or Bank Notes? Says he, I believe Goldsmiths Notes will serve: You are to shew the Balance of your Caff; but I think, Bank-Notes will do better. Upon that Mr. Lightburn said, I don’t know what the Consequence of this may be. Suppose, when we have produced these Notes, they should be detrais’d from us, I am afraid most of the Goldsmiths Shops about Temple-Bar and the like would be shut up the next Day, and indeed I think what Haford, if it was, and Thousands of Families might be ruin’d by this Tranfition. Mr. Cattingham propo’d, You may shal by, and affit another. Mr. Kyngton, said, I find, we are like to be firc’d, an given up; for my part, I will neither borrow, nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Matters were in great Concern. Mr. Cattingham and Mr. Dixon went back to my Lord Chancellor, and laid a bill about an Hour and half, and then return’d to us, and said, my Lord was very busy, and dismis’d us, and so we went home.

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

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

Mr. Serj. Pengelly. What past’d on the 10th of November in the Preffence of my Lord Macclesfield, at his Houfe?

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

Mr. Serj. Pengelly. We define that Mr. Bennet may repeat the Expiration my Lord made use of to persuade them to subscribe, as Mr. Haford had done.

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

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

Mr. Tho. Bennet. I can only answer for my self. My Lord did not ask me, whether I was able and sufficient; but only directed me to write that Subscription that Mr. Haford had done; and I did go down, and write, in effeft, that Subscription. I did subscribe thus: ‘My Lord, I have all the Security ftings in my Name, as in the within mention’d Account are fpecific’d; as also the Tallies, Orders, and Bonds in my custody; and as to the Money, I am ready to give your Lordship satisfactions, that I am able to answer it to every Person that is entitled thereto. The Words, to a Delegation, which are in Mr. Haford’s Subscription, I omitted, because I could not make it out to the Lords of the Council.

Mr. Serj. Pengelly. My Lords, we beg leave to produce those Accounts, and shew to your Lordships that Subcription of Mr. Haford, that was to be followed by the other Matters, and the first Subscription of Mr. Bennet.

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

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

Mr. Outlaw. No other Words? Mr. Tho. Bennet. And it would be to prevent a parliamentary Enquiry.

Mr. Outlaw. Was there nothing mentioned relating to a Stand?

Mr. Tho. Bennet. I don’t remember that then; Mr. Cattingham said something of that at a meeting at Mr. Edward’s.

(The Subscription shew’d to Mr. Bennet, And as proved by him to be Mr. Haford’s Hand.)

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

Clerk reads.

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

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

Clerk reads.

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

Tho. Bennet, 16th Novemb. 1714.

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

Clerk reads.

10 Nov. 1714. My Lord, I have all the Securities standing in my Name, as in the within mentioned Account are specified; as also the Tallies, Orders and Bonds in my custody. And
Mr. Serje. P mongely. Your Lordships he observes, we hath left out the Words To a Deminstration, because he thought that he could not so clearly make it out. I beg leave to mention, that these Accoumt and Subscriptions thus altered, were actually delivered in, and laid before the Council, and are the Original Accoumts.

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

Mr. Thomas Bennet. No, I did not; I did as the rest of the Masters did. Mr. Com. Serje. I defer he may inform your Lordships when this was?

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

Mr. Kynaston called.

Mr. Serje. P mongely. My Lords, we defere that Mr. Kyngston may give your Lordships an Account, whether he was present at this Meeting on the 10th of November, and what passed there relating to their Accoumts?

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

Mr. Serje. P mongely. What passed at that Time at the Earl of Macclesfield's?

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

Mr. Serje. P mongely. Can you recollect what Expressions the Earl of Macclesfield used, to recommend it to the Masters?

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

Mr. Serje. P mongely. What was it that would look well to the Council?

Mr. Kyngston. When Mr. Holford had writ at the Bottom of his Accoumt, That they were ready, &c.

Mr. Serje. P mongely. My Lords, I defere he may be ask'd, whether there was an Enquiry made by the Earl of Macclesfield, as to his Ability or Sufficiency?

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

Mr. Serje. P mongely. I defere he would inform your Lordships, what Subscription he had first made, and what was added, or what Advice was given?

Mr. Kyngston. I had writ before: My Lord, the Perfon I employed to write out this Accoumt, has only gone thus far as to the Number of the Bonds. I have brought the Bonds with me, and defere you'll appoint any Perfon to in- speet them, and the other Seccurites I have here given an account of.

Mr. Serje. P mongely. What was writ afterwards? This is writ with a different Ink from that before: And as to the Money, I am ready to pay it to the Perfons entitled thereto. That is with a different Ink.

Mr. Kyngston. I believe, upon looking upon it, I went down with the reft, and writ that in the Parlour in my Lord's Houfe.

Mr. Serje. P mongely. I defere he may be asked, whether he, or any other of the matters then receiv'd any Explanation how this Sufficiency or Ability was to appear?

Mr. Kyngston. Not then, I don't remember any thing of it.

Mr. Serje. P mongely. Or at any other Time?

Mr. Kyngston. Some time after this, this was the 10th of November, and I believe, between that and the 16th, when we were to attend the Judges, the masters were fummon'd to meet at Mr. Ed- wards's Houfe: I understand, it was a Summons from my Lord Macclesfield; and when we were here, there came Mr. Cottingham and Mr. Dixon. I don't remember all the Difficourf; but they were telling us what was to be done: First, we were to produce the Seccurites, and there would be no great Nicety in producing them: And then, next, we were to produce the Balance of Cash: And I remember, on that, Mr. Cottingham faid, You must stand by one another, and affit one another.

Bank-Notes, faid he, will be bift; but if you can't get them, then Goldsmiths Notes. You must get one or other to produce and fiew.

Mr. Latycefe. I defere he may be ask'd, what he thought he meant by the Propofal of getting Goldsmiths Notes, or Bank Notes?

Mr. Kytton. I did take the meaning in the word Siew to be, for the Masters barely to make a Siew on them; and that made me complain; and I spoke warmly, and faid, I jaw what the Deign was; and whoever borrow'd any money on that Occafion, was a Knave, and he that knet it was a Fool.

Mr. Latycefe. I defere he may be ask'd, whether there was any Recommendation by Mr. Cottingham or Mr. Dixon, and in what particular Expressions thoef Recommendations were made?

Mr. Kytton. I believe, Mr. Lightboum expref'd himself, That if they borrow'd Goldsmiths Notes, and they were defire'd, the Goldsmiths Shops would be fut, and People would be enquiing what was the matter.

Mr. Latycefe. I defere he may be ask'd, what was faid about making a Siew? if Mr. Cottingham own'd what was the meaning of thofe Words?

Mr. Kyngston. I don't remember: They were pretty warm and faid they would go to my Lord Macclesfield, which they did, and return'd again.

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

Mr. Kyngston. I underftood it fo myfelf, and I believe several others did; Mr. Lightboum, and Mr. Holford, and some of the others did fo, by what they faid.
Mr. Serj. Poggey. My Lords, we have done with this Witness.
Mr. Serj. Proby. My Lords, I desire to ask this Witness the same Question that I asked the other; and that is, whether at the time when this Proposal was made to him, that he should subscribe as Mr. Holford had done, he made any Objection to it?
Mr. Kynaston. No, I did not make any Objection to it. I had been there first, and with my Lords, and at the farther End of the Room, that I remember left what happened at that time, than other People did.
Mr. Lightbourn called.
Mr. Serj. Poggey. My Lord, we desire that Mr. Lightbourn may give an Account of what passed at this meeting, relating to the bringing in of the Accompits?
Mr. Lightbourn. What meeting? That at Mr. Edwards's, or that at the Earl of Macclesfield's?
Mr. Serj. Poggey. That at Mr. Edwards's.
Mr. Lightbourn. I was at Mr. Edwards's about that Time, at some meeting when our Accompits were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had so many meetings about that time at Mr. Edwards's, that I don't remember exactly, which was before, and which after. I remember, at the meeting when Mr. Cattigarchy and Mr. Dixon both were there, there was some Difference relating to the Producing of the Securities, and of the Balance of the Caff. I then asked, whether we should produce it in Bank notes, or Goldsmith's Notes, and I understood, it was hinted that the Goldsmiths that we had dealt with, would stand any Matter that wanted money, but by whom it was paid, I can't recollect. The Answer I made to that, was, that I should be sorry that any matter should borrow Notes of a Goldsmith, and that they should be lay'd or secured when produced, which I apprehended would be done; and next morning several Goldsmiths would be for'd to hunt up their Shops, and it would look like a Holiday in Fleetstreet.
Mr. Lutzyce. Do you remember any Thing concerning a Net?
Mr. Lightbourn. I don't remember the Expression of a Net.
Mr. Lutzyce. What Application was made to any of the masters to carry in their Accompits, and to whom?
Mr. Lightbourn. My Lord Macclesfield one morning sent for me, and designed me, that when the Accompits were brought into the Council, I would be thereabouts, that if there was any occasion to clear up or explain any thing, or give farther Satisfa'tion to the Council, I might be ready. I told his Lordship, I would give no Satisfaction about any one's Accompits but my own. But if his Lordship pleased that I should attend, I would be thereabouts; and if his Lordship pleased, I would have another matter with me. I nam'd Mr. Holford, and my Lord desired me to acquaint Mr. Holford with what I did, who said, he was ready to go with me to answer any Questions that should be ask'd, arising on the Perusal of his Accompits.
Mr. Lutzyce. What did he desire you to attend for?
Mr. Lightbourn. To resolve any Question or Difficulty that should arise before the Council. After this, Mr. Cattigarchy told Mr. Holford at Mr. Edwards's, that my Lord desired that two of the masters should attend the Council with the Accompits of the whole, and that Mr. Holford being the senior master, should be one, and he was to choose whom he would have go along with him; and I having given Mr. Holford intimation before of my Lord's inclination, Mr. Holford desired me to go with him. I told him, I did not care to carry in any other Accompits than my own; as I had no concern in other masters' Accompits, I would not then begin; I would not carry any but my own, and no body else should carry mine; I would not be a Representative of the Body. Upon that, Mr. Holford recollected himself, and said, nor he neither; he would carry no Accompits but his own. I said, the Accompits were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.
Mr. Lutzyce. Your Lordships will observe, the Persons thought most proper to appear for the rest of the masters, Mr. Holford and Mr. Lightbourn, were so apprehensive of the matters being deficient, that they did not dare to appear for themselves. I desire Mr. Lightbourn may be ask'd, what pass'd on the 10th of November, when the Accompits were deliver'd to the Earl of Macclesfield?
Mr. Lightbourn. My Lords, upon the 10th of November my Accompits was not ready at the time I was to deliver it. I rather chose it should not be ready; because I did not care that it should be carry'd in by any body but my self. However, I waited at the proper Time; and when we came there, Mr. Holford deliver'd his in his Accompits, and a Letter he had writ to his Lordship, and fix'd to his Accompit, which was read. My Lord seems'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, deliver'd in their Accompits. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finish them, and attend his Lordship with them at the Co'd'st-pit by Eight of the Clock. Accordingly I did, and left it in to his Lordship.
Mr. Lutzyce. What pass'd farther relating to their fignifying of the Accompits?
Mr. Lightbourn. I know nothing of it; for I went away to finish my own.
Mr. Serj. Poggey. My Lords, we desire that Mr. John Bennet may be call'd.
Mr. John Bennet appeared.
Mr. Lutzyce. My Lords, we desire that Mr. John Bennet may be ask'd, whether he was at this meeting at Mr. Edwards's House, and what pass'd at that time?
Mr. J. Bennet. My Lords, I was at that meeting at that time, when Mr. Cattigarchy and Mr. Dixon came in, and told us they came from my Lord Chancellor; and Mr. Cattigarchy said, he had brought Mr. Dixon with him, because he was don't, and could not well hear. Mr. Cattigarchy said, he had two Questions to propose first whether we were willing that all our Bonds, and other Securities in our Cuffyed, should be inspeck'd by him or any other? All of us were willing, and agreed to that. The second was, whether we were willing, or would produce the Balance of Caff in our hands before the Council? To this the matters made a Stand, and said, The Caff was considera-
H. L. for High Crimes and Misdemeanors.

my own Accompent of my Money Securities, and the Accompent of my Eflate.

Mr. Serj. Pengelly. I defire to know what Subcription Mr. John Bennet made to his Accompent at first, and what afterwards?

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

Mr. Levinlond called.

Mr. Lutwyche. My Lords, I defire he may be asked, whether there was any other Expreffion made use of by him?

Mr. J. Bennet. I don’t remember there was: But he repeated it several times, that we should stand by, and affift one another with Cafh.

Mr. Plumer. My Lords, I defire to ask this Witnefs, if, in pursuance of the Advice given by Mr. Cattingham, he did affift any of the matters, or was affifted by any of them?

Mr. J. Bennet. One of the Gentlemen did affift me with Cafh, which I lock’d up in the Chefs: I gave him Security for it. And as to my affiftling any Body, Mr. Conway informed me, he had a Real Security for 4000l. and beg’d, if I could, that I would affift him with 4000l. and in two or three Days I should have it again: I told him, I had in my Accompent mentioned my Cafh, and that I had offer’d to make up the Balance by my Real Eflate, and so could not affift him with any Cafh. He affifted me, if I had any Bonds by me: I told him I had 2000l. Bonds: and if he could engage to bring them back to me in two Days, he should have them: And upon lodging a Bag of Writings with me, which he told me was a real Security for 400l. I accordingly did lend him them, and he brought them back again to me in two Days Time.

Mr. Plumer. I defire he may be asked, what his Inducement was for lending the Bonds?

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

Mr. Plumer. I defire to know whether he open’d the Bag, to fee what the Security was, or took it by Conjecture?

Mr. J. Bennet. No, I did not open it; Mr. Conway affured me it was fo.

Mr. Plumer. What use did he make of those Bonds?

Mr. J. Bennet. Indeed I don’t know.

Mr. Lutwyche. My Lords, I defire he may be asked, whether those Bonds belong’d to the Suits of the Court?

Mr. J. Bennet. They were brought in by the Suits of the Court after my Accompent was deliver’d in, and I must give them in my Pool-Accompent: Therefore I faid, I must have them again in two Days time.

Mr. Serj. Pengelly. I defire he may be asked, whether this was after he had given in his own Accompent?

Mr. J. Bennet. Yes, it was after I had given in Vol. VI.
Mr. Serj. Pongelly. I desire he may be ask'd, whether my Lord Macclesfield made any object to any Part of that Subscription, and what Part in particular?

Mr. Lovibond. He made an Object to the latter Part of it; because that might imply that my Efforts were not ready.

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

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

Mr. Lovatzeby. Read this Subscription.

Mr. Serj. Pongelly. All these Securities standing in my Name as in this Account is fixtected, I am ready to procure Certificates from the proper Offices, that I have, and had them before this Account, if your Lordship requires it; and as to the money, I am ready to answer it upon Demand to every Perfon entitled thereto, and who can give me a legal Discharge.

November 16th 1724. H. Lovibond.

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

Mr. Serj. Pongelly. My Lords, we desire he may be ask'd, whether he can have done it out of his own Estate, or Effeds?

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

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

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

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

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

Mr. Strange. In Land?

Mr. Lovibond. Yes, in Land.

Mr. Plumer. I desire he may be ask'd, if my Lord Macclesfield asked him any Questions about his Ability?

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

Mr. Gayer. I desire he may be ask'd, whether at that time he did not believe, that all the matters were sufficient and able to make good their Accomp?

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

Mr. Edwards called.

Mr. Serj. Pongelly. My Lords, I desire Mr. Edwards may give your Lordships an account of what passed at this meeting at his Houfe?

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

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

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

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

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

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

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

Mr. Serj. Pongelly. Look upon that Accompt and Subscription.

Mr. Edwards looks upon it.

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

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

H. Edwards.

Mr. Serj. Pongelly. What other Subscription was made after that?

Mr. Edwards. After I had made this Subscription, I curried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subscription, did not seem to approve of it: But he thought Mr. Halford's more proper, and direct'd me
H. L.

for High Crimes and Misdemeanors.

M. Conway, I did declare it at that time, as I afterwards wrote, that I would endeavour to produce my Effects.

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

Mr. Conway. No such thing happened while I was there.

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

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

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

Mr. Conway. Some time after this I waited upon Mr. Godfrey, and before I came away, he asked me if I had any Bonds; I told him I had; then pray, says he, let me have what you can spare, and send them immediately: Whereupon I went Home, and sent him about 500l. into Bonds. Some Days after that I expected Mr. Godfrey to return me the Favour; and I carried to him Effects to as (I apprehended) the Value of 6 or 7000l. or more; and I desired him to lend me Bonds, and he seemed unwilling without the Security, and he kept the Security.

Mr. Latymer. He hath not answered to those Questions, whether he borrowed money, and what Sum.

Mr. Conway, Mr. Godfrey lent me upon the Bonds, 500l. and Mr. Bowles, 200l.

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

Mr. Conway. Yes, my lords, they were returned into Notes.

Mr. Latymer. I desire he may be asked, whether they were lack'd of, or he did take them back again?

Mr. Conway. I took them back again.

Mr. Latymer. What became of them afterwards?

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

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

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

Mr. Latymer. Who was that?

Mr. Casburn. The Goldsmith, Mr. Rogers, at Temple Bar.

Mr.
Mr. Plummer. I desire to know when he returned those Bonds again?
Mr. Conway. In a few Days after.
Mr. Latymer. My Lords, it may be necessary to examine how it was that he persuaded the Goldsmith to let him have those Notes?
Mr. Conway. I gave him Bonds for them.
Mr. Latymer. Whether they were those Bonds that you had from Mr. Goffre and Mr. Bennett?
Mr. Conway. They were.
Mr. Latymer. Whether they were not delivered to the Goldsmith in the Nature of a Pledge for those Notes?
Mr. Conway. Yes, they were.
Mr. Latymer. What became of the Bonds?
Mr. Conway. I returned them.
Mr. Latymer. To whom?
Mr. Conway. To Mr. Goffre and Mr. Bennett.
Mr. Serje. Pongelly. When he carried back the Notes to the Goldsmith, at that time, whether he took up the Bonds?
Mr. Conway. I did.
Mr. Serje. Pongelly. As I apprehend, he says, he had lent Mr. Goffrey 5001. India-Bonds, and in return he expected that Mr. Goffrey should affix him; I desire he may be asked this Qualification, whether the 500l. in India-Bonds he applied Mr. Goffrey with, was after or before he produced his Cash to the Committee?
Mr. Conway. After.
Mr. Serje. Pongelly. Was it before or after Goffrey had done it?
Mr. Conway. After he had produced his Securities.
Mr. Serje. Pongelly. Was it before or after he had produced his Cash?
Mr. Conway. It was after he had produced his Securities, and before he had produced his Cash.
Mr. Serje. Pongelly. My Lords, we think it will be very necessary to lay before your Lordships a General State or Account of the total Deficiency; to show how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the several Offices amount to; and we apprehend, that we are able likewise to give an Account of some additional Deficiencies that have been discovered since. I apprehend, there was at that time near 100,000l. Deficiencies.
Mr. Serje. Pongelly. I desire he may be asked, whether at that time when he wrote the Subscriptions, he was able to pay the Balance of his Accumpt?
Mr. Conway. I was, in Effect, I had, and I said no otherwise.
Mr. Sandys. I desire he may be asked, if my Lord Macclesfield asked him as to his Ability?
Mr. Conway. No, my Lords, he did not; to my remembrance he did not. I deliver'd my Accumpt to Mr. Cattingham.
Mr. Serje. Pongelly. I desire he may be asked, what Deficiency there remains upon his Office; whether he can recollect how much it is?
Mr. Conway. My Lords, I believe it is 1,500l. my Charge, of which I can take off something in my Poll-Accumpt.
Mr. Serje. Pongelly. I desire he may be asked, whether he is now able to make good the Deficiency in his Office?
Mr. Conway. Yes, my Lords, I am.
Mr. Serje. Pongelly. Whether he hath made any Conveyance of any Estate as a Security for it?
Mr. Conway. I have.
Mr. Serje. Pongelly. I desire he may be asked, whether any thing, or how much hath been raised out of that Estate?
Mr. Conway. It is made so very lately, that I don't know that any thing hath been raised since; it is but a few Days ago that it hath been made.
Lord Leveur. My Lords, I would be glad to know, as there is a Balance of 15,000l. whether he flands indebted to any other Persons, but to the Suitors of the Court, and to whom?
Mr. Conway. No, my Lords, I don't owe any thing to any body, to my Knowledge.
Mr. Latymer. I should be very glad if Mr. Conway could extricate himself out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Estate, that is to be made good.
Mr. Conway. It is to be made good by an Estate in land.
Mr. Latymer. I desire to know whether that Estate is settled, whether it was not settled upon his Marriage?
Mr. Conway. It was not settled on his marriage. I was Tenant in Tail, and my Wife and Son joined with me in levying a Fine.
Mr. Latymer. Whether it is not settled by Will?
Mr. Conway. I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joined with me.
Mr. Osborn. What Interest had your Son in it?
Mr. Conway. No Interest, as I apprehend; but I thought it was necessary he should join, to take off all Difficulties and Objectives to the Title.
Mr. Osborn. Whether there are no Annuities charged upon that Estate, and what they are?
Mr. Conway. There are no Annuities charged on that Estate.
Mr. Osborn. No Payment to the Mother?
Mr. Conway. There is, out of another Estate. Mr. Conway. Mr. Osborn. What are the rents of the Estate you have secured for the Payment of this money?
Mr. Conway. Between 5 and 600l. a Year.
Mr. Osborn. Is that your Computation, or is it let at so much now?
Mr. Conway. I can't say it is all let to; there are some Demesnes.
Mr. Osborn. What are the Rents of that part of the Estate that is let?
Mr. Conway. I take it to be 500l. a Year.
Mr. Conway. What let at 500l. a Year?
Mr. Conway. Yeas or thereabouts.
Mr. Osborn. Do you reckon the whole Estate to be worth 500l. a Year?
Mr. Conway. No, I don't reckon in the whole Estate, but only that which is conveyed for the securing of this money.
Mr. Osborn. Then I desire to know what are the Rents of this Estate as it is let?
Mr. Conway. I take it to be 500l. a Year, or thereabouts, that is applied for, and as a Security to answer my Deficiency.
Lord Ld. North. This 15,000l. Balance is due to the Suitors, which he says is secured by this Estate; I would be glad to know how the Deficiency came, and what is become of this 15,000l. that is due to the Suitors?
Mr. Conway. The Occurrence of it was, my coming into the Office confided to me my Predecessor for 600l. I paid besides 1500l. upon my Admission, and 500l. Contribution towards making good Mr. Dormer's Deficiency.
Mr. Osborn. How was the rest of the Debt contracted? You have mention'd but about 8000 Pounds.
Mr. Conway. No. It is applied in a Cause of a Suitor, and now it remains as Security.

