, your Lordships observe that a Bill of the most extraordinary; Nature that ever was fair, hath been supported by the most extraordinary E­­vidence, that ever was heard: And we hope, we have set the dark Puffiges, of which the Charge is compounded, in such a Light, that every One may
may plainly see the Right Reverend Prelate is not guilty at any One Offence charged against him.

Mr. Wynn spoke next.

My Lords,

I shall beg your Patience to clothe our Defence with an Observation or two on the Evidence that has been given by my Lord Bishop: and I need take up the left of your Lordships Time, because my Witnesses have fully answered all I opened, and in many Things have exceeded my Expectations. And for your Lordships clearer Apprehension of so many various and perplex'd Facts, I shall just recapitulate what I humbly conceive to have been the Subsistence of the Charge against my Lord Bishop, and, as briefly as I can, state the Evidence, which we have produced in order to falsify and disprove it.

The first and chief Accusation against his Lordships, was founded on the Informations of Philip Xynie, and therefore the first Part of our Proof was as to his Credit. Your Lordships, I doubt not, remember the Purport of his Information read against us, and the many gross Absurdities and Inconveniences in his other Information read by us; and likewise how fully they have been all disproved, and the Credit of them entirely blasted, even from Xynie's own Confession, several Times repeated, and confirmed by three unexceptionable Witnesses.

Your Lordships have fully heard of the Torments and Apprehensions he was continually under, because (as he himself expressed it) he had given false Informations against this Reverend Prelate, and so many other innocent Persons. Your Lordships have heard the Indictments he had to give those Informations, and how often he had declared his Intentions to escape, in order to avoid the Punishments, which he apprehended most justly due to him, because he could not make out the Truth of them.

Two of those Witnesses (Bigney and Skene) are full in Custody, and ditto almost all the Necelarics of Life: I say, my Lords, they are full in close and strict Custody, and consequently there could have been no Opportunity to lead or instruct them in what they should say, or so much as to be apprised before hand (which surely would have been a reasonable Liberty) whether they could say any thing material or not; and we are only huddled to those lights, which the Report of that Honourable Committee has afforded us: And all three of those Witnesses utterly unknown to my Lord Bishop, both in Person and Reputation, as well as his Lordship is unknown to them. They have not conversed together for several Months, but yet are perfectly consistent with themselves, and entirely supported and confirmed by each other. And all three declare, they had very truly told, and frequently repeated this Account of Xynie to their Fellow-Prisoners and Acompaniments, as long as they were permitted to have Access to them. Mr. Skene being asked in relation to the Difference between him and Captain Pantier, as in the printed Deposition of Pantier, App. D. 1, he turned on his Oath every Word of it. Says I, that Captain Pantier told all his Encounters by Treats and Entertainments to induce him to suppress this Informa-

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1723.

But the Wittefes have gone much further; for they have told your Lordships, that no Stranger approached the Bishop's Room all that Time; nor had any one been for a confiderable Time before and after the 20th of December under his Roof. Even some of tho"s Perfon's that usually were with my Lord Bifhop at other Times (as his Son, his Chaplain, and his Son's Tuter) happened then all to be abfen at the Election of Wiganmer Scholler.

One of tho'fe Servants, who happens to be a Prisoner with his Lordship in the Tower, being asked, whether my Lord Bifhop had not put him in mind of thefe Circumstances, told your Lordships, that it was entirely his own Recollection, by confafion taking up the Reports, after my Lord Bifhop was gone to Bed, and dipping on that Part of it, in which his Lordship is charged with having writ thefe Three Letters. Upon which, the next Day (he faid) talking to his Fellow-Servant, and he agreeing to the very fame Circumstances, they acquainted the Bifhop with what they had read, and how they could, from their own Knowledge and Remembrance, satisfy and disprofe that Circumstance.

I muft likewise confide to observe to your Lordships, the four or five of tho'fe Servants, that have spoke to thefe particular Facts and Times, are fiff in Culpefey, under feprate Meflengers, without any Opportunity to converse together, and were hardly to be found by my Lord Bifhop, when he had need of their Evidence; and yet every one of them have been perfectly confident with themselves, and one with the other, and all equally pofitive.

The Bifhop's Coachman, your Lordships, I doubt not, remember, the low under another Influence, and called as Witnefs againft his Mifter, confirmed what they faid, and was as pofitive and peremptory in his Teltimony concerning this Matter, as far as the Nature of his Employment gave him an Opportunity to make such Obfervations. And upon the whole, I may now, with more Refton, and with greater Confidence, repeat my former Affertion, that it is impoffible for them even to devife or frame any Scheme to prove his Lordship to have wrote, or difputed these three Letters, but what will be actually disproved and diffufed by fome Part of the Evidence.

Another Reafon, by which I think proved that his Lordship wrote thefe Three Letters, was, from the Subfcription of the Number 1728, to the Letter addreffed to Jackam. Which Number Mr. Wifles (a Decypherer) fays, denotes the proper Name or Title of a Perfon beginning with the Letter R. The little Time we have had to enquire into this Affertion, and your Lordships not permitting me Questions, put by us to the Decypherer, to be afwered, won't enable us fairly to confider it. But with Subfcription to your Lordships, it seems impofible to affirm even thus much, with any degree of Certainty, and it muft be (as I before obferved to your Lordships) Matter of Conjefture only; and it appears manifeft to your Lordships, by feveral Pattages occurring up and down in this Correpondence, not yet dyfpenfery, that either the Art is not fo infallible, or that Mr. Wifles is not fo great an Arrif as he pretends to be.

But, my Lords, admitting such a Number in this Cypher does really denote a Perfon's Name, or Title, beginning with the Letter R. what a Strange and uncertain Proof is that, to fix a Charge of High-Treafon on the Bifhop, when there are other Perfon's Names, and Titles, found like his, and many others begin with the very fame Letter; and this not to be admitted as Evidence in a minute or confiderable Circumference, but in the very Gift of the fuppofted Offence, in the principal Foundation of the Charge, in the only Letter that is criminal, and which is to magnify and improve the reft into High-Treafon?

Another way of proving these Letters to have been difputed by the Bifhop, was, because another, difputed to be an Answer to this, mentions the Prefent of a Dog. I need not here repeat what Mr. Kelly himfelf has confantly faid in his Examination, becaufe your Lordships, I doubt not, remember what Mrs. Barnes faid; that Mr. Kelly indeed at times (sometimes tells her of another Dog that was for the Bifhop, but that the always apprehended that Dog, which he had in his Possifion, was defigned for her, and never heard of any other Dog that did come from Prine. She owns, that the Mule received one Meflanger from the Bifhop about it, but fiefs which, when it was recovered, as her own, as long as it lived; and tho' his Lordship never had, nor loved a Dog in his Life, yet it would have been natural, and good Manners to the Perfon that sent it, especially if fo confiderable a Perfon as is fuppofed, to have made now and then fome little Enquiry about it, if my Lord Bifhop had really known any thing of the Dog.

But we have shewn your Lordships by the follemn Affeltation of Mr. Birmingham, the French Surgeon, that he was the Perfon who gave this Dog (in March 24.) to Mr. Kelly, for Madame Barnes, of whom he had received Civilities in London, and for no other Perfon, nor with any other Intent. He likewise fays, that he never reciev'd any fuch thing as a Dog, or Meflanger from Lord Marr, (as alluded in the Report) never had any the leaf Thought of the Bifhop of Rochester, or his Lady, much lefs of making either the one or the other (both of which he was utterly unknown) any fuch Prefent.

Your Lordships obfervc this to have been a follemn notaflral Act upon Oath, of a Perfon not only reputed, but attested likewise by the Lord of the Signeury, to have been a legal Notary, and to have exercis'd his Office as fuch for fome Time. That the Teltimony of fuch a Perfon beyond Sea is a good and exceftionable Proof in every Cafe, I need not fay; or that it has been often allow'd here, where no other is to be had, nor any other Method to have the Benefit of a Man's Teltimony that is beyond Sea. And our Witnefs has rold other Parts of the Evidence that has frequently tranflated fuch Inflruments: That he believes it to be the Notary's Hand-writing, and the publick Seal of his Office. I need not, my Lords, have faid thus much; for in all Events it must furley have been of more Weight in your Lordships Judgments, than the Extract of an Information given by a Perfon, infamous in his Character, absurd and inconftant in all he faid, and without being figned or sworn to, even by that Perfon.
But yet this Affidavit of Mr. Birmingham has the more Credit, because his Majesty's own Residant at Paris (Mr. Crawford) has been pleased to examine him about the Man. He being employed by him in his Professions as a Surgeon, and he has confirn'd the same Account to him, which has been likewise transmitted, and read to your Lordships.

Another way of proving my Lord Bishop to have been concerned in their Letters, was from the Hand-writing, which is supposed to have been Kelly's, and he is supposed to have been his Lordship's Secretary in their Matters. But both these Allegations, we think, with Submission to your Lordships, are full utterly defulte of any proper or prudent Color.

I before observ'd to your Lordships, that the first time the Clerks of the Post-Office have made any Deposition about the Similitude of the Hand-writing, was four and eight Months after they had been the Original Letters; which is a little of the lett fo exactly to remember all the little Strokes and Turnings of a Pen, by which the Identity or Diveristy of a Hand can only be made out. That Mephe, the Footman of Mrs. Bates, was never called upon for his Testimony till January last, that is, nine Months after he had seen any of Kelly's Writing, and consequently not then very able (if ever he was) to form a Judgment of it.

I have already observed to your Lordships, that this was the first, and the only Injustice, that any Evidence of the Similitude of Hands was ever admitted, but where the Papers pretend'd to be in the same Hand were produced and compared in Court; which is so far from being the Case in this, that the Clerks of the Post-Office never had any Opportunity of comparing the Original of the 20th of Augst, with any one of the three Originals of the 20th of April, or with any of the Intermediate Letters which they affirm to have been in the same Hand; so that they are the absolute and ultimate Judges of this Matter, without any Possibility on our Side of detecting any Culfal or wilful Miflake.

I would not again repeat an Observation I have before made to your Lordships, that a great part of these Letters are in Figures, and how much more difficult it is to distinguish the Hand of one writing in Figures, from Words and Syllables in length; because we have thrown your Lordships, by three positive Witnessfs (well acquainted with Mr. Kelly's Writing, one of them above 20 Years, and his School-fellow) that the only original Letter of the 20th of Augst, stop'd at the Post-Office, as a Sample to the rest, (and which was written in the Hand of the Man which those Clerks have affirmed to be Kelly's Writing) really and in fact, was not his, nor like it. This, my Lords, we have fully proved by three Witnesses; and as a Demonstration of what they said, they shew'd your Lordships, among a Variety of Papers produced to them at your Bar, that they could at once distinguish which was Kelly's Hand, which was any thing like it, and which was not.

We have likewise produced to your Lordships, the Dozen Attestation, on Oath, of "Alexandra Gordon Junior, the Son, Banker at Bonnigay, that no such Packet of Letters ever came to his Hands, as mentioned by the Council for the Bills; and consequently he could not deliver any such to Talbot, (who, they say, called for them at Bonnigay). He further deposes, that he never had any Receipts or Intercourse with Kelly, of Bonnigay, nor ever had acquaintance with any Person to call, in his whole Life.

And we have proved to your Lordships, that James Talbot, the tall black Man, described in the Letter printed in the Appendix, and who is supposed to have been the Person that called upon Alexander Gordon at Bonnigay for this Packet, was far from doing it, at the Time supposed, that he was at London on that Day, as appears by the unexceptionable Testimony of Edward Corinth, his Steward, and by the Entries of his Shop-book, to whom he accidentally paid a Visit upon that very Day, at his House in London.

We have likewise shewn your Lordships by two Witnesses, Mrs. Kellor, and her Maid, Sarah Lewis, that Mr. Kelly was at her House in London, on the 20th of April, (the very Day upon which my Lord Bishop is supposed to have dictated these Letters to him) and by a great Variety of Evidence, impossible to escape any one's Memory, that my Lord Bishop was ill in Bed, at Bristol in Kent; and Quod non elater est in stipha, is an Axiom of Reason as well as of Philosophy.

And I must humbly submit it to your Lordships, that it has not yet, in the least, appeared by any Shadow of Evidence, that Mr. Kelly ever was employed by my Lord Bishop to carry on a Correspondence; that he wrote any one Letter for the Bishop, upon that, or upon any other Occasion whatever.

That Paflage in the Letter to Huggan, that seems to give Countenance to such a Supposition, the learned Council for the Bill told us yesterday they had waved, and were angry that we should offer to disprove that which they had not proved. But, with Submission to your Lordships, tho' they have been pleased to wave that Part of the Charge against my Lord Bishop, yet, as it makes no small or considerable Appearance in the Report of that Honourable House, we will be so humble as to challenge you to your Lordships upon the Observations I before made on it.

There was indeed some of your Lordships Time spent in comparing the Seal of that Letter, with that which happen'd to be taken on my Lord Bishop's Servant at the Fleet: if it was intended as any Proof, I cannot at present judge; however, we thought it proper to follow them in the Court and Manner of their Proof, and your Lordships yesterday have fully heard the Danger and Uncertainty of admitting such a Proof. First, you have had some Account from Mr. Erasmus Lewis
of the known Practice of one Brackets, who was able to counterfeit any Man's Hand or Seal, in such a manner that even the Person (whole Hand or Seal it was) should not be able to distinguish it from his own.

