

heard the Shooting; but he was told by the other *Black*, that they were sailing to *Callicoilan*: And the said other *Black* did forbid the Deponent to tell any Person whatsoever of the said Engagement. And the Deponent does not remember how long it is since he heard the said Shooting of Guns. And depones, That *Antonio Ferdinando*, the other *Black*, told the Deponent all these Matters upon the Coast of *Malabar*: And that the said *Antonio* came aboard the Ship the *Worcester*, when they were going to *Bengal*. And depones, That while he was chained to the Fore-Castle, he knows not who were aboard, or who were ashore: And that he was so chained for the Space of two Months; and that he was so chained to the Fore-Castle about ten Days before he heard the said Shooting: *Causa Scientiæ patet.* Depones, He cannot write.

This Oath signed by the said Captain *George Yeaman*, the Deponent's Interpreter.

George Yeaman.
ROBERT FORBES.

Compeared *James Wilkie*, Taylor, Burgefs of *Edinburgh*, aged twenty five Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogat upon the Libel pursued by the Procurator-Fiscal, against Captain *Green*, and the other Pannels; depones, That in *October* last, after Captain *Green's* Ship was brought into *Bruntifland*, the Deponent went over to *Bruntifland* with his Mother, with a Design to learn some News, or to get some Notice of a Brother of his, *Andrew Wilkie*, who had gone along with Captain *Drummond* to the *East-Indies*: Depones, That after the Deponent and his Mother came to *Bruntifland*, they went to Mrs. *Seaton's* House; where the Deponent fell in Company with *George Haines*, whom the Deponent presently * points in the Pannel; and after some Discourse, the Deponent asked the said *George Haines*, Whether or not, in his Voyage, he had seen Captain *Drummond*? At which the said *Haines* fell in a Passion, and said, *D—n me, what have I to do with Captain Drummond?* Depones, That the Deponent seeing *Haines* in such a bad Humour, forbore for some time to speak about his Brother or Captain *Drummond*: But after that they had taken some Cups about, and that the Deponent thought *Haines* in a better Mood, the Deponent asked the said *Haines*, If he had not heard of, or seen any Scots Ship coming to or from the *East-Indies*? Depones, That *Haines* then said, *That while their Ship was upon the Coast of Malabar (where they had taken in a Black, whom Haines pointed to, and had by him at the Time) a Dutch Ship informed them, That one Captain Drummond, commanding a Scots Ship, was turned Pirate; and that thereupon they manned their Sloop, and made themselves ready, in case they should have been attack'd.* But *Haines* added, *That they did not see the said Captain Drummond.* Depones, That the said *Haines* did likewise say, *That he had in his Custody, at the Time the Ship the Worcester was seized in the Road of Leith, that which he would not have fallen in the Seizers Hands for twice the Value of the Ship.* And depones, That the said *Haines* likeways added, *That he threw it overboard after the Ship was seized; saying, Let them seek it now in the Bottom of the Sea.* Depones,

* now shews at the Bar.

That while the Deponent was discoursing with the said *Haines* about the Worth of the Ship; the said *Haines* said to the Deponent, That it would not be found to be so rich as it was expected: But that there was still in the Ship that which would never be found by the Seizers, unless they pulled her Board from Board: And that the said *Haines* said, He knew very well where that thing lay. Depones, That his Mother having gone to the other Room to Mrs. *Seaton*, the Mistress of the House; she desired the said Mrs. *Seaton* to enquire of *Haines* concerning her Son, the Deponent's Brother; and that Mrs. *Seaton* said, That *Haines* was a † Suiter of *Anne Seaton*, her * courted. Daughter, who would be more proper to enquire that of *Haines*: And that the next Morning *Anne Seaton* declared, in Prefence of *Kenneth Mackenzie*, that *Haines* had said to her, *He found they had a Design to pump him; but that they should not be the wiser of him: Tho' what he had said, he had said; but would say no more at that Time.* *Causa Scientiæ patet.* And this is the Truth, as he shall answer to GOD.

James Wilkie.
ROBERT FORBES.