Earl of Anglesey. I am far nearer related to that Noble Lord that is mentioned, that I must do that Justice, as to put Mr. Conway in mind, as I did Mr. Hillsdell, i.e., That if any Quotation is asked him, which may possibly offend his Honor, or, as hath the Bar Cown, may concern his Client, he ought to be left to his Discretion, whether he will or will not answer.

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

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

Lord Lovelace. When was this money in the Hands of my Lord Bolloyle ap'd to the Bar of any Suitor, and by what Order or Authority?

Mr. Conway. It is some time since, some months ago, perhaps six months ago.

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

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

E. of Sandwich. My Lords, if you please to give me leave, I would suggest something, that probably may help towards the better understanding him. If my Gues be right, this relates to his Pol Perpetuum. He had laid his Charge is 13,000l. And he by that Charge could discharge 2600l. or more, of that Quantity by a Perpetum. Now I apprehend this he is speaking of now, is that Article of the Pol Perpetum. I don't know, if I guess his meaning right, but I desire he may inform your Lordships, in case it be otherwise.

Lord Lovelace. It may be for your Information to know who are the Persons to whom this is applied; that it may be known whether it is in the Pol Perpetum company.

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

Mr. Conway. He gave a Bond and Judgment.

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

Mr. Conway. It is in the Cause of Constable contra Faintbore.

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

Mr. Conway. No, I do not reckon it in that Sum. Mr. Osbalde, Your Lordships will please to recollect, that his Deficiency came, he hath given your Lordships an Account of 10,000 old hundred Pounds; and first says that the Refund was in the Hands of his Acquaintance, and named 2600l. money of the Suitors to be in the Hands of Lord Bolloyle, now he faid this Lift Sum is not Part of the 13,000l. Therefore now I would ask, how the Remains of his Deficient money was applied, or how the Debt happened?

Mr. Conway. If my Lords please to give me leave to explain it; As to the Remainder of this 13,000l., you have been pleased to reckon 10,000 old hundred Pounds to be made out; and there is 3000l. old money I have laid out in land, which I have since conveyed, which makes 12,000 old hundred Pounds; and the rest I have in Bonds and Notes, which I have to make up the Refund.

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

Mr. Conway. No. I humbly hope to have it allowed me on my Podd Accompot, being applied in the forefined Caufe with Approbation of the Parties.

Mr. Osborn. We have done with him; and leave him to Your Lordships Obligation.

Mr. Thornton called.

Mr. Serj, Pungilly. My Lords, we beg leave, that Mr. Thornton may give Your Lordship's an Account, upon the Inspection and Examination of those Accompots, how much the Deficiency of the several matters amounted to?

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

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

Mr. Conway's Deficiency in his Cash only amounts to L. 10,259 4:45, but Mr. Conway, while his Accompot was wanting, from South Sea Annuity, and 5500 l. South Sea Stock; and of the money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than L. 2893 9:3; so that his Deficiency is increased by the Sum of L. 5350, somewhat more or less, according to the Price he sold at.

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

Mr. Thornton. Yes.—Mr. Kynaston's Deficiency amounts to L. 26,908 11:3.

Mr. Thomas Beattie's Deficiency amounts to 9075 l.

The Total of the Deficiency of the present matters is L. 67,141 15:2.

The Charge that remained upon Mr. Barret's Office, amounted to L. 56,500 10:31:4. But Mr. Beattie and Mr. Godfrey, the masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left, would produce 44,000 l. and upwards; so that I compute the Deficiency of Mr. Barret's Office at L. 14,000 500:1.

The Total Charge upon Mr. Darner's Office, when he resigned to Mr. Edwards, amounted to L. 49,004 11:11:5; but Mr. Edwards has paid in Discharge of that Charge the Sum of L. 23,752 15:9:1. So that the Deficiency of Mr. Darner's Office amounts to L. 25,578 16:11.

Mr. Serj, Pungilly. Whether in that is Mr. Wigan's and Mr. Pulte's Security included in Darner's Accompot?

Mr. Thornton. Mr. Darner's Deficiency I take to be L. 25,578 16:5:1; and the whole Deficiency I take to be L. 105,043 17:8:3. And if any Securities or Sums of money belonging to the Suitors are omitted in the matter Accompots, such Securities and Sums are not included in this Estimate.

E. of Macfieald. Have you had before you the Administrator, either of Mr. Barret or Mr. Darner?

Mr. Thornton. No, my Lord.

Mr. Serj, Pungilly. My Lords, we shall beg leave to call one Witnes to give your Lordships an Accompot of another Deficiency of 2000 l. upon Mr. Conway, which is not charged in his Accompot. We define that Mr. Sanderson may be called.

Mr. Sanderson sworn.

Mr. Latrobe. We define, that Mr. Sanderson may give Your Lordships an Accompot of any money in Mr. Conway's Hands, and how much it is, that is not brought to Accompot.

Mr. Sanderson. My Lords, I was concerned as a Solicitor in a Cause in Chancery, between Sir Ephraim Norris and Alexander Norris; from which the Accompts were brought into the Register's Office, I went to look and see if Mr. Conway had charged himself with a Sum of money paid in, in that Cause. I found by his Accompt, that it was not charged. I had drawn up the Accompt, and given a Copy of it to Mr. Conway, which he did not deny, but he said, there was not so much by 2 or 200 l. Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omision not to mention the Cause or Sum. He said, he believed it was not so much, he did not think to mention it. I asked him, why he did not infest, how much it was as he thought it? He said, because he would pay in all.

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

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

Mr. Sel. Gen. My Lords, this is the Sum of the Accompot we had to lay before Your Lordships of the Deficiencies, notwithstanding the masters reprefened themselves as able to pay the whole. We would not represent it to Your Lordships, that this will certainly be the 400 l., because some of the masters have gone away for some Part, the other, I apprehend the Security given will not be sufficient for half.

E. of Macfield. I desire to ask Mr. Thornton, whether this Charge he makes upon Mr. Barret's Office be a Charge taken from the Office, or only to one Account taken from Mr. Miller?

Mr. Thornton. This Charge was taken from the Vouchers, which Mr. Miller produced.

E. of Macfield. Are there any Payments allowed, made by Mr. Barret in his Life time?

Mr. Thornton. A great many.

E. of Macfield. Who gave you an Account of that?

Mr. Thornton. Mr. Miller, my Lord.

E. of Macfield. But I speak of the money paid by Mr. Barret himself, not what Mr. Miller paid. Have you any Account what Mr. Barret paid out himself?

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

E. of Macfield. As to the Effects belonging to Mr. Barret, who gave you the Account of them?

Mr. Thornton. Mr. Beattie, and Mr. Godfrey.

E. of Macfield. Do you know who is Administrator to Mr. Barret?

Mr. Thornton. I have heard that Mr. Paxton is.

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

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

Mr. Thornton. From the masters voluntary Accompts only.

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

Mr.  

TO G. I.  

The Trial of Thomas Earl of Macclesfield.
Mr. Tho. Burrell and Mr. Godfrey were the Puritans that appeared to us to have the Care and Custody of Mr. Barrow's Effects.

Lord Leconfield. As to the Nature of these Deficiencies, I think he fays, these Deficiencies arise upon the Cash Balance. Then I would be glad to know, whether in the Accoumts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Balance arise upon the whole Balance, or are appropriated to any particular Suitor concerned in theo Balance?

Mr. Godfrey. No Part of the Cash Balance is appropriated to any particular Suitor.

Mr. Ward, My Lords, the Commons have now produced, very long, and as they apprehend, a very full and convincing Evidence, in maintenance of the Impeachment by them exhibited against Tho. Earl of Macclesfield, for High Crimes and Misdemeanors, and I am commanded to acquaint your Lordships, That they do not intend to trouble this House with any further Examination. But, My Lords, the Commons conferring the Length and Variety of the several Parts and Circumstances, that have been offered, are of Opinion, It may be of Service to that Cause, in which their Zeal for publick Justice has made them to engage, that the whole of what they have ascertained upon or produced, shall be in such manner, as I am able to obey their Commands, be thorly recapitulated and prefented in one View to your Lordships Consideration.

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

Mr. Godfrey. All the general and particular Evidence and Proofs to justify excess and exorbitant Gain and Profit, was the First Principle, from which all this Michiel produced.

Mr. Ward. This was indeed that prompted the Earl of Macclesfield to exhort the whole Land of money, which he Receiver'd from the several Persons, whom he admitted to the Office of Masters of the Court of Chancery. The granting this favour engag'd his Lordship to neglect every other Consideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Persons of small Abilities, and every way unqualified for the Discharge of so great a Truth. — This, obliged him to come at, and permit the fraudulent Practice of paying the Excessive Price of their Places, out of the money belonging to the Suitors of the Court. — That again, forc'd him to suffer, or rather to encour- age the purchasing masters, to traffic and game with the Estates of the Suitors. — There was no other way, by which those liberal Purchasers, cou'd Reimburse themselves. — And this Circumstance, even after it was apparent the Suitors were likely to lose a great Part of their Effects, reduc'd him to the unhappy Necessity of refusing to take those Measures, that were necessary to prevent that Practice for the Future. And when the fatal Effects of this unbounded Liberty, which he permitted the masters to enjoy, began to appear, then he was forc'd to become a Confed- rate with the deficient masters, to prevent its being known to the World. — From hence sprung the unequal Composition with Wlifon: The partial Orders for the Payment of Money: The private Contribution, to answer the most pressing Demands: And from hence his own Liberty to Leconfield. But when all these Methods proved of no Effect, and he found the Cry of the Widows and Orphans had reach'd his Majesty, then, my Lords, did the Lord high Chancellor of Great Britain combine with these Masters, advise and persuade them to make false Representations of their Circumstances and Accoumts, in Order to deceive his Majesty, to frustrate his most gracious Intentions for the Good of his Subjects, and to prevent (what he most fear'd) a parliamentary Inquiry.

Thee, my Lords, are the malignant Consequences of that Corruption of which the Earl of Macclesfield is accused, and which the Commons apprehend to be perfectly consistent with the whole Term of his Abuses, during the Time of his being Chancellor.

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

The first general Head of Accusation against the Earl, is, That he Corruptly, Illegally, and Excessively employed, and received great sums of Money, for the Admission of several Persons into Offices relating to the Administration of Affairs, and to the Benefit of Trade.

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his paying 150 Guineas from T. Bennet for permitting him to resign his Office of Clerk of the Cutlers, and for procuring a new Grant of that Office to Hugh Hamerley. The Commons chose to begin with this Article, not because they thought the Sum taken to be considerable, as to have any great Influence upon the Judgment your Lordships may give upon this Occasion, but because the Fact discovers the Man, and fully explains what manner of Man he must be endow'd with, who could dipp'd an Admon after low and forlorn. This Article does of it left lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordship in his Answer gives himself a very different Character, and offers to produce a Catalogue of his own Generosities. What Argument there would be in this when produced, I cannot comprehend. I will therefore endeavour to prove your Lordships that Truth is more than is defined: Instead of being Generous, it will suppress his Lordship (far from the Truth) to have been profuse: Yet still would it prove nothing: For surely, it is not a new Character in History, that even Squanderers should be Rapacious.

To prove the Particulars of this Article, the Resignation of Bennet and the new Grant to Hamerley, were both
both prov'd. And as to the Payment of the money, Mr. Catham, who was Secretary to my Lord Mac-

'clesfield, and who, thro' the whole Course of the Evi-
dence, appears to have been his great Agent and Con-

fident: He owns the Receipt of the hundred Guineas, and swear he paid 'em to the Earl, within a Day or
two after he received them. He also owns the Con-

sideration, for what he knows the Sum was, was for
demanding £ 100 for £ 100. But the Earl was so

for persuading Mr. Bent to surrender his Place. —

Were there no Evidence but Catham alone, the Com-

mons think they have sufficiently prov'd this Fact. But

the Evidence of T. Bennet puts it beyond Contradi-

cction, and makes it manifest, that the hundred Guineas

were in a manner extorted. — He swears soon after

he was admitted a Mafter, he was defirous to part with

his Place of Clerk of the Cudities; and to that End

applied to Catham for my Lord Macfellesfield's Fa-

vour, and acquaints him with the Perfom, to whom he

defr'd the new Grant should be made. Catham upon

this speaks to my Lord, and some short time after tells

Mr. Bent, that neither my Lord nor himself knew

Hannelry. Your Lordships may remember that the Earl

by his crofs Examination, seemed to endeavour at some

small Triumph upon this Circumstance. My Lords, it

is not fo wonderful, that Catham should not speak

Truth, there is no giving Evidence to the Tone of the

Voice, nor the Air and Manner, in which a Conversa-

tion is carry'd on; more especially, it he be considered,

that Catham was a Man who doublets upon thes

Occasions would not have known his Father without

the meditation of Gold. Bent was surpriz'd at this

Speech, as well he might, when Hannelry liv'd next

Door to Catham. However, Catham at t' left a

plea for the Mystery, but getting him kinder, a Prentis

was expected by the Earl, and Catham himfelf ow'd;

he did fay the Earl figh'd upon a Project.

Mr. West was here interrupted by the Earl of

Macfellesfield, who faid that Catham's Words were

not True, that he infifted upon, but that he expected a Prentis.

Upon which Oc-

Cation Mr. Ogilvie repreffed warmly to the

Lords, that the Behaviour of the Earl was

Irregular, and that the Managers ought not to

be broken in upon while they were speaking.

And then Mr. West went on,

My Lords, I am touch'd to reprefent the Acions of

this Earl in the strongest Light; and the strongest

Light is the infulted Light. Upon Recollection I do

not think the Word I use'd to be of Force equal to the

Fact. My Lords, the Expiration of a Chancel-

or commnicated by a Secretary to a new made Ma-

ner, is more view'd to Infult. But be that as it will; 

Bent in anwering to thef Experiments, repreffed the

Hardship of being oblig'd to pay Money upon this Oc-
cafion, when he had to fubmit to a large Value for the

Clandy, and by way of Argument told him, that

when he came into the Place himself, he paid noth-

ing; and his Brother told him, that Lord Catham

on the like Occafion had taken nothing, becaufe as that

Noble Earl faid, nothing was due. At left, my Lord

Macfellesfield and his Secretary, being both inexpressible,

Bent agreed to pay the one hundred and five Pounds.

After this Agreement was made, Catham acquaint-

ed his Lord with the Bargain, and then told Bent,

that the Earl agreed to it: But wish'd, that it was a great

Favour he would take to fmall a Sum; and Catham at

the fame Time made this very remarkable Declaration,

That if Mr. Bent, would bring the hundred

Guineas, he need take no further Trouble, for the

Chancellor, would lay the Application to the King for leave for him to

refign, and would take Care of the other necessary

Steps. And accordingly the Bargain was executed in

that manner. For, Mr. Bent knew what little of the

intermediate Proceedings, that he has told your Lord-

ships he knows nor how, or by whom the Warrant

came into the Hands of the Clerks of the Patentees.

It is difficult not to feel some Indignation rise at

the bare relating this meaners! Mean it would have been

in any Man: But for a Poet of Great Britain, an

Earl, Lord Chancellor of the Kingdom, and a Parliament

allied and to nearly the same Degree, as every illu-


srious Characters, in fo low a manner as to become a

Broker for the Hire of 100 Guineas, is astonishing.

But, my Lords, when I consider that this Earl was

the fame Time one of the Lords Jullici of the King-

dom, in a Commission to execute some of the Function of

Majesty itself, I want Words to express thus Translaction in its proper Colours.

My Lords, I have mentioned the Evidence relating
to this Point something the more particularly, because

the Proof comes up to the express Words of the Sa-

tute of the 12 of Ric. ii. and proves, as I apprehend,

beyond Contradiction, that the Earl of Macfelles-

dield of this Place for Gift and Befuge.

Before I quit this Article, I beg leave to offer

your Lordships, that my Lord Macfellesfield in his

Answer infifts upon it to be the Right of the Chancel-

iors to accept Prentis; and therefore owns he did in

this Cafe accept a Prentis. But he adds, that it is

every where effe does, the naming any particular Sum

that he accepted. I would willingly add, why this Pr
cution, if what he did was lawful and right? I would

also observe, that there is something strangely equivocal

in that Part of his Answer, where he terms the

figur'd on 100 Guineas, or any other Sum. This

is heady explain him; whether he means the Sum in

question, and almost demantuates the Practice of it. For

a very remarkable his Lordship does not deny he infifted

upon a Prentis in General, but only that he did

infit upon any particular Sum.

My Lords, your Lordships will find by the Court

of the Evidence, that this Article of not naming

particular Sum was not peculiar to this Instance, in

my Lord Macfellesfield, whenever a Mafter's Place, or

other Place was to be sold, carefully avoided alluding

Price by demanding a certain Sum. No — it is

more gainful to act every Thing up to the Jeff Bef-

der, and receive never to dispone of any Office, till

the Price be fixed by the Market, and from the Evi-

dence given by Mr. Ad. Judges, and from the

Evidence given by Mr. Ad. Judges, relating to that

fundamentul Jurisdiction, which they exercise, that

these Office do relate to the Administration

and Execution of Justice.

My Lord Macfellesfield, in his Answer to this Part

of the Charge, industriously is silent as to the particular

Sum which he received, although your Lordships will

observe, that Payment of the individual Sum charged

in the Articles has been prov'd by the Perions them-

selves, who paid the Money. Knyvett and Bent ad

express as to the Payment of 1500 Guineas each; Mr. 

E. is positive as to his carrying to the Earl 1500

Guineas in a Dutch Befige; and Mr. T. avows that

he left 5000 Guineas with Lady Macfellesfield. Now

my Lords, as the Earl infifts it was known Peguificnce of the Great State to accept of Prentis upon the admis-

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

Mr. Bennet, he says, that when he had agreed with Mr. Hicock, he also applied to Cottinham to know what Sum was necessary to be paid the Earl. Cottinham agreed that a Pretend was necessary, but he would not name the Sum. Upon this, after Bennet had con- 

firmed with his Brother and Mr. Godfrey, he again went to Cottinham, and offer'd 1000 Guineas; but Cottinham, dislik'd it with this, shook his Head, and said, He would not go to the Chancellor with that Sum; a great deal more had been long since, and he hoped he would not lower the Price. Bennet then proposed to the 1500 Guineas, to which Cottinham replied, there was no boggling with the Chancellor; and that if he would not give more, he might be absolutely refused, and lose the Place. Bennet, struck with this Reply, agreed to give the 1500 Guineas, tho' Cottinham gravely told him, he need not bring it in money, for Bank Bills would do as well. I cannot help observing, that there was a strange Caution used as to the Payment of this money, altogether inconsistent with the Nature of an establisht Fec., or regular Perquisite. Mr. Bennet sent his Clerk to take out the Bills in a feign'd Name, and for a farthing more than they were worth, and he believed they could never be fairly parted with. Cottinham it seems, was something jealous of a Man, who had the Confidence to pretend to long in offering but 1000 Guineas, and therefore the first Word he said to him, when he repair'd to the Chancellor to be sworn in, Have you brought the Money? Bennet answer'd like a Man, who perfectly well knew the Family, He should not have ventur'd to have come without it. Upon this the money was paid, the matter was sworn, and the whole Bargain fully executed.

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

The last Person examined as to this Point, was Mr. Thorburn, and he also was treated in a manner different from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine e- nough to expect he should have the Place. But, my Lords, before he was recommended, Mr. Thorburn likewise apply'd to Cottinham, and offer'd 5000 Guineas, Cottinham said he would report; but he was not trufl'd to return an answer. — In the mean Time Care was taken by the Artful spreading of Rumors, That Mr. Thorburn should hear the Chancellor intended to give
The Trial of Thomas Earl of Macclesfield

10 G. I.

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

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

The last Thing I shall mention to prove this Point is an Evidence, to his Lordship, most unexceptionable. I mean the Earl of Macclesfield himself; for my Lords, consider once more his Answer in relation to this very Point. What Caution! What Equivocation! What Confusion of Mind! That could make him even forget the Time of his own Impeachment. What other Circumstances of Guilt! That during the Course of this Trial, they have been visible to your Lordships—Bank Bills taken out in Reg't'd Names, the Secrecy with which the money was paid, the cold Silence as to the Price agreed: One five thousand Guineas in a Basket; another five thousand Guineas left on a Toiler; and lastly, his Own Declaration to the matters almost in a Body; How much they, how much himself might be affected. I submit to your Lordships what Inference is to be drawn from all these Particulars. The Commons are prevailed all flowed from this Principle, That his Lordship, the Malters, the Seller, and the Buyer, were all confest that the whole Transaction was illegal and corrupt.

Before I quit this Part of the Charge, I must take Notice that that of his Lordship's Answer, wherein he hopes that the receiving Presents on such Occasions is not criminal in itself, or by the Common Law of this Realm; and that there is not any Act of Parliament whatsoever, by which the fame is made Criminal. I hope his Lordship intends that the Words, or by the Common Law of this Realm should be understood as Explanatory of the Expiration, Criminal in itself; other otherwise it supposes a very strange Difinition. For surely an Actio cannot be conceived to be Criminal in itself, and at the same Time not contrary to the Common Law of this Kingdom. Is it possible for any one to imagine, that Corruption in the Office is not the necessary Consequence of being obliged to purchase his Place? This is in Swimmis the Reason of the Statute of Edu. VI. Is it possible for any one to imagine, that Oppression of the Subject must not be added to this Corruptio? Or, can the Man, who sells the Place, with no other View than to satisfy his own Avarice, retain his Integrity, and be a fever or competent Check upon the Actions of those Officers, to whom he has sold? And that is the Reason of the Judgment reported by Mased, viz., That the Sale of Office is Malum in se, and therefore finish'd. But when to what I have already referred the Consideration of the Statute 12. Rich. II, (his Lordship will be pleased to add his own Opinion and Apprehensions) I do not conceive it possible to debate, but that the Sale of Offices relating to the Administration of Justice, is criminal in itself, criminal by the common Law, and criminal by Act of Parliament.