Then we produced to your Lordships two Seal-gravers, who fully attested the same thing. Mr. Stilton said, That he himself could make such an Imprisonment, so as not to be distinguished by an Artist, and give it the very same Likeness. That he could even take an Imprisonment from a broken Seal, and that there would at first necessarily be some little flaw in it, yet he had several times mend it, and then make such an Imprisonment from it, that even an Artist could not discover it from the Original.

Mr. Jovita, another eminent Seal-graver, likewise told your Lordships, that he could do the same thing: In particular, That he had once such an Imprisonment taken in Paris by one Mr. W. esmunder, and from that he made another Imprisonment, to perfect and exact, that Mr. W. esmunder himself could not distinguish one from the other: But as to the Seals of these two Letters, he doubted very much whether they were made by the same Seal or not; and from some little Strokes in the Hand, that were very visible to any one, 'twas not to easily be exprest, he rather inclined to believe, that they could not be made from one and the same Seal.

And when your Lordships were pleased to enquire of them, How such a thing was practicable? They did not cover themselves (as their Disciple did) by saying, It would discover the Secrets of their Art, but frankly told your Lordships the very Manner and Method of doing it.

Their own Seal-graver, Mr. Capitain, owned, That this might be done, altho' he had never done it: And in the Experiment made on Mr. Radcliff, their other Seal-graver, he was once plainly in the wrong, as well as once in the right. And it manifestly appears from every one of their Testimonies, that this Practice of taking Imprisonments is very easy.

And as one of my Noble Lords informed the House, his Footman could do it as well as any of them; and, as your Lordships yester- day observed, even to deceive Mr. Radcliff himself, who, they say, is to great an Artist. And therefore, my Lords, it is a most dangerous fort of Proof, and too uncertain at the best, to receive any judicial Countenance in a criminal Matter.

So that I must honestly infil, that this Part of the Charge against my Lord Bishop has not been proved; any better than the former; and that when your Lordships do consider the Evidence that has been given on the one Side as well as on the other, as your Lordships are at liberty to do, you will see Mr. Radcliff, the Footman, to be of Opinion, that there is no just or reasonable Ground to suppose, that these three Letters were wrote by Mr. Kelly, and much less that they were dictated by my Lord Bishop.

The next general Charge against this Reverend Prelate, was, the receiving of two Letters from abroad, in relation to this Conspiracy. The Council had for the Bill have waved the Letter signed Dystry, addressed to Mr. Otton, and (as I apprehended from them last Night) did not pretend to prove any Thing concerning the Bishop, under the Name of Ireland.

Neither have they as yet pretended to prove, that the other Letter from Moshfield to Inngton ever came to his Lordships Hands, or in whose Hand-writing it was wrote. If so, if the Lord Murrays (as it is figurated) many of your Lordships must have been well acquainted with it. Nor has it been yet said, that my Lord Bishop ever returned any Answer to it.

And as we have now proved (and fully too, we apprehend) the Letters of the 20th of April, to which this is figurated to have been an Answer, to be a mere Fiction, or Imposture upon the Bishop; this, which is designed as an Answer to it, must likewise fall to the Ground, as Part of the same Conspiracies, and more grossly than the former. The next and last general Charge arises from the Coincidenties of Times and Names in the intercepted Correspondence, the more readily to induce your Lordships Belief, that my Lord Bishop was really meant by that Correspondence.

Some of them I accounted for before, as Truths publicly known, but turned by ignorant and malicious Correspondents to ill Purposes, or else as absolute Falsities, and manifested Mithakes.

We have shown your Lordships by various Reasons, that the fictitious Names supposed to denote my Lord Bishop, cannot be applicable to him, with any Colour, Truth, or Decency; that there is a great doubt to be made, whether many others of those fictitious Names were really intended for the Person supposed to be denoted by them: and especially, that Jacken, to whom the Letter of the 20th of April is adressed, we have proved by various Arguments, and even from those Lights the Committee have afforded us, could not possi- bly mean the Pretender, whomsoever else it may mean; and consequently that that Letter (if it were wrote by Kelly, and dictated by the Bishop) cannot be High-Treason.

And as to the Articles of Times, and the Accounts of my Lord Bishops coming and going, it must be owned, they are sometimes right, but as often wrong.

There is no doubt, but the Correpondents on this Side the Water, whoever they were, whether out of Malice or Vanity, or out of any other Inducement, apprized themselves as well as they could, of the Bishop s Mithakes to the Nation, and in order to give the better Colour or Probability to what they did him of. But yet it has happen'd, unhappily to them, as your Lordships have heard, that out of six or seven Instances occurring in these Letters, two only are true; two of them may be doubted whether true or false, because ambiguously expressed; but three of them are gross Mithakes, as appears even by the Accounts of their own Wminaels.

And the Mithakes are the more remarkable, because they confirm the Bishop to have been in the Country, when he positively was not: whereas it was ten to one, but that the mere Gueless of a Stranger, at that time of the Year, had been true; and the rather, because his Lordship was really in the Country ten Days to one that he was in Town, all last Summer.

There is another Thing remains for me yet to speak to, and that is the Intimacy of my Lord Bishop with Mr. Kelly; which was likewise shown in to the Number of Circumstances, and as another weighty Argument to induce your Lordships belief of the foregoing Matters.
But has any thing appeared to your Lordships like it, even upon their own Evidence? First, a Chairman is brought to tell your Lordships that he carry'd Mr. Kelly to the Deanery three or four Times about Four Years ago, and he, the Bishop was not one of the Company. And a Porter says, he carry'd two Letters from Kelly to the Bishop; one of them about Christmas last was Twelve-mouth, and the other Letter some time before that; but received no Answer in Writing, nor Message, but only his Service to Mr. Kelly. But there is one extraordinary Circumstance, which shews him, I confess, to be a very willing Evidence, tho' not so very likely and credible; that is, that this Porter, dirty as he must be in the midst of Winter, deliver'd his Message to the Bishop in his Bed-Chamber.

And Malone, the Perfson that usually attended Mr. Kelly, and went on his Errands, was asfected to the same Purpsoe; and one might have expected that he should have given some Account of it, and had been often employed on Errands to and from the Deanery: But I submit it to your Lordships Memory whether he did not say, that he never was at the Deanery in his Life-time, nor did know to this Day where it stood.

Mrs. Killorn, with whom Mr. Kelly had lodg'd a considerable Time, says, the remembrance a Message once came to Mr. Kelly, from the Bishop; but positively denies that my Lord Bishop's Coach ever came to fetch Mr. Kelly at her House, as that Honourable Committee have been pleased to affirm in their Report. And I appeal to your Lordships Memory, whether Mrs. Barnett, whom the Counsel for the Bill think so credible a Witness in some other refleets, and with whom it must be confess'd Mr. Kelly frequently lodg'd, was not equally positive in this Matter, and that she did not believe there could be any Friendship or Intercourse between the Bishop and Mr. Kelly without her knowing of it.

Thus the suppos'd Intrigue and great Acquaintance between my Lord Bishop and Mr. Kelly stand upon their own Evidence. And I believe your Lordships to consider, what sort or degree of Proof all this can possibly amount to. But we have shown your Lordships the direc contrariety, by no less than ten Witnesses, Servants to my Lord Bishop, some or other of which were always with him, whether he was in Town or in the Country, and every one of them has lived with his Lordship above Two Years; and they say, as it were with one Voice, that they don't remotely remember any such Person or Name as Kelly or Joboins coming to the House: as they must have remember'd him, they say, if he had been frequented in his Visits or Messages: and some of them say, they usually wrote down the Names of those that did come; and the Coachman in particular, who has liv'd four Years with his Lordship, and appears now as Evidence against the Bishop, and therefore cannot be suppos'd partial to him in his Testimony, is yet as positive and peremptory, that he never saw Mr. Kelly, or Joboins, at his Master's House, in all his Time. And being carry'd all this Time by a Messeng'r, to see if he could recollect his Face, then frankly own'd, he had never seen his Face before. And being ask'd how he could pretend to know all Persons that came to the House, whose Names was at the Stables? He told your Lordships, that he was as often in the House, as'd to wait at Table when Company was there; and that let him come which way he would, he should have seen him coming going, or have heard of him in the Kitchen, if he he'd a Person that had frequented his Master's House.

Some of the other Servants likewise spoke as fully to these Circumstances.

We have likewise shewn your Lordships by Mr. Pope, who has been for these two or three last Years, the most constant Companion of his Lordship's Hours; two or three Days, he says, almold in every Week, and an Hour or two almold in every of those Days: That his Lordship generally sat in one Room, which I think was his Bed-Chamber; that he was admitted to all Hours, and into all Companies, and never found the Diseourse change at his coming in: That his Lordship never in the least discover'd any Thoughts or Intentions like those now charg'd upon him; but had heard occasionally many Things drop from the Bishop, of a Tendency di-rectly contrary. And to this we might have called many others, if it were necessary.

We were likewise ready to lay before your Lordships, several libellous and inmittent Scribbs, several Publick Buildings, in Matters of Literature with different Persons, which my Lord Bishop was engaged in last Summer; and would have been a full Employment for some Mens whole Lives: But your Lordships did not think it necessary; being (as we hope) fully satisfi'd and convinced of my Lord Bishop's Innocency, by that Variety of Proof which we had before make.

There are, my Lords, some other Observations that might be made: but have been, I doubt not, already much better taken notice of by the learned Gentleman that spoke before me: And I think this is the Substance and Purport of the Evidence that has been hitherto offer'd on both Sides.

What the Issue or Success of this long Hearing may be, I know not; That is in your Lordships Pleasure only to determine; to Acquit, or to Condemn: But I hope you will say, We find in him no Fault at all.

The Proof which has been against the Bishop, (if it can be said that Name) has neither been such as is reasonable in itself, nor agreeable to the known Rules and Proceedings of Law; but chiefly by Probabilitie, Circumstances, Conjectures and Suppositions: Whereas we have encounter'd and disprov'd even them, by far greater Probabilitie, much stronger Circumstances, and also by such Evidence, as would be convincing and sufficient in any Court of Law or Equity within the Kingdom.

And, upon the whole, I hope I may venture to affirm, That there does not now remain the least Sueception of the Charge brought against the Bishop; not even a Sueception of a Sueception of a High-Treason; nor one probable Probabilitie, or the preeminent Preemptions: I mean, That there is not now remaining before your Lordships, the least Degree of Probability, or the very least er of Preemption that is known in Law: And therefore, shall humbly conclude with the same Prayer Sir Constantine Philips has made before me, That your Lordships will reject this Bill.

The
The Bishop then spake in his own Defence, as follows:

*My Lords,*

I have been under a very long and clofe Confinement, and have been treated with fuch Severity, and fo great Indignity, as I believe no Pri­foner in the Tower, of my Age and Function, and Rank, ever was. By which Means, what Strength and Ufe of my Limbs I had, when I was first committed in *Auguf* 16, is now fo far de­clined, that I am very ufit to make my Defence against a Bill of fuch an extraordinary Nature.

The great Weaknefs of Body and Mind under which I labour, fuch Ufage, fuch Harfhips, fuch Infults, as I have undergone, might have broken a more refolute Spirit and much stronger Confi­dence than falls to my Share.

Your Lordships were pleafed to permit me to appear, and to argue, if I thought fit, left my Silence should be turned to my Disad­vantage; as, in fact, the Council for the Bill have done their utmost towards it.

I fhould not have thought to decline any Occa­fon of juftifying myfelf; but I crave leave to tell your Lordships fome Reasons why I did not appear there, and make ufe of the Leave your Lordships gave me.

After feven Months of Clofe Imprifonment, I was not a little surprized when I heard, that on the fubmitting the Report of the Habeas Cor­pus, it was thus resolved, that it appears to this *Court,* that Francis Lord Bishop of Rochefter, was principally concerned in Forging, De­ceiving, and carrying on a deteftable Conpira­cy, &c.

Upon duly weighing which Resolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was fully contain’d and previously resolved in this Vote; and there­fore whatever fhould have been offered on my behalf to that Judge, would have been an express Contradiction to it. And what Hopes I could have of Succefs in fuch an Attempt, I need not fay: What they fent me was the Premble of the Bill only, which they could not alter, confiftent with what they had resolved.

The Bill itself was to inflict Pain and Penal­ties, which followed: but there was no room to objeft against any of thofe which they had not then declare’d; they have fince been added, and fent up to your Lordships, in like manner, with­out any Oath made, or any criminal Act proved against me by any living Witnefs. And is a Per­fon thus fetenced below, to be deprived of all his Preterntions, and his very Function, and to be a perpetual Exile, and to be render’d incapable of any Office and Employment? To be one whom no Man muft correpond with by Letters, Mef­fages, or otherwife? And, my Lords, one who is a Bishop of the Church of England, and a Lord of Parliament?

It is the firft Infance wherein a Member of this Houfe hath been fo treated and prejudged, and (as I have once before faid to your Lordships) I pray God it may be the laft, and that fuch Pre­cedents in this Kingdom may not be multiplied in After-Times.