Compeared *Kenneth Mackenzie*, † Indweller in *Cannongate*, aged † Inhabitant. twenty seven Years, or thereby; married: Who being solemnly sworn, purged of partial Counsel, examined and interrogat, *ut supra*: Depones, That in the Month of *October* last, when the Ship the *Worcester* was lying in *Bruntifland* Harbour, the Deponent was in Widow *Seaton's* House with *George Haines* (whom he now points to in the Pannel) and *James Wilkie*, and heard the said *James Wilkie* ask the said *Haines* about Captain *Thomas Drummond's* Ship; at which the said *Haines* fell in a Passion; but the Deponent going out of the Room, heard no more what passed. And depones, That the same Night the Deponent heard Mrs. *Wilkie* intreat the said Widow *Seaton*, to endeavour to get an Account from any of Captain *Green's* Crew, of her Son, who had gone Doctor aboard of the said Captain *Drummond's* Ship: And having returned next Morning, the Deponent heard *Anne Seaton*, Daughter to the said Widow *Seaton*, tell, That *Haines* had said to her, that they had a Design to pump him; but what he had said, he had said. And that he the said *Haines* told † the said *Anne Seaton*, when asked by her, why he fell in a Passion at the mentioning of Captain *Drummond*? That he answered, That he knew more of the said Captain *Drummond*, than he would tell. *Causa Scientiæ patet.* And this is the Truth, as he shall answer to GOD.

Kenneth Mackenzie.

ROBERT FORBES.

Compeared *William Wood*, one of the Gunners of her Majesty's Artillery, aged fifty three Years, or thereby; married: Who being solemnly sworn, purged of partial Counsel, examined and interrogat, *ut supra*; depones, That the Deponent was in Company with *George Haines*, at *Bruntifland*; and that one *John Henderfon*, † Writer, in *Edinburgh*, † Clerk for Law-Business. was likeways present. Depones, That the said *George Haines*, and the rest in Company with the Deponent, hav-

ing drunk pretty warmly, the said *George Haines* fell in a melancholy Fit; and *John Henderson* having ask'd the Reason, the said *Haines* expressed himself thus: *It is a Wonder that since we did not sink at Sea, that God does not make the Ground open and swallow us up when we are come ashore, for the Wickedness that has been committed during this last Voyage, on board of that old Bitch Bels; pointing to Captain Green's Ship.* And depones, That there-

after he went a walking with the said *George Haines* in the † Links of

Bruntisland; and the Deponent happening to tell the said *Haines*, that *Captain Madder's* Uncle was burnt in Oil, for attempting to burn the Dutch Ships at *Amsterdam*; the said *George Haines* did thereupon tell the Deponent, *That if what Captain Madder had done, during his last Voyage, were as well known, he deserved as much as his Uncle had met with.* *Causa Scientiæ patet.* And this is the Truth, as he shall answer to GOD.

William Wood.

ROBERT FORBES.

Compeared *John Henderson*, Writer in *Edinburgh*, aged twenty Years, or thereby; unmarried: Who being solemnly sworn, purged of partial Coun-

sel, examined and interrogat *ut supra* Depones, † *conformis precedenti* (viz. *William Wood*) in omnibus; except as to what happen'd betwixt the said

William Wood and *George Haines* in the Links of *Bruntisland*, in relation to *Captain Madder* and his Uncle. *Causa Scientiæ patet.* And this is the Truth, as he shall answer to GOD.

John Henderson.

ROBERT FORBES.

Compeared *Anne Seaton*, Indweller in *Bruntisland*, aged nineteen Years, or thereby, unmarried: Who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra*, depones, That she was present with *Georges Haines*, one of *Captain Green's* Crew (whom she points at the Bar) in *Bruntisland*, at the Time when *Mrs. Wilkie* and her Son were there: That *Mrs. Wilkie* desired the Deponent to endeavour to learn if *George Haines* knew any thing of *Captain Drummond*, because the said *Mrs. Wilkie* had a Son that went along with him. Depones, That she the Deponent did accordingly enquire at *Haines's*, but he denied that ever he saw the said Ship, or knew any thing of her. Depones, That she was likewise present with *George Haines*, when *William Wood*, one of her Majesty's Artillery, and *John Henderson*, were in Company with him, and that at that time, *George Haines*, in a melancholy Fit, expressed himself thus: *It's a wonder, that since we did not sink at Sea, that we are not swallowed up with the Ground ashore, for the Sins committed on board of Captain Green's Ship.* And depones, That he likewise added, *during the last Voyage.* And depones, That *Haines* said to the Deponent, *That he knew more of Captain Drummond than what he would express at that time:* Depones, That the said *George Haines* told the Deponent, *That when the Ship was seized in Leith Road, he had aboard with him that which he would not have had to fall in the Seizers Hands for twice the Value of the Ship, but that*

he threw the same over-board. Depones, That she never talked with *Haines* about an old Sweet-heart that she had aboard of *Captain Drummond's* Ship, nor did the said *Haines* say to the Deponent, *That she would never see him again.* And depones, That she never heard *Haines* say, *That there was yet aboard of the said Ship what would not be found unless she were pulled Board from Board.* And depones, That when the Deponent was enquiring of *Haines* about *Mrs. Wilkie's* Son, that he said, *That she designed to pump him as Mr. Mackenzie had done before.* *Causa scientiæ patet.* And this is the Truth as she shall answer to GOD

Anne Seaton.