The next Point to which the Commons gave Evidence, is the necessary Confirmation of what I have mentioned: I mean the admitting Persons to the Office of Malters, who were of mean Substance, and every unqualified for that Trust. The Evidence given of the Deficiency, now in several of those Offices, is so full and uncontestable, that I shall avoid the Repetition of it, and only justly observe, that Mr. Thurlow, and Mr. Lascelles, in the Report made to the Council, the Orders of the Court of Chancery, and the other Papers upon the Table. Their being deficient at this time in violent Presumption, and that, in Point of Law, is the Degree of Proof, that they were of small Substance; the time of their Admission. How else is it to be except'd that matters, who have been so short a time in their Offices, should be so much in Arrear? King's was admitted but in August 1723, and in 1724 there appears a Deficiency of 25,908l. T. Bonet is admitted but in June 1723, and in little more than a Year there is a Deficiency of 1,675l. And it is remarkable, that both these Malters have sworn, all they were own'd of in the World, and by the necessity of the Order, a Proof of this, as a Malters they gave for their Offices. Yet these два were chuzen out to be trusted, one with near 50,000l, and the other with near 100,000l. of the money belonging to the help-keeper and the miserly. By the bill of my Lord Macclesfield they'd the other Day, in endeavouring to prove a Man illegally worth 1000l. at 1500l. who had own'd himself to be worth nothing; your Lordships may fee it was not want of Knowledge how to make an Inquiry, that made his Lordship neglect it. It was because he never once concern'd himself, whether they had Substance or not. Then himself he was receive, was very just Consideration, either therefore his only Care, for Mr. Bonet has already declared the day never asked him, either before or after his Admission, any one Quotation in order to inform'd of his private Circumstances. And yet, my Lords, thefe are the Men, whom his Lordship, as Mr. Waller has particularly fnown, thought fit in open Court, and while he was sitting in the Secreat Seat of Truth and Justice, to declare Men of a great Fortune, Abilities and Skill, as bad ever fit to sit in Court. I much more readily concur in the Trump of the other part of his Lordship's Declaration, and proved by the same Witness, That he had great Satisfaction in the hearing admitted many of the matters before him. Te Reafon Mr. Weller gave, in order to some qubible Questions of his Lordship's, for his particularly remembering this remarkable Speech, is clear and convincing to everybody. That the Affraiment he was ftruck with, the Hearing, made him to remember it. And happy would it be for his Lordship, it was possible ever to be forgotten.

But what could the Earl of Macclesfield break out into this Panegyric? A Reason so mean, and at the same time so grofs, that I almost wonder even his
Lordship would venture to act upon it in public. A Day or two before this happened, a matter died, and
a new Purchaser was to be invited.
I have just now mentioned the Satisfaction his Lordship had in the Sale of these Offices. The Effect of which was, that the Earl connived at and permitted the unjust Method that was practised, for the purchasing matters to pay the Price of their Offices, out of the money belonging to the Suits of the Court. This Practice the Commons charge to have been notorious, and the Evidence produced to your Lordship proves it. In giving way to this, and Bennet swore, that this Circumstance induced them to become Purchasers; and indeed as to them, the Fact proves it felt, even though they had not favor it be to no. For they have both own’d, they were not able to buy without it; nay, were they show that even the fifteen hundred Guineas, they paid the Earl himself, was out of the Suits money. And thus far the Earl of Macclesfield himself has own’d in his Answer. But also! That would prove nothing, if it was not accompanied with a Fact, that cannot be dif 

My Lords, He has repaid the Money?
After this, I think, I need not repeat the Evidence in minute as to explain the particular method, in which this Fraud was transacted. The whole seems obviously calculated for no other End or Purpofe, than to induce Persons of small Abilities to become Pur-

chasers, by facilitating and making easy the method of Payment. And indeed it was so easy, that I wonder his Lordship did not meet with Persons, who would agree to give one half of the money, for an opportunity of running away with the other. And if they had, I do not see but his Lordship’s Defence would have been just as good as it is now. Such a Price might with as much Reason be called a Perquisite, as his condettioning to take but five or six thou-

sand Guineas, when no one would give more. It is true my Lord Macclesfield does in his Answer say, that he was ignorant of this Practice. But I apprehend his Lordship to be as much mistaken in this, as he has been in other particulars: For, my Lords, it appears by Mr. Bennet’s Evidence, that he not only knew of this Practice, but also concurred in it.

It happened that when this Mr. Bennet delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; Item, In the Hands of Perfon of Ability and Honour, 97 75l. My Lord Mac-

aclesfield, at sight of this Particular, asks him the Rea-

son of it; Mr. Bennet explains it, That as to 175 7l. he meant his Lordship, and as to the Remain, Mr. Hicock, of whom he bought, had detained so much of the Suits money in his Hands, by way of Pay-

ment for his Place, and at the same time he complained to his Lordship of the Hardship with which he had been 

walled. The Consideration that induced him to give in large a Price, was his being immediately to receive a very large Cash; and yet the first time he waited on Mr. Hicocks for that purpose, he could get but 500 7l. and that upon the hard Terms of giving a Receipt for 9000 7l. During this Conversation, Bennet swears, the Earl said with some Concern, That his Accounts were made up the worst way in the World, for every Body would see that, who paid for his Office, came out of the Suits Money, and that what had been so much wished would be more disapproved, and what he himself had taken so much Pains to do, when-

ever he was asked the Question. After this his Lord-

ship and Bennet enter into a serious Confutation, how to make up this Affair. The Chancellor bids him go to Mr. Hicocks, to try what he would do. But it seems he could not be brought to do more, than to lend 2000l. which Bennet absolutely refused, and inflected upon its being given him, or not at all. He reported this to the Earl, who disapproved of it, said, Hicocks should pay the Full, and that he himself would repay the 1575 7l. but it should be in such a manner, as that Bennet should not know in what manner it was done. Most profound politicks this! Bennet afterwards told your Lordships, that he found the Earl intended to trick him out of this money; for several Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordship

should have previously observed, that my Lord Macclesfield was very much offended by Mr. Bennet’s Evidence, and therefore took care to cross-examine him most accurately. But that Fatality which confounds his Wits and Guilt, was so strong upon him, that the Anwers given by this and almost every other Witness, to the Questions prop’d by the Earl, and his Counsel, evidently, as I apprehend, destroy his own Anwer, and confirm our Accusation. But, my Lords, it is not only the Anwers of the Witnesses, but even his Lordship’s own Questions that afford Evidence against him. For, from that part of the Charge am I now speaking? Why to that, where he is accused of being so designing and endeavouring to conceal the Practice of paying the Purchase out of the Suits money. And what does his Lordship think? Did not your Lordship say at this Meeting tell me, that if Hicocks would pay 2000 l., then you would make up the rest your self? By his Lordship’s own Confession therefore, Bennet was with the Earl upon this Occasion; they did talk upon the Subject, Bennet has inform’d your Lordships. Hicocks retaining the Suits money, was part of the Conversation. Else why should he pay 2000 l.? His Lordship did consider how to make up this Affair, and conseqently how to con-

ceal the whole. To this Question of the noble Lord’s Bennet answers confidently with what he had said before, for that he did not say, if Mr. Hicocks would pay 2000 l., that then he would stand the rest. And the Rea-

son he gives is good, He was not worth the Money. Your Lordships remember the other part of the Di-

alogue. I shall only add, that the Earl being angry at this Evidence, asks Mr. Bennet, And how could you, as an honourable Man, after you had a place, could you not worth the purchase money? I submit to your Lordships, wheth-

er it was not as honest for him to buy without Mo-

ney, as for his Lordship to fall without Right.
I have now stated to your Lordships the Fact, as to this scandalous Practice. And I think it can never be thought reasonable to supposse the Earl of Macclesfield only ignorant of what every one knew: Or that he did not know of what he endeavours to conceal. And if it is certainly true, that the Office of Chancel-

lor is an Office of the highest TrufT, it is as true, that every wild Neglect of what is necessary to be done, in order to discharge that Trust, is criminal. It cannot be doubted, but that this Practice was unjust, and fraudulent upon the Suits of the Court.

Hitherto, my Lords, avarice, uncorrected avarice! has been the only Principle of this Earl. In what fol-

loows, your Lordships will perceive Aprehension and Fear begin to mingle in all his Actions; and for this Reason the Bankruptcy of Dormer was to be concealed, that the Clamors of the World might be hushed. It has appeared in Proof to your Lordships, that upon Dormer’s abolishing, the Deficiency in his Office a-

mounted
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mounted to upwards of 52,000 l. for the Account upon
the Table, which reduces the Balance to 49,000 l.,
was made up long after the matters had been
obliged to contribute their share towards the
— When Dornor ran a
way is it natural to imagine, that even this Chancellor
should have turned his Thoughts to the Security of the
Suitors: Not because it was his Duty so to do, but as
Mr. Dornor was a matter whom he had not had the
Satisfaction to admit himself, he might with the more
Security have given himself the Show at least, of
acting vigorously in relation to his Affairs. By the
Evidence that has been given it appears his Lordship's
Behaviour was quite the Reveres, my Lord Maccles-
field, instead of being Solicitous for the Good of the
Suitors, was apprehensive only of the loss that might
happen to himself, he having two or three Pieces of
Property, and therefore signify that gainful Trade he carried on in
the Sale of them. But this Thought was attended with
another Consideration, that this open Acknowledge-
ment of the Bankruptcy of one matter might induce the
World to suspect the Abilities of the rest, and as
he knew what Care, what Circumception he had used upon their Admission, so he was determined to
prevent an Incident of that kind. With these
Views therefore every Step that was taken was my-
erious, and the Deficiency itself with the utmost cau-
tion kept secret; so fere the, that at least the trans-
ferences, his creditors, for that very Reason,
refused to contribute any further towards it. It is a
bottomless Pit, says one; We know not what it is, says another.

The first Step the Earl took was to direct Mr. Roe-
gers and Mr. Hecock to carry on a private Negotia-
tion with Dornor, for his Return into England, af-
furing him in his Lordship's Name, that his Perfon
should not be confined, provided he made an Afferm-
ment and Discovery of his Elate and Effeces. Upon
this Dornor returns, and executes an Affermment; but
I do not find he was ever brought to any
Statutory, or that any of his Creditors attended, in order to
enquire into the Truth of his Discovery. Your
Lordships obverse, that the Promise of liberty was
conditional; but Dornor, and the Earl, tho' for very
different Reasons, were equally afraid of this Com-
mitment; and therefore his Lordship took Care not
to direct any Proceeding, that might lay him under
a Necesity of doing it. If there was nothing else in
the Cafe, this Behaviour was sufficiently Grofs.
But, my Lords, it was ill writ; for Mr. Lichfield has acconnted your Lordships, that for his Infirmi-
ities, his Father, Mr. Lichfield, committed on my Lord Macclesfield, and told him, that he suspected the Account given in by
Dornor was not Fair and Just; and that therefore he
ought to be committed for example's sake. This Wit-
tes added another Circumface, that justifies what I
have before alluded to your Lordships, as the Reason of
the Earl's Conduct. He says, that in this Conver-
sation with his lordship he intimated and gave broad
Hints of his suspecting the abilities of some of the
other matters; he represented that the Year 1720 had
been a very fatal Year, and might affect the matters as
well themselves, as other People; what had been might be, and
several other matters of this Nature. Your Lordships
remember the manner in which this evidence was
given, there was an air of Probability and Truth, that
appeared in it; he own'd indeed, when the Noble Earl
ask'd the Question, for fear, I suppose, left your
Lordships should want Proof of there having been such a
Dikorce, that he did not name any matter in partic-
ular whom he suspected. He did not know how far
an action might lie, and if known, it would make him
more responsible to his Brother, and himself might be made
uneasy in his Office, and several other Reasons of that
kind; and therefore chose to express himself in gene-
ral Terms. Your Lordships will observe that the Earl
was very early in this Resolutions, some way or other
to patch up this Affair of Dornor's, so far as this, as to
make it left his Time: For Mr. Kyngston has informed
your Lordships, that when he was in Treaty with
Cottingham, to be admitted Successor to Mr. Beret, he
objected this very Deficiency of Dornor's as a Reason
why the Chancellor should not insist upon so large a
Sum, since the Consequence of it must naturally
lower the Value of the Office. But he made light of it, and
said, it would soon be made up. Mr. Edwards, who
succeeded Dornor, said he never would have bought the
Office, if he had not been affliged the Deficiency
would have been made good. Here your Lordships
may observe, that the Chancellor, by cross-
examining this Gentleman, laboured to make it appear
that the matters had actually agreed, in all events, to
make good Dornor's effects. Mr. Edwards said, he could not feel so, as he had agreed, be hoped they would, and
by Conversation he had bad, imagined they were inclined
do so, &c. Upon this the Earl asked, From whom
had you that Affurances that it would be done? His
Lordship (ever fortunate in his Questions!) I believe
was not well satisfied with the answer; for says Ed-
wards, I had them from Cottingham and Goofrey. This
Nurture and Qualifications are well known to your
Lordships.

The next Step that was taken, relates to the Compo-
sition of a Debt of 24,000 l. due from one Wijfs,
Banker, to the estate of Mr. Dornor. This Compo-
sition the Commons did over the Earl did direct and
directs, in an unanswerable and clandisien manner.
On the other hand, my Lord Macclesfield does in his
answer say, that it was done in the proper and usual
manner: Your Lordships will judge of the Truth
between us. The Commons, to prove their Veracity, have pro-
duced the original Inframent of Composition, by
which it appears, that this Debt of 24,000 l. was to be
discharged by the Sum of 1,463 l. in money, and an
Assignement of 10,000 l. or a proportionable part of what
should be recovered of a desperate Debt of 22,000 l.
due from one Pouler (who also is a Bankrupt) to Wijfs.

The Introduction to this Affair was thus; Mr. Ed-
wards, to whom Dornor assigned his Effeces, acquaint-
ed the Chancellor that Wijfs proposed a Composition,
but apprehended he had not Power to conclude any
Such Agreement. To this the Chancellor agrees,
and therefore advised him to apply to the Court by
way of Petition for that Purpose. Edwards followed this
Advice, and petitioned the Chancellor, who directed
him to Mr. Hecock, who made his Rep-
port, which being annexed to another Petition, the
Composition was confirmed. In the Answer which the
Earl gave to the second Petition, these Words are
inferred, Of which give Notice forthwith, To what
Purpose these Words were inferred, I cannot compre-
end, unless it was to deceive the poor matter, who
trusted him, into Ruin, by craftily laying a Ground-
work for throwing the blame of the whole upon him,
unless he could divine to whom this Notice was to
be given. For his Lordship took Care not to give any
Directions, as to what Persons, or in what manner it
should be done.—During this whole Transaction
Wijfs was never examined upon Interrogatories: No one
Creditor ever summoned to attend; the Character of
Pouler perfectly unknown, or by what they did
know, they might have reasonably suspected what af-
terwards happened; No Knowledge of Wijfs Affairs,
but what he communicated himself; the first Proposis
tion he made was accepted; no Consultation with any o-
ther of Wijfs Creditors; and to show how useful that
might have been, it has been proved to your Lordships, that Wijfs has paid several of his Credi-
tors their whole Debt.
This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtless he imagin'd, that tho' more vigorous measurers might secure more money, yet they might at the same Time make the Circumstances of the Court too public; for, at that Period Lord Holland took abundantly Caution to prevent any of these Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of these Facts appears upon any Record or Register whatsoever; the Whole was a private and clandestine Transfusion between his Lordship, two or three masters and the Bankrupt himself. Your Lordships have a Certificate from the proper Officers for what I now say, That none of those Petitions, Resolutions, Orders, were ever regularly drawn up, or filed. My Lords, this Caution, this Secrecy, this Mystery, is a strange Way of proceeding for Justice and Equity; but, if the contrary be supplied to have been his Intentions, the Whole is of a Piece, natural and confident.

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

My lord Macclesfield himself might possibly insist with the Approbation of those masters, on whom he vouchsafed to fulfil: Both he and they seem to have considered themselves as in an Interest separate, and quite opposite to that of the Suitors. His View was to keep the Circumstances of the Court secret, and to prevent any Thing that might happen to leffen his Profits in the Isle of Places: This was to retain the money of the Court in their Hands, and for that Reason to hold any public Clamour that might occasion the taking it away. I think I am not mistaken in this Conjecture, because I find his lordship himself was of the same Opinion: For this was the great Artifice and Machine, which his lordship employ'd, to terrify them into a Contributio of 500l. each, to supply the Deficiency of Durner's Office. To shew how much this Covidity of the money was in the masters Thoughts, your lordship will be pleased to remember, that all the same Time his masters own'd, that it made a very considerable Article in what they call'd, the Profits of their Places. Mr. Holford (on whom the only blemish I know, is the misfortune he has had of being a master acknowledg'd, in answer to a Question propof'd by a Noble Lord, That he understand'd it is, for he never propof'd to lock the Money up, but to employ it for his own Use. In fact, it was what the masters bought, and what the Chancellor sold, or rather, Widows, Orphans, Lunatics, the Wards and Suitors of the Court were the wretched unhappy merchandize, in which the Earl of Macclesfield thought fit to deal. When Kyngston was to buy, he sweares that Cottingham, or Rider, or both, recommended it to him, and was the Senior Office, and therefore the best. And Cottingham, in so words, the first Day of this Trial, that he had acknowledg'd to a Committee of the House of Commons, that he paid to Mr. Kyngston, You have purchased a very good Office; for there is a great deal of Money in it. But, my lords, the Thing proves itself: Consider the Nature of the Office, the attendance and labour that is required; deduct the unlawful Intereit made of the Suitors money; how can the honest Fees (even supposing it lawful to be) worth 6, 7, 8, or 900l.5 gave this for my lord Macclesfield to explain, and shall at present take it for granted, that the masters esteem'd the Covidity of the money to be part of their Bargain.

That there was, in fact, a Contribution by the masters of 500l. each, is evident from the Receipts now upon your lordships Table; and Mr. Holford fully explains the method that was taken to draw them into it. And, receiving a Day after the Report of Durner's Bankruptcy, an Order from Mr. Cottingham to prepare and bring in his Accounts to the Chancellor; soon after that, it was intimat'd to him, that a Contribution of 500l. was necessary towards supplying the Difiency of Durner: Upon which he paid his money, and his Accounts (that ready, as he sweares expressly) were never afterwards called for. Lightham was another master, who received Orders to prepare his Accounts; but not paying his money, Cottingham, some short Time after Durner broke, ask'd him if he had not heard of the Proposal to contribute 500l. Lightham own'd he had: Cottingham then said, 'twas necessary to raise some money to go on, and that, if he contributed, possibly the money might be repaid. Still Lightham was indolent, and said it was a dangerous Step, and he would not pay the money. Upon this Moral, he inform'd your lordships, that he was look'd upon as a very troublesome Fellow, among the masters, and little Arts were us'd to make him uneasy in his Office: But when this likewise prov'd inefficient, the Earl himself, at last, confedentiaf to talk with him, and in the beginning of the Year 1723, he was taken into his lordship's Study; and the Earl told him, he was sorry to hear he did not now attend him to consider the Consequences, and how dangerous it was, not to take Care of Durner's Affair. Upon this, Lightham still refused to pay, saying he did not know how far a Contribution of this Kind might be contriv'd to be an Undertaking of the masters to answer one for the other: At the same Time he boldly and honestly represented to the Chancellor, how cautious his lordshipought to be; that this method was no Cure for the mischief; and that as to its being propof'd by the Senior masters, 'twas no Argument to him, and ought to raise some Jealousy in his lordship, since they were visibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of selling their Places at great Rates; and a great deal more to this Purpoe; and concluded with a peremptory Refus'd to contribute.
However, as the other matters paid their money, the Earl was not discourag'd, but depended upon it that some Time or other (as he told Mr. Edwards) he should be able to force Mr. Lightburn to comply and therefore, as he thought; he had by this means contriv'd a Fund to answer any Demands upon Mr. Dormer's Office, he went on, just as if there had been no Deficiency at all. By the Orders that have been read to your Lordship, and by the Evidence of Mr. Edwards, who paid the money, it appears that he made several Orders for the Payment of money, without any Regard to that due Proportion all the Suitors of the Court were entituled unto. His lordship in his Answer says, It was not incumbent upon him, ex officio, to declare an Average. If it was not his Duty, my Lords, for God's sake, whole Duty was it? This is too gros to be a Sin of Ignorance, A Barrister of but a Term's standing knows, very, it is obvious to the lowest Capacity, that where several Perfura have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the same Foot, and be paid in an equal Proportion. Mr. Lightburn, Mr. Edwards, both represented to him the Hardship of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, losing his whole Debt. The Reason therefore of this otherwise absurd Proceeding could only be, that the Declaration of an Average would publish that Deficiency to the World, which he had so farre to many Stratchments to conceal.

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

Your lordships know the Contract that was made between the Chancellor and the matters: I therefore shall not waffle your Time in mentioning Evidence to prove, that they, who gave such vast Prices for the Custody of the money, did not neglect the Opportunity of employing it for their own Use. The Proof is but too visible: They who are rich, confes it; and they who are poor, dare not deny it: It was the neccessary Consequence of his lordship's Extortion; and that part it out of their Power, to take those Measures that were neccessary to prevent that Practice. The misfortunes of the South-Sea Year were so univeral, that surely any Man of even common Sense would have been upon his Guard: My Lord Macclesfield knew, that these matters gain'd with the Suitors money themselves, or for an extravagant Interest lent it to those who did: He knew that this was the Occasion of Dormer's Deficiency: He knew that the other matters had it still in their Power to do the same; therefore he permitted it: He took no measures to prevent it; that he expected it.