My Counfel have amply done their Part, by arguing the Points of Law, by explaining and enforcing the Evidence, and fhewing the little Colour, Appearance and Shadow of Proof against Vol. VI.

me, (permit me to call them fo) by anfwer­ing what hath been offer’d againft me, and by fet­ting out the Conquence which fuch a Bill, found­ed and carry’d on in fuch a manner, and which enacts fuch fevere Penalties, mutt and will be at­tended with.

Yet it becomes me to fay something for my felf; left my Silence be confidered Confounding of Guilt. Unwillingnefs to enter into Matters of fuch danger, fuch infallibility, fuch ufelefs, fuch impotent, fuch weak, fuch effcacious and tender a Nature; as if I was not able, or did not care to clear and explain myfelf, and rather chose to leave it to the Management of others: I thank God, I am under no fuch Refrain, and can speak to your Lordships on this Subject with great free­dom and plainnefs.

But before I proceed, I beg leave that I may re­fert to your Lordships fome particular Har­ fhips under which I have laboured.

The firft is, reading Extracts of anonymous Letters, without fuffering any other Parts of the fame Letters, tho’ relating to the fame Subject, to be read. — Another is, — Excusing the Decr.ipherers from anfwerimg Questions affid by me, and which I thought neceffary for my Defence, left they fhould reveal their Art. — The next is, not fuffering me to be anfwered by the Clerks of the Poft-Office, left the Secrets of that Office fhould be divulged. — Another was, not fuffering a Perfon, who had left ten Years out of the Secretary’s Office, to anfwer any Questions, which came to his Knowledge by being fome Years in that Office.

Another is, reading Examinations neither da­ted, signed, nor sworn to.

Another is, reading Letters suppos’d to be Criminal, write in another Man’s Hand, and sup­pos’d to be dicatar’d by me, without offering any Proof that I either dicatar’d them, or was privy to them.

Another is, not allowing me Copies of the Decr.ipher’d Letters, tho’ presented for, till the Trial was fo far advanced, and I fo employed and weakened by it, that I had not sufficient time to confider them. — Another is, not allowing me to read out of the Collec­tion of Papers before the Houfe any part of them, in order to discharge myfelf, but what hath been read by Clerks. — And all this in a Proceeding where the Counfel for the Bill profefs they have no legal Evidence, and that they are not to be con­fined to the Rules of any Court of Law or Equity; tho’ as often as it is for their Service, they confantly fleuther themfelves under it.

My Lords, these are the Harfhips which I previously mention, and humbly lay before your Lordships.

By your Lordships Leave, I proceed now to make that Defence, as well as I am able to make it, in the Condition of Health I am now in; humbly praying your Lordships, if I find myfelf in any degree finking under it, that you will indulge me, and allow me a little Time to go on.

The general Chargé of the Bill is, That I have been deeply concerned in forging, directing, and carrying on a wicked and deteftable Conspiracy, and was a principal Actor therein.

The Charge is divided into two Heads:

First, That I most curiously confulted and corre­ponded with divers Persons to raise an Insurrec­tion, &c. in this Kingdom, to procure foreign Forces to invade it, &c.

Secondly,
Secondly, That I traitorously corresponded, with the same Intent, with Perons employed, &c. But neither part of this Charge hath been made good by the Counsel for the Bill, nor have they proved, nor attempted to prove me at one Con- futation; nor is there any thing tends towards such a Proof, except the exploded Story of the Barfoot Club, 2 and two or three Hearley Informa- tions which were mentioned of my Lord Straff- ford, Lord North and Grey, Lord Orsey, and Sir Henry Goring, said to be concerned in the Ma- nagement of this Affair. I have met all these Lords, I own it, but at different Times; and up- on the best Recollection I can make, I never was in all my Life with any of them at once, unleas perhaps about some general Matters de- pending in Parliament. The Earl of Strafford hath visited me, and I have, when in Health, dined with him once at his Houfe. At my Lord North’s Table I have not eat: Tho’ I have great Honour for him, yet I never had any Intimacy with him, especially since the Affair of the Dour- minery, wherein he appeared to against me, that I certainly had left the Caufe, had not his Affairs call’d him to Holland.

Lawfes had sworn, that this Lord did often vift me at Bromley; but in truth he never was there above twice or thrice in all his Life-time.

1 I have not been once these two Years with Lord Orrey on any Bullets whatsoever; we twice dined together at the Houfe of a Peron, whose Name if I should mention, your Lordships would not think there was any Harm at all in dining there. Sir Henry Goring I never saw in all my Life, till he bave me a Card of Tanger, and he was but once at Bromley; and the Occasion of his coming to me, was his placing four Sons at Wigsford-School, and intending to breed up some of them to the Gofpel: The last Time I saw Sir Henry Goring, was about twelve Months ago, when I promis’d to bring down one of his Sons to be up- on the Foundation; and I shall be sorry if I can’t be as good as my Word.

Your Lordships will excufe me for being fo pa- rticular, when you consider how dangerous the Charge is, and how fit it is to clear the Perons charged, from such mischievous Correspondence; especially since it is with thieves, and thief only, that I have been speaking of; and, it is infamous that I have held Confutations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy, without a Confutation. But how hath that too been made good? Your Lordships will observe, that there is not one Overt-Act, or Circumstance of Time or Place mentioned, proved, or al- leged. I have not therefore confulted or con- fpirated at Home.

The next, and the only material Part of the Charge is, corresponding abroad with the Pret- tender, &c.

A high and heinous Accusatión, strongly af- fected, much inflitited upon; but how maintained, is the Question.

The true State of this part of my Charge, as well as and fully as I can recollect, is this, (I will not in any degree distilve before you:) if, That I did the 20th of April, 1722, dilate three Letters to Mr. Dillon, the late Lord Murr, and to the Pretender himself, under the feigned Names of ChIVERS, MUGROSE, and Jackob ; to which Letters the Names of Jones, Illington, and 1378, were, by my Direction, subscribed.

Secondly, That afterwards two Letters, in an- swer to these two last to Murr and Dillon, one dated May the 11th, and the other July the 25th, under the feigned Names of Methaid and Dygbly, were interpreted.

Thirdly, That there is certain intercepted Cor- respondence between the Pretender’s Agents a- broad and Kelly here, carry’d on by him; and that I was at the Head of it, and an answerable for what it contains.

This is the Substance of my Charge; all other particular Circumstances are made use of, as they thought would give Light and Strength to one or other of those Articles.

As to the first of these Points, that I did di- tribute these Letters, That it could not be possible that I did distrībute these Letters, hath been made out to your Lordships by such a Concurrency of Evidence, so clear, so full and legal, as I persuade myself can have left no Doubt, remaining upon any candid and indifferent Peron: A plain Matter of Fact, supported by such Testimony, cannot be over- thrown by little Guiles and consequential Sur- mises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Cafe, that peculiar Circumstances attend it as to the point of Time. My being disabled in my Cham- ber, and attended before and after that Time by some of my Servants, and receiving frequent Mel- liges from others: The agreeing Testimony of my Servants, that no Stranger came near me about that Time, and for some Time before and af- ter; and the full Evidence of the School at Wigs- ford, hath enabled my several Servants to re- collect the Time, and to furnish such a Proof of my Innocence in this Matter, as is not to be mislaken, and shews the Cleareness of the Impossibility of it.

The Clerks of the Post-Office swear, they be- lieve thes three Letters to have been in the Hand-writing of Mr. Kelly, my Supposéd Amus- mentis. Your Lordships will remember, that their dates were at four Months distance from the Time of receiv’ing the Letters; during the whole Series of which Time, it never had hap- pened that they have compared one Original with another, and the only Original, as a Spec- imen, hath been proved at your Lordships Bar, not to be the Hand-writing of Mr. Kelly: And be pleased to remember, the very Supposition of Mr. Kelly’s being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, Who then write these Letters, and with what View were they writ? The Answer to this is obvious: my being here at your Lord- ships Bar sufficiently explains it. It is enough to prove that I did not write or dilate them, and I have proved it abundantly. Let but any moment- ary part of the Charge against me be made out with half the Evidence, and I will submit with- out any Dispute. Eight or nine such Witnecess would have borne down the Evidence of one or two that had swar’n: But where there is none on
1723. and others, for a Tresonable Conspiracy.

the one Side, but all on the other Side who ap-
pear, and that give direct positive Evidence, can
your Lordsips deliberate a Moment for the Rea-
son of giving your Judgment, which in doubtful
Cafes ought always to lean to the doubtful Side?
And so taking this Point as it stands, there is an
End of the whole matter; for all other Infor-
nations, feigned Names, and obscure Paffages in
Letters, depending upon this, must fall toge-
ther.

As to the other Part of the Accusation, where it
is said the Letter to Jackfo is a Letter to the
Prentender: I have nothing to do with it; he that
writ the Letter, when known, will be able, and
most concerned, to dispove it.

Since this Objection carries a very odd Sound,
I shall briefly shew your Lordsips how that
stands. Jackfo, in a Cypher of Plunket's, is said
to denote the Prentender: That Cypher confits of
one hundred and fifty Names, of which not one is
used in any of the Letters attributed to Mr.
Kelly; three or four of those Names are used by
Perfons supposed to have writ to Mr. Kelly from
an Offset; but not one of them is used by him;
nor doth Jackfo ever, in his part of the Corre-
spondence, stand for the Prentender, but he is al-
ways under other Appellations: Nay, Plunket
himself, in all his Letters writ in disguised Names,
never fyles the Prentender Jackfo, but
either Jofeph or Jofeph. —— Why shou'd a Name,
used in Kelly's Correspondence, be explained by
Plunket's Cypher, when Kelly appears to be no
ways acquainted with him, and Plunket himself
did never dictate to him? I forbear Repetition;
I only add, that at this Rate, there is nothing
that may not be proved.

The Letter taken in itself, there is little faid of,
because there is no ufeful made of it; it is charged
in the Report as a Letter which I had received from
abroad. The Tables are now turned, and I my-
s elf defign'd to have fent this Letter to a fegned
Correspondent, but keep it among my Papers un-
der my Seal: For what End? The Letter itfelf
is an errant Defufion: Why, to furnish Proof,
which is much wanted, of my receiving Letters
that were directed Jackfo and Hignott; and it is
very ftrange, that I, who am reprehended as being
so very cautious, fhou'd be fo negligent in this,
and prefume fomething that is of no ufe, and yet
might hurt me much, when fhewn hereafter.

It is abfolutely to think, that I fhould by that
means mention the Name of my Correspondent,
and mention the Name of Jackfo, which the
Committee of the Lower Houfe obferves is con-
stantly with me.

I know not what farther can be faid for this
Matter, till the Counfel have further explain'd it,
and fhew'd what Ufe they make of this Letter,
which hath given your Lordsips fo much Trou-
ble, and which I own I do not comprehend.

Here is still a fifth Letter, which I have ac-
knowl'dg'd to be my Hand, that which was
taken on my Servant; Mr. Reece hath made
fome uncharitable Observations upon it, which
for ought I know, may be allow'd as the Form of
Law in the Ordinary Courts: but, I am fure, in
a Court of Equity, the moft favourable Con-
tradiction ought to take Place. I have taken Mi-
нутies of his Observations, and I think they are
thefe: He obferves that the Bishop doth not in
his Letter inift on his Innocence in general, but
confiders only what Evidence doth affect him.

It comes out, at laft, for whom my Letter was
deffign'd, and I think that an Answer to Mr.
Reece's firft Observation, and I fhall explain it
no further. He obferves next, that I clear myself
from the Knowledge of Letter, Negoia, etc, there
I fay nothing of Kelly.

The Gentleman I defign'd the Letter for,
knows it was in answer to one we wrote to me about
Letter, and will fwear it himself, if there was
room for it.

The third Observation is, where fpeaking of
myfelf, I fay, ' If I cannot ward the Blow, I
'must be a Prisoner fome Years without Remedy,'
from which he is pleas'd to infer, not in that good-
natur'd way he generally did, my Meaning must
be, that I was conficious of Guilt.

I apprehended an Impeachment would have
been lodged and never prosecuted, as in the Cafe of my
Lord Danby and the Earl of Oxford; and then
I fhould have him without Trial, and without
Bread.

The second Article of my Charge, is the two
Letters from Maffe and Dillon, under the feigned
Names of Matfield and Digg's, which were inter-
cepted.

One of thofe they have drops.

That I received them, is not pretended: both
Letters, tho' without a Criminal Expiration or
Word of Billufines in either of them, would yet
have affected me in some Degree, if received by
me, and I was the Perfons as is fuppofed who
write the Letters to which they are Anwers. That
I used to have any Correspondence, is that proved?
Is not one and the fame neceffary in order to af-
certain the Charge?

Any Man that pleift may write to me, and
take thofe Names upon him; I am not to an-
swer for that, unlefs I have appeared to receive
them, and kept up the Correspondence.

The Letter from Matfield, dated the 11th of
May, cannot be reafonably thought to have been
written with any other View than that of being in-
tercepted, and of fixing upon me the Letter of
April 20th.