ROBERT FORBES.

Compeared *Captain John Brown*, Skipper, in *Leith*, aged 40 Years, or thereby, married, who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra:* Depones, That he went aboard the Ship the *Worcester* when the Goods were unloaded, by Order of the Lords of the Committee of Privy-Council, and saw the Hatches, which were fast and sealed, opened: Depones, That on the Larboard-side of the Ship, the Goods were much damaged, and that few or none of the pack'd Goods were numbered or marked, which is customary; and the Deponent himself never received any Goods but what were marked, that he might know to whom they belonged. Depones, That the Goods aboard the said Ship, were regularly enough stowed: And being interrogate * for the Prisoners, whether or not it be customary that Goods be marked or numbered where there is a *Supercargo* aboard: Depones, That it is always customary, whether they belong to ten, or one Man: And being interrogate for the Pannels, whether or not the Reason why the Goods wanted Mark or Number, might be, because that the Goods were much damaged, and the Pepper spoiled and heated. Depones, That where the Goods or Pepper were spoiled, the Bales were all rotten to Pieces, but where the Pepper and other Goods were intire, there were Bales and Packs which wanted both Numbers and Marks: And being likewise interrogate by the Pannels, whether or not there were some Packs and Bales that had a common Ship-mark, and some who had only the Vestige † thereof, being † *Sign.* near worn out. Depones, That there were a great many who had a common Mark, and that it was plain and obvious, and that there were others who had no Mark at all, and that the most Part wanted Marks altogether, and that there were two or three Bales which had the Vestige of a Mark. *Causa scientiæ.* The Deponent † witnessed the unloading † *was Witness to.* of the said Ship, at the Desire of the Lords of the Committee of Privy-Council, and saw, and knows as he has deponed, And this is the Truth, as he shall answer to GOD.

John Brown.

ROBERT FORBES.

Compeared *Archibald Hodge*, Skipper, in *Leith*, aged 40 Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogate, *ut supra.* Depones, That he was aboard the Ship the *Worcester* in *Bruntisland*

island Harbour, when the Committee of Privy Council came to rummage her, and saw Goods unloaded from aboard. Depones, That the most Part of the Goods wanted both Number and Marks, which is no wise common or regular in any Ship that ever the Deponent has seen: But the Deponent did never see any *East-India* Ship unloaded before. *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

Archibald Hodge.
ROBERT FORBES.

COMPEARED *John Glen*, Goldsmith, Indweller in *Leith*, aged 43 Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogate, *ut supra.* Depones, That the second Day after the Ship the *Worcester* came to *Leith* Road in Summer last, the Deponent went aboard the said Ship, and about twelve a Clock of the Day, the Deponent was in the Cabin with Captain *Madder* and one *Hammond*, now in *England*, as the Deponent is informed; at which Time the said Captain *John Madder* took a Seal out of his Pocket, and asked the Deponent, what he thought of the *Scots African* and *Indian* Companies Arms, and at the same time gave the Deponent the said Seal in his Hand, to which the Deponent did look, and found thereon the St. *Andrew's* Cross, a Dromedary, a Camel, with a Cattle on the Back of it, and a Ship with a Rising-Sun above the Helmet, and two wild Men as Supporters, and that the said Seal, to the best of the Deponent's Memory, was near the Bigness of an *English* Half-Crown, and had an Handle of *Lignum vitæ.* And being interrogate if aboard the said Ship he did see the Impression of the said Seal upon any Paper: Depones negative. And further depones, That the Seal now exhibited in Court, was not the same which Captain *Madder* did shew to the Deponent; and whereupon he has deponed as above, *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

John Glen.
ROBERT FORBES.