But what could engage this Earl (whole Understanding is no wife question'd) after so fair a Year, thus to rique his own Character; and was perhaps he values more, his own Fortunes not only upon the Understanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, as the Borrower is to the Lender, so a corrupt Cancellor is the Servant of his confidential Officers. He don't put a flop to their Practice (the his own Eulate was embark'd with them) left Reputation and Revenge should make them discover the infamous Secrets, with which they were entrighted. How durst he demand Security from those whom he had admitted, knowing they were able to give none? Surely, my lords, no Reason, but such as I have now mention'd, could induce his lordship to neglect (and a long neglect amounts to a Refusal) the obliging these matters to give Security, or else to call them to a first Account, as to their Cafes and Securities, after he had been inform'd by Mr. Lightburn, that some even of the matters were to be fuspeed. But Mr. Lightburn this Day went further; he represented the Danger of trufting Men with vast Vatts: That this Credit had been the Occasion of all the Lofes in the Court, and therefore propound a Scheme of Security, to prevent any Lofes for the future. The Chancellor did not absolutely reject this Proposal; that was too gros even for himself: He therefore defines Mr. Lightburn to put it in Writing; 'Tis done; and his lordship most carefully kept it by him for two Years, without taking any notice of it. But, my lords, there is one Circumstance in this Neglect, that in Equity (and surely a Chancellor will not decline to be tryd by that Rule) makes his lordship answerable for a very large Sum in one Cafe only, without entering into any the other Consequences of his Crime. Mr. Kyngdon, your lordships remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my lords, this very Kyngdon did, in the Year 1722, propose to his lordship, to give land, or other Security, for the Effects with which he was entrighted. I know his lordship will object what this Gentleman has before sworn, in relation to his own Circumstances: But what is it? the Suitors, whole Land it is, provided it be pledg'd for their Safety? 'What Answer, my Lords, ma'ter give to our Fellow Subjects, who are undone, I will not say by Kyngdon's and its other matters Deficiency, but his lordship's own wilful Neglect? I will not take up any more of your lordships Time upon this Head. In what I have already mention'd, it is proved, notwithstanding what the Earl in his Answer says to the contrary, that he knew the matters converted the money of the Court of Chancery to their own Account. And he himself owns, that he did not infall upon any Security from them. In a late Order of his own making, he has recited it not to be usual in the Court of Chancery,
for High Crimes and Misdemeanors.

Chancery, for the matters to give Security; and therefore in his Answer covers himself under the Practice of his Predecessors. My Lords, the Re
geniallnes and Necessity of this depends upon the Graciation of the True consent, and the Qualities of the Persons intrusted. In Dr. Ed
diffray's Cafe, tho' there was a Spot, yet there was no Lofs, for his Eftate prov'd sufficient to an
ter all Demands. And therefore his lordship's Argument, in my Approbation, amounts to this,
That because his Predecessors did not infit upon Security from Perfons who wanted none, there
too might justly enfract tho' who were able to
give none.

My Lords, I am come to the left Head of our Charge, and your Lordships will now fee the Earl at Macclesfield abandoned to all his own to her; even
Avarice forfalsifies him. The Dread of a Parliamentary Inquiry fits heavy on his Mind; and I firmly believe, he now repents his having illegitamely taken
this money, because he parts with it to prevent, if possible, that Punishment he most justly de
cares for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is
now bent how to ward off their coming into Par
liament.

The first Influence of this appears in the Cafe
of Mrs. Clotty. The Fact is this: An Order was
made for the Payment of 1000 l. to her, Part of a
5000 l. upwards of 11,000 l. he now stands with
which hehatches his Tail into the Hands of Mr. Dar
ner. She, it seems, affirms this Order to a very
important Solicitor, one Mr. Lockman, who, as
he has told your Lordshipp, diligently purfals'd
the Chancellor from London to Keffenngton, from Keffen
to to Wigtimber-Hall, and the Court of Chancery
is left. He represented to his Lordship the Cir
cumstances he was in; that he had compounded some
Sandt Sea Contracts, and absolutely wanted,
and infited upon his money to compleat his agree
ment, and for himself at Liberty. The Chan
cellor finding himself to prefer'd, was at last forc'd
to promitce him, that he would take care to get
the 2,000 l. out of his 11,000 l. and that, if this he founds meet
ing of the matters, in order to persuade them to
pay the mony, by a Contribution of fifty Pounds
every; and in the mean while it had been given
out among them, that such a Contribution was
expected. Cottingham himself, as Mr. Lightbown
says, told it to him, and at the same time made a
telch Demand of the old Sum of 500 l. and sh'd him what Anfwer he would send to the Chancellor.
Lightbown prudently replies, he would deli
ver his Anfwer himself; and in the mean while
he applies to the other matters, tells them the ill
Consequences of what they had done, and works
then to the Chancellor, not to comply with this
their fresh Demand. He defies 'em not to give
the Chancellor false Hopes, but to speak their
mind freely. And thus prepared, they all repair
to his Lordship's House. I need not upon this
Occasion repeat the Names of the Witnessers, for
all the matters preface concur in giving the fame
Tontimony. His Lordship began the Confe
rence with asking Mr. Lightbown, in a very angry
Tone and manner, why he did not pay his goll.? Who reply'd, he had often told his lordship the Rea
son, and that he neither could nor would pay, and
was charg'd in his Resolution, by his having once
heard of it. And then more fully explained their
Compliance. The Earl, without regarding Light
bown's Reason, propos'd the Necessities of the Court
to the other matters, in relation to this 1000 l. The
matters not seeming willing to comply, he us'd
many Argument to persuade 'em to it: He defies
'em to consider the consequences; the occasion pre
fes,

and Lightbown grow strong; and if this Affair was not taken care of, Darners Deficiency must break
out, and therefore when he proposed, was the only
way to prevent a Parliamentary Inquiry.

Upon this Lightbown interpos'd, and said. If it
was fo, he could not help it: That he had rather
lofe the keeping of the money and Securities, than
hold it upon those Terms. The Chancellor repli
d, But that is not the worst: Suppose the House
of Commons should in a Committee of Jucifce resolve, that your Offices relate to the Ad
ministration of Justice; that the buying them is contrary to the Nature of Edward VI, and there
fore forfeited. Confidger (says he) the it may affec
me, as to the Disposal of those Places for the future, yet it will affect you much more in the
Lofs of your Places; and therefore, upon the whole,
defire them to agree to the Contribution.

My Lords, the Musters were Proof against his
Lordship's Eloquence, and was a judiciously to com
ply. Upon which the Earl was struck, and with
a vast concern said, Then I will pay it my felf. What
Guilt, what Fear, must this Noble Earl be faflible
of, to thus part with that money he had fafisfied
his Honour to get it! In this manner the Earl parted with his matters, and Lockman re
turns again to the Chancellor, and at last meeting
the Chancellor in the Room behind the Court,
he got a Promifce from him, that Mr. Cot	tingham should pay the 1000 l. But at the same
Time his lordship (I suppose) to get rid of trou
blesome a Suitor) advis'd him not to engage with
the Widow Clotty; for if her money in the Court
of Chancery was all her Fortune, that Sum was all
she was like to have. Soon after this, Cottingham paid
the mony. But it seems he forgot to defire Lock
man to keep the Secret; he told it about too much,
that Cottingham meeting him rebuk'd him for it,
saying, Can't you fare well, but you must cry Rooff Month? Then the Earl, as he saith, prepare'd
that the Earl endeavours to fly, by Croft-exam
ining, that he had generously given this 1000 l.
to. Mr. Lockman, out of meer Charity and Com
passion to his miserable Circumstances. Lockman
reply'd very raoningly, that his Circumstances
were not so to low as to want his Charity; for he
did not think it a Favour that he was paid his own.

The Evidence I have now left mention'd to his
lordship, even without the Affidavit of other
Proof, almost maintains the whole Charge. By the
Tontimony of a Council of Witnessers he lord
ship refles the Sale of Offices, and owns that
Sale to be illegal: He acknowledges his being acquai
nted with Dome's Deficiency; and at the same
time endeavours to conceal it: He in a manner
conceals his own Guilt, pronounces Sentence upon
himself, and therefore propo$es methods to prevent
a Parliamentary Inquiry.

But, my Lords, there is stillmore behind: There
is not only a Connection among the Articles, but
the Crimes charg'd 'em rise upon each other. Hi
therto his Deceit has extended only to the Subiect,
but now he attempts the Throne it self. His Ma
jesty gravely directed an Inquiry to be made into
the Circumstances of the Court of Chancery. His lord
ship knew that this was useful. Houseof Commons would
not interpose in the Affair, till his Majesty's Com
mands were obey'd, and therefore he now fummons
all his Arts and Skill to ward the Blow, and deceive

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his Majesty into a belief, that the World had taken a false Alarm; and that the Circumstances of the Matters were much better than they were represented to be: That they were able to supply all Demands; and that consequently the Suits of the Court were no longer dangerous. His Agents are few, among themselves, to encourage them to stand by each other; that they should make a bold stand, and defeat the Devises of their Enemies. He himself becomes their Counsellor, and advises, and (without Inquiry, or Regard to either Truth or Justice) he persuades them to make such a Subscription to their Accounts, as might mislead the Council in any Report they should make to his Majesty.

All his Thoughts, Counsels, and Measures, are now swift and precipitate. Your Lordships have heard Evidence of the several Discourses of Catt, and Dison, the meeting of the Matters at Mr. Edwards's, and the last Conference with the Chancellor himself; all within two or three Days of each other, and all tending to the same End, of deceiving the King, and preventing the Parliament. My Lords, all the matters concern the meeting at the Chancellor's House; when, it seems, his Lordship, upon considering their several Accounts, declared his Appreciation of Mr. Hefford's Subscription; and without any leaf Inquiry into their Abilities and Circumstances, he advised them all to make the same Subscription as Mr. Hefford had done.

Your Lordships have likewise heard it proved, that the matters, in order to make a Show, were advised to affit and stand by each other. Benten and Cawney are both Instances of this Counsellor's being put in Practice; and—But why should I abuse your Lordships' Patience with particularly re-capitulating the Evidence that has been this Day given? I observe the Attention with which it was heard, and any Thing I can say, will only weaken that Impression it must naturally have left on your Lordships' minds. I shall therefore conclude the Whole with an Observation from the Parliament-Roll of Henry IV. Complaints and Snufflets being to the Commons, Judgments being to the Lords, and Relief is the Duty of the Counciil.

My Lords, The Commons have now dioccharg'd their Duty; they have declair'd their Grievances, explain'd the Crimes, and produced the Offender. They are affair'd the King will of his Fatherly Goodness, grant a jull Redrefs, and apply a proper Remedy; and they doubt not your Lordships will pronounce a righteous Judgment.

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

Wednesday, May 12. The Fifth Day.

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

L. G. J. King, Gentlemen, You that are Council for the Earl of Macclesfield, may now proceed.

Mr. Serj. Paddyn.

May it please your Lordships,

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

My Lords, When I consider the Importance of this Charge, in respect to the Noble Earl impeach'd, the great and wife Conduct of the several Gentlemen of the House of Commons, who are intrusted to manage the Prosecution, and the great Variety of Arguments they have used to enforce and aggravate their Charge, it is with the utmost Concern that I presume to appear before your Lordships in his Defence; but that I am well affered of the Truth and Justice, the Strength and Fulfeful of the Defence which may be made in his behalf, but out of real Concerns of my own Inability to discharge so great a Truth.

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

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

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

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

The impeach'd Earl is pursued back from his late Refignation of the High Office of Lord Chancellor, through every Stage of the Publick Life; and, with inquisitive Eyes, they have also viewed and pry'd into his most private Transactions, so as not even the least Indication has be candidly observed.

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

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

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

The principal Objection that seems to be rely'd on by the learned Managers, and the only one which I humbly apprehend can any Way affect the impeach'd Earl in the present Cafe, is, that possibly he may have been too easily lead into a good Opinion of some Persons, who in the Eye of the World appeared
appealed to be Men of good Substance, and fair Reputation, Persons that were recommended to him by others of understood Honour and Credit; that he has admitted these Persons into Offices of great Trust and Profit under him; and they have at length been found not to have deserved the good Opinion, which he at first had been persuaded to entertain of them.

Some of these Officers have been negligent, others unfaithful in the Discharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron. And, in regard the principal Complaints against the noble Earl are founded upon the Disposition of the Offices of Malters in Chancery, therefore it has been thought necessary (in the Preamble of the Articles exhibited) to represent the Malters in Chancery as Officers of very great Trust, sworn to serve the King and his People, and associated to the Lord Chancellor by particular Commissions, for his Affiliation in the due Administration and Execution of Justice.

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

They fit indeed in Court, at proper Distances, much like the Chancellor, and sedulously attend his Aflotions, but never pretend to advise or interfere in Judgment.

They have likewise the Honour to be named in Commissions of Association to the Lord Chancellor; but the whole Body are not always named in such Commissions, but only such particular Persons as his Majesty is pleased to think fit. And this appears from one of the oldest Commissions that has been produced and read before your Lordships, I think it was the Commission granted to Robert Somerset and others the 5th of October, 4 Edw. VI. where in there were not more than four or five of the Malters named, that I believe in the later Commissions their Names are usually all inflected. But what Power or Authority is given them by this Commission? None at all, that they can execute of themselves in the Absence of the Master of the Rolls, or none of the learned Judges named there in; for the Judges and the Master of the Rolls are only included in the Quorum.

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

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

They examine and state such particular Matters and Facts, as the Court is pleased to refer to them, for its better Information, and which the Court it felt has no Time to look into; they settle Accounts depending between the Suitsors of the Court; they look into, and take the Counsel's Opinions upon Titles of Estates between, and by Order of the Court; and they tax Costs.

This seems to be their principal Concern; and yet in this they are not absolute Judges, they determine nothing finally; for when they have made such Enquiry as the Court directs them, they only certify their Opinions of the several Matters referred to them by way of Report, which Report is not conclusive to the Parties; the Malters only, who thinks himself aggrieved by such Reports, may take Exception to it; and the Court, on hearing such Exception, will consider the Malters' Report, and determine as they think just. And in case the Parties themselves do not controvert the Matter reported, but totally acquiesce and submit to it, yet is not the Malters' Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Stinement from the Order of the Court, and its none without it.

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

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

The Earl in his Answer admits, That on the fourteenth of May, One thousand seven hundred and eighteen, he took the Oath of Office as Chancellor, which is set forth in his Answer; that at the same Time he took the Oaths of Supremacy and Allegiance, but not Oath of Office, except that above set forth.

To this Part of the Lord Earl's Answer, the learned Managers are pleased to object, That the Oath preferred by the Statute of Richard the Second, had been frequently administered to the noble Earl, but that he had forgotten that Oath in his Answer, as well as in his Con duct and Practice.

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

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

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

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

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

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

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

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

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

So, if this be consider'd as an Oath, every one of the great Persons that have taken it, must be indispensably obliged not to give any Office to any Person that hath even asked, or made Application by himself, or any one in his Behalf, for that or any other Office without his Consent.

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

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

This Charge, my Lords, must be confined to some reasonable Time, wherein these other Oaths charged must be suppos'd to be taken; I apprehend it can relate to such Oaths only, as the noble Earl took at the same Time, when the general Oath of Office was administer'd to him.

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

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

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

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

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

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

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

That in March, One thousand seven hundred and eighteen, his Majesty was pleas'd to appoint him Lord Chancellor, on the 14th of the said Month of
As he has received large Bounties from his Majesty, he has been abundantly liberal to Persons that were proper Objects of Charity; and his Purse has been always open to succour and relieve the Distressed.

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

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

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

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

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

In Mr. Madox’s History of the Exchequer, Page 42: we find that Robert Fitz Allerred, in the Time of King Stephen, fined fifteen Marks of Silver, that he might fit with Ralph Boffest to hold the King’s Pleas; and in Page 743 of this Book it appears, that Ralph Boffest was the King’s Juecier. Here we see one of the Juecies of the King’s hand purchasing his Office for fifteen Marks in Silver.

And
The Trial of Thomas Earl of Macclesfield, 10 G. I.

And in the same Page of the said Book it appears, that in the seventh Year of King John, Walter de Gray gave the King five thousand Marks pro barena Cancellaria Dominii Regis into vita sua, & pro bakena tidsn Charta Domini Regis.

Thefe, my Lords, are great Inflances what the ancient Ufage was, in purchasine even the highest Offices of Justice.

Inferior Offices were doubtlefs disposed of in the fame manner; and if this had been thought Criminal, we fhould have had fame Inflances in our Law Books, wherein they would have appeared to have been adjudged for.

I beg your Lordships leave to conftider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of Edward VI. which has been taken Notice of by none of the learned Managers.

By the 5th and 6th of Edw. VI. c. 16. it is Enfrated, That if any Perfon or Perfons fhall at any Time thereafter bargain and fell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which fhall in anywift touch or concern the Administration of any Office or Offices, whatsoever, these Perfons fhall flall be bargain and卖给, or take any Money, Fee, or Reward, for fuch Office or Offices, fhall not only lose his Right, Intereft and Eftate in fuch Office or Offices, but alfo every Perfon and Perfons that fhall give or pay any Sum of Money, Reward, or Fee, fhall be adjudged a defbalad Perfon in the Laws, to have, occuny, and enjoy the faid Office or Offices.

This is the Purport of this Act of Parliament, fo far as it relates to the Offence charged in these Articles; and I apprehend it cannot be extended to the-prefent Café.

Here are no prohibitory Words that Perfons fhall not bargain and fell Offices, nor any Words declaratory that they could not do fo before, by Common Law.

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

But on the contrary, by the many Provifions after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and fell without Offence, and many Offices are authorizd and intended by the exprfs Provifions of this Act, to continue to be bought and fell for the future.

For the firft Provifio in this Act, it is declared not to extend to any Office of Inheritance; which is an exprefs Declaration that Offices of Inheritance were to be bought and fell even after the Act fhould take place.

The second Provifio I apprehend is stronger to our Purpofe; for by that it is declared, That this Act fhall not extend to any Contract made or a-greed before the firft of Adreth then next, but all fuch Bargains and Contracts to be good, as if the Act had never been made.

And, my Lords, there is yet a further Provifio, That this Act, or any Thing therein contained, fhall not extend, or be prejudicial, or hurtful to any of the chief Offices of the King's Courts, commonly called the King's Bench and Common Pleas, or to any of the Justices of Affize, as now be, or hereafter shall be, but that they and every of them may do in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithstanding.

What is that which thefe great Officers of Justice might have done before the making this Act? They might have given, granted, bargained, or sold, the refpective Offices under them, in fuch manner as they thought fit; and by this Provifio they may continue to do till.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that fhall buy or fell Offices, not contained in any of the refpective Provifions; that is, the Contract made between the Buyer and Seller is declared void: The Party felling lofes his Eftate and Interest in the Office; and the Party buying is rendered incapable to hold and enjoy it.

In Case's Café, Cor. Jar. 644. it was adjudged, That when a Statue appoints a Penalty for the doing a Thing, which was no Offence before, and appoints how it fhall be recovered, it fhall be punifhed by that means, and no other.

Therefore, my Lords, in the prefent Café, supposing that the Prefentns proved to be fometimes made to the impeached Earl, upon the Nomin- tion of Mallers in Chancery, can be interpreted a felling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Punifhment than what the Act it felf directs; and this the Noble Earl has already fuffered by his Loss of the Great Seal. The Statue inflicts a Penalty upon the Seller of an Office, only of forfaking the Nominatlon to the Office for the future; and no other Penalty or Punifhment ought to be inflicted by virtue of this Act of Parliament; and confequently the Offence, as now charged against the Noble Earl, and the Facts, as proved before your Lordships, cannot subject him to any Punifhment or Judgment, that can be prayed in this Prosecution, upon the prefoft Articles of Im- peachment.

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

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

The Precedent is too anfient, for us to difcover when it was firft made; and I humbly submit it to your Lordships, that the immor- tal cofant Ufage and Pratice of it in all Ages fince, will sufficiently eftablfih the Rea- fonableness and Justice of the Precedent.

The fame Objection, which is now made a-gainft the Noble Earl impeached, in this particu- lar Instance, might undoubtedly have been inflicted upon every one of his Predecessors.
And I doubt not but we shall be able to prove, that those Officers have made Prefents to the Great Seal, as frequently and contantly as the several Vacancies have been supplied.

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

This Objection, my Lords, some of the learned Managers of the House of Commons were well aware of; and therefore they have endeavoured to distinguish the present from the preceding Cases. They admit it to be true, that small Sums have been formerly given to, and accepted by former Chancellors, upon this occasion: they are of the Compliment or Prefent, and this without a Crime: But then they urge, that the Sums now complained of are exorbitant; they are bargain'd, haggled for, and given unwillingly by the Purchaser; and that there is a great difference between a Prefent given, and a Price bargain'd for and paid.

My Lords, I can't deny but that this Distinction is just: A Prefent implies a voluntary Gift of something less than the Value of the Thing given, or promised, for which that Prefent is to be made; a Price, the full Value of the Thing contracted for. I think the Earl's present Cafe is exactly within this Distinction, and justifies the Earl's Answer in this respect.

The Prefent which Mr. Knyffes made to the Earl, upon his Admisson, was One thousand five hundred and seaveny five Pounds. The Price he paid Mr. Rogers for the Purchase of his Office, was no les than fix thousand Pounds.

The Prefent which Mr. Thomas Basset made to the said Earl, upon his Admisson, was One thousand five hundred and seaveny five Pounds. The Price he paid Mr. Basset for the Purchase of his Office, was even thousand five hundred Pounds.

Mr. Eldo, upon his Admission into the Office, upon the Death of Mr. Fellows (the former Master) made a Prefent to the late Chancellor, of five thousand two hundred and fixy Pounds. But when his Lordship confider'd the Greatness of the Sum, he return'd him all but eighteen hundred Pounds: When at the fame time Mr. Lucas offered six thousand Pounds for the same Office.

Mr. Thorley has alfo proved, that he left Bank-notes to the amount of five thousand two hundred and fixy Pounds, and received in a Letter at the Earl's Houfe, before his Admisson, upon Mr. Berret's Death. But when the Lady, to whom the Letter was directed, difcovered how great the Sum was, and without any Application made her for that Purpofe, return'd all but two thousand Pounds.

And this, my Lords, was done before the Seal, before Mckenzies-Term laft, before the Maffers were ordered by the Privy-Council to give in their Accounts; and when the prefent Prefentation was not in any fome apprehended: And it is like- 

wise proved, That Mr. Lucas, upon this Occation, renewed his Offer of Six thousand Pounds for the Office; and Mr. Thorley was admitted for a les than Sum of Money.

These, my Lords, we humbly hope and infit, are not Infinces of a corrupt Mind, an avaricious, rapacious Temper, fuch as fome of the Gentle- men Managers have been pleaf'd to represent them. On the contrary, we humbly hope, that upon the Evidence already given, it plainly ap-

ears, that thefe Payments were not Sum of Money extorted and unwillingly paid by the Ger-
tlemen, who were admitted into the feveral Of- fices that have been mentioned, but Prefents vo- luntarily made, and pref'd upon the Earl impref'd, with force and prefumption, and that the Laws, that at the Time were offered, the Prefons offering thought they were not equal to the Value of the Favour they expected. And their Im- portunity was fo great, that Mr. Thomas Bennet one of the prefent Maffers, that has been fo often examined, would endure no delay, but impatiently pref'd to be sworn into his Office, at a time when the late Chancellor was fick, and by his Physician thought to be dying. This may rather be faid to be extorting a Favour from the impeached Earl, than Money from Mr. Bennet, eu'n upon his own Evidence.