This Letter is committed to the common Post-
Office, and fent upon this Errand; one may
doubt who wrote it, but one cannot doubt with
what Defign it was writ: your Lordships Will
will fee three thofe malicious Difguifes, and not
make me account for Letters which have been
banded to and fra, between unknown Correspon-
dents, on a Defign to raife a Sufpicion of a third
Perfon, altogether a Stranger to what is writ.
And here I deifie that the Obervation made by
one of my Counfel may not be forgot; that is,
All the intercepted Letters from abroad, mention
Perfons that lay hid under fecret Names, and are
discover'd by doing of fuch Deeds, and by fuch
Circumstances as will fallen thofe Names upon
them: Tho' the Committee were not at a Guefs,
yet they were often at a Loaf.

In my Cafe the fictitious Names applied to me
are often attent'd with fuch Deceit and Circum-
stances, as very natur'd lead tho' that offer
thefe Letters to fix them on me. The Writers of
them ufe all their Art not to difguife, but to open
the thing, and seem to be in pain left they fhould
not be well enough understood.

This being contrary to the Method of Referves
in all other Cafes, faculis strong of a malicious
Defign.

The
The Letter of July 25th, from Dibgy to Welfan, is not so well contrived as it should have been; yet I am to be understood by it, because of the Circumstances of the whole under, which the Writer was apprised of.

There are the only two Inferences of Letters supposed to be writ from abroad: They are not confident: Shall they affect me in so high a manner?

It remains to be considered in the third place, Whether there was a supported Correspondence between the Pretender and his Agents, and Mr. Kelly here? Whether I was at the Head of it, and am justly to answer for it? Mr. Kelly, I hear, both owned at your Bar, and declared, which I also believe, that they had a Line of any Letter he write to foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Prefent of the Dog; the Account of that is in a Letter to Hatfield, dated May 5, not signed: in which are these Words: For little Dog was sent ten Days ago, and ordered to be delivered to you: but there is no Indication in this, or any other Letter from abroad, that this Pretendit is intended for me.

In two Letters from hence, by whom it doth not appear, somebody is meant under the different Names of Mr. Jones and Mr. Illington, in such Manner as designed for the fake Perfon; but the Circumstances are neither applicable to my self nor my Wife, particularly. The Letter dated May 7th, from Hatfield to Milgrave, being five Days after the Burial of my Wife, cannot mean her; and being but five Days after, it can as little mean me: So that the Writer of this Letter must either have known nothing of my Family-Affairs, or, if he did, must mistake his Knowledge of them to raise a Suspicion; and in either Case what he says is not to be regarded. The Surgeon and Mr. Kelly only knew any thing of this matter, and they both, as well.

Mrs. Borne, the Varieties, and sometimes the Dog is for me, and sometimes for her.

As for myself, I never asked for, received, or saw this Pretendit, nor know any thing of it, but from common Fames; nor have I, to this Day, had any Meffage or Letter whatsoever concerning it. The End of this Dilegn seems to be, to point me out by the Name of Jones, and Illing- ton, subscrib'd to the Letters of April 20th, by using them again in relation to this Pretendit.

And perhaps they are not much in the wrong to think, that one intercepted Letter should be of as much use as Ten intercepted Letters. Both Correspondences then must have succeeded, had I not been able to prove that those Letters were not writ with my Order or Knowledge; and therefore the Use of those Names, in subsequent Letters, is a Continuation of the Fraud, and this obviously runs thro' the whole of the Correspondence: For whenever the Names of Jones and Illington are, they are used in applying to them, because they are the fame.

Those Points have not only been deny'd, but disproved with all Manner of Credence and Clearness.

My Counsel have shew'd, that all these Suspicious Correspondences are to the last Degree absurd to apply to me, and no one would apply them: That I could not order the Letters of the 20th of April, to which the Names of Jones, &c., are subscrib'd, I think is plain, and then the Evidence falls which depends upon it.

In the Journeys to and from Bromley, where the Pretender's Business needs to me, and therefore I might probably dictate those Letters, the Counsel for the Bill have not open'd them themselves on that Head; but your Lordships have heard it made out, and because it is material I shall repeat it.

(Here Wood's Examination was read.)

By all these Accounts, nothing could have been easier for the Perfons themselves to manage here, than getting an Account of my Neighbours, in order to render the Consequence more plausible.

I am not the Stranger to me I own: but that he is in any Degree intimate with me, or frequently saw me, I deny. And what Evidence is there from them to the contrary; or how is this solemn denial at your Bar contradicted?

The Chairman says, he carry'd him twice or thrice to the Deanery, three or four Years ago; and this Brown, the Chairman, he swear's, he carry'd me once in three or four Years Time. I believe he may. The Porter he says, that he brought a Letter and some Stockings from Kelly to me. The Foundation of this Story is true; but Mr. Kelly us'd to furnish me with Beaver Stockings and Gloves: not that the Circumstance of the Porter coming up to my Bed-Chamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never sent by me to him.

Now on the other Side, there is the Evidence of almost all my Servants, who have, upon Oath, attest'd, that they do not know either the Name or the Face of Mr. Kelly, which could not possibly be, did he use frequently to refer to me. Such a Flight of Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him, of such a dangerous Consequence as these are, which the Report infinuates to have paiz'd between us: However, Suspicion is not now the Buftics. They that prove some Things may be allow'd to suppose more; they that prove nothing have no Right to indulge their Suspicions and Conjectures to the Rain of any Man: Twenty Probabilities, allow'd to be fake, are not equal to any one Matter of Fact, well attest'd; it may fire the Fak, but cannot support it. They cannot be Evidence themselves, because one Probability may be set against another.

I use this Distinction between Evidence in Law, and reasonable Evidence, because the Counsel for the Bill have allert'd something like it.

I own I always thought the Publick Law of the State, the Publick Reason of the State; and whatever it is in another Country, yet, in this Country, no Evidence can be reaonable that is not legal. But I ask, What sort of Evidence, either in Reason or Law, is brought against me? How am I prov'd to confult and correspond, to raise an Insurrection against his Majesty and his Kingdom, and to procure a foreign Force to invade the fame in Favour of the Pretender? How am I prov'd in the second Place, to have corresponded with the fame Pretender, and with Perfons employ'd by him? Is one Article of those Charges made out against me with any Colour
1723.

and others, for a Treasonable Conspiracy:

Colour of Relfon? Suppositions without Proof, Suppositions disproov'd, & shown to be vain, and unjust.

If the Proof in these Cases wants Strength, can the Hearry of Nyenne justify the want of Proof, and render it ite into Nyenne pretends, for ought that appears, not to have known any thing of me? He only heard Kyly fay fo, and Mr. Kyly denies it; and there is, I think, no Relfon why such a dead Evidence should affect me, or Kyly himself, much less me thro' him. Was Nyenne alive, and Kyly dead, and incapable of contradicting what Nyenne fald, I believe what Nyenne fald would not be of any Weight; besides, what Nyenne dead says, and Kyly now alive denies, ought not to have any Force.

Concerning the Hearry Evidence in general, and concerning the due Regard to it, I humbly defire your Lordships, that a Paflage may be read out of Sir John Frewick's Bill of Attaint. [The whole Preamble read.]

My Lords, I humbly defire'd to have this read, because I thought it would take away a Difficion between Legal and Parliamentary Evidence; that what was not Legal might be Parliamentary. I believe here is a Condemnation of him by Parliamentary; therefore, I think, the Condemnation of him must be by Parliamentary Evidence. It is, recit'd in this Act, as one of the Induccents that mov'd the King, Lords, and Commons to pass that Act, that Sir John Frewick had contriv'd and fram'd several Papers, &c. only by Hearry.

Shall that he accepted in this Parliament for Evidence, which is declar'd the only Motive of attaining a Man in another? If it was just'd hard in Sir John Frewick's Case to charge a Man by Hearry, can the being thus charg'd be any Proof against me? Sure the House of Commons in 1716, that thought that in, would have so thought, nor would those of your Lordships con-funct here, or elsewhere, to have passt it.

As for those that did not confent, I will ven- ture to say, I am exceedingly puzzled to know why they did not oppose Sir John Frewick, but favour'd his Cafe, and are yet against me. Is the Gult objected to, me, if prov'd, in any Mea- sure like his? Or is there any Competition be- tween the Proof against him and me?

As to the Paper and Information given in by Nyenne, and printed in the Appendix, it is plain he was drawn in to have sworn backward or for- ward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up some Days be- fore it happen'd. He knew what Ufe and Pur- pose the Proceedings of your Lordships were chiefly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positi- ve Account, and design'd either to all or re- ceive such a Sum of Money.

'Tis faid he was the late Earl Marshall's Bed- fellow for several Months, and had drawn up Heads for Memorials to be delivered to the Re- gent; but he had kept no Copy of these Heads, or foul Draughts which would have flown whether they were given in to promote it, or discov- er it; in either Cafe the Evidence of being then employ'd, would have been of Service: but they have not been able to produce a Line of such Heads or Memorials, yet the Report of the Hous of Commons, upon the Bills of these Mem- orials, builds the whole Fabrick. He knew that I went under the Names of Jones and Illing- ton, and undoubtedly he knew Mr. Dubois: If the Serjeant writing the Letter myself had been seen, he would have found that Relfon for the Correspondence; and good would have been in him affirm, That he carry's the Letter himself. He knew the Pretender's particular Opinion of me, or of any Body else, and that he rely'd on Advice from me: How did he know that? He told him fo. Who told him? It is not suppos'd Mr. Kyly had it from himself, but from Per- sons of high Estait, and that were near the Pre- tender.

Lone speak, my Lords, as always I hope I shall, with that Modesty as becomes Jullice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transac- tions? Is it possible to believe this Pretender to Secrecy could have had, or shall he still have any Degree of Weight, that threw away his Life, rather than venture to hand to the Truth of what he said before his Death, and then he could have been contradicted, or Fings of Confidence might have made him unlay what he had faid? But a dead Man can retract nothing; what he hath writ, he hath writ: The Accumulation must fland just as it did, so far as it concerns him; and we are depriv'd of the Advantage, which Truth and Remorle once exerted, and would have again exerted from him. However, I would have been glad to have had all that ever this Wretch faid; and would hope that by comparing of the several Stories, which he several Times told, some Light might have been gain'd, which is now want'd: — Particularly by the Know- ledge of what he faid freely and voluntarily, when he was in good humour, and before his rough Utage, on his Return from Rome, had frighted him; but I think we have the Evidence only of a few of the late Days of his Life, all the preceding Time is blank. He underwent fre- quent Examinations, but they were not, it feme to be; nor was it digested as it should be thought worth the committing to writing: but he is gone to his Place, and hath answer'd for what he faid at another Tribunal. I define not to disturb this Affairs, rather than what is necessary for my Defence.

Your Lordships will obverse first, the Incon- sistency of some Part of the Charge. Secondly, the Improbability of it. The Report takes No- tice of three several Periods, or Stages of Time, when, by Consequence of some Informations from the Regent, the Defign did not take Place: The first was, during the Election; the second was, the King's going to Havero; and the third was, the breaking up of the Camp. There is not the least Hint as to the Bill of these three Defigns, in any of the Papers; tho' in the Recital of the Bill it is mention'd as the third Part of the Plot, and the most detectable Part of the Defign, to lay violent Hands on his Majesty and his Royal Highness.

There is not the least Colour of Proof, as to the first Part of the Conspiracy, which was to take place at the Election; their only Reston for that, is from a Paflage, where it is faid, that the present Opportunity is elasped, that is the Opportunity of the Election.
I shall recite the Passage, as it lies in the in ter
recept Letter, and make some Reflections on it : N otwith stand ing the Opportunity is claps'd, (says the Writer to J anus) I agree with you, another may offer before the End of the Year, 'tis not perhaps every Day so favourable.

The Committee propose this Letter to be from Kelis, a Kinsman of mine; and they suppose the Words to refer to the time of the Election, and from those Suppositions infer that I knew something of it. On the contrary, I shall, on the two first Suppositions threw the Improbability of it; if this was a Letter from me, or from any other Person, dictated by me to the Pretender, I must write as in Answer to some Letter sent from them to me, in repeating the Expression; and his Opinion in the Letter must have been founded on Intelligence before receiv'd: This Intelligence, confederating the Difance between London and Rome, must have been communicated two Months, if not longer, before the Date of this Letter; if we go back two Months, and talk of the Election being claps'd, it was not begun; consequently that Opportunity in the Letter could not possibly mean the Time of the Election; and if it, it is im possible that it should be a Letter to the Pretend er, that can wit h the Charge of the Per son's writing in April 1720.

If it be a Letter write in good Earnest, it ap pears they had given over all Thoughts at that Time: I agree with you, says he, another may offer before the End of the Year; and yet he finds some Words in a Letter write ten Days after, wherein, under the Name of Jacob, I am made to be deep ly concern'd in a Conspiracy.

How can this be, if I write and dis propri eted that Letter, and was engag'd in the second Part of the Conspiracy.

Both cannot be true, both may be false; and I hope I have satisfy'd your Lordships, as that is did nor dictate the one, that I was no ways concern'd in the other.

Can any one believe, that under the said Circum stance of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man, unlesse under the Power of Prejudice, to believe such an Improb ability, or that I had such a Conjecture? I forbear former Inferences.