† *Jury order'd to withdraw.*

† *Sentence or Opinion.*

|| *Sufficient to bear a Trial.*

The Probation being ended as above, and the † Affize ordained to enclose, some of the Assizers moved, that that Part of the Judges and Assessors ‡ Interloquitor, whereby they find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, || relevant, &c. to be explained as to these Words, *being proven clear and plain by Evidence*, if the same did require, that the said Crimes of Piracy, or Robbery, or Murder, should be proven by two or three Witnesses, directly proving the foresaid Crimes: Or, if it were only required, that the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by a clear and plain Evidence, as to the cumulative and concurring Presumptions, whereby the same were alledged to be inferred, altho' two concurring Witnesses should not be found as to every several Presumption, were sufficient: The said Judge and Assessors declared their Meaning to be in the Terms of Law, *viz.* That tho' there were not a direct Probation of the Crimes libelled, *per idoneos Testes, vel instructa apertissimis documentis*, by proper Witnesses, or made good by plain Proofs; yet if the Crimes did appear by the Qualifications and Circumstances, as they were li-

belled, to be made out *per indicia ad probationem indubitata & luce clariora*, by undoubted Presumptions as clear as Sun-shine, albeit every Circumstance and Qualification were not proven by two direct Witnesses, the same should be held for a clear and plain Evidence.

Thereafter, according to the Custom observed in Criminal Courts and Processes, That the Advocates for the Pursuer, and for the Pannels, are allowed † *hinc inde* to speech the Affize, and resume and lay before the Assizers, the Libel, with the Interloquitor past thereon, and apply the Probation led for proving thereof on the one Part, and on the other to resume the Defences for the Pannels, and to take off as much as possible, the Weight of the Probation for their Defence and Exculpation; Sir *David Dalrymple*, her Majesty's Sollicitor, one of the Assistants to the Procurator-Fiscal in this Criminal Pursuit, spoke to the † Affize in † *Jury* manner following.

† *On both sides, in their Turns to speak to the Jury.*

Gentlemen of the INQUEST.

YOU have before you Indictments against the Pannels upon very atrocious Crimes, and these Indictments have been sustained relevant, as libelled by the honourable Judge-Admiral, to be proven by clear and plain Evidence. But for your further Satisfaction, at the Desire of some of your own Number, made openly in Court, the Judges have declared, That by these Words, *Plain and clear Evidence*, they do not confine the Affize to two concurring Witnesses, but have left to you what Evidence is necessary to make Faith according to the Nature of the Crime, to your Conviction.

Your Business then, *Gentlemen*, is to apply or compare the Probation with the Indictment, and to return your Verdict distinct, concerning what you think proven or not.

It is a Happiness that this Trust is in the Hands of Persons so discerning and faithful, and therefore the less needs be said, either for clearing the Nature of the Crime, the Manner of the Discovery, or for summing up the Evidences: But to comply with the Custom of such Trials in this Kingdom, and for preventing the Mistakes into which the Lawyers on the other Part seem to lead you: Forgive me if after a Sederunt of twelve Hours spent in † leading of the Probation, I detain you a little longer in Recapitulating what has past, with some few Observations, I hope not improper, before ye || enclose.

* *Hearing.*

† *Giving in the Evidence*

|| *withdraw*

As to the Crimes contained in the Indictment, it is obvious how heinous they are, and how hateful they render the Persons who are truly guilty in the Eye of the Law: A Pirate is in a perpetual War with every Individual, and every State, Christian or Infidel. Pirates properly have no Country, but by the Nature of their Guilt, separate themselves, and renounce on the Matter, the Benefit of all lawful Societies: They are worse than ravenous Beasts, in as far as their fatal Reason gives them a greater Faculty and Skill to do Evil: And whereas such Creatures follow the Bent of their Natures, and that promiscuously Pirates extinguish Humanity in themselves, and prey upon Men only, especially upon Traders, who are the most innocent. The Crime of Piracy is complex, and

and is made up of Oppression, Robbery, and Murder, committed in Places far remote and solitary. And indeed if GOD had not, in a most wonderful way, brought the Crimes whereof the Pannels stand accused, to Light, they might have escaped unpunished in this World, to their own eternal Destruction, and to the great Loss of such who may be amended, or prevented by the Example of their Punishment. But altho' the Abuses now complained of, happened in the vast Ocean, and at no less Distance than the *East-Indies*, and that the Actors were tied by

† Arbitrary
Command of
their Captain.