My Lords, we do humbly infit, That as the noble Earl within your Bar was not conficious of any Crime in accepting thefe Prefents, fo he is justified in fo doing, by the Example of many suc- cessions of great and learned Men, who have done the fame in the like Cafe. And should this now be adjudged Criminal, what Numbers of very good and juft Men must be involved in the Impregnation of this Guilt? It must necessarily spread an un- 

iversal Cloud of Infamy and Reproach over the Ages of many juft and upright Judges of the Law, whose Memories have luther been preferred as venerable and sacred; Men who defpif'd Ruines, and abhorred the remotefl appearance of Bribery, and never were, nor were suspected to be Corrupt; yet thefe Men thought it a juft Duty, owing to themselves and Successors, to adhere to the known and juft Rights, the ancient Established Fees and Perquisites of their Offices; and believe'd it a juftly due to them, as the Salaries which were annexed to their paid Offices.

My Lords, We shall beg Leave to fhew that this has been the ancient Usage and confantly ft-cific of all Ages; and that the feveral great Prefons, who fecuively have prefided in the greatest Courts of Law and Equity, from the earlift Times to the prefent, have cliifed of the feveral Offices in their Gift, as they became vacant, for Money.

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

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

The Opinion and Judgment of fo many learned Prefons must have very great Weight in a Cafe of this Nature; and if in Britifh Law it can't be faid to justify the Action, it will certainly very much Ex- temate the Guilt.

In the next place, the Gentlemen are plea~ed to proceed to shew, That Maffers in Chancery, being, as before repreffed, very great Officers in that Court, the noble Earl within the Bar, for his own corrupt Gain, has admitted Prefents into that Office, that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for fuch Prices.
This, my Lords, is urged as the greatest Inconvenience, That Men who have no Substance of their own, should be trusted with such large Sums of other Perfon's Money.

It is infifted, That honestly, Prudence, and good Subfidence, are absolutely neceffary for the Suitors Security; yet inferior Perfons have been put in by his Lordship, who had little or no Substance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors Money; and that this was known, confirmed at, and encouraged by the noble Lord that then prefided in the Court of Chancery. This therefore could only be with a View to enhance the Price of those Places: For what should not People hazard, who had nothing of their own to lose? If any Profit could be made, it was their own; if any Loses, the Suitors; for no Security was given to answer the Effects in their Hands.

My Lords, it must be confefled, that this way of Arguing has a very popular Appearante, and finds an easy Access to every Ear.

The Court of Chancery must be admitted to be the greatest Court of Justice in the Kingdom: And it must be alfo admitted, That the Bufinefs of that Court has of late Years increafed, in Proportion, more than any other Court; and confequently, much greater Sums of Money are now deposited in the Hands of the Mafhers of that Court, than formerly.

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

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

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts againft Precedents, againft ancient, concurrent, uniform Precedents and Pracfices, is without Excufe, and juftly to be fufpected of SOME particular View, in the Language of the preffent Artide.

The Earl of Macclesfield, when he was firft in- trufted with the great Seal, found the Suitors Money in the Custody and Care of the Perfons who were then Mafhers of the Court, and without any Security given or demanded for it.

He confider'd, that his Predecessors were a Succeffion of Great and Honourable Perfons, of equal if not greater Sagacity and Learning, Prudence and Experience, than any that ever had fate in any Court; they found the Mafhers in poffeffion of the Suitors Money upon the fame Establishment, and they left them fo.

Was it proper or prudent for him to oppose his fingle Opinion to the united Judgment of fo many wife and great Men that had gone before him? (urely, no. Inconvenience had been seen before, and Deficiencies had happened, and tho' Deficiencies had been supply'd by a voluntary Contribution of the other Malters then in Being, Why was not Security then demanded? and why not all the other Malters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, if it may, be possible, to be done, at leat upon the fingle Authority of one Lord Chancellor. And that therefore is a good Excufe for the omission or Neglect in that Particular, in the preffent Cafe.

But, my Lords, it is now objected, That as the Sums of Money in the Malters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Malters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Perfon's to be admitted Malters, upon Vacancies and Reafignations. And therefore another part of the Charge against the Honourable Earl impeached, is, That he appointed Perfons to be Malters of the Court, that were not proper or fufficient either in Substance, Knowlege, or Prudence.

These are said to be all essential Requiements in the Character of every good Mafter; but greatly neglected in the preffent Cafe: And a Reafon is given, or (if I may presume to fay) rather invented, in the preffent Cafe, that it was the Advantage of the Earl impeached, to put in fuch unqualified Perfons; because fuch Perfons would be drawn in, to give larger Prices for their Places, and confequently be recompenced to the Earl's Advantage.

My Lords, I must beg Leave to observe, that in the Evidence that has been given, there has not been any one Infance proved (or at leat, that I can recollect) that any of these Malters were really Inufficient in any of the Particulars objected to, at the Time of their respective Admissions into their several Offices; or at leat that the noble Earl impeached, knew that they were Inufficient, or had any reafon to fufpect it: They were all Gentlemen of good Families, well Educated, or at leat in both of them a Barrister at Law (which, I submit to your Lordships, is not the leat expenfive Education) and had all fufficient Fortune, and appeared as Perfons in very plentiful Circumstances.

Even Mr. Caccav and Mr. Thomas Bentit (who are the Perfons intimated to be the leat qualified in Point of Fortune and Subfidence) had at that time very good Eflates in their Possessions; Mr. Bentit had then alfo a very valuable Office, Clerk of the C打算s: had married a Lady of considerable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir John Bentit, theo' a younger Son; and the whole Family then feemed to be in a very proper Condition. Mr. Thomas Bentit has proved to your Lordships, that he was worth twenty thoufand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever informed of any Incumbrances upon his Eflate; (except now, he fays, there are great ones) or that his Circumstances were leas at the Time of his Admission, than in the Year 1720. Sorely then the late Lord Chancellor had at that time no reafon to fufpect his being unqualified in Point of Subfidence. Mr.
Mr. Conway had also then a very good visible Estate in Land, an Estate of Four or Five hundred Pounds a Year; had been Receiver-General of several Counties in Wales, had discharged his Office punctually, and produced his Quittance to the Lord Chancellor, before Admission.

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

Mr. Towneley, I think, the Gentlemen of the House of Commons don't object to in any respect.

None of their Refractories, in respect of their Proceedings, have been called in question, till their late Misereries: And as to their other Personal Enforcements, their good Sense and Judgment, I need only refer to your Lordships' own Observations, upon their several Examinations in the present Trial.

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

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

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

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

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

This, my Lords, we humbly submit, has been the ancient Usage and Practice of the Court in these Cases; and that the same Method was used by the present Earl Impeached, the same Care taken, as had been formerly in the like Cases by any of his predecessors.

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

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

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

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

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

The two Senior Matters immediately were directed to enquire into his Effects, secure his Chambers, and put a stop to all transacts in his Office. What more possibly could be done in this Emergency, his person being out of the power of the Court? A Proposal is made on his Behalf, That if the then Chancellor would engage that his Liberty should be secured to him, he would return, and
This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be defined on the Earl's part: No Evidence of any Design had been shewn, or exhibited the Deficiency; nor of any Masters consulted upon this Composition, and confected to it: And as for those that were not Parties to it, they are not bound by it.

But it is objected, That this Transfusion was Private and Clandestine between the Masters and the then Chancellor; nor carried on in the usual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

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

The Substance of the Order is pronounced by the Court: The Form is the Act of the Register; and the Chancellor can have Leisure to attend the Entries of all his Officers.

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

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

But, my Lords, in the 13th Article, it is objected to the said Earl, That to carry in his unjust Purposes, in Concealing Darow's Deficiency, in February one thousand seven hundred and twenty, he ordered the matters to be brought in their Accounts of the said Caff, Effects, and Securities; nor with a real Design to Examine the Accounts, and secure their Effects, but to terrify them into a Contribution; and threatened that the Caff should be taken out of their Hands, if they did not comply; by which means he got nine of the said matters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no further Proceedings were had upon their Accounts.

My Lords, one would have thought that these Proceedings, which so plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice.
In February 1726, the late Lord Chancellor (finding Mr. Durners's Deficiency like to be greater than at first it was apprehended) was willing to look into the State of the Accounts of the other Matters, to guard against the like Misfortune; and at the same time proposes to them advance Money to help to pay Mr. Durners's Deficiency. Five hundred Pounds a piece is raised of them, and applied accordingly; the half of these five hundred Pounds paid in August 1721. And upon the 7th of November 1721 a second Letter is written to haffen their Accounts, and every Argument used that could be thought likely to induce them to it: But the Labour proved too difficult, and the Purse was forced to be given over till a more convenient Time and Opportunity should present. What was done in this Instance also, I beg leave to say likewise, was fully the Example of another Great Man, into Methal he took in the Cafe of Dr. Edsbury, and that he can Circumstances less favourable than the present: Dr. Edsbury was always in Town, or at least within the Reach or Power of the Court, and yet his Perfon was not secured for many Years after his first Failure.

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

My Lords, By this Order it appears that Dr. Edsbury had several Orders made upon him for Money to be paid, not in Average, for some Time, and those Orders not complied with; and that he had not given out Examination, and had Prevaricated with the Court; yet the late Extremity, the Committing his Person, and ordering Payment in Average, was not thought of, till it was certain he was ruined, and his Affair was over, that he had not Affets to pay the Whole.

In the present Cafe, Mr. Durner was examin'd; delivered his Eftere, assigned the Whole in Trust for the Suitors, but died before the Enquiry could be perfected.

In Dr. Edsbury's Cafe the other Matters continued at first to supply his Dificiency, as they faire did in the Cafe of Mr. Durner: And this without doubt was to done, in hopes that his Effects, when fully discovered, would in time prove sufficient to answer all, or much the greatest part of the Suitors Demands: And thus far both Cafes are parallel, and Orders made for Payments to the respective Suitors in general, as they applied for them. And no Average was directed in the Cafe of Dr. Edsbury, 'till it appeared even by his own Confection, that his Affets were not sufficient to make good the Suitors whole Demand: And when the quantum of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the present Cafe: But that could not possibly be done 'till the Value of Mr. Durner's Effects could be known Vol. vi, and averted, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before mentioned, it has not been possible to effect: And therefore, the proffering directing Payments in an Average, can't be reasonably objected to the present improved Lord as Criminal. His Intention throughout the Whole appears to be to conclude the whole Service and Benefit of the Suitors of the Court, without any Prejudice or Possibility of Advantage to himself. His Design was, to procure every Suitor full Satisfaction for his Demand: And if nothing had happened to interrupt so just a Design, 'tis possible that his great Zeal for the public Good, and his indefatigable Industry, might in due time have had their desired Effect.

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

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

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

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

On the contrary, I hope it will abundantly appear to your Lordships, even from this Instance, and from the whole Series of this noble Lord's Conduct, that he firmly believe'd that all the Suitors of the Court would, in due time, be made G B
cafe, and their whole Demands be made good to them. And had the whole Body of the Masters as cheerfully concurred in this good Design, and contributed as generously to support the Honour of the Court, and themselves, 'tis more than probable that the Suitors would not long have had any just Occasion of Complaining, nor your Lordships the Trouble of this Prosecution.

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

And for whose Benefit were these Arguments thus made and pressed upon the Masters? Who could proft by their Compliance, or suffer by their Refusal? No, nor the Chancellor himself: He had no other Interest to serve, no inclination to gratify, but a just Zeal for the publick Good, and a generous Concern for the great Lofs that was like to happen to the Suitors of the Court, without his vigorous Interposition and Assistance.

This, my Lords, I humbly hope, appears to be the sole and just Principle upon which this Noble Lord has founded all his Designs and Actions, to relieve the Credit of the Court, which had been greatly injured by other Mens ill Conduct; to procure the Suitors in general the hard Satisfaction that could be obtained; not partially preferring one to another, but endeavouring to do every Suitors full and equal Justice, in order, as their Complaints were brought before him. As to the Expressions proved to be made use of by the impeached Earl, in the Case of Harper's, surely they have but little weight. Can it be imagined, that after so many Transactions had happened in the Court of Chancery, in relation to Mr. Dormer's Misfortunes, and the great Losses that were like to happen to the Suitors thereby, the then Chancellor himself should be the only Person that had ever heard of it; and even after such time as he had been endeavouring to let us know a remedy so great an Evil? Could any Man of loss Sarcity than he must be allowed to have, conceive that he could be credited, even in the Court wherein he presided, in saying (as it is now represented) That he was a perfect Stranger to the Affair of Mr. Dormer; that he had heard nothing of it, but as a Idle News, a flying Report, that might be true or false? No, my Lords, that certainly could not be his Intention, in speaking the Words that are said to be uttered by him on this Occasion.

But when a Purchaser under the Decree of the Court, that had paid his Money in to the Master, and required his conveyances to be executed, could not procure the Parties interested to execute, without actual Payment of the Purchaser-Money to them at the Time of the Execution, and that Money was funk in Mr. Dormer's Hands; this first brought the Difficulty of Mr. Dormer in Judgment before his Lordship; and it is probable that the first time it came regularly before him in Judgment, Upon this he declared, That then it was a proper Time for him to make a strict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Report of Persons about the Town, or upon any private Conversation or Information that he might have received, and possibly might have the Expression of common Talkers of News; but now that it came judicially before him, he would thoroughly examine into the whole Matter, and endeavour to apply a proper Remedy.

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

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

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

My Lords, Had it been proved to you, that when these Orders were made, it had legally appeared to the then Chancellor, that Mr. Dormer's Effects would at all Events prove Deficient, and that reality had been foreseen, whereby that Deficiency could have been prevented; I must admit this Objection would have been very strong: And in that Case, to have order'd full Payment to those Suitors who first applied, and left nothing for those that came after, would have been a manifest Partiality.

But this is not the present Case. When the Court ordered the first Payments to be made, it does not appear in Proof (as I humbly apprehend) that there would at last be any certain Deficiency in Mr. Dormer's Effects, or at least no Pretence of judging how great that Deficiency was like to be. And consequently, the Payment of the whole Demand to the Suitors that first applied, does not necessarily infer that there would be any Loss to those which came after. His Effects, upon further Enquiry, might possibly come out to be more than were at first discovered; they might prove sufficient to answer all Demands: Or in case the Deficiency was not very great, a moderate Contribution from the other Masters, or, it may be, a reasonable Addition intended to be made to that by the Chancellor himself, would have supplied
that Defeat. And that this was really intended, I apprehend that the Evidence already given does abundantly demonstrate; and by that Objection has been made; That very great sums of Money have been deposited in the Matters Hands, without any Security; and that some proposals have been made to the Noble Earl, for securing in some measure those great Sums, and preventing the Matters having too great Power over so great a Calf.

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

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

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

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

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

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

But during all this time, nothing had happened to give the late Chancellor any just Jealousy or Suspicion of the Deficiency of any of the other Matters. They are proved to have often declined that Sufficient; nay, they have themselves sworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl Impeached, succinctly thought they were so; and therefore when their Accounts were brought to him, in order to be laid before the Council, in Obedience to His Majesty's gracious Commands, he did all that was in his power or Capacity to forward that Communication, and make it effectual: He ordered the Matters to speed their Accounts; And when they were brought before him, he observing that the Senior Matter had under-written his Account in a full, and plain, and more direct Manner than the other Matters had done, he told them, He liked the Form which Mr. Holford the Senior Matter had used, and thought it a proper precedent for the rest. They all complied, without Hesitation or Objection; so one pretended they had not sufficient then in their Hands to make good their Balance; and accordingly subscribed to it; so that they were able and willing to make good their respective Balances; or to the like Effect.

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

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

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

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

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

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

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

The Articles exhibited by the House of Commons, charge him with Convertical
The Trial of Thomas Earl of Macclesfield,

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

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

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

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

The Foundation of their Charge, is, The diffig of several Offices for considerate Sons of Mine. This is the Corruption! This the Extortion! And to aggravate the Guilt of this, and raise your Lordships Indignation the Preamble sets forth, 

That in or about May 1718, the Earl was appointed Lord Chancellor of Great Britain, and did thereupon take the usual Oath for the due Execution of that High Office, and such other Oaths as have been accustomed.

And the subsequent Articles proceed to charge his lordship with Breach and Violation of Oaths, as Lord Chancellor. The learned Gentlemen who had the Conduct of the Evidence, justly sensible of the Expectation they had raised by this Aggravation, did attempt a Proof.

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

However,
However, I can't help thinking that the learned Reflection had but very small pretence. in saying, that the Earl seemed to be bounden to this Oath not only in his answer, but in his conduct; when it appears that he屿自己 had forgot how he had charged it in his Articles.

If he will cast his eye back upon them, he will find that the Preamble makes mention of no Oaths, but what were taken by the Earl upon his Majesty's Appointments of him to the Seat; and the Articles charge him only with Violation of his Oath, as Lord Chancellor.

Having justified the Earl's Memory in this Point, I proceed to justify his Conduct in others; and I hope the Defence he has made by his Answer will have its Weight with your Lordships.

The Earl has intimated, "That the making Prelates hath been legally and professed in the Time of his Predeces-sors; That such proffests have been made, and new Purgitives of the Great Seat; and that the making and accepting them has been Noted in to the World, and never before looked upon as Criminal, or complained of as such." My Lords, this (as far as Proof is requisite) We shall make fully appear by great Numbers of Witness, who are able to speak to both the Opinion and Practice of the Earl's PREDECESSORS.

To this it has indeed been said, that the Earl may be guilty, tho' his Predecessors have sinned not sinned unperceived or unpunished. My Lords, the Examples we have followed are too proliix for us to lead us into Gall: But, my Lords, if the Earl has only done what they have done, and received what they obtained an honest Purgative; was the Practice in it fell not quite so regular at first, senecoration, que confusione comprehens — Uinge (mentioned) has to great Authority, that is to Common Law of England; and tho' with us it cannot repeal a Statute, or destroy its Force, it does in other Countries, yet, my Lords, there is an Equity to be observed; and Reinst in such as Charity must inform your Lordships, no Man ought to be treated with the old Security, which an Old Statute may direct; even great Examples may have led them to the Aid of a long Consecutive of his Predecessors plead his Security from Centure. But the Earl's Defence stops not here; he says, "It knowingly hopes that the giving or receiving Purposes of such Occasions is not Criminal in it, or by the Common Law, and that there is no Act of Parliament whatsoever, by which these things are Criminal, or subject to any Punish-ment." To this the learned Gentlemen have given but very general Answers. Some have by Rule, instead of Rule, endeavoured to perfect your Lordships, that the Act it itself is highly felt, and that the Corruptly in giving Office is greedier and far more dangerous to Society, than when giving Office it less; Others have talked of Common Law, and Statutes, but have produced none, except those of 12 & 13 Rich. II. and V. and 6 of Edw. V. and a few Inferences drawn from them, which I shall speak more largely to immedi-ately: And as the Learning and Experience of those Gentlemen are too great for any Law to setge their Observation, as their Honour to refuse any for their Repl'y, I shall take it for granted, that since it has been mentioned, there is no other.

My Lords, the Writers upon the Laws of Na-ture have properly distinguished between selling Justice and Offices concerning the Administration of Ju-rite: They and some of the learned Managers have said, with them the selling Justice is absolutely culpable, is absolutely Corrupt and Innominal. The selling Offices is Matter of mere Policy, varied in different Governments, prohibited in some, allowed in others.

Among the Romans the Law in this Particular fluctuated and changed, and the Sale of Offices was generally forbid, yet it received great Alterations, as the Emperors or the People were disposed: When Elections of the Magistrates were Popular, the Suffragia, or Votes of the People were bought and sold; but as this Practice produced frequent Riots and Disorders, frequent Laws were made to restrain it, which some of the Judges and men of the Body of the Civil Law: However, all proving unsuccesful, the Emperors took occasion from it to surpaso upon the People, and name the Magistrates themselves: This Translation of Au-thority carried the Benefit to Counters, and other Men of Power, who took a fort of Brekage for their Interest. Theodosius, the Emperor, so far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promisced for Procurement of any Place. In proeds of Time the Emperors themselves participated and took a Share of this Advantage, which introduced a distinction of Suffragia Dominorum, and privatum, of the Emperors and the People; of the Prince and Dominium, and Legit implatum ratiocinatio infirmitatis. This Distinction, as well as the Practice, is very evident from the two Novels of Justinian, which were intended absolutely to prevent for the future all Sale of Offices. In Novel 161 it is said, Egojum Dominici sufragia meos reddedam te condemnare eunum; and in Novel 8 that by the Prohibition, Quaeis immediatess inmutator imperii. It is well known that in France, the Laws have varied in like manner. Sometimes the Sale of Offi-res was permitted, sometimes forbid, but at pre-sent, and for this last Century, it has been so far encouraged, that Officers retain the Right of Rejection either in their Succession, and transmit to their Heirs, in case they have paid the Annual Tax or Day within the Year.

I mention this to shew what the Opinion has been of other Governments; that they have not esteemed this Practice so highly Criminal, or unreaonsable; and as they have not, so neither have we: For notwithstanding what has been urged with so much Ingenious (according to my poor Apprehension) that very Statute of Edw. VI. so much inflated on, is the strongest Proof which can be given, not only that in particular instances the Sale of Offices is now permitted, but that it was in general before that Statute, by the Common Law of England. This Statute is still continued, that "All Bargains, Sales, Promises, etc. shall be very bad." Yet and yet by sect. 126, it makes Provis-ion, that "It shall not extend to any Bargain, Sale, Gift, Grant, etc. concluded and agreed before the First Day of March next coming, but that the same Bargain and Sale so concluded and agreed, shall always remain, continue, and be in such force, strength, and effect, as if this Act had never been bad or made." If Bargains and Sales, agreed before the First of March, are to continue in such Force, etc. as if this Act had never been made, the Consequence to me seems cer-tain,
tation, that those Bargains and Sales bad Force, and that they were before Efficacious and Legal, for otherwise the Provision would be absurd and ridiculous.

The 7th Section of this Statute still goes further, and makes a perpetual Provision, that "this Act, or any thing therein contained, shall not in any case, at any time, be judicial or hurtful to any of the Chief Officers of the King's Courts, commonly called the King's Bench, or Common Pleas, or to any of the Offices of the Affire that now be, or hereafter shall be, but that they, and every of them, may do in every Behalf, without or according to the Offices to be given or granted by them, or as they, or any of them, might have done before the making of this Act.