I shall now consider the Improbability, as well as the Insufficiency of the Charge brought against me without positive Proof. You will allow me to answer the Indictment in the same Manner as it is hail.

Is it probable that if I were engag'd in any such Design, no Footsteps should be seen of any Cor respondence I had with the late Duke of Ormonde, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is confident with my Duties to my King and Country?

Is it probable that I would choose rather to engage in such a Design with Mr. Dillon, a Military Man I never saw, and with the Earl of Mary, whom I never convers'd with except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender several Years, and had a Pension abroad? Is this a Seafon for me to enter into Conferences with him about refining the Pretender; and do this not by Meffengers but by the common Poll? That by thus writing to him by the Poll, I should advise him after the same manner to write to me, and by these Means furnish Opportunity to those concerned by Letters, and bringing myself into Danger? How clear that conflict with the Curtion and Scrocy which are said to belong to me? Must not I have been nigh to have hid myself open in such a Manner? This is an inconceivablc Scheme, the other a bold Affection. Is it probable, when attending the sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should enter into Ne gotiations of this kind?

There was no need of disputing any of those Letters, merely to extenuate my not writing: The Circumstances of my Family had been a suf ficient Apology, and more official.

Is it probable, that when I was carrying on publick Buildings of various Kinds at Wexfanger, and Borely, containing all the Books from the Wexfanger Foundation, engaging in a Conce rned with learned Men, about setting an I mportant Point of Divinity; that at that very Time, I should be carrying on a Conspiracy? Those that entertain such Thoughts without Reason, may also condemn me without Argument.

Is it probable that I should meet, and converse, in order to carry on and forward this Correspondence with no Ill, and no where.

That I, who always lod'd at home, and except at Dinner Times, never rul'd out of my Clo m ber; receiv'd all Persons that visit'd me, and was deny'd to none, should have an Opportunity to be so engag'd? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing? No Evidence a mong my Papers, that they were all seal'd at both my Hands, and confining all my Servants, but one now, for about 20 or 21 Weeks, searching him twice in the Tower and searching myself, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

Is it probable, that I should form and direct a Conspiracy, and carry it on with any Success, that I am not us'd to Arms, which I am no more acquai nit with, than with the Persons employ'd on toke Occasions? My way of Life hath not led me to converse with such Men and such Matters, except the Occasions of attending in Parliament; but in a Council of War I never was. Have I yet in any Instance of my Life molest'd remark ably out of my own Sphere, in Affairs foreign to my Business or Character? I might have been thought to have been too active in my proper Suc tion and Duties; but I was never charg'd with War, nor any ways inform'd in the Art of it.

Is it just, that Persons concern'd in the Military Way, should be punish'd without any Proof?

And must I, whose Way of Life is set at the greatest Difance from such Persons, and from the very Supposition of being concern'd with them, suffer all the Pains and Penalties, short of Death, which the Parliament can inflict, for a suppos'd I know not what, and what I don't to this Day apprehend?

Here
Here is a Plot of a Year or two flustering, to subvert the Government with an armed Force, an Invasion from Abroad, an Insurrection at Home; just when ripe for Execution it is discovered: and 12 Months after the Convenience of this Scheme, no Confutation appears, no Men corresponding together, no Provision of Money, Arms, or Officers — not a Man in Arms — and yet the poor Bishop has done all this.

Layer and Plunder carry on a Treasonable Correspondence: They go to Rome and receive Directions from the Pretender himself, to promote his Cause — It does no where appear that the Bishop has the least Share in, or is any way privy to their Practices — And yet the Bishop has done all, he is principally concerned in forming, directing, and carrying on this Delightful Conspiracy.

What could tempt me to help thus out of my Way? Was it Ambition, and a Delire of climbing into a higher Station in the Church? There is not a Man in my Office farther removed from this than I am: I have a hundred Times said, and sincerely resolved, I would have been nothing more than I was at a Time when I little thought of being any thing before; and could give an Instance of this Kind if I thought proper.

Was Money my Aim? I always despised it, too much perhaps, considering what occasion I am now likely to have for it: for out of a poor Bishoprick of 300l. for Awnen, I have laid out no less than Two Thousand Pounds, towards Repairs of the Church and Episcopacy, Palace; nor did I take one Shilling for Disiputations. The rest of my little Income has been spent as is necessary, as I am a Bishop. Nor do I repent of those Expenditures now, (the since my long Confinement I have not received the least Part of the Income in my Deanery) not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I sincerely rely.

Was I influenced by any Dislike of the established Religion, and secretly inclin'd towards a Church of greater Liberty: and Power I have, my Lords, ever since I knew what Power was, appoind'd it; and the better I knew it, the more I disliked it.

I began my Study in Divinity, when the Popish Controversy grew hot about that immortal Book of Titillate's, when he undertook the Defence of the Protestant Cause in general; and as such I esteem'd him above all.

You will pardon me, my Lords, if I mention one thing.

Thirty Years ago, I write in Defence of Martin Luthe, and have preached, and wrote to that Purpose from Geneva; and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Protestant Religion, as professed in the Church of England.

Once more: Can I be suppos'd to favour Arbitrary Power? The whole Tenor of my Life hath been otherwise: I was always a Friend of the liberty of the Subject, and to the left of my Power confin'dly maintain'd it: I may have been thought mislaken in the Measres I took to support it.

It matters not by what Party I was called, so my Actions are uniform.

To return to the Point: The Charge brought against me in the Manner it is brought, is improper: if I could be guilty of it, I must have acted under a Spirit of Injuriousness; yet I have never been thought an Idolator or a Madman.

My Lords, as to the Pains and Penalties contained in the Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, my Lords, and have been expecting an immediate Trial. I have, my Lords, declin'd no Impeachment. The Correspondence with the Earl of Clarendon was made Treason, but with me it is only Felony. He was allow'd the Conversation of his Children, by the express Words of the Act: Mine are not so much as to write, so as to be sent to me.

What is most particular in my Case I will repeat distinctly, that my Reverend Brethren may hear it. I am render'd incapable of using or exercising any Office, Pursuah Authority, or Power Ecclesiastical, not only in his Majesties Dominions, but any where else. Very hard! That such Spiritual Power as is not deriv'd from Men, but God himself, should be taken from me!

And I am not only depriv'd of all Offices, Dignities, and Benefts Ecclesiastical, and for ever banish'd the Realm, but likewise precluded from the Benefit of Royal Clemency, and made utterly incapable of any Pardon by his Majesties, his Heirs and Successors.

My Lords, I insist on my Innocence, that I am not guilty; and if I am not prov'd so, your Lordships will thus judge; if otherwise, I persuade myself I shall find some Degree of Mercy.

You will not find a Man of his Substance, and then fend him where he cannot subsist; you will not fend him among Strangers, and then hinder others from performing Humanity to him; you will not give him left time to order his Affairs and depart the Kingdom, than the Bill hath taken in paffing thro' both Houses.

The Great Man, I left mention'd, carry'd a great Fortune with him into Foreign Parts, and had the languages; was well acquainted abroad: The Reverse of all this is my Case; I indeed am like him in nothing but his Insecurity, and his Poverty. It is in no Mans Power to make us differ in the one, but it is in your Lordships Power to make us differ widely in the other, and I hope your Lordships will do it.

But to sum up the Arguments: It hath been frequently observ'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High-Treason brought against me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made so by any Power on Earth: for the Law that requir'd the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjust to declare any Proof Legal, because of my Profession: As extraordinary would it be, to declare the Acts themselves, ex post facto.

Never was there a Charge of so high a Nature, and so weakly prov'd.

A Perfon dead, so that there is not an Opportunity to satisfy him by contradicting him, a Charge not supported by any one Evidence, nor by any one Proof of any Thing that hath been writ or receiv'd by me, nor even by any one criminating Word prov'd to have been spoken by me: but by interpreted Letters and Correspondence, in which appears not the least Certainty.
Some of those letters, shown to Perons, with a Design to fill some of them; others write in Cyphers, and fictitious Names, throwing out their dark and abstruse Hints of what Persons went by those Names, sometimes true and sometimes doubtful, and often false, who continue all the while strangers to the whole Transactions, and never make the Discovery, till they feel and find it advancing itself towards them: My Lords, this is my Cafe, in short.

I have a hard Task to prove my Innocency: Shall I stand convicted before your Lordships on such an Evidence as this? The Hearlay of an Hearlay; a Party dead, and that 'd what he said; by Errone and obscure Passages, and fictitious Names in letters, by the Conjecture of Decyphers, without any Opportunity given me of examining and looking into the Decyphering; by the Depositions of Post-Office Clerks about the SUPPOSE of Hands; their Depositions made at different Times, and without comparing any one of the Originals, by a strange Interpretation of them: for nothing more, I am persuaded, can be made of the Arguments, than what is call'd the intercepted Correspondence.

Shall I, my Lords, be deprived of all that is dear to me, and in the Circumstances I am in, scarce able to bear up, and by such an Evidence as would not be admitted in any other Cause or any other Court; and would hardly affect a Jew in the Inquisition of Spain?

And shall it be received against a Bishop of this Church, and a Member of this House? God forbid. Give me leave to make mention of a Text in Holy Writ: Against an elder receive not an Accusation, but before two or three Witness. It is not said, Condemn him not upon an Accusation, &c; but receive it not: I am something more than an Elder; and shall an Accusation against me be countenanced, without any one Inference of Proof to support it.

This is not directly Matter of Ecclesiastical Constitution: There you read, one Witness should not rise up against an Elder; but here, at the Mouth of two Witnesses, or three Witnesses, shall the Matter be establishd: And as this Rule was translated into the State of the Church, People always thought fit to allow it.

Shall I be the first Bishop in this Church, condemned upon Conjecture, on fictitious Names and obscure Passages in letters, instead of two or three Witnesses? Will not others endeavour to make the same Precedent, and defile the fame Influence of it to succeeding Ages; and even concur in such an Act, in order to render me incapable of using or exercising any Power or Authority, &c? Is this good Divinity, or good Policy?

As to the Justice of the Legislature, in some Respects it hath a greater Power than the Supreme Legislature of the Univers. For he can do nothing unjust. But there are no Limits to be set to a Parliament, yet they are generally thought to restrain themselves, to guide their Proceedings in Criminal Cases, according to the known Law.

The Parliament may order a Criminal to be tortured: Who can say they cannot? But they never did, nor never will, I hope; because Torture, tho' useful in other Countries, is not known here.

Is it not torturing, to inflict Pains and Penalties on Persons only suspected of Guilt, not plainly prov'd guilty? It is not much unlike it. The Parliament may, if they please, as well upon Bills of perpetual Imprisonment, as upon Bills of perpetual Exile, refer the Crown a Power to determine the one as well as the other. They have refer'd it in the former Cafe, but have not refer'd it here in the other. The Law knows nothing of such absolute perpetual Imprisonments.

The Parliament may, in like manner condemn a Man on a Charge of Accumulated and Consecutive Treason. They did so in the Cafe of the great Lord Strafford, and that by Accumulated and Consecutive Proof of such Treason; that is, by Proofs so interpreted, as plainly to communicate Light and Strength to each other, and to have all the Force without the Formality of Evidence. Was such proof ever admitted by any one to deprive his Fellow-Subject of his Fortune, of his Estate, his Friends, and Country, and send him in his old Age, without Language or Hope, without Employment to take the Necessaries of Life, to starve? I say again, God forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or even to fear to violate the Constitution in any Degree, which they ought to preserve against any Attempts whatsoever.

But where once such extraordinary Steps as these are taken, and we depart from the established Rules and Forms of Justice, to try untried paths, no Man knows where this shall stop.

The I am worthy of no regard, tho' whatever is done to me may, for that Reason, he look'd upon to be just; yet your Lords' have will have none regard to your own Justing Interests, and that of Poffery.

This is a proceeding with which the Constitution is not acquainted; which, under the pretence of supporting it, will at last effectually destroy it.

For God's sake fly aside these extraordinary proceedings; for not up these new and dangerous Precedents; I, for my part, will voluntarily and cheerfully go into perpetual Banishment, and pleade myself that I am, in some measure, the Occasion of putting a Stop to such Precedents, and doing some Good to my Country, and will live, where ever I am, praying for its prosperity; and do, with the Word of Father Paul to the State of Vanity, Ety Efo persever: It is not my departing from it I am concerned for; let me depart, and let my Country be fix'd upon the immortal Foundation of Law and Justice, and stand for ever.

I have, my Lords, taken up much of your Lordships Time, yet I must beg your Attention a little longer.