obvious Reason to Secrecy on their own Account, and were bound by a † regulous Command, not to reveal or answer Questions: And besides all these, it is most probable there was a

most impious Oath interposed, as uses to be in such Cases, and which has more Force to restrain Men of such desperate Principles and Practices, than all the Ties of Religion or Nature: Yet GOD, in his Providence, has let in Light upon these dark and cruel Crimes, as it were by meer Accident: For I presume, you are not ignorant, that the first Notices of this Matter proceeded from Words which were dropt in Passion, or expressed by the Weight of Guilt, concerning the Wickednesses which have been done aboard the *Worcester* during the last Voyage. These, and some other Grounds of Suspicion which appeared upon better Enquiry, were the Occasion of the Information given to the Government, and how cautious the Lords of Her Majesty's most Honourable Privy-Council, have been in examining the Matter before any Prosecution was appointed, I persuade myself that you and the whole Nation know, and are satisfied. And now that the Probation has been solemnly led in Presence of the Court, and of the great Number of all Qualities who have been present; I doubt not it will appear to you and all Men, who will suffer their Reason to act freely, that these Informations have been too well founded.

The Indictment, as it concerns the Facts libelled, consists chiefly of two Parts. The first concerns a Murder and Piracy happening upon the Coast of *Malabar*. The second concerns Circumstances which help to give Light to that Piracy, and which Circumstances have happened since the Arriving of the *Worcester* into this Country.

As to the first, *Gentlemen*, You have a Testimony of the first Witness *Antonio Ferdinando*, who depones, *He came aboard of the Worcester upon the Coast of Malabar, and that about a Month after, he saw an Engagement betwixt a Sloop belonging to the Worcester, and another Ship sailed by White Men, speaking English, and bearing such Colours as Captain Green's Ship did bear; and that the Captain and some others of the Worcester's Crew, went aboard the Stranger's Ship, and stayed about the Space of a Glass; that upon their Return to the Worcester, the Sloop was man'd out with twenty Men, of which Number were the Captain himself, with Madder, Simpson, Keigle, Kitchen, and others; that the Sloop was mounted with 4 Guns and 2 Patteraroes; that the Sloop engaged the Stranger's Ship, and that there was a running Fight for 3 Days, during which Time the Worcester came up and fired at the said Ship, and that upon the third Day, the said unfortunate Ship was taken (and what is fearful even to repeat) the Crew being about Ten, were murdered and thrown over-board; that the Goods were brought aboard of the Worcester, and the taken Ship was sailed with a Part of the Worcester's Crew to Callicoilan, and there sold to Coge Commodo; that the Deponent himself was wounded, the Scar of*

which Wound was shewn to you, Gentlemen, and the Court; and that he was commanded to keep Secrecy under the highest Peril, and that the very Upper-Coat which he wears (and in my Judgment, appears to be Scots † Rugg) was a Part of the Spoil.

† Coarse
Cloth.

As to this Testimony, *Gentlemen*, there are several Things very observable, such as the † Stayedness, Simplicity and Constancy of this Witness, who, in many Examinations before the Council, and Committee of Council, has uniformly given the same Account which he has now deponed before this Honourable Court; not in the same Form of conceived Words, but materially the same, tho' the † Interrogators have been changed: And I think, it adds to the Weight of his Testimony, that ye are Witnesses how it was † emitted, while he was under heavy Sickness, and forced to lie down at the End of the Table.

† Solidity.

† Questions.

† Given.

2. It is observable, that this Witness *Antonio Ferdinando* had no Accession to the discovering of this Matter, nor was at all an Informer: But the Matter being enquired into, he did plainly and honestly acknowledge from the Beginning, as he has now deponed: Neither was the Story first told at *Leith*, nor since the Pannels arriving in our Harbours: But it appears by the Testimony of *Antonio Francisco* the other *Black* (who shews a great Inclination to favour Captain *Green* and the Pannels) that *Ferdinando* gave him the same Account in Substance upon the Coast of *Malabar*: And this is further confirmed by *Stringman* the Cook, who told in several Examinations before the Council, that shortly after the said *Stringman* came aboard on the Coast of *Bengal*, *Ferdinando* who was his Mate, gave him the like Account of the Story: So that it is morally evident, that this Account of the Crime was not invented with any View of a Trial against the Captain and his Crew.

3. It is worthy your Notice, that Captain *Green* had been aboard of the unfortunate Ship taken, as a Friend, and had Opportunity to spy, that the Crew being but about ten, were too weak to man or defend a Ship of 20 Guns, which, no doubt, emboldned him to undertake the Wickedness complained of.