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

But I humbly conceive that this Provision is not only an Evidence of what the Common Law itself was, but that the Act of Rich. II. (of which I before made mention) could never be intended to reach Offices of the Necessity for the State, even as Rich. II. had no Office, the Chief Justices, &c. are expressly required to take, can it be imagined without the greatest Extravagance of Fancy, that the Legislature should be so very forgetful, as to guard and secure to them a Privilege, which they could never exercise without the highest Perjury?

This, my Lords, is the only Statute, which, as I apprehend, any way concerns the Charge brought against the Noble Earl: But does this Statute make the Sale of Offices Criminal? Does it direct a Punishment, or even by any general Clause forbid the Practice of it? 'Tis true the Bargains are hereby made void, the Person who fails, does by his own Confession, and Oath, and the given or taken, is to be adjudged guilty in Law to have the Office. My Lords, these are the Disavowments, which the Provision then thought proper to lay such Bargains under, these are the only Punishments: If the Earl has by his Conduct done what this Statute disapproves; if he has bargained and sold Offices, which your Lordships judge within the Statute, and the constant Usage of his Predecessors will not give Protection, the Statute points out your Lordships Justice. But, my Lords, this unfortunate Great Man, we think, has already more than satisfied this Law, he has resigned the Seal, and yet shall not be made wise by the Punishment before your Lordships, Offices are to be judged by this Statute: and Punishments the Legislature has annexed; for in determining the Penalties, it determined the Sense it had of the Offence: When Penal Laws are made, it must always be supposed, that a Consideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Punishment directed was effectual adequate and just: By this rate it is easy to guess what the Legislature thought of the Offence of selling Offices. And, indeed, it would have been (if I may use the Expression) unbecoming the Legislature to have inflicted fewer Penalties, while by the same Law it permitted the said Judges in the Nation to do what it seemed to condemn in others.

When a Law is once past, the Transgression of it is to be determined by what Law directs; to inflict a greater Punishment, would be altering the Law, and acting arbitrarily. This Observation will hold in every Instance, in Matters of Common Justice, as well as Publick Policy: To forbid to kill, or Murder, is only to enforce what was already law; to forbid to sell Offices, is to lay a Publick Restraint on Acts indifferent. And yet in the former Case, to punish the Offender beyond the Law, would be unjust and arbitrary. Are Prohibitions made Political more Sacred? Is it a Treafips against both more severely to be treated, than one against the Law of Nature, the Law of God? No, Your Lordships (I say it with Submission) are the Supreme Judges of the Nation; as such, the Supreme Judges of the Law, for by the Law your Lordships always judge: It is the peculiar Blessing of our Nation, to have known certain Laws, the Guide of our Actions, and the Moiety of our Punishments; to secure to us this Blessing has been the Labour and the Glory of our Ancelst.' For the Sake of this, the REVOLUTION's blessing, and for a Ready Adherence to the said Rule, his Majesty's Esteem is entitled to the Safety, the Liberty of his People.

I beg Pardon for dwelling so long upon this Subject, but the Honourable Gentlemen of the House of Commons having made the Statute of CHARLESTON the Foundation of their whole Bill, I thought it of some Consequence to prove to your Lordships, that it is no ways Criminal in it: And, my Lords, if it be not Criminal, Where the Corruption? Where the Extortion? Is it in the Manner of receiving Presents? How that was, the Learned Senator of Council with me had already given your Lordships an Account: An Account, which we hope does sufficiently justify the Earl against the Imputation of Hypocrisy, or of forcing up the Conscience to what they gave. We believe from the whole of the Business, that it appears to be, when we come to produce our Evidence, shall pass them over with an Observation of two. If the Earl had so great a Heart for God, as was so ridiculously laid to his charge, he had much more than paid his Tithes, for he had the great full Disposal of an Office upon a Money in Law, he should always receive a great sum of the same, what from the very face of the Articles himself appears constantly to have been paid, which was paid to Ministers. Had the Earl for the Office's sake sold any, or even injured on a Price? It is probable that he should not be able to shew one a great.

However, as I said, I can't help taking notice of the Circumstance, with which the Article of Mr. Thory's admission is intimated, "The Earl, diabolically, greatly took to the Soldier, and sold Earl as, without operation a full Satisfaction, and mit him." Your Lordships must observe, the Earl is not so much at that time here with a kind of ledge of this infamy; and, my Lords, included only can create the guilt. If the Earl did not know it, can your Lordships confute him? If it was
asked why he did not? Mr. Godfrey, who was pro-
duced and examined by the managers, has alrea-
dy given a full Answer: Mr. Godfrey was most in-
imate with the Affairs of Barron, and a fiancé was
directed by the Earl to half-pay them; he has de-
poited, that he told the Earl, he thought there
would be no deficiency in his Office, this (your Lord-
ships may remember) he said was his own sincerest
Opinion, and he gave good Reasons for it. Mr. Bar-
ron had a very good Income, reputed 400 l. per
An, besides his Place; he had lately married a
Wife of Fortune; his Family lived with his Fa-
ther-in-law; and he himself a man of no Ex-
perience: My Lords, Mr. Godfrey told you, he was
so fully in this Opinion, that when Mr. Green, the
defeated Uncle, made a demand of a debt, he
was greatly surprized, not imagining that he had owed
one single farthing. Whence this deficiency (if there
is any) none can tell: But, my Lords, that fatal
Year of 1710 is not so long past, as to leave us
quite without conjecture; a Year, my Lords, when the
Cottagers were so virulent, that scarce any Vir-
ma was left unpunished, and those who sunk under it,
deservedly suffer our Pity, as sad Inferences of
human Frailty: To this Year, the matters owe their
whole Disease, and to th' Earl, tho' innocent, this
aggravated Charge: But, my Lords, supposing a
Discreet in this Office, and known too by the Earl
himself, what Satisfaction to the Suitors was from
him expected? What could he possibly figure?
There is but one Method: which, I hope, he will
not, by the Managers, be thought criminal in not
taking, since it is that, which they themselves con-
demn as illegal and corrupt.

It was to be expected, that I should have drew
some Regard to the 9th Article: But as it is that which
the learned Gentlemen made choice of to begin
with, I apprehend greater Difficulties than I fee;
and therefore shall leave the Consideration of it to
thou, who are much more able to furmament them
than myself: But I must afly Pardon, that I can't
reach a Distinction on which great Stresses has been
laid: It has been observed by more than one, that
in this Case, the money was paid for the re-
fratation, and not for the admissiam. Is there any
real Difference, whether the Buyer or the Seller
pays the Comitament? Must it be supposed that
it was considered in the Bargain, and part of it? Or
is it imagined, that the general Habit of History
was in this Case, done by Mr. Thomas Bennett, by a
feeling Obftruction of his Inclination to part with an
Office, when in fact the Earl could not bind nor
his resigning it? For notwithstanding the Obser-
vation made by a learned Gentleman, that the
Lord Chancellor was the King's Officer, and there-
fore a Refraction to the Crown was the fame as to
him; yet am I from his very great Abilities per-
suaded to believe, that he is not so entirely a fra-
ger to the Thought of that high Office, as not to be
able to diilugith the Crown from the Salf, and to
know that in many Inferences of Patronage they are
different: The Lord Chancellor being the King's Offi-
cier, a Refraction to him in some Cases is equi-
valent in Law to one made to the Crown itself,
but never in contrariet.
As to this particular Office, and indeed to many others of the like Nature, we
shall make it fully appear, that tho' the Officer
himself is in the Nomination of the Crown, yet has
he always been under the Recommendation of the
Salf, and has so constantly paid Acknowledgement to
the Lord Chancellor.

Upon these Charges are built the whole of the
following Articles: Every Execution, every Action
which could bear an Ambiguity, has been collected
to form the Crime. The Earl has received money
for his Office; his Aim is therefore Gain by Sale of
Offices, an easy Inference; the other is either a
profit, are done, or vice versa, is at first Sufficient,
and then an Evidence against him.

But, my Lords, before I proceed to try Particulars
upon this Head, I must beg your Lordships
Patience to compute in general the very small Ad-
vatage the Noble Earl could propose by the
Scheme, the learned Gentlemen have projected for
him: The Office of Lord Chancellor is precarious;
and only during Pleasure: The King, for his Sub-
jects Welfare, jealous of every Minilor, and ready
to remove the greatest Favourite upon the very
first Offence; and upon this Contingency, what
would the Chance of dispensing of a Minister's Place
be worth? A very trite, I may boldly say, not so
much as what he has refused the Opportunity of
gaining upon every complot vacany he has dispofed
Of. And can your Lordships suppect a Character
once so dear, once allowed so worthy, of doing such
little Things, I should say, such base Things, for
soe Advantage, and yet to promote this illegal and
corrupt Gain on which his Heart was eagerst fix? The
noble Earl is further charged with having ac-
ted several Persons to the Offices of Maffers,
who were at the Time of small Substance and Abi-
ity: Against this there lay an obvious Ob-
jection; Why Persons of small Substance, who to the
Earl might have been, and indeed always had,
when of his own Choice, others of Sufficiency.
Wherefore, to make their Charge consistent, a
fraudulent method is suppos'd to be introduced,
of paying for their Places out of the Efect of the
Court; A Method left to them Perfon: But
your Lordships Justice must have led you to ob-
serve, that they no where do so much as intindate, that
the Earl knew them to have been as charged:
They were capable of the proper Caution he had
taken, and (as it will appear in Evidence) that not
only previous Inquiries were always made,
and none admitted, who came not well recommend'd,
or perfectly known to the Earl himself; but when several Candidates for the
Office had made themselves so unmindful of the little View, he is
supposed ever to have acted with, that he has
constantly press'red him he thought the worthy,
the prezent to the Earl was far less than what
others gave him Expectation of. This surely,
my Lords, will be enough to vindicate his Care;
and tho' it should appear, that he was deceived in
some single Infrinage; no, that the Main binniff
should be the Evidence of his own Destr and Fraud,
yet I hope, my Lords, such Person will have his
full Compliment of Credit, if he is believed in the
Character he gives of binniff. But to make some
excuse for the Earl's good Offices of this Mr.
Thomas Bennett and his Circumstances, I must ob-
serve, that it is Evident from his own Account
which lies upon the Table, that when he was ad-
mitte'd, he had an Efect of between 5 and 600l.
per An, he had besides his Office for Life of 250l.
per An, he kept his Cace, and then lived in Refu-
ratation: However, I must confess, that in further
Proof of his great Integrity, this Gentleman has
depos'd, that Part of his Estate was then mort-
gaged for more than it was worth. I should upon
this
this Occasion put your Lordships in mind of what happened upon this Gentleman's Confrontation, because he has been singular in his Evidence on more Facts than one; but we shall take another Opportunity of disproving this Worthy Perkin's Veracity, that your Lordships may know how much Regard to pay to him, by seeing how little Regard he has for Truth.

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

My Lords, when Dower's Affair (the sufficiently unfortunate) is considered by your Lordships, I hope that the noble Earl will not be thought to have acted otherwise than as became his Character: Upon the first notice of the misfortune, the Earl took all possible Care both to restore the Efts, and secure the Office; he sent the two senior masters to search his Chambers, and to stop the Transfers of all Stock, which flowed in his Name, in any of the public Companies. My Lords, had the Earl had that Eye on Gain, had he had that Apprehension of Discovery, which is represented, he would have heard taken this last Step, which might and did make a Sufficiency of the Office public:

When Mr. Dower was returned, and upon full Terms as the Managers themselves can't say were unreasonable to grant to one, whose Person was out of reach, and whose Efts and Accounts were in the greatest Confusion: His Liberty was all he asked, and that upon Condition only of a full discovery and a fair Allowance of all he had.

I say, my Lords, when Mr. Dower was returned upon these Terms, which we hope he has honestly performed, his Office was folded, and every Thing done, not to conceal, but to supply the Deficiencies. I would not enter too minutely into the Composition with Mr. Wilks: It will, I conceive, be a full and satisfactory Answer to the Charge, to observe that as the Suitors were not Parties to it, they can no ways be injured by it. If the Composition be precocious, trifling, and unjust, the Suitors are still at Liberty to proceed: If more could be had, they may have more; but till more is recovered, it must be admitted that the little, which is gained, is owing to the Composition. Had the Suitors been Parties, the Order to much concerned

plained of for its Irregularity would not have been made without a Notice; but as Mr. Wilson, because particular Interest it was to have them Parties, did not desire it, we apprehend the Order to be in the usual manner. My Lords, the matters (as is in Evidence) having in some measure engaged themselves to make good the Deficiencies, if any should happen, the Earl could have no reason to doubt the Justice of the Propos'd of Mr. Hicos, after Mr. Hicos had repaid it, and Mr. Edson's, the Successor in the Office, had pressed the Earl to let him to accept it.

It seems, my Lords, a very forced and unkind Construotion, which the Articles put upon the Accounts his Lordship had required of the matter, but the worthiest Behaviour may be thus misconstrued. The matters themselves had made its Propos'al of contributing, and it will appear that they all (except Mr. Lightburn) did pay their Money voluntarily. What occasion then for these Methods as are suggested to terrify and oblige him to this Contribution? Is it in Proof that the requiring the Accounts did influence one single matter? No, my Lords, but, on the contrary, you will find that the Payment by the matters did prevail on his Lordship to drift for; for it will hurt his Evidence, that the Earl fill perverted, and that by the Earl's direction a Letter was wrote to the matters, after the several Payments were made, complaining of their Delay, and requiring their Accounts. The Earl, indeed, upon Representations, did afterwards think the method imprudent, which he is the better justified in saying, because the very same method has been face found to by the Honourable Committee for inspecting their Account, and departed from at the same.

Upon this Subject of Dower's Deficiency, I must beg leave to remind you of what Mr. Po-wards told your Lordships. He said, "That they were all of Opinion, that the Deficiency could not be made up, and unless he had belief in it, he said "not have come into the Office." Mr. Edson, who was so much concerned, was in this Persuasion, why might not the Earl too with Innocence? And, my Lords, this Persuasion, this Expectation, is, I humbly conceive, a very satisfactory Residue, why the Earl, had he been obliged to declare an Average as e f. in common Cases, might be excused the doing it in this Instance. And as to the Cases of Chitty and Hurry, when the Circumstances which attend them, are laid before your Lordships, the Inference drawn from each will appear equally unreasonable: For the Earl can no more be supposed to have intended a Concealment of Dower's Deficiencies, than he did make, after he had expressly mentioned before Court the several Accidents, by which they happened, than he could by the Payment of Interest to Mr. Leckham, when he told him, that it would be the last Payment Mr. Chitty said, when reviewing the residue, the residue being in great danger from Dower's Deficiency. But when we prove to you the very great diffi Mr. Leckman represented himself to be in, your Lordships will be convinced that the money was by the Earl advanced upon an other motive, than a generous and unassuming Regard to him: This at that time was Mr. Leckman's own Sacristy of it; this he has often face acknowledged, tho' upon his Examination he was plaid to claim it as his Right, and own no Obligation.

I think
to offer in Vindication of the Earl from the Charge oficide; and therefore, without denying a plodick Epp, he was pleased by his Elocution to try whether he could not bring Charity itself under suspicion: Whether he could not wound the difference between the meek and piratical Generosity, and the Luxury and Dicinableness, and the Ritos of a CATILINE! What innocence is secure against the Power of such Eloquence? My Lords, had he not thought this a Defence against the very Foundation of the whole Charge, he would not have surpried us with such an Answer: He well knew that the Earl could have Orphans and Widows, the poorer Clergy, and the Tomb of the University, to appear and acknowledge their Obligations to him: Obligations made greater by being unfeigned; I cannot say unmerited, because every Object in thrift is within his Knowledge, had Reason to expect Relief. I would ask the learned Gentlemen, whether Exposures of this kind were part of CATILINE's Profligacy?

This, My Lords, will be an Answer to their oft repeated Impudences, and most clear the Earl from all suspicion of ever having acted from such fordid motives, or from any thirst or impatience of Gain. Is it likely that he should encourage the highest Villany to raise a Sum, and then apply it to relieve the Poor and the Distressed? Is it credible, at the same time, that Vertue and Nobility should join together to support him? And indeed is the Condition of the Earl, when his very Virtues, when his most commendable Actions, are turned to his Disgrace and Injury? But under all, it is a great Satisfaction to him, that your Lordships are his Judges; and he submits his whole Conduct to your Justice.

Mr. Lingard, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occasion, have so fully opened the Nature of the noble Earl's defence in general, that I shall not presume to take up any more of your Lordships' Time, by following them in that Method, but shall confine myself to the 7th, 6th, 7th, 8th, and 9th Articles; and shall beg leave to inform your Lordships what we have to lay before you, in relation to the Matters contained in those Articles. But before I proceed, I shall beg your Lordships' Perimission to go out of those Articles, so far as shortly to observe, that in the Preamble to the Articles of Impeachment, where the several Favourites and Advantages, which the noble Earl at the Bar received from the Crown, are enumerated, those which were the peculiar Marks of his Majesty's Royal Bounty to him, and those which were the ordinary Benefits and Allowances, which the Earl enjoyed in common with his Predecessors in that Office, are so blended together, and set in such a light, that at least it gives an occasion to mistake some of the latter Sort, for those of the former; if it does not amount to an Infiniation to that Purposp, in order to enhance the particular Advantages which the noble Earl has received, above what they really were.
My Lords, I should be injurious to that noble Lord, who is poissed with Sentiments of the deepest Gratitude to his Majesty, should I endeavour to lessen the Influence of his Royal Munificence towards him: And I purposely omit mentioning any thing of the noble Earl's Merit upon this Occasion (tho' I humbly appr-\nprehend that I should be thought very excusable in so doing) because I am sensible, that he chooses to owe every thing purely to his Majesty's goodnes: Yet as he has (very pro-\npertly as we humbly apprehend) in his An-\nswer, fet one of those Matters in its true Light; by informing your Lordships that the Annual allowance of 4000 l. per Annum, men-\ntioned in the Preamble to the Articles, and which he admits to have been granted to him, du-\ning the Time he should continue Lord Chan-\ncello, is no way particular in his Case; but\nthat the fame has, for many Years past, been\nconfidently granted to, and enjoyed by his Pre-
decessors: give me leave, my Lords, for a\nProof of what is so insisted on, to refer your\nLordships to what appears upon your own\nJournal, in the Cafe of the Lord Somers, up-
on the Impeachment exhibited against him by the Houfe of Commons, for high Crimes and\nMisdemeanors; where, in the Introduction of the\nCharge in the 8th Article, this Appointment of\n4000 l. per Annum to him is alleged in Ag-\ngravation of that Charge against him. His\nLordship, by his Answer thereto, admits, that\nduring his Capacity of the great Seal, he did\nreceive the Profits and Perquisites thereto be-
longing, which before his Time were become\nvery inconsiderable; and that he did also re-
cieve an Annual allowance from his then Ma-
jury, of 4000 l. per Annum, being the like Pen-
fion that had been allowed to several of his Predecessors. This, we humbly apprehend,\nplainly shews both that this allowance has\nbeen usual, and likewise the Reason of mak-\ning such allowance; which is the inconsidera-
blenefs of the ordinary Profits and Perquisites\nbelonging to that high Station.

I shall now proceed to the Articles I pro-
posed to speak to; in which the Matter, which\nis charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extortively, in-
filt upon, take and receive, the several Sums of Money therein respectively mentioned, for\nthe-admitting the several Perfons named in the 5th, 6th, 7th, and 8th Articles, to be Masters of the Court of Chancery; with a\nsmall variation in the 8th Article, by way of Aggravation, that there was a deficiency in that Of-\nfice; which is there taken notice of: And for permitting Thomas Benett, as it is al-
ledged in the 9th Article, to resign his Of-

ice of Clerk of the Cufidences; which is agreed\nto be a Charge much of the fame Nature with that in the four preceding Articles; and\nis alleged to be against the good and whol-
some Laws and Statutes of this Realm.

It has been strongly insisted on, by the Gen-
tlemen appointed to manage this Prosecution, that this is a Matter which is Malum in se, and contrary to any Common Law, as well as expressly against the Statute of 12. Rich. II., and 6th of Edw. VI. and no Means, that could be thought of, have been wanting to represent it under all the most aggravating Circumstances, and in the most odious and frightful Appearance, that the blackest Col-
ours could give it.

My Lords, The Earl, by his Answer, denies\nthat he did at any Time insist upon the Sum of 100 l. out of the Sum of Money, to\npermit or accept of the Recognition of Tho-
\nmus Benett, mentioned in the 9th Article; or\ndid refuse to permit or accept thereof, until\nthe said Thomas Benett had agreed to pay the\nsum, or any other Sum of Money on that\nAccount: Which is a denial of that, which\nis properly the Charge in that Article: He\ndoes indeed admit, that he did receive a Pre-
fent from Thomas Benett, under the Circum-
stances mentioned in the Answer to that Ar-
ticle; and likewise that he accepted the Pre-
fents, which were freely and voluntarily sent\nto him, by the several Perfons mentioned in\nthe four preceding Articles; in two of which\nInfluences, all, and in the other two, great\npart of what he so received, has been return-
ed. But his Lordship very rightly (as we\nhumbly apprehend) insists upon it in general,\nthat the acceptance of Prefents upon such Oc-
casions has been long used and pratticed by his Predecessors; and that they have been\nreckoned as the antient and known Perqui-
flies of the said Office: That it is not Cri-
minal in itself, or by the Common Law, or\nagainst any Statute of this Realm; or sub-
ject to any Judgment, which can be prayed in\nthis Prosecution.

The Gentlemen of the House of Commons,\nmy Lords, in order to support what they have\ninstituted upon, and to make it appear that\nsuch an Acceptance of Prefents is Criminal, \nhave caused the Statute of 12 Richard II. to\nbe read to your Lordships; and have pro-
duced Mr. Ayres; to give an Account of the\nCeremony, which is annually pratticed upon\nthe Occasion of Nominating of Sheriffs.

I won't presume to act the Caffian, or trou-
brule your Lordships with any Necessities, by\nquestioning, whether what passes upon that Oc-
casion ought to be esteemed an Oath or no;\nbut, my Lords, I hope I may venture to say,\nthat it is very plain, is no Oath of Office in\ngeneral, for this Reason, because if it had\nbeen so, the once taking it had been suffi-
cient; and there would have been no occasion\nof repeating it Annually, in the flight Curfewy manner Mr. Ayres has given an Account of,\nupon one particular occasion; which likewise\nshews, that what is then done, is confined to\nthat matter only, which is then transacting,\nand not intended to be generally obligatory in\nother Things.