Some part of my Charge hath been disproved by direct and full Evidence, particularly that of writing the letters of the 26th of April, or that I know no written; which I utterly deny that I ever did, or as yet do know. Other parts of the Charge there are, which are not capable of such Disproof, nor indeed require it; there I rest. But my Lords, there is a Way allow'd of vindicating myself, it is generally Negative; that is, by convicting and declaring my Innocence to your Lordships, in the most deliberate, serious, and solemn Manner; and appealing to God, the Searcher of Hearts, as to the Truth of what I say, as I do it in what follows. I am chargd in
the Report with directing a Correspolence to Mr. Kelly; but I solemnly deny that I ever, di-
rectly or indirectly, saw a single Line of any of their Letters, till I met with them in Print. 
Nor was the Contents of any of them communicated
to me. I do in the next place deny, that I was ever privy to any Memorial to be drawn up to be 
deliver'd to the Regent. Nor was I ever ac-
quainted with any Attempt to be made on the 
King's going to Hanover, or at the Time of the 
Election. Nor did I hear the least Rumour of a 
Plot to take place after the breaking up of the 
Camp, till some Time after Mr. [illegible] Commit-
ment. I do with the same Sollennity declare, 
that I never collected, remitted, receiv'd, or 
heard any Money or Tokens whatever, for the 
United States; nor was I ever acquainted with, or 
had any Remittances whatsoever, from any of those 
Perfons. I never drew any Declaration, Minutes, 
or Paper in the Name of the Pretender, as is 
expressly charg'd upon me. And I never knew 
of any Committion illud, Preparation of Arms, 
Officers, or Soldiers, or the Methods taken to 
procure any, in order to raise an Insurrection in 
these Kingdoms. All this I declare to be true, 
and will to declare to the last Gasp of my Breath. 
And I will not only, but do further your Lordships 
examine into this Affair, the more you will be 
convinc'd of my Innocence. These contain all 
the Capital Articles of which I am accused, in the 

Had the Charge been as fully prov'd as after-
tain'd, it had been vain to make Protetions of my 
Innocency, that's never to be fealem. 

But as the Charge is only supported by the 
flighted Probabilities, and which cannot be dif-
predicted in any Infinance, without proving a Nega-
tive, let the solemn Allegations of a Man 
in behalf of his own Innocence to have their due 
Weight, and I sect no more, than that they may 
have as much Influence with your Lordships as 
they have Truth.

If on any Account there shall still be thought 
by your Lordships to be any Kening Strength in the 
Proofs against me: If by your Lordships Judg-
ments, springing from unknown Motives, I shall 
be thought to be guilty; if for any Reasons, or 
Necessity of State, the Judges and Justices of 
which I am no conformet Judge; if your Lord-
ships shall proceed to pafs this Bill against me, 
God's Will be done: Waked came I out of my Mo-
ter's Tomb, and Waked shall I return, and whether 
he gives or takes away, blessed be the Name of the Lord.

May 13. was appointed for the Reply of the 
Counsel for the Bill, which were Mr. Reeve, and 
Mr. Wong, Mr. Reeve spake as follows.

May it please your Lordships,

To permit me to offer something, by way of 
Reply to the Arguments that have been 
made use of, and the Evidence that hath been 
given, in behalf of the Bishop of Rochester.

My Lords, I shall not trouble your Lordships 
with entring far into the Arguments so much 
inflicted on by the other Side, concerning the 
Power of the Parliament to pass Bills of At-
tainder.

They have been spoken of by the Counsel of 
the other Side, as inconsistent with our Constitu-
tion; Bills of Pains and Penalties, and Bills of 
Attainder, have been treated by them as un-
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known to our Constitution, unless in a few In-
stances, which afterwards have been condemned.

And yet they have mentioned the Case of Sir 
John Perrot, which is a Precedent of a Person 
attainted without legal Evidence, tho' he were 
forth-coming and amenable to Justice, and his 
Attainder remains still unreverted. And as to 
Bills of Pains and Penalties, they should, before 
they inveigh'd so much against them, have con-
def'd, that two such Bills have now already pas-
fed your Lordships House; and the Bills against 
Coutler, Bernard, and others, and against the late 
South-Sea Directors, are Precedents of Bills of 
this Kind.

They have mention'd many Influences, where 
Perfons have been prosecuted according to the 
known Rules of Law, and the Parliament did not 
think fit to interpole. And doub'tless, my Lords, 
generally speaking, where Evidence is to be had 
and to be produced, and the Perfons are forth-
coming, it is right to proceed according to the 
known Rules of Law, in the ordinary Courts of 
Justice.

But where Conspirators are carrying on their 
Deligns with Art, and contriving to shelter them-
selves from these known Rules of Law, as we ap-
prehend, my Lords, the ordinary Procedution at 
Law will be no Argument against the Legisla-
ture's making use of their Authority, when the 
Circumstances of the Case, the Preservation of the 
publick Peace, and the Safety of the Constitution 
require it.

But I beg leave to mention one Influence, in 
which they are mistaken: They have said, that in 
the Case of the Regicides (that horrid and de-
testable Treason!) they were all prosecuted ac-
cording to the ordinary Course of Law; but if 
they had look'd into the Acts of Parliament, they 
would have found, that some of them were pun-
ished by Bills of Pains and Penalties. The Lord 
Mansfield and others, who sit as Judges in the pre-
tended High Court of Justice, were refer'd by 
two Acts of Parliament that pass'd, to have Pains 
and Penalties inflicted upon them; and tho' there 
was Evidence in that Case to have attainted them 
according to the ordinary Course of Law, the 
Parliament did proceed to punish them by Pains 
and Penalties, and they were not try'd according to 
the ordinary Course of Law.

This I beg leave to obverse to your Lordships, 
in relation to the Power and Usage of Parliament, 
in passing Bills of this Kind.

My Lords, in the next place I beg leave to 
take Notice, that the Observations that have 
been made, and the Evidence that hath been 
given by them, as to Facts mention'd in the Re-
port and Appendix, concerning which we have 
given no Evidence at all, ought to be laid out of 
this Case, as foreign be the Matter before your 
Lordships. The Matters we have given in Evi-
dence, it was proper for them to answer; but 
they have gone into the Report and Appendix, in 
order to illprove Facts mention'd there; tho' we 
gave no Evidence concerning them; and we hum-
ly apprehend, it is not necessary for us to follow 
them as to those Facts; for if we maintain the 
Charge we have given, it doth not concern us to 
make good every Article in the Report and Ap-
pendix, relating to this Reverend Prelate now be-
fore your Lordships.

My Lords, we must admit the Evidence pro-
duced to charge the Reverend Prelate at your 

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Lordships
Lordshps Bar, is not all of it Evidence strictly legal against him, if he was to be try'd according to the ordinary Course of Justice in Wexfingham-Hall. But, my Lords, we humbly apprehend you are not tied to the Rules of Wexfingham-Hall; for if your Lordships are satisfied that the Facts proved, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithstanding they do not amount to Evidence according to the ordinary Rules of Wexfingham-Hall, your Lordships will be of Opinion, that it is fit he should be punish'd.

My Lords, the Evidence that has been given by us, as to Facts committed by the Bishop of Rochester, has been chiefly from three Letters, dated the 20th of April, 1722; each of these was written in the Hand of Mr. Kely, and dictated by my Lord Bishop of Rochester.

My Lords, these Letters are writ, some Part in Cyphers, and some Part not; they are sig'd by the Names of T. Jones, T. Hillegas, and the Figures 1727. My Lords, if these three Letters are proved, to your Lordships Satisfaction, to be the Letters of my Lord Bishop of Rochester, we humbly apprehend they do prove all the Allegations in the Bill, which my Lord Bishop of Rochester has been pleas'd to call upon us to shew that he hath been guilty of. They do contain, as we say, and as plainly appears from the Letters themselves, Matters relating to canvailing and conspiring to invite a foreign Force into this Kingdom for an Invasion, and to promote an Inurrection. And if the Name of Jackon is the Name by which the Pretender is signified, that Letter will prove the other Part of the Bill, that the Bishop of Rochester was a willing, and deliberate Correspondence with the Pretender himself.

My Lords, I beg leave to observe upon the Word Jackon: It hath been insinuated, that tho' it is contain'd in Plunket's Cypher, yet Jackon may signify in Mr. Plunket's Cypher one thing, and in the Letters another; and these Letters are contriv'd in Figures, and not those Cont Words and Names, as in Mr. Plunket's; but so far they go, to admit that in Plunket's Cypher the Name of Jackon stands for the Pretender.

My Lord Bishop of Rochester was pleas'd to observe, that in all the Correspondence between Mr. Kelly and the Perons with whom he corresponded abroad, there is no Name contain'd in Mr. Plunket's Cypher, which Kelly hath made use of in any of his Letters, but this.

My Lords, it appears to your Lordships, that in the Correspondence between Mr. Kelly and the Perons abroad, several other Names, mention'd in Plunket's Cypher, have been us'd: and it is not material, whether these Names are contain'd in the Letters writ by Kelly himself, or in those of his Correspondents writting to him. When his Correspondents write to him, in answer to his Letters, they use several other of the Names which are contain'd in Plunket's Cypher; which, my Lords, we humbly apprehend is the same Thing as the Purpose, at if they were us'd in Mr. Kelly's Letters; for he must be presum'd to know the Meaning of those fictitious Names, when they are contain'd in Letters that come in answer to Letters from him, in the Correspondence which he carries on; and we humbly apprehend, my Lords, that as strong an Evidence, as if they had been contain'd in the Letters writ by Kelly himself. Therefore, my Lords,

I beg leave to take Notice of several Names that are in Mr. Plunket's Cypher, and us'd by Mr. Kelly's Correspondents, in their Letters to him.

There is the Name of Xokland, which stands for Wogan; the Name of Lane, which stands for Lord Mars; the Name of Cane, which stands for Dillon, and the Name of Howel, for Gagees. My Lords, all these Names are in Mr. Plunket's Cypher, and made use of in the Letters that past between Mr. Kely and his Correspondents.

My Lords, I shall beg leave to submit it to your Lordships, when, among Perons concerned in carrying on the Name of Conspiracy, Cyphers are made use of, and in the Cyphers of some of the Conspirators, the Names compriz'd in Letters writ by others of the Conspirators are contain'd, whether it is not a reasonable Evidence, that those fictitious Names contain'd in the Cyphers of one of the Conspirators, and made use of in the Letters of the other, signify the same Peron; unless there is something to dissuade the Cale, and shew that the same Names are made use of to denote several Persons.

My Lords, we humbly submit it to your Lordships, that it is plain from the Evidence we have given, that these three Letters are writ by the same Hand; and by the Circumstances in the Letters, they appear to be dictated by one and the very same Peron. Therefore, my Lords, the Enquiry will be, who is the Peron desrib'd by the Names of T. Jones, T. Hillegas, and the Figures 1727: for if we have proved the Bishop of Rochester to be dictating in this Correspondence by the Names of Jones and Hillegas, and that these Letters were writen by Kelly, and dictated by the same Jones and Hillegas, then the Bishop of Rochester is the Peron by whom those Letters were dictat'd.

This will appear to your Lordships from other Facts contain'd in Letters intercept'd in this Correspondence: Facts that, all of them together, can relate to no Peron but the Bishop of Rochester.

The Circumstances of the Bishop and his Family, are exactly describ'd in the three Letters of the 20th of April; and those Circumstances plainly shew, that all the three Letters were dictated by the same Peron, and that the Figures 1727 denote the same Peron that Jones and Hillegas do.

My Lords, there are several other Facts contain'd in the intercepted Letters, that denote Jones and Hillegas to be the Bishop of Rochester. One of them is, the Fact relating to a Dog sent over to Mr. Kelly, which appears, by the Evidence given, to have been deliv'd for the Bishop of Rochester: Therefore in the Letter mark'd E. 32. (that is, a Letter to Mr. Kelly by the Name of Hatfield, and directed to Mr. Hatfield, under Mr. Anthony Saddler's Cover, which is one of the Perons describ'd in the Lift of Directions taken in Kelly's Pocket-Book) the Letter mentions the little Dog was sent ten Days ago, and order'd to be deliver'd this day, &c.—My Lords, afterwards Mr. Kelly by a Letter dated the 20th of April, 1722, E. 35, (it is a Letter from T. El. to one of Mr. Kelly's Names to Howell, and which have been prov'd to be Mr. Kelly's Hand-writing) says, I received the Present sent by the young Lady, but in such a bad Condition, that I am afraid he never will do well; for he had a Leg broken in his Journey, which is still
very bad with him; however, I will take all the care imaginable of him, and inform Mr. Jones soon of it, to whom, I know, any thing from that Quarter will be very acceptable.

My Lords, it appears by this Letter of Mr. Kelly's, that this Dog, that is there mention'd, was a Dog for Mr. Kelly himself, but for Mr. Jones a Dog for a Perfon denoted underhand, and under the fictitious Name of Jones: So that if the Evidence that hath been given of this Dog being design'd for the Bishop of Rochester, is true; then it follows that Mr. Jones, mention'd in this Letter of Kelly's, denotes the Bishop of Rochester.

There is another Letter relating to this Dog. E. 42: there is mention'd the Concern Mrs. Illington was in for poor Harlequin, Mrs. Illington is in great Trouble for poor Harlequin, who is in a bad Way, having flipp'd his Leg again before it was thoroughly well, however his Obligation to the Lady are as great as if he had come safe, which he desirs you to let her know.

My Lords, this fhews that Jones and Illington are the fame Pfennis. It appears by the former letter, that the Prefent was for Mr. Jones, and he fhould know of it; this letter says, that Mrs. Illington is in great Trouble, &c. However his Obligation to the Lady are as great, &c. That in the first Part of the letter it is Mrs. Illington, in the latter Part it is HIS Obligations to the Lady are as great as if he had come safe, which he desires you to let her know. That fhews, that the Perfon in the former letter, defribed by the Name of Jones, is in this letter defribed by Illington, and confequently Jones and Illington are the fame Perfon.