It is observable, That the several Parts of *Ferdinando's* Testimony are fortified by concurring Proofs. As first, by the Books found aboard, it appears, that the Sloop was furnished with Arms in the Month of *February* libelled, and that the Arms were such as the Testimony mentions. 2. He shews you the Scar of his Wound upon his Arm; and as he depones, that he got it in the Engagement, so the Chyrurgeon depones, *That he not only saw it, but that shortly after the bearing of the Shooting, he had taken the † Dressing from off the Wound, and found it a Fracture, and that it look'd like a Gun-shot, and that the Black came to his Chest a few Days thereafter to have it dress'd aboard.* 3. The Testimony of *Ferdinando* is also confirmed by the Depositions of *Francisco* and Mr. *May*, as to two very notable Articles, viz. *The bringing of the Goods aboard about that Time*: And by the Testimony of the said Mr. *May*, as to the Ship taken, riding at the Stern of the *Worcester*. 4. Captain *Madder's* severe Commands for observing of Secrecy, is not only deponed upon by *Ferdinando* the first Witness, but also by *May* the Chyrurgeon, very circumstantially: When Mr. *May* asked an innocent

† Plaster.

nocent Question, as one should think, upon seeing the Deck lumbered with Goods, Mr. *Madder* answers, cursing him, and bids him mind his Plaister-Box. When *May* goes to his Chest, there came three Men to be dressed of their Wounds, of which the *Black* was one. *May* asks them how they came to be wounded, but *Madder* had followed, and commands Silence on their Peril; but Mr. *May* persisting in his Enquiry, *Madder* goes to the Commander, and brings a positive Order to answer no Questions: Thus *Ferdinando* and *May* concur as to the Command of Silence. Now, I put it to your Consciences, *Gentlemen*, if ye think this Mystery was used to cover a common Accident; or if, rather you are not satisfied, that, joining the Testimony of *Ferdinando* with the Wounds, and the Silence so rigorously imposed, the Goods brought aboard, the riding of the taken Ship at the Stern of the *Worcester*, they do not evince the Certainty of the Piracy and Murder libelled, as far as the Nature of the thing can admit.

To these, *Gentlemen*, ye would be pleased to join in your Observation, That it is owned and demonstrated, from the Books taken aboard of the *Worcester*, that there sprung a Leak in the said Ship on the Coast of *Malabar*; and that it had been most natural for the Pannels to have carried their Ship to *Goa*, or to *Surat*, which was within Ten Degrees Sailing, or thereabouts; yet the Pannels did chuse, rather than continue on that Coast, to run along in a leaky Vessel, a dangerous Course, round the *Peninsula*, and the Island *Keilon*, to the Bottom of the Bay of *Bengal*, a Course of about Seven or Eight hundred Leagues. But that Fatigue and Risque was small, when compared with the Danger of repairing their Ship on a Coast, where their Crimes might be more easily discovered. 2. It is remarkable, that the Books found aboard, and now lying before you, contain the full Instructions given to Captain *Green* and his Company, from their alledged Owners, which have something mysterious from

the very Beginning. I have had little
 † *Opportunity*. † Occasion to peruse them, having
 seen them this Morning for the first
 Time. But one Thing I could not
 † *Observe*. but † notice, That in the Instructions,
 one Article contains a Cypher, in
 which the Captain or Supercargo was to correspond
 with their Owners. And altho' the Cypher seems
 to be nice, and well enough devised at first to cover
 the Correspondence from any ordinary Curiosity;
 yet so great Anxiety has been shewn concerning this
 Cypher, that the Freighters send a Letter after the
 Ship; adding an Instruction, That besides the Cha-
 racter to be used, there should be this further Dis-
 guise added, that the last Letter of the preceding
 Word should be always repeated before the first
 Letter of the next Word; of which, for Illustration,
 the Letter contains an Example, giving Direction
 how Letters should be addressed to the Writer him-
 self. But neither was this Caution sufficient: For
 next Day another Letter is written, relating still to
 the Cypher; and wherein the Writer expressly ad-
 vises, that the Letters from the Ship should not be
 directed to himself, but to a Scrivener living in —
Street, London; and that they should not be subscrib-
 ed. Why all this Mystery? The Correspondence must
 be in Cypher; and this Cypher exquisite and refin'd:
 And yet the Letters to be addressed to a Third Per-
 son, obscure, for what I know. They were not to
 contain any Address or Subscription, which should
 either discover the Writer, or the Person to whom

he writes. Fair Trading requires no such Affec-
 tation.