If the accepting of Prefents, upon occasion of\nrecommending, or admitting Officers to Places, had been understood to be Criminal, in the Eye of the Common Law, or against the Statute of 12 Rich. II. no doubt, but in a\ngreat a length of Time, Precedents might\nhave been produced, where Prefons had been\nconfused, or punished, for a Practice, which\nhas been represented to your Lordships as the\nmot vile, and pernicious Sort of Britley and Corrup-
Corruption; and yet, notwithstanding the many marks of the Severity of the Government against Bribery and Corruption, which have been taken Notice of, the Gentlemen of the House of Commons have been pleased to acknowledge, that there is no Precedent, no Judgment to establish and warrant what they affect to be Law in this Point.

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

But suppose, after all that has been said, that this was still a doubtful Point, would it not, my Lords, be extremely hard to rouze up an old antiquated Law, which for so many Centuries has quietly slept, without exerting itself, without fixing any mark, or leaving any Traces of its Force and Vigour, to point out the Dinger attending such a Practice; a Practice that has been owned and countenanced by such great and unexceptionable men, and objected to by none; and which from thence, might well receive the Appearance of being fair and innocent: Would it not, I say, my Lords, be very hard, without some previous Notice of the Danger, to put this Law in Execution, to unhasten this rushy Sword, to wound this Noble Earl with? We hope your Lordships would think so, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any Doubt remaining with your Lordships, as to the legality of the Earl's Behaviour in this Point, that the Statute of 6th. of Edw. VI. will clear it up beyond question; and that it will manifestly appear by that Statute, that accepting of Presents is neither Malum in se, against the Common Law, or the Statue of Rich. II. and that this Statute of Edw. VI. must be looked upon as a declarative Law in those Points, or otherwise, it must be allowed (which none fore will suppose) that the Legislature of this Kingdom has made a Provision to sanction a moral Evil; (for that is the Import of Malum in se) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the most pernicious Tendency and Consequence, if the Representation made of it by the Gentlemen of the House of Commons is to be regarded.

My Lords, I shall pass by the fourth Paragraph of that Statue, whereby it is provided, that the said Act should not extend to Offices of Inheritance; tho', I presume, the Largeness of the Estate can hardly be thought to alter the moral Nature of the Actio. By the 6th Paragraph, there is a Siving for all Bargains, Sales, Promises, and Agreements, of or for any Office, made before the first of March; and such Bargains, Sales, and Contracts, are exempted out of the force of that Act. Your Lordships will be pleased to observe, this Seccion of Parliament began the 29th of January; so that this saying, Clause makes a Provision for Futurity. My Lords, this would be to establish Iniquity by a Law, if the accepting a Present on Occasion of admitting a Person into an Office, was immoral and criminal, as it has been affected. But if it were so, and likewise against the Statute of 12 Rich. II. and contrary to the suppos'd Oath, taken in pursuance of that Statue; what, my Lords, must be thought of the last Paragraph, which provides, that the Act should not extend to the Chief Justices, or Justices of Assize, that then were, or thereafter should be? These All Anually take the same Oath (if it is to pass as such) upon the same Occasion of nominating of Sheriffs, as Mr. Ayres has informed your Lordships; and are consequently, by Virtue thereof, under the same Obligation in this respect, as a Lord Chancellor: And can your Lordships suppose that so many Reverend and Learned Persons, who, from their known Duty of Attendance, must be presumed to be present in your Lordships House, whilst this Law was there under Consideration, would have forborne informing their then Lordships, how contradictory these Parts of this Statue were to the Common Law, and the Statutes of this Realm, especially that of Richard II. Can it possibly be conceived, that the whole Legislature would pass a Law, not only to allow, in several Incisions, the Practice of what was so contrary to the Law of Reason, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath preferred by Statue, and Annually repeated? And that no Body should ever scruple the doing so, or discover the Illegality of this Practice, but upon this uninformative Occasion? And yet, my Lords, I contend, that these Suppositions are, they must (as I humbly conceive) be allowed of, or it must be granted that such Acceptance of Presents is not Malum in se, or contrary to the Statue of Richard II.
II. And I hope it is plain, that this Statute of Edward VI. is in effect a declarative law in those Points.

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

My Lords, As the manner of the Earl's taking of Prebents will depend in a great measure upon the Evidence, which has been offered to your Lordships, upon these Articles; I shall beg leave to take some short Notice of it. As to the 6th Article, Mr. Thomas Bennett has been pleased to inform your Lordships, that he did desire to have the Earl's Recommendation of Mr. Hauvery, to succeed him as Clerk of the Clinketers; and that being told at the second meeting with Mr. Cattinabon, that a Prebent would be expected, he said it was a very hard and unreasonable Thing to expect a Prebent from him, who had lately paid a large Sum, upon his being admitted into his other Office: But upon its being inferred on, that 100 Guineas should be paid, he was forced to comply therewith, and agree to pay it.

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

But, my Lords, we must beg leave to submit it to your Lordships Consideration, what Credit is to be given to Mr. Bennett's Evidence, so far as it does go, for this Purpofe. The Gentle- men of the House of Commons have thought fit to call Mr. Cattinabon, as a Witness to this Article; who owns that in his first Discourse with Mr. Bennett upon this Occasion, he told him, he believed a Prebent would be expected to the Great Seal, and that Mr. Bennett freely offered 100 Guineas, before Mr. Cattinabon spoke to the Earl about that Affair. He expressly contradicts Mr. Bennett in what he said of Mr. Cattinabon's insinuating upon 100 Guineas, and Mr. Bennett's Agreement to give that Sum at the second meeting. Mr. Cattinabon swearing, that the offer of 100 Guineas was voluntary on Mr. Bennett's Part; and that it was at their first meeting. There are several other Contradictions in their Evidence; but I shall only take Notice of that, where Mr. Bennett pretends, that Mr. Cattinabon affixed him not to know Mr. Haltermy, his next door Neighbour. This Mr. Cattinabon denies, and Mr. Bennett is forced in tone of voice to retract what he had so positively sworn; and comes down to a Belief, that Mr. Cattinabon said so, but will not be positive.

It is something surprising, that after they have done Mr. Cattinabon the Honour to call him as a Witness, and given him a Credit by so doing. Hints should be flung out, that Mr. Cattinabon knows no body, except where there is Gold in the Cafe; that Gold is a great clearer of the Eye-sight, and the like Infirmations, to the blemishing his Character. But why then did they call him as a Witness? Surely, my Lords, if he is a Perfon not to be believed, it was not altogether so proper to produce him as a Witness before this August Assembly. But, my Lords, we shall excuse them in that matter, by thoroughly dis- blushing Mr. Cattinabon's Reputation; for that is something unusefull to support the Reputation of a Witness produced by the other side: And we hope your Lordships will then find no difficulty in determining whether Mr. Bennett or Mr. Cattinabon deserves more credit.

In support of the 4th Article, Mr. Kyngah is called as a Witness. I shall take no Notice of any part of his Evidence, but what relates particular- ly to the Charge in this Article, the money paid upon his Admittance, and the Circumstances of that Transaction. Mr. Kyngah indeed has said, that he would willingly have paid but 100 l. upon his Admittance; and accordingly offered that Sum, which Mr. Cattinabon would not hearken to; and therefore he submitted to pay 1500 Guineas; but he owns at the same time, that he has not a very exact Remembrance of what paffed upon this Occasion. Mr. Baily, to whom Mr. Kyngah refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account, that Mr. Kyngah, when he understood the 1500 l. was apprehended to be the Prefent he intended to make, said, that he thought it was only 1500 l., but mentions nothing of the Offer of 1000 l. It is very strange, if that had been the Cafe, that he should not have taken Notice of that like-wise. But Mr. Catti- nabon, who is again called as a Witness, shews the reason why no Notice could be taken of such an Offer; and that is, because there really was none such. He denies that Mr. Kyngah offered 1000 l. and swears that the Sum offered by Mr. Kyngah, was 1500 Guineas, and withal declared, that he would aquire under what the Earl should think fit in that matter, and inform your Lordships, upon his being interro- gated by the Gentlemen of the House of Commons to that Purpofe, that he never did acquaint the Earl with what passed upon that Occasion till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my Lords, here are no extraordinary En- deavors or Artifices used to enhance the Price; no haggling, by first naming one Sum, then ano-
Busines of the Court of Chancery hath increased proportionally; and consequently, People would be more desirous of, and gain for their Purchase of those Offices, which were improved by such inrease of Business, as And as the common Interest of money is grown lower, it is natural to suppose, that People would be the more ready to invest their Fortunes in those Things, which were likely to produce a better Income, even in proportion to the value that was run upon their Lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, that this also may be the Case of it, it is the plain and notorious that all Place and Office have of late Years increased in their Value, that it would be mispiping your Lordships time to enter into the Proof of it.

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

My Lords, There is one particular Circumstance in the 8th Article, which has taken up a great deal of your Time; that I mean, of the Deficiency in Mr. Bore's office. Why that matter was inferted there, and why it has been so much laboured, and your Lordships troubled with so much Proof about it, I must own myself at a loss to conceive; unless it is be allowed and admitted, that the taking of money, upon the Admission of a Person to the office of one of the Masters of the Court of Chancery, is not purely and simply Malum in se, illegal, and contrary to the Statute of Rich. II. but that, if it be done to raise money to make good the deficiency in the office, as was done in the Case of Mr. Edwards, which your Lordships have upon this occasion heard of, it is right and well. How otherwise can the Deficiency in the office be an Aggravation of the suppos'd Crime of taking a Present upon the Admission of a Person into it? Is it unreason able to admit a new matter into an office wherein there is a deficiency? Is it not as necessary to fill up that Vacancy as any other?
Certainly more so, in order to have one, whose Duty obliges him to a more particular Care of the Affairs thereof, which seem more to want it. The Aggravation being the Fault, or rather the Fault itself, must consist in not the applying the money reserved, towards the discharge of the deficiency. But how can it be a Fault to do so, unless there had been an obligation so to have applied it? And how can there be an obligation to make such Application of the money, where there is no strong an obligation, as has been inflicted on, not to raise any money at all by such means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakened, at least, what is laid as the Foundation for it, viz. being a Crime; and this with little or no Success in the Proof, attempted to be made of this matter; so far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that office.

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

My Lords, I have thus stated the Matter of these several Articles, to the best of my Remembrance, in its true light, as it stands upon the Evidence already given. We shall beg leave to call some Witnesses to prove, that several noble and great Persons have taken Pensions upon these occasions; men of excellent Characters; some of whom several of the Gentlemen of the House of Commons have taken such Notice of, that I may safely venture to say, they will concur in the Opinion, that they were Pensions of so much Integrity, that they would not have taken such Pensions, if they had thought it illegal so to have done; and of so great Abilities, that their Judgment must be of the greatest weight in this Point. We shall further trouble your Lordships to explain the nature of the Payment of 64 l. which Mr. Thomas Benuet told your Lordships he made, over and above the 100 Guineas, paid by him on Account of the Office of Clerk of the Catholics. He might, no doubt, if he had pleased, have informed your Lordships, that the most part of this 64 l. was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33 l. came to the Great Seal; and we apprehend that to have done fo, would have been more agreeable to the Sincerity, with which a Witness ought to speak, than to have left it in that general manner, where it might be called such other Payment to the Earl. And I hope your Lordships will excuse my observing upon this Occasion, the unhappy Circumstances of the noble Earl at the Bar: If he takes a small Sum, as this of the 100 Guineas for Instance, it is poor, pitiful, and a Profition of his Honour; if a larger Sum is taken, he is avaricious, greedy, rapacious, and I don't know what: That your Lordships will observe, the Sum accepted are regulated according to the Nature of the Office, on Account of which they are given. My Lords, his very Care in other Infrances is made his Fault, his Actions must be all supposed to be done with corrupt Views; and yet his not Acting is equally blamed; it is Carelessness, and Neglect. This is the Light in which his whole Behaviour has been fixt before your Lordships, and that with all the Aggravations and Vechemence imaginable. But it is your Lordships, who, in a superior and calmer Station, are to weigh and judge of these matters, and to decide whether it be a proper Judgment; and it is his Happines, that it is so. And in order thereto, when we have laid this Evidence before your Lordships, together with an Order, which shews the Payment of the monies received from Mr. Thomas Bennet and Mr. Kyngsley, into the Court of Chancery; we shall submit the matter of these Articles to your Lordships. And notwithstanding all the severe Things which have been laid upon this Occasion, we humbly hope your Lordships will be of Opinion, that the noble Earl at your Lordships Bar, is not guilty of any of the Infrances which are charged against him.

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

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

Mr. Lewis. I have at first been as Clerk of the Catholics of Lanacrick and Idcotes, for the space of about 35 Years.

Mr. Serj. Proby. I desire he may be asked, who was the first that came into the Office of Clerk of the Catholics in Ireland?

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

Mr. Serj. Proby. Who succeeded Mr. Hopne?

Mr. Lewis. Mr. Roger Thompson.

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

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

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

Mr. Planner. My Lords, I object to the Answering of the Question, as I am not sufficiently acquainted with, whether your Lordships will have Evidence against Gentleman that are dead, who are no way capable of Answering for themselves before your Lordships here? If my Lord can give any Title or Right he had to sell this Place, we are ready to hear him; but to give Evidence against a Person that is dead, and cannot speak for himself; I submit that to your Lordships.

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

So, my Lords, we must beg leave to have your Lordships Judgment in this matter.

Mr. Sad. Gen. My Lords, if the noble Lord procured any one to make out his Innocence, we do not oppose it. But if the noble Lord endeavours to shew what the law is, from the Practice of other People, it is altogether improper. It is impossible that the law can be judged of by the Practice of other People in committing the same Facts. That can't have the Weight of the Opinion of a great Man. The Opinion of a learned Prefent, not considered in the Question, is an Opinion of weight; but the Opinion of a Prefent concerned in the Question, is not to be looked upon as of any Authority. If the noble Lord makes use of this kind of Evidence, by way of mitigation, or of justifying his Offence, in that View it can be of no Significance: Because the Aggravation or Mitigation of the noble Lord's Offence must arise from the particular Circumstances, Manner, and Facts of his Offence. We must submit it therefore to your Lordships Consideration, whether this is a proper Inquiry or no.

Mr. Secy. Praxyn. My Lords, we beg leave to insist upon it, that this is a proper Question, and very material for the noble Earl's Defence. He has instilled in his Answer, * That what is objected to him in this Inflance, hath been long used and practised in the Time of his Predecessors; and that such Prefents have been reckoned among the ancient and known Perquisites of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as such; and that he humbly hopes, that the giving or receiving of a Prefent on such an Occasion, is neither criminal in itself, nor by the Common Law of this Realm; and that there is not any Act of Parliament, by which the same is subjected to any Punishment or Jurisdiction, which can be prayed for this Prefent; and the said Earl further hath said, that he thinks himself obliged humbly to lay this before your Lordships, not only in his own Defence, but in Vindication of the Honour of so many great and excellent men, who have been his Predecessors in the same Office, and have all along done the same, for which he is now complained of; and all of others, who have been Lord Chief Justices of the King's Bench, and Common-Plains, Masters of the Rolls, and Judges, who have likewise received Prefents, upon the Admission of the several Officers under them in the respective Courts of Justice wherein they presided; and who, the said Earl is assured, never apprehended themselves to be guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to support this Part of the noble Earl's Answer.* But, my Lords, it is true, that Gentlemen, who are Members for the House of Commons, that they are not prepared to enter into this Proof, because they had no Notice that such Evidence would be given: In Answer to which we humbly submit it, that the Answer the noble Lord hath given, that several preceding Officers in the Courts of Law and Equity have always received such Prefents, is insufficient Notice to them to be prepared to answer such Evidence as might be offered to support this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Cases, we submit it that in this Case it is a material Circumstance. Though the Precedents of great men, (whose Names they are unwilling to hear) who have taken Prefents in like Cases, and not thought it criminal, may not control your Lordships Judgment in this Particular, yet I humbly apprehend that such Inflances cannot but have great weight in the Event of this Case. The noble Lord is armed with material Circumstances, strong Inducements to incline your Lordships to believe, that this noble Lord had
had no avuriosc, no corrupt DeSign, in accepting
the common culuminary Precepts that were volun-
tarily tendred to him. And since it is made fo
material a Part of his Defence, and that he might
well think himself innocent and secure in follow-
ing the Examples of so many honourable and
learned Perfons, of which we are prepared to
give your lordships many Inftances in Evidence ;
and since they have Notice of it, and that the noble
Lord hath inftiffd upon it in his Anfwer, we humbly
beg your lordhips will admit us to give the formal
Inftances in Evidence.
Mr. Com. Serj. My Lords, I beg your lordships
Patience. My Lords, we humbly apprehend this is
very proper and regular Evidence. I think there
might be no Evidence more proper. If the noble
Lord fhould have the Misfortune to be thought
culpable, will he not appear under another View
to your lordships, when he hath had the Concur-
rence of several great Perfons, of whose Integrity,
Honour, and Knowledge, no Quotation hath ever
been made? If he himself hath introduced this
Practice, and fet it up by himself, it will then
more certain be an Agravation; if he hath done
no more than others have done, it will be an
Extion. My Lords, taking it in that light, there
is no Reafon why this Evidence fhould not be
given. But, I hope your lordships will fur-
ther confider of the prefent Cafe: Here is a law
infifted upon, of feveral Hundred Years standing,
that makes this Criminal: It is owned that there
hath been no Determination or Judgment at Law
that this is Criminal: Practice, efepecially in Ref-
pect of old Statutes, hath oftentimes been allow-
ed and admitted to explain the Senfe and mean-
ing of thofe Statutes. There are no Records
preserved of this, and therefore we are under a
Nefcefly to cofnine our felves to fuch Evidence
as we can produce of living Witneffes, and thence
we apprehend we are proper, as it is Part of the
matter in ftitle before your lordships. Your lord-
ships are as well to try the Earl’s Anfwer, as the
Commons Article. Another Circumstance they are
pleas’d to mention againft receiving this Evi-
dence, is, the taking up of your lordships time.
Your lordships have had the Goodnefs and Juflice
to bear, with great Patience, a very long Evi-
dence, with refpefted Ofervations and Opinions
of the Articles, in order to prove a noble Peer,
one of your own Body, to be Guilty: Can it be
Suppoft that your lordships will not have that
Patience, which is due to all People in Favour
of Innocence, and when one of your own Body flands
impeached? For thefe Reafons we humbly hope
that this Evidence fhall be admitted; and that
the noble Earl fhall have the Benefit of this Ex-
planation, what the Senfe of fo many great and
elegant men hath been of this old and doubtful
Statute.
Mr. Robins. My Lords, we apprehend your
lordships will not be of Opinion, that this will
be to defend the prefent Impeachment, by the
Impeaching others. We lay it down as the
Foundation of our afcerting, that our Precedents
have done the fame, notwithstanding this Statute
of Edward the VIIth, and therefore it is a reason-
able Inference, that this was not taken to be
within the faid Statute. We apprehend it can
not reft upon any that are either Dead or
Living; and that, as we are in Defence of this
noble Lord, we are at liberty to examine Wit-
nes, to prove that other Perfons, his Predecess-
ors, have done the fame.
Mr. Strange. My Lords, I apprehend we have
the fame Right to juftify our felves by Precedents,
as they have to accuse us by Precedents. What
the noble Earl’s Predecessors in other Inftances
have done, hath been mentioned by way of Ag-
gravation. The Cafe of Dr. Edilsbury hath been
mentioned over and over by the Gentlemen of the
Houfe of Commons; and they have aggravated the
Offence of the noble Earl, for not following that
Precedent; and as they had a Right to ag-
grave the Earl’s Offence, by not following the
Precedents of his Predecessors, so we think we
have the fame Right to fiew in other Inftances,
that we have followed the Examples which have
been fct by our Perfons. But they fay, this is
againft law: Whether that is fo, or no, is the
Quotation; and it will be material for the De-
cision of that Quotation, to take into your Confi-
deration, what hath been the Opinion of great Men
in all Ages, upon this Act of Parliament. Criminal
Ulages, from time to time, even from the making
of the Act of Parliament, is fettled by the bell
Expofition of that law. Contemporary Ulage, or the Opin-
ion of thofe, who were at the Time of the
making of a law, hath always been esteemed the
bell Interpretation of that law; and therefore,
as we fhow the Ulage to be conformatible to what
we now infift upon, I humbly hope it will have
great influence upon your lordships, as to the
Expofition to be now put upon this Act of Par-
liament: It hath been faid, this Way of Proceed-
ing tends to accufe great Perfons of Honour, &c.
that are dead, and fome that are now liv-
ing; we fhall not enter into fo nice a Debate:
it is fufficient for us that it is proper and nece-
sary Evidence for the Defence of our Client.
It is a material Evidence in this Cafe, whether other
Perfons have clipeflod of thefie Offices, and have
 incurred any Penalty; if they have done it, I
humbly apprehend that no Objection remains a-
gainst our entering into the Evidence of that Kind.
Whatever is your lordships Judgment in Point
of law, it is material for your lordships Confe-
deration, whether this noble Lord hath fet this on
foot of his own Accord, or hath not tred in the
Path of his noble Predecessors? Your lordships
will take it into your Conferation, and what-
ever the Point of law may happen to be, it must
be faid, that if this noble Lord did err, he erred
with his Predecessors.
Earl of Macclesfeild. My Lords, I would not
trouble your lordships, if I did not think it ne-
cessary to infift upon your lordships admitting
this Evidence; Indeed, if I thought it would
impeach the Charafter or Reputation of any of
the noble lords, who have been my Predecessors,
whether they be now dead or alive, I would un-
dergo any Punishment rather than do it. But I
hope it was innocent, both in them and me; and
that its being done by Perfons of fuch unbleniified
Honour, will be one Argument of its being
fo; and, my Lords, I protest their Example was
the fingle Reafon with me for doing it; and if
it had not been done before, I would not have
done it: This was the true Ground of what
I have done. For what thefe Gentile-
men say, my Lords, that this is not material,
and that the law must be proved by law
Books and Judgments, I thought the common
law
Law was common Usage, and that which hath continually and openly been done without being confused or blamed, cannot be contrary to common Law. If this be not allowed, I am highly obliged to the Gentlemen, that they have not accused me for taking money in many other Instances, relating to my Office; to instance in one only, upon the paying of every Patent there is a small Fee due, and continually paid to the great Seal; if they had accused me of this, and called it criminal, I know not what to have said to it, unless Usage and Custom had justified it; I chafe it as a Right, and unless Usage will prove the Right, I know no other Way. I own this is something different: In that Cafe, I insist on a particular Sum due by Usage: I do not insist in this Cafe that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of such a Sum as the Party should give: But, say the Gentlemen, this Evidence is to make other Persons Criminal: That is very true, if this be a Crime. These Gentlemen take it for granted, but whether it be a Crime or no, will be for your Lordships final Determination: And I hope your Lordships will not be of Opinion, that it is a Crime. If it should come out to be in your Lordships Judgment a Crime, it will be a great Confusion upon my Predecessors, who all, as it is, well known by every body, did the same Thing. But if this be underhand to be a matter, that is admitted to have been practiced, and to need no formal Proof, I had rather let this Examination alone: It is unaesy to me, to enter upon anything that can draw a Reflection upon any Person: Therefore I fumbit it to your Lordships.