My Lords, the next Circumfance obfervable in these letters, the intercepted Correpofidence between Mr. Kelly and his Friends abroad, is the letter dated the 2oth of April 1722, E. 45, which says, Mrs. Jones died last Week, and when the Days of Mourning are over, be will, I hope, be fit for Bufinefs.

My Lords, it hath been given in Evidence, that the Bishop's Lady, his own Witnefses as well as ours, have given an Account, that the Bishop's Lady died the 20th of April. This letter is dated the 20th of the fame April, confequently this fuits exactly with the Bishop's Circumstances as to his Lady being dead.

My Lords, that Jones and Illington are the fame, appears likewise by the Anwer given to this letter, dated the 2oth of May, 1722, E. 43, which says, Mrs. Chiveron gives you her kind Service, and prays you will confide in his Name on the Death of Mrs. Illington. My Lords, this letter is in an- swer to that of the 30th of April, for it begins, Years of the 30th of April, which should have come by laft Pay, is come to hand, and this letter con- cludes on the Death of Mrs. Illington, whereas the letter of the 30th of April gave an Account that Mrs. Jones was dead. So that Jones and Illington appear by these letters to denote the fame Perfon.

My Lords, there are letters writ by Corre- fpondents, concern'd, one with another, in carrying on this Conspiracy. It hath been object'd, on the behalf of my Lord Bishop of Rochester, that he is not concern'd in writing of these letters, nor did any of them come to his Hands, nor were they writ by his Directions, but that they paffed between Mr. Kelly and his Correpond- ents abroad.

Your Lordships, we hope, will be of Opinion, in a Correpofidence of this Nature, (unless they fhew thowing to induce your Lordships to be- lieve, that there hath been a malicious Defign in the Parties between whom thefe letters pafs'd, to denomine the Bishop of Rochester, or another to charge him) that there are Facts, which amount to a certain Proof who the Perfon is, that used to go by the Names of Jones and Illington.

Your Lordships obferve how the Matter stands: Mr. Jones and Illington is a Perfon defribed, by the Letters of the 2oth of April, to be in great Pain himfelf, to be in melancholy Circumstances in other Reffpects: He appears by the Evidence at that Time to have been ill of the Gout, his lady ap- pears to have been ill, and dying; Mrs. Jones and Mr. Illington is a Perfon to whom a Dog was sent, and it appears by the Evidence, that this Dog was design'd for the Bishop of Rochester. Mrs. Jones, in one letter 'tis faid, died laft Week; and in another letter they condele the Death of Mrs. Illington: and it appears the Bishop's Lady died the Week before the 3oth of April.

My Lords, there are other Circumstances, which I fhould mention, in relation to the Times when the Bishop was in London, and when in the Country; which, I apprehend, is an additional Proof who was meant by the Names of Jones and Illington. Therefore in Letter E. 41. n. Kelly fays, Mr. Illington is now in Town, and pref-ents his kind Service to you, he is glad to hear you received his Letters by Crow, and wishes his next may be more to your Satisfaction.

This letter is dated the 7th of May; there it is faid, Mr. Jones is now in Town; it appears, by the Examination of Wood the Coachman, that on the 7th of May my Lord Bishop of Rochester was in Town.

There is another letter dated the 7th of May 1722, directed to Mr. Grove, E. 42. which I beg leave to make some Observations on. There it is faid, I had the Favour of yours, which I communi- cated to Mr. Jones, who is come to Town only for a Day.

My Lords, this letter fhews, that the Perfon denoted by the Name of Jones was come to Town. But they object, that this letter cannot be applied to the Bishop of Rochester, but because it appears by the Deposition of Wood, that the Bishop of Rochester flaid in Town till the 10th of May; so confequently he did not come to Town only for a Day, and confequently can't be the Perfon meant in that letter.

My Lords, as to that it appears, that the Fact concerning Mr. Jones, applying it to the Bishop of Rochester, of his being come to Town, is true; as to the Bishop's being come to Town only for a Day, that is not Matter of Fact, but of the Apprehen- sion of the Writer: He apprehended he was only come to Town for a Day, but he might be mistaken in that; but the Fact of his being come to Town is true, the Apprehension of the Writer that he came only for a Day, is falk. But we must submit it to your Lordships; the Apprehen- sion of the Writer is not sufficient to avoid the Truth of the Fact contain'd in that letter, when we have proved that my Lord Bishop of Rochester was in Town on the Day when Mr. Jones is mention- ed to have been in Town in that letter.

Another letter dated Thursday the 10th of May 1722, E. 44. says, Illington is come to the Country;
Country, and, lest we Wlrd be would be in Town on Tuesday Night, when he hath desired to fee me at a particular Hour, by which I conclude it may be about Bafsets's; and the Tuesday following that Thursday happen'd to be the 15th of May. Another letter E. 45. dated the 14th of May, 1722, says, Mr. Jones is still in the Country, but be hath sent me Word he will be in Town to morrow.

My Lords, upon the Examination of the Coachman Wood, it doth appear, that the Bishop of Rochester was out of Town the 10th of May, out of Town the 14th of May; but that he came to Town the 15th of May, which is the Day mention'd in those letters that he had promis'd to come to Town: So that there are additional Circumstances, all agreeing to prove that the Bishop of Rochester was not in the Country nor in the City of London at the Time when the Letters from the Bishop were sent to the Names of Jones and Harington, by which it appears that he was not within the Jurisdiction of the Bishop of London.

It has been argued, as to the letters of the 20th of April, Was he the only Person that was in Pain and melancholy Circumstances at that Time? A great many might be so. They go thro' the Particulars of his being in Town and in the Country; a great many Persons might be in Town and in the Country on those Days besides him. It is true, it might be so. Was there no body else that dier'd the Week before the 30th of April, but the Bishop of Rochester? Certain- ly, there are a great many to whom that Circumstance may be applied. But, my Lords, taking the Circumstances together, they cannot all of them concur in the Case of any other Person, as they do in the Case of my Lord Bishop of Rochester.

It may not be improper here to take Notice of some other of the intercepted letters, that have been given in Evidence to your Lordships, which mention the Names of Jones and Harington.

In Mr. Kelly's letters, giving an Account of his being taken up, and his Examination before the Council, he takes Notice of his being examined concerning the Perions that were meant by several fictitious Names, and, among the rest, Jones and Harington, who, he says, are chiefly struck at. This is to give an Intimation to his Correlleants abroad, that there had been a Discovery, that the fictitious Names, concerning which he had been examined, were made use of in their Correspondence.

My Lords, he comes afterwards and writes a letter, after such Time as he was bai'd (he was taken the 15th of May, and bai'd the 7th of June) wherein he says, it is absolutely necessary now, that there should be a new Book of Accounts; says lie, they must use no more their present Book of Accounts, since those, who have got Part, very have got the Whole.

My Lords, we humbly submit it, that he has given an Account of his being examined concerning those several fictitious Names, after when he comes and says it is absolutely necessary to have a new Book of Accounts, it is a plain owning of Kelly by this letter, that the Names enquired after were the Names made use of in the Correspondence, and therefore he says, it is necessary to have a new Book of Accounts; that is, other Ciphers and fictitious Names, by which they carry on their Correspondence: He owns they have got Part, and fears they may have got the Whole.

From that Time the Names of Jones and Harington are no more met with in the Correspondence that follows. We have gone no farther in our Evidence to fix any other Names to mean the Bishop of Rochester, but only the Names of Jones and Harington. But there are other Names, which, in the Letters that follow, probably are design'd to mean the Bishop of Rochester, but they will be out of the Case, because we have given no Evidence concerning them: and the plain Reason why Jones and Harington are not made use of any longer, is, because it appears on the Examination of Mr. Kelly, that those Names were mention'd: therefore they were afraid, by making use of those Names, the Correspondence might be discover'd, and it might prejudice the Persons who went by those fictitious Names.

My Lords, the Substance of the letters, write to and from Mr. Kelly and his Correlleants, concerning the Person that goes by the Names of Jones and Harington.

Tho' my Lord Bishop of Rochester inflicts, that he is not proved to be the Person concern'd in writing those letters, and that he had no Notice of them, and therefore they ought not to be look'd upon as Evidence against him; my Lords, we submit it to your Lordships, in a Correspondence of this Nature, when we purifie Ciphers and Correspondence that are fixed and are in use, we can not expect that they will be intercepted letters, which when they come to be apply'd together, are a plain Indication of the Person that is meant by them; when the Circumstances and Facts can fit none but the Bishop of Rochester; we hope, tho' it is not legal Evidence in Writings-Hall, yet it is satisfactory Evidence to induce your Lordships to believe and be convinced, that no Person can be denoted by these Names but the Bishop of Rochester.

My Lords, this is a Matter, and the Bishop of Rochester could not, with all his Care, be aware of; he takes Care that the letters of the 20th of April are in Ciphers, and not writ with his own Hand; fictitious Names are made use of, and he thinks he shall be sheltered by this Means from being found out to be the Person. The other Facts could not be suppos'd would come out to explain the Person.

But, my Lords, very often there is a Provi- dence in detecting Things of this Nature; and where the greatest Caution and Care is used, Circum- stances (that human Prudence could not guard against) are so strong and convincing, that they discover such secret Correspondence, and plainly prove who is the Person carrying it on.

Some Texts of Scripture have been cited on the other Side, my Lords, I beg leave to use one on this Occasion; and that is, Corse not the King, nor set thy Thoughts for a Bird of the air shall carry the Pate, and that which both Wings shall not tell the Matter.
that the Conspirators think nothing can discover them) there happen sometimes, thro' Providence, such Circumstances which the Perions cannot be aware of, that bring those things of Noicks to Light; and we hope this may be an Example, that may deter any Perion from going in the most secret and concealed Way to engage in any thing of this Nature.

My Lords, there is a Matter I shall beg leave to mention to your Lordships, because my Lord Bishop hath infamously as if I made hard and harth Application of the letter taken upon his Servant. My Lords, he says that the Confrontation I put upon that letter was not a natural but an ill-natur'd Explanation. The letter mentions an Impediment, and says the Bishop in the letter, if the Impediment cannot be forgot, I am Prisner for some Years without Remedy.

My Lords, I did observe to your Lordships on that Expression in the letter, that it seem'd to import a Sense of my Lord Bishop's Guilt, because he said he was unavoidably a Prisoner for some Years. My Lord Bishop says, this is by no means a natural, but a forc'd and ill-natur'd Explanation; for in that place he meant no more than, if an Impediment were lodged, it would not be professed, but made use of only that he might be obtained a Prisoner for some Years.

My Lords, I must submit to your Lordships, which is the most genuine and natural Interpretation, that which I put upon the Words, or that which my Lord Bishop of Rochester doth, which so highly reflects on the Honour and Justice of your Lordships and the House of Commons.

My Lords, I shall beg leave in the next place to take notice of the Evidence that hath been given on the behalf of my Lord Bishop of Rochester, and to consider, whether that is sufficient Evidence to satisfy your Lordships of his Innocence.

My Lords, we did read the Examination of Mr. Nynce, one of his Examinations, and the laft that was taken; they on the other Side called for three other Examinations, of which the last Examination, which we read, was an Arbitrate; they read them all, and, my Lords, the Examination which we read, was confentient with three other Examinations, with relation to my Lord Bishop of Rochester; and I must own that the Charge, in the Examination of Nynce, upon my Lord Bishop of Rochester, is only Hearsay from Kelly; that Mr. Kelly did tell Nynce, that the Bishop of Rochester held Correspondence with the Precorder and his Agents; and that he was employed by the Bishop in writing for him, and carrying on the said Correspondence: So far, my Lords, it is Hearsay, what Mr. Kelly told Nynce. Now, as to Mr. Kelly himself, it did affect him, by charging that he had confed to Nynce, that he did carry on such a Correspondence: but as to my Lord Bishop, it cannot affect him but as Hearsay; and we must agree that if there was nothing else in the Cafe but this, all the Arguments made as of against such Evidence would be of great Weight.

My Lords, I can't say that this Charge from Nynce's Examination is of Weight to charge the Bishop of Rochester, so as to condemn him. My Lords, they have urged that if this Charge is not to be believed, all comes to nothing: This, say they, is the Foundation, and if Nynce's Examination is not sufficient to affect the Bishop of Rochester, then all the fubsequent Evidence falls to the Ground.

My Lords, I beg leave to observe first, that if we had not Nynce's Examination, the Proof against my Lord Bishop of Rochester is as strong without it as with it, it is certainly Evidence of the Conspiracy in general, but as to the Bishop it is only a Circumstance, to shew that another Man had said of the Bishop of Rochester, that he was carrying on a Correspondence with the Pretender, &c.

But, my Lords, taking the Examination of Nynce out of the Cafe, and considering the other Facts mention'd and prov'd to your Lordships, there is some Occasion of Nynce's Examination; whether Nynce's Examination be false or true, is not material: There is sufficient to prove the Bishop of Rochester guilty, for they can't destroy the other Facts and Circumstances; and as long as they subsist, they prove the Bishop of Rochester to be the Perion concerned in carrying on this Correspondence.