But further, you will be pleased to take notice,
 That the outward Cargo for a Ship of 200 Tons,
 and 20 Guns mounted, sailed with 36 Men, was in
 Value but 999*l.* 17*s.* 2*d.* Sterling; which appears by the † Document † *Vercher*.
 produced by themselves, for instruct-
 ing their Entry at the *Custom-House*; and that too,
 for the most Part, Arms. I have not so much Ex-
 perience in Matters of Trade; but to me it seems
 very strange, that a Voyage so exceedingly hazard-
 ous and expensive, should have been
 undertaken with so small † Means. And † *Stock*.
 these Things, in the very undertaking
 of the Voyage being joined with the shrewd Evi-
 dences of the Crimes, whereof these Pannels stand
 accused, seem to be of very great
 Weight: And where such † Fineness † *Cunning*.
 occurs in the Entry, and the Effects
 are so tragical, in such an Enquiry; I hope I shall
 be forgiven by every body, having laid them be-
 fore you with as much Tenderness to the Freighters
 (with whom I have nothing to do) as possible.

As to the Second Part of the Libel, I mean these
 Circumstances which concur to give Light to the
 Crimes chiefly libelled; there is also sufficient Evi-
 dence. The first of these Circumstances is what
 concerns Mr. *Reynolds*, one of the Pannels. The
 Indictment bears, That there was a Letter found
 writ to him by his Wife's Sister, in Return to one
 of his writ to his Wife; wherein his said Sister ad-
 vises him to confess; adding, That in his own Let-
 ter, which she had seen, he says, *That some of their*
Men had basely confess'd; which implied, that they
 were guilty. And *Reynolds* being questioned upon
 this Letter, produced the Copy of his Letter to his
 Wife, which occasioned his Sister's writing to him,
 agreeing with this Letter. These you have before
 you.

I am not ignorant, that *Ferdinando* (the first Wit-
 ness) says, *He believes Reynolds was ashore*: But
 the Testimony as to that is not positive; neither
 is it, in my Judgment, sufficient to take off the
 Accession of the Crime, or † Art and † *Contriving*
 Part libelled; since the said *Reynolds* and *Alien*.
 was of the same Crew, and did not se-
 parate himself from them; and it is most presum-
 able, had his own Share of the Booty. Besides,
 it's plain from the Letters, he was conscious to the
 Truth, which (he says) *was basely confess'd*: And it
 is of little Weight, what has been offer'd as a Gloss;
viz. basely confess'd, is as much as if he had said,
falsely told Stories. For in the ordinary way of speak-
 ing, to *confess*, is to *tell true*; and the Adverb *basely*
 implies no more than if he had said, that they had
 ungenerously confessed; tho' it be indeed rather a
 Duty, whatever Mr. *Reynolds* thinks.

The next observable Circumstance is what con-
 cerns *George Haines*: As to whom, by laying toge-
 ther the Testimonies of *James Wilkie*, *Kenneth*
Mackenzie, *William Wood*, *John Henderson*, and
Anne Seaton, you will find it proven, That upon
 asking a Question about *Drummond's* Ship, *Haines*
 fell in Passion; by the Depositions of *Wilkie* and
Kenneth Mackenzie. 2. That *Haines* said, *That*
when the Ship the Worcester was seized in the Road
of Leith, he had that in his Custody, which he would
not have fallen in the Seizer's Hands for twice the
Value of the Ship; and that he threw it over-board;
 is proven by the Testimonies of *James Wilkie* and
Anne

Anne Seaton. 3. That *James Wilkie's* Mother employ'd *Anne Seaton* to enquire of *Haines* concerning her Son, who had gone Doctor to *Drummond's* Ship; is proven by the Testimonies of *Wilkie* and *Seaton*. And *Kenneth Mackenzie* depones, That he was present when the said *Anne Seaton* gave an Account of what had pass'd betwixt her and *Haines*; and that she told, that *Haines* said, *They had a Design to pump him*: And that being ask'd why he fell in a Passion at the mentioning of Captain *Drummond*? He answered, *That he knew more of Captain Drummond than he would tell.* And *Anne Seaton* concurs with *Mackenzie* as to these Particulars. 4.

|| *broke out.* That *Haines*, in a melancholy Fit || burst forth in these, or like Words, *It's a wonder that, since we did not sink at Sea, God does not open the Earth, to swallow us up at Shore, for the Wickedness committed during the last Voyage, in that old Bitch Bels* (pointing to Captain *Green's* Ship) is proven by the concurring Testimonies of *William Wood*, *John Henderson*, and *Anne Seaton*. And, 5. That *Haines* said, *If what Captain Madder did during the last Voyage, were as well known as what his Uncle undertook at Amsterdam, he deserved as much as his Uncle met with; which was, to be boiled in Oil*; is only attested by *William Wood*. Nor does every minute Circumstance need a concurring Probation.