Mr. Seji. Plegelly. My Lords, the managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unless they are satisfied and convinced that they have a right to admit it, it is not to be expected for the managers to do it. It is said, that the Things offered are in Extenation: That it would be a greater Guilt, if there were not former Examples to justify it: I apprehend for that Reason it is an improper Time to insist upon this now: Because matters of Aggravation or Extenuation must come subsequent to your Lordships Determination on the Articles, and will be the Consideration of your Lordships, when you come to consider of the Judgment that is to be given. I have been known to frequent Experience, in Professions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumstances before the Court, in mitigation of the Punishment: And if, hereafter, this comes to be considered of in this manner, the managers will have an Opportunity, to give a proper Answer thereto. If in this Answer he had insisted on it as an established Fee supported by Custom, and had claimed it as of Right, it had been proper to have examined Witnesses in Support of that; but when he insists upon it as a matter of Difference, and of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give, in Evidence, that which doth not make good the Defence in Answer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconvenience. We do not know what may be granted upon such an Admission; therefore we beg Leave to submit it to your Lordships Determination.

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

Mr. Pllumer. My Lords, the Council for the noble Lord take that for granted which we deny. The admitting these Witneces to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take Care of the Reputation of the noble Lord's Predecessors. I am not a Lawyer, but I never heard that there was not a Crime of which an Act of Parliament says so. And that this is a Crime, I beg Leave to remind your Lordships, that he himself declared so to the 6 F
matters in Chancery, that they had bought their Places against Law. I take that to be a fair Condition that his Opinion was, that it was a Crime.

Lord Leckmere. Before the Council withdraw, I would have this Question explained to me by the Counsel of the noble Lord, Whether this Practice be inflicted on as a Proof of a Right in the Great Seal to take this as a Perquisite, or whether it be offered as an Exten-
cution?

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

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

Lord Chief Jefb. King. Mr. Serjeant Pemblyn. It is their Lordships Judgment that you are at liberty to proceed in your Evidence, as you were going on.

Mr. Serj. Pemblyn. My Lords, we desire Mr. Roger Lewin may be called again.

Mr. Lewis called.

Mr. Serj. Pemblyn. My Lords, I define this Writs may be alleged, how long he hath been a Deputy in the Office of the Clerk of the Calendars?

Mr. Lewis. About five and thirty Years.

Mr. Serj. Pemblyn. Who was then in the Office?

Mr. Lewis. Mr. Henry Wynn.

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

Mr. Lewis. About Twelve months.

Mr. Serj. Pemblyn. Do you know who succeeded him?

Mr. Lewis. Mr. Roger Thompson.

Mr. Serj. Pemblyn. My Lords, I desire he may be alleged, whether any Prefent was made by Mr. Thompson, on his Admissition into the Office?

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

Mr. Serj. Pemblyn. By Mr. Wynn, or Mr. Thompson?

Mr. Lewis. No; but Mr. Wynn told me—

Mr. Serj. Pemblyn. Is Mr. Wynn living or dead?

Mr. Lewis. He is dead.

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

Mr. Lewis. They know this was never al-

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

Mr. Cen. Serj. The Gentlemen object, that we are not at liberty to ask what hath been declared concerning that matter by a Person that is now dead; we humbly apprehend it is within the Rule of Evidence, and I must ap-

Mr. Serj. Pemblyn. This is the same Thing again.

Mr. Cen. Serj. Evidence of this Sort is by your Lordships Judgment not to be permitted. Mr. Serj. Pemblyn. He informs your Lordships, that he hath known this Office thirty five Years. Now, I desire that he may declare what hath been the Usage on Surrenders and Admissions into this Office of Clerk of the Calendars, whether any Prefent, or Gratuity, hath been made to the great Seal?

Mr. Serj. Pengeley. This is the same Thing again.

Mr. Cen. Serj. If Gentlemen put this gene-

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for High Crimes and Misdemeanors.

Mr. Oster. The first was Mr. Thames, who surrendered to Mr. Edwards, he surrendered to Mr. John Bennet, and Mr. John Bennet surrendered to Mr. Thomas Bennet.

Mr. Oster. My lords, I desire, before Mr. Oster goes, that he may explain himself which of those Times it was that my Lord Chesterfield said, he was implored upon?

Mr. Oster. It was the first Time.

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

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

Mr. Serj. Prsby. My Lords, we desire that Mr. Edward Duper may be called.

Mr. Duper. I was then Secretary of the Lunaticks, and I remember I inquired of one or both of those Gentlemen, if any Pretext was made to my lord on that Occasion, and was answered, that nothing had been usually given in the Cafe of that Office, and that they had satisfied my Lord thereof. Afterwards, when my Lord Chesterfield had the great Seal again, and I was again Secretary of the Lunaticks, his Lordship was pleased to oblige me, that he had suffered himself to be implored upon in several matters, when he had the Seal before, and indulged particularly in the Affair of transering the Office of Clerk of the Custodies; and said he was very well satisfied that Gentlemen had implored upon him, by assuring him that nothing had usually been given on transering that Office; for he was well assured there had been Pretexts on that Occasion, and did not see any Reason why there should not: And his Lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind should happen again.

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

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

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

Mr. Oster. I don't know, I believe he had nothing the first Time, but he thought himself implored upon in it, and made me inquire about it. At the second Time, I never could inform my self what was done in it.

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

Mr. Serj. Prsby. From whom had you that Information?

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

Many Lords. Name him.

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

Mr. Duper. Yes, my Lords.

Lord — Who was it from?

Mr. Duper. I had it from my Lord Harcourt.

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

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

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

Mr. Serjeant. Pongelly. Give an Account! he knows nothing.

Mr. Con. Serj. My Lords, I hope you will not think it an improper Question. He says, that he gave an Account, I desire to know what he
he give an Account of, and if he knows upon what Occasion it was?

Mr. Dupper. My Lords, the Reason of my giving this Account was, There was a Difficultie between Mr. Cattingham, Macclesfield's Secretary, and my self, about the Office of Clerk of the Cuddeles. Mr. Catting-

ham told me, that Mr. Bowett was going to surrender his Place of Clerk of the Cuddeles: I asked him, to whom? He told me, it was to his Neighbour Mr. Hamerly. I answered, I am very glad to hear it, there will then be a piece of money for my Lord Chancellor. Mr. Cattingham said, That is more than I know; there was there ever any money paid upon the Trans-

fer of this Office! I said, Yes, I remembered there was, and I never knew any Office or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord Hartcourt in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next day I told Mr. Cattingham, that £500 Guineas had been paid on the Surrender of that Office. And after-

wards, and before the Transfer, I told my Lord Macclesfield of it.

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

Mr. Dupper. I did not know Mr. Hamerly at that time; but Mr. Cattingham called him his Neighbour.

Mr. Plummer. My Lords, I desire he may be asked, if he told my Lord Macclesfield of this before Mr. Bowett resigned to Mr. Hamerly?

Mr. Dupper. Yes, I did my lords.

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

Mr. Dupper. No, my Lords.

Mr. Lascelles. Had you no Place at all given you?

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

Mr. Lascelles. What Place is that?

Mr. Dupper. The Sealer's Place.

Mr. Lascelles. Do you enjoy that Place?

Mr. Dupper. No.

Mr. Lascelles. Was there any money given for that Place?

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

Mr. Serj. Pengecry, My Lords, I desire he may be asked, how long after it was that he carried this Account to Mr. Cattingham, that he speaks of, how long after he had found it?

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

Mr. Serj. Pengecry. I desire he may be asked whether at that time he gave Satisfaction to Mr. Cattingham, that it ought to be inferred upon?

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

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

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

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

Mr. Dupper. No.

Mr. Lascelles. Can you give no Account of it?

Mr. Dupper. No: The man hath been in Possession of it, I believe, three or four years, and I believe he will live three or four years longer.

Mr. Serj. Preby. My Lords, we desire this Mr. Lalou may be called.

Mr. Lalou sworn.

Mr. Serj. Preby. I desire he may be asked whether he was not formerly a Curator?

Mr. Lalou. I was a Curator almost three and forty Years.

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

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

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

Mr. Lascelles. My Lords, I submit it whether it is proper for your Lordships to let them into this Evidence. I take it that the immediate Questions before your Lordships are only upon two parts of Offices, one of the Clerk of the Collo-

dies, the other the Writs in Chancery. Now whether your Lordships will let them into an Evidence of all the Offices of the Kingdom, which is very extensive, I submit to your Lord-

ships Consideration.

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

End of Macclesfield. This would be to put a great difficulty upon me. The Charge against me being founded upon a Supposition, that the taking
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making money upon admitting Perons into Offices in the Court of Chancery is criminal; part of my Defence is, that the constant practice of my Predecessors flew the general Opinion to be otherwise; and therefore I have by my Answer infe
ced generally, that not only for the one particular Office of the Clerk of the Cattleways, or matters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another not charged, or charged and saved, it will be the same thing. The Argument is the same with respect to the Evidence of the Assiduity, as in all other Offices, of which Peronsfnow living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reason it may be taken in those. I offer this Evidence, not to shew I am not criminal with respect to the Curriors Offices; their waving that general Article which comprizes them, admitts it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particular they do proceed upon, for if we go Crime to take money from the Curriers, and all the rest, besides the matters in Chancery and Clerk of the Cattleways, it is no more to take it from them: If this Objection be allowed, the Proof, which in its full latitude would be of great Extent, and go to all my Pre
decessors within 50 or 60 Years, will be confined to a very narrow Compass, when restrain'd to what Account can be given in only two Sorts of Offices, by Persons who have been paid, and happen to be still alive. Besides, for strengthening that Argument from other Instances, I have in another Part of my Answer inserted, that other Persons of great Width and Honour, have likewise without Scruple, and without Confuse, dis
dposed of other Offices for money; that this hath been constantly practised in the Dispofal of all Sorts of Offices in England; money hath been taken for them all along; this Proof I must be allowed to give Evidence only of what was done in the Cafe of those Offices for which they proceeded against me; I hope therefore the Gentleman will not oppose the going on to make the Proof propounded by my Counsel.

Mr. Serj. Peggily, My Lords, if it be put in this general manner of all other Courts, and in all other instances, we apprehend it will be a very extraordinary Examination. A Person is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is before the Iffin, and not before your Lordships. Here is a Charge by the Commons of Great Britain, and an Answer and Denience to that, which can go only to those particular Offices charged. Now, to introduce an Evidence of this Nature, is exceeding any Rule or Instance that hath been ever heard of. If they apprehend by propounding and inflating on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the Consequence of such an Allowance; and it is not to the purpose for the Managers to come prepared to examine to a particular Fact stated between us, when there may be ten thousand things Inflated on that are not in Iffin. Lord Viscount Tavistad. I can't say this is within the Rule your Lordships laid down. It is inflatted upon, the Counsel must withdraw. Vesc. VI.

E. of Mountfeyd. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to shew that other Offices have been disposed of by the matter of the Rolls, the Chief Justices, and other Judges. This is in my Answer. The Commons had Notice of it; and they have joined Iffin upon it. I wonder to hear it said they have not joined Iffin, when in the Answer is is inflated upon, and they have replied thereto. This is a Thing that these Gentlemen are very well aware of, it is so ge
eral and universal a Thing, that every Body knows of it. I don't know whether it is intended to make some Difficult in this Cafe, and what is done in other Cafes; if so, I, I would be glad to hear of it. If they can't, or not, then I would beg your Lordships Determination upon it.

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

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

Mr. Lutwytche. My Lords, because it is inflated upon that whatever this Noble Lord hath said in his Answer, we have replied to; I would ob
erve that the very Replication takes Notice of this very Thing, and was one of the Things con
cidered of by the Commons, and therefore the Reply is, "that he hath endeavoured to evade the Enquiries into his own Crimes, by in
troducing Facts not material to the matters charged." And then they say, My Lords, weinsist that he may not enquire into those matters which we have not charged.

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

Then the Managers and Counsel were ordered to withdraw, and being afterwards called in again, and restored.

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

Mr. Serj. Probyn. Then if it be your Lordships Pleasure, we beg leave to call on Wintersmore, in opposition to the Evidence given by Mr. Thomas Brier, in Relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Cattleways; he gave your Lordships an Account that he had paid the Sum of Sixty four Pounds, (bef bill the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal, upon his Surrender of that Office. Now, my Lords, we shall shew your Lordships, that no part of
of that Sum of Sixty four Pounds was really paid to the Great Seal, as Mr. Bennett seems to intinuate, but was all laid out in the Fees and Expen-
ces of passing his Patent through the several Off-
cers that are proper upon that Occasion. And to-
this End we define that Mr. Touch may be called.

Mr. Serj. Probyn. My lords, we define Mr. Touch may inform your Lordships, if he was employed in taking out the Patent for Mr. Thomas Bennett, upon his Surrender of the Clerk of the Cullodies?

Mr. Touch. My lords, I was implored by Mr. Thomas Bennett to sue out the Patent, and I paid the Fees of every Office of passing the Patent, which comes to between 60 and 70l.

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

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

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

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

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

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

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

Mr. Touch. I don't know that any thing is paid to the Great Seal, upon passing the Patent Office, but the Dividend of 1 l. 11 s. 4 d.

Mr. Com. Serj. I define he may inform your Lordships, whether the Remainder is paid to other Offices?

Mr. Touch. Yes, in other Offices, to the Hanaper Office, the Secretary's Office, the Signet and Privy Seal.

Mr. Serj. Probyn. My Lords, we shall trouble your Lordships with no further Evidence on this Article: But beg your Lordships Favour to begin our Evidence on the 59th, and other Articles.

Mr. Sandy. My Lords, I define he may be asked, where he found the Warrant for passing the Patent at that Time?

Mr. Touch. I had the Warrant from the Secretary's Office.

Mr. Sandy. I define he may be asked, if he knows how it came there, and by what Direction, if he knows who procured it?

Mr. Touch. My Lords, I drew a Petition by Mr. Bennett's Direction, to the Secretary of State, upon that the Petition was referred to the Attorney General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. Sandy. My Lords, I define he may be asked, at what Influence he drew up that Petition?

Mr. Touch. I drew it up at Mr. Thomas Bennett's Request.

Mr. Sandy. To what Purpose was that Petition?

Mr. Touch. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's surrendering it, it might be granted to him.

Mr. Sandy. Is it the last Petition we define to be informed of, what the Purpose of that was, not the Petition of Mr. John Bennett, when he surrendered to Mr. Thomas Bennett, but the Petition of Mr. Thomas Bennett, when he surrendered to Mr. Humfrey?

Mr. Touch. It was a Petition reciting the Grant to Mr. Thomas Bennett, and that he might resign to Mr. Humfrey's Toke, who was a Percon well affected to his Majesty and the Government.

Mr. Serj. Probyn. My Lords, we now proceed to the other Articles, which relate to the Patents made by the matters in Chancery to the Earl of Macclesfield.

Upon this the House adjourned to the next Morning Ten a Clock.

Thursday the 13th of May, 1725. The Sixth Day. The Lords being seated in their House, and the two Proclamations being made as on the former Days.

O R D Chief Jud. King. Mr. Serj. Probyn, you may go on with your Evidence.

Mr. Serj. Probyn. My Lords, we beg leave to lay before your Lordships some Inquiries, where, upon former Admissions of matters in Chancery, Sums of money have from time to time been taken by the Great Seal. We define Mr. Meller may be called again.

Accordingly Mr. Meller appeared.

Mr. Serj. Probyn. We define Mr. Meller may be asked, whether he knows of any Sum of money paid to the Great Seal, upon the Admission of a matter in Chancery, and what Sum?

Mr. Meller. My lords, I humbly apprehend, that the Subjects of Great Britain are not compellable in any case to give an Answer to any matter that may be to their Prejudice. I speak it with the greatest Submission to your Lordships. For my part, I am very unwilling to do anything that may in any ways lessen the Security of the Subject; therefore I humbly hope your Lordships will not compel me to give an Answer to any Quætion of the Nature. I humbly submit it to your Lordships Judgment.

Earl of Macclesfield. My Lords, the Quætion he is asked is a general Quætion, whether he knows of any money paid to the Great Seal by any matter in Chancery upon his admission. Whether he knows, or does not know it?

Mr. Serj. Pongddy. My Lords, we beg leave to acquaint the House of the Circumstances of Mr. Meller, from whence the Objection rises. He was formerly a matter, but before the late Act of Parliament he quitted that Office, and hath no Indemnification,
demnation, as the present Misters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Answer to this Question, without subjecting himself to a Penalty, and accu-
cussing himself of an Offence against the Law.

Mr. Littlerose. This general Question tends to make him accuse himself, and subject himself to a Penalty.

Earl of Macclesfield. My Lords, I would gladly know whether these Gentlemen object to this Que-
uestion or not; if they object themselves to it, they have a right so to do, and to offer their Reasons, and they must be left to your Lordships Judgment. But they have no Right to instruct a Witness.

Mr. Littlerose. I never endeavoured to instruct any Witness. It is very well known I never at-
tempted any such thing; and that noble Lord knows it. I am now here, not as Counsel, but as one of the Managers for the House of Commons, and by their Command, and to have more Reason to take Notice of this Reflection. We do not in-
struct Witnesses, this is no such thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lord-
ships Determination upon it. It is not so very long ago, but the noble Lord may remember this very Question was directly asked of Mr. Bennet, and then refused; the next Day asked again by a like wind, whether he knew any, and what Money had been given for the Place? and rejected by your Lordships; and then a Question was asked. How much he knew the Place told for? and your Lordships likewise refused that. Here now, and likewise refused that: Here now, and a Question asked of a Man that has been a Mafter in Chancery, and not indemnified by the Act, whether in Effect he paid any Money for his Office? Your Lordships thought this in-
duced a Penalty, because you thought it necessary to put an Act of Parliament to indemnify the present Misters; but it is well known it doth not extend to those who were Misters before; and therefore as there is a Penalty annexed to it, he ought not to answer this Question. Besides, for the Course of our Proceedings, it ought not to be an-
swered, and we have no right to interpret, that your Lordships have refused the same thing in another Man, the same is not to be inferred upon again.

Mr. Serje. Pevdey. My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impached. Whether he apprehends that he hath a right to control the Managers in this House, and whether that arises from the Seat he enjoys, your Lordships will consider the Con-
sequences of this Behaviour. When the first Day we were told, that we were working up the Wit-
nesses, and now that we are instructing them, will not could this be a just imagination, but from his own former Practice?

Earl of Macclesfield. My Lords, as to that Gen-
tleman that thought himself reflected upon, he greatly mistakes me. I did not intend to reflect upon him as going to instruct the Witnesses in his Evidence; I believe him as far from it as any Man in England. I know him to be a Person of too much Honour; and I had not the least Thought when I spoke it, of instructing a Witness in that Sense. But here a Witnesses is making some Difficulty in answering a Question, and I thought that that Gentleman who spoke first, was stating that which made the Witnesses Objection; which I apprehended did not belong to the Managers to do. That is what I meant by instructing. The Que-
fession that is asked is, whether he hath known of any Money given to the Great Seal, upon an Ad-
mifion of a Mafter in Chancery? Say they, he was a Mafter in Chancery himself, therefore it may include his giving Money upon his being ad-
misit; But be that so, he may know of other Perfons besides himself that gave Money. My Que-

Question therefore is general, whether he knows of any Money given to the Great Seal? So the Admission of a Mafter in Chancery? The Question your Lordships resolved was as to Mr. Bennet himself, and confined to his single Office; and I asked Mr. Meller what he had given on his Admission to his own Office, it had been another Matter, and within your Lordships Resolution. But the Question that is now asked, includes what he knows hath been given by other Misters; therefore he may give an Answer without charging himself. If he answers that he doth not know of any Money given by any other Mafter except himself; then it will come to the Question the managers would bring it to.

In the mean time give me leave to say, that those Gentlemen, by being Managers for the House of Commons, have not a Right of treating Perfons in a different manner than they should do if they were not Managers. That that Gentleman should say, that what I spoke about instructing of Witnesses, ariseth from a Practice of my own, is a language unbecoming the Dignity of your Lord-

ships Bar. Is this a Way of treating mankind? Is this a fit Method of carrying on a Prosecution? Is this a decent speaking before to augur a Judicature of the State? I find of instructing a Witnesses, im-
posed with no faulty way of Instruction.—(After a short Pause) I have used a great deal of Preparation not to be disturbed at any Expressions that fall upon this Occasion. It is a faulty Way of instructing a Witnesses, to tell him what he shall say; but to tell him he hath a legal Objection to a Question that is asked, I know no Crime in that. My Lords, I beg Pardon for taking so much Notice of this Matter; but I insist upon an Answer to this Que-

Question, whether he knows of any Money given to the Great Seal, on an Admission of a Mafter in Chancery. He may answer after politely, without our all affecting him; and I submit, whe-
ther he ought not to do it.

Mr. Plummer. My Lords, if the Counsel for the noble Lord have done, I beg leave to reply. The noble Lord says, that this Gentleman may pos-

sibly answer, and not accuse himself. But if by the Answer he may accuse himself, it is a Reason why he should not answer. The method proposed, that he may say, he doth not know of any but himself, is accussing himself. As for the other Point about instructing Witnesses, it is not our Wit-
ness, but his own Witness, who refuses to answer. Mr. Meller is a free and uncorrupted Person, who does not become the Inconvenience of this Lord, and his un-
worthy manner of treating us. What we say here, we are ready to say any where. We do not think the lord as the Bar should be directing the Man-

agers, as if he fat in his Place as Judge: We do any thing unbecoming, we are subject to your Lordships Judgment. We appear not here as common Prosecutors, and are not to be treated as common Counsel by him, as he would have treated Counsel in another Place. We are here Ad-

vocates for all the Commons of Great Britain, to demand Justice against this Earl; and submit it to your Lordships, whether he is to try us in this unbecoming manner. As for the Question, the very Reason he now gives for asking it, is the same