My Lords, I beg leave to observe in Nynce's Examination, there is something more than Hearsay, there is a Fact in it, and we are able to support that Fact by other Evidence. Nynce says, that he hath gone several Times with Kelly to the Bishop of Rochester's, and hath find a considerable Time for him. My Lords, we shall prove by another Witness, that Nynce about that Time came several Times to a House, where he said he waited for a Friend of his that was gone to the Bishop of Rochester's, and he said and waited for him three or four Times, for an Hour, and an Hour and a half together. This will confirm what Nynce said in that respect to be true.

They say there are several Improbabilities contained in Nynce's Examination, and Inconveniences; as to the Improbabilities, some of them are mentioned as if there was great Weight in them. That so much infall'd on by my Lord Bishop himself, is, that Nynce says, he was employed to write Memorials, and the left he wrote was in December, and that was to declare the Regent of France to furnish a Body of 5000 Men, to come and invade the Kingdoms: The Observation made by the Bishop of Rochester is, Where are those Memorials? Why did he not keep Copies of them? For he was at that Time concerned in a Design to serve himself one way or other; if he be designed to betray those Perions he corresponded with, it would have been of Service to have kept those Memorials, to have delivered them to the Government: If, on the other side, he had kept to his Friends, it would have been proper to have kept them, in order to create a Confidence in him, and to shew the Part he had in the Conspiracy. Those Observations can have no Weight, when your Lordships come to consider this was in December, and there was never any Application by him to make any Disclosure of this Conspiracy till July following. As to the Service it might be to keep them with respect to his Parry, our Lords, we humbly apprehend that, considering him as a Man engaged in a Correspondence of this kind, a Memorial of this Nature drawn up by him can be of no Use, but to deceit himself and injure his Parry, if he happens to be taken up, and such a Memorial found upon him; therefore it was necessary to destroy it.
My Lords, there is another thing mentioned with relation to *Watson*, and the Improbability of his being the Earl of Marlborough; but *Neyne* does not say that he was the Earl of Marlborough, but says, there was one *Henry Watson*, which he took to be a fictitious Name, and does not know who he really was, but he took him to be the Earl Marlborough, and he gave him the Heads to draw up their Memorials.

My Lords, we apprehend it is not material, who *Watson* was; he is a Person that employed *Neyne* to write these Memorials, and he might be the Earl of Marlborough: *Neyne* says he took him to be so. Say they, if it was this Person, why should he lie about *Neyne*? this, say they, is very improbable. If it was him, he was to conceal himself; and take the fittest Place for that Purpose; therefore converting with *Neyne*, and not owning himself who he was, is not improbable. It is probable he would not discover himself to every Person; and tho' *Neyne* was a Person engaged in the Conspiracy, if *Neyne* did not know him to be the Earl Marlborough, it might not be proper for him to discover himself to *Neyne*.

My Lords, I think these are the principal Things objected to; there are for other Little Matters, but I think these are the chief Ones as these, it is not misusing your Lordships Time.

My Lords, that we humbly intitulate upon is, Whether *Neyne*'s Examination is an Examination to be credited or not credited? We agree it is only Hear-fay, as to the Bishop of Rochester, and if we had not other Matter, it would not be sufficient; so that we humbly apprehend it's being true or false won't affect this Case. If your Lordships are of Opinion 'tis false, there is sufficient Evidence against the Bishop of Rochester without it.

My Lords, in the next Place they have produced in Evidence several Persons that come and give your Lordships an Account of *Neyne*'s Conformations to them. There is one Mr. *Bingley*, Mr. *Stevard* and Mr. *Skeene*, and two other Persons, that give an Account of what Mr. *Skeene* and *Stevard* had told them *Neyne* had said.

*Bingley* by his Evidence would have it believed, that *Neyne* had told him, he was employed by some Person in Power, to fix several Things upon several Persons that they were innocent of; that he had said several Things that were false, and had imposed upon a great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this. By what hath been inferred upon by my Lord Bishop of Rochester, and his Counsel, it should seem as if they were labouring to shew from these Persons, that they have call'd to be examin'd, that all the Letters relating to this Correspondence, the letters of the 20th of April, and subsequent letters, that relate to the particular Facts, that denote *Jones* and *Mangen* to be my Lord Bishop of Rochester, were contriv'd between *Neyne* and some other Persons, in order to charge my Lord Bishop of Rochester with being concern'd in this Conspiracy. This seems to be what they are labouring at by this Evidence. So I say, as to *Neyne*'s being a Person em-ploy'd in writing these letters of the 20th of April, or any subsequent letters, in manner as is suggested, we shall shew your Lordships that it's improbable to be true; we shall shew that the letters of the 20th of April, and all the other letters that mention the Facts which denote the Bishop of Rochester, were all intercepted and in the Hands of the Government, before such Time as it was known among the Ministy that there was such a Person as *Neyne*; for *Neyne* made Application to the honourable Person mentioned by their Witnesses, subsequent to all this Correspondence, when these letters were in the Hands of the Government, as a Person that could make碟ver Govermnent. Therefore in Infamtion must vanish, that *Neyne* was employ'd to forge Letters, which contain Facts under the Names of *Jones* and *Bingley*, to charge the Bishop of Rochester; and that even those letters of the 20th of April were forg'd by him.

My Lords, we shall go into the Characters of Mr. *Bingley*, who hath, at your Lordships Bar, owned, that he hath been whipt, pillor'd, and imprison'd: and as he hath taken his Degrees, as he owned at your Lordships Bar, consequently he hath taken the Oaths.

As to the Characters of Mr. *Skeene*, he hath likewise been produc'd as a Witnese, and he carries his Evidence further than the Evidence of Mr. *Bingley*; for whereas Mr. *Bingley* says, that *Neyne* confessed he had imposed upon that Honourable Person, and had mentioned things that were false, yet he could not say that after the Time of his Examinations, after *Neyne* was brought from Dover to Town, he had confess'd to him that what he had said on those Examinations was false: But *Skeene* says, that after his Examinations he own'd that they were false. The last Examination was the 27th of September, and he was sworn that Night; but as to the Examinations before the 27th of September, and out of which that is collect'd, Mr. *Skeene* says, *Neyne* lie'd to him, that they were false.

My Lords, as to Mr. *Skeene*, we shall shew what a Man he is, a Man attainted of High Treason; and tho' he is pardoned, as to having his life and liberty given him, he is in all respects attainted Person: He was tried and condemned in the County of Surrey, for being concern'd in the Pretrea Rebellion, and consequently a Man of no Credit. And as to what he and *Stevard* swear, relating to a Conversation with *Neyne*, when in Custody, we shall shew they never were together in the first Night, when they pretend'd together. He was attaint'd, whether it was the first Night that he had this Conversation with *Neyne*, and he did not pretend he had any Conversation of this Nature with *Neyne* the first Night; and if it was not the first Night, we shall shew it could not be afterwards, for *Neyne* was kept in a Room by himself, *Skeene* and *Stevard* by themselves in a Room underneath; and therefore this seems to be a Story contriv'd between *Skeene* and *Stevard*.

We shall shew it could not be possible for them to converse together, for *Skeene* and *Stevard* are not locked up in their Rooms; *Neyne* was locked up in his Room excepted and apart from theirs; so that they could never have Correspondence with him, nor come near him.

Another thing is sworn by one of them, about a Message sent to him by *Neyne*, and a Paper, while
while they were in Custody of the Meffenger; and he says, this Paper was brought to him by the Meffenger’s Maid from Nynoe, and that this Paper contain’d a Jufification of my Lord Orrery, exprefling that he knew nothing of my Lord Orref-fer, but what he had faid of him was utterly falf; that the Meffenger finding he had fome Paper, he, to conceal this Paper, burnt it. But that the Maid came to him with fuch a Meffage or Paper is falf; the Maid never did, nor did the Meffenger know of the Paper, as we fhall prove to your Lordfipps.

My Lords, when we have proved this, we humbly apprehend we have taken off any Credit that could be given to what thofe People have faid, they have faid any thing material. My Lords, before I leave this Head, I beg leave to observe another thing as to Skene. He, upon his Examination concerning a Difcourfe with Panetier, denies it entirely; but fays, that what Panetier hath informed in relation to him, is falf. We fhall call Panetier, who will inform your Lordfipps, that Skene hath own’d that he was privy to this Conspiracy, and knew who were concern’d in it.

I own there are feveral noble Perfons named to be concern’d; that there is no Reafon to fay, from what Skene may have faid of them, that they are guilty. But fuch as he may have used the Names of great Perfons defign’d, to keep up the Spirit of their Party, by telling them fuch and fuch Perfons were concern’d: and if there is no other Evidence but what fuch a Perfon hath faid, the noble Perfons mentioned will not be affect’d by it.

My Lords, there is another Head I shall beg leave to mention, and what they have inform’d upon under this Suppoftion; that they would have it taken that there was a Defign to forge Letters, in order to charge my Lord Bishop of Rochefler, and feveral other Perfons. Say they, it was early to get Information of fuch Circumfiances relating to the Bishop and his Family, as are mentioned in the intercepted Letters, and then to write fuch Letters, with a Defign fally to charge the Bishop with having been concern’d in carrying on a treasonable Correspondence. Your Lordfipps will plafs to consider who this Charge must fall upon, of forging the Letters of the 20th of April, or the Letters that flew Jones and Illington to be the Bishop of Rochefler.

My Lords, we have proved them all to be Mr. Kelly’s own Hand-writing, or Letters that have come in Answer to them. They have before us have not given fuch, but Proof of Kelly’s Hand: Say there is, it is proved by Clerks of the Post-Office, who never had compared one original Letter with another, but at length they flop an original Letter, dated the 20th of August, after the Correspondence had been carried on several Months; and then come and fwear that the original Letters, that were forward’d, were of the fame Hand-writing with that of the 20th of August. Can this be look’d upon as sufficient Proof? But we admit it, their Evidence is much stronger than if they had only compared one Letter with another, for they not only had these Letters come every Week, when they were employ’d every time these Letters came, to copy them; fo that the Hand-writing of these Letters must, by the continual copying of these Letters, and their copying of them, be fo imprinted on their Memory, that they are much better Judges of the Hand than if they had two of these Letters to have only compared them together: And the Hand-writing was fo well known to them, that they could, as they have informed your Lordfipps, when any of these Letters came, diftinguifh them by the Hand-writing of the Superfrijctions, before they had open’d them, and they never were miftaken. And this, we humbly apprehend, is as fatisfactory an Evidence as can be given, that these Letters were the Hand-writing of Mr. Kelly, moving the letter of the 20th of August, which I shall now Notice of Mr. Kelly’s, is sufficiently proved to be of his Hand-writing.

Taking it then, my Lords, that these letters are the Hand-writing of Mr. Kelly, and of his Correspondents in answer to them, I don’t find that my Lord Bishop of Rochefler hath charged Mr. Kelly with having any Malice to him. And if he had no Malice to the Bishop of Rochefler, what should induce him to write thofe Letters, on purpofe to charge the Bishop of Rochefler with being concern’d in this Conspiracy?

My Lords, we humbly apprehend the Pretence of thofe letters being forg’d, must infinate, that Mr. Kelly, the Fellow, intend’d, in chargeing the Bishop of Rochefler with being concern’d in this Conspiracy, and make him liable to forfeit every thing that was dear to him, hath contriv’d letters containing Circumfiances, in order to fix him to be the Perfon denominated by the Names of Jones and Illington; he hath written Letters, and by Combination received others in answer to them, for this Purpofe; and by thofe wicked and malicious Practices, hath furnished this Evidence againft the Bishop, who is an innocent Man.

My Lords, this is the Subftance of the Debate on this Head; and whether your Lordfipps will believe this, we muft deferve to your Lordfipps. Your Lordfipps have had Kelly before you, and by his Behaviour have had no Reafon to think that he had any Malice againft my Lord Bishop of Rochefler, or any Defign or Intention to prejudice him.

My Lords, the next Part of the Evidence I shall beg leave to obferve, is a Part very con- derable, and is fo far from being a Defence, that the Defence attempted, hath confir’d and strengthen’d the Evidence againft my Lord Bishop of Rochefler; that is, with relation to the letter taken among my Lord Bishop’s Papers, directed to Dubois; a letter, which they, obferv’d, don’t contain such Information, or of any treasonable Impor- tunity; but it seems to be a Letter of Indifference, and, I believe, as fuch, it was not taken care to be destroy’d, as it would have been, had there been any Apprehenfion that Ufe would have been made of it, as now, againft the Bishop of Rochefler.

My Lords, the Ufe we make of it is, to fhew that Mr. Johnfon, or Mr. Kelly, was a Perfon employed by my Lord Bishop of Rochefler in writing Letters for him. My Lords, your Lordfipps will obferve by the Letter, he fays, I have breaad nothing from you from the Letter I had about two Months ago by Mr. Johnfon, to which I immediately in copy addrec’d my answer. My Lords, if this is the Bishop of Rochefler’s letter, either in his own Hand, or his letter write by another Perfon, it plainly proves what we infer from it, that Johnfon, i.e. Kelly, write for the Bishop. Your Lordfipps will obferve, it is