Having thus laid before you the Indictment and Probation, conjoining these Proofs, which, I am confident, to all impartial Men, will appear clear and plain Evidence of the Crimes of which these Pannels are accused; I shall take Liberty, in the next Place, to precaution you against certain Insinuations, which the Pannels Lawyers have discover'd when the || Probation was a leading.

I need be at little Pains to convince you, that the first Witness, tho' a *Black*, is a legal Witness; seeing that, upon full Debate, has been already determined by the Honourable Judges. And indeed, besides that, he is not only a Man, but a Christian, and adduced for proving a Crime covered, committed at Sea, which is more solitary than any Defart at Land. His Testimony had such a distinguishable Air of Truth and Sincerity, as made him not only a legal Witness, but a very material and probative one. But the Pannels Lawyers would fain have observed some Inconsistency in his Testimony, and betwixt it and that of Mr. *May's*: For, say they, *Ferdinando depones, That he came aboard two Years and a half ago; and that the Action happen'd about a Month after he came aboard*; so that it must have been in the Month of *November*, 1702, and not in the Months of *February*, *March*, &c. 1703. But ye were Witnesses, that the *Black* did not depone positively as to the Time of his coming aboard, but said it was about two Years and a half ago; and that the Engagement was about a Month after. Both these Designations of the Time admit a Latitude: And he was so cautious, that he stopt again before he signed his Oath; until it was told him, that it could not be otherways understood.

But then they urge, that he depones, That the Engagement happen'd betwixt *Tillicherry* and *Callecut*, upon the Coast of *Malabar*; yet Mr. *May* depones, That he heard the Shooting at *Callicoilan*; which, say they, being at such a vast Distance from *Tillicherry*, was impossible.

But these Gentlemen do not observe, That the Engagement continued for three Days; and that it is expressly deponed, There was a running Fight during that Time: So that tho' the Beginning of

the Attack might have been betwixt *Tillicherry* and *Callecut*, yet it might have continued along the Coast.

Neither is it of more Moment what these Gentlemen observe, That the Strangers Ship attacked might have in three Days got off: Because it appears, she was attacked and pursued by the Sloop, which was a light Vessel; and the Ship itself attack'd was weakly mann'd, having but about ten Men aboard, and a Ship of 20 Guns.

But it may possibly be further urged, That the *Black* deponed, That Mr. *Loveday* and Mr. *Linstead* were aboard the Sloop; whereas Mr. *May* depones, That Mr. *Linstead* was left at *Keilon*; and that he heard him order'd to go ashore before, and saw him taken into the Ship some Time afterwards.

But neither is there any Inconsistency in this Particular, betwixt these two Oaths: For Mr. *May* depones, That when the Ship came upon the Coast of *Malabar*, he himself was put ashore: And altho' before he was put a-shore he heard *Linstead* and *Hammond* ordered a-shore, yet he did not see them go; so that *Linstead* might have continued in the Ship notwithstanding. Or, in the next Place, let us suppose that *Linstead* had once gone a-shore; does it from thence necessarily follow, that he did not come aboard again, till the Doctor saw him taken up? Certainly it does not; for Mr. *May* continued a very long Time a-shore. But now granting what these Gentlemen so earnestly desire, that *Ferdinando* had been mistaken as to some such Circumstance; can that overturn his Testimony? The Thing happening upwards of two Years ago: The Subject was an Engagement at Sea; perhaps the first Fighting ever he was Witness to: And the Confusion which, for the most part, is incident to the firmest Spirits in their first Adventures, might excuse this Witness, if in a † minute † *small*. Circumstance he had mistaken; seeing his Oath, as to what is material and essential, is most pregnantly || astructed, as has been already said. || *supported*.

It may be likeways observed, That it was very much urged for the Pannels, that *Ferdinando* came aboard the Ship at *Anjango*, only two Days before the Ship parted from the Coast of *Malabar*: But tho' that were true, it would be little to the Purpose: For it is evident by his own Deposition, that at first he enter'd to the Service of Mr. *Loveday*, the Purser; and that he came aboard of the Sloop at *Callicoilan* with *Loveday*; and the Sloop was the chief Instrument made use of in the Piracy libelled.

It is not unlikely, that the Lawyers on the other side will amuse you with Observes upon Mr. *May's* Testimony; as that he is but a Witness † *de auditu*, not having been † *By Hear-say*. present at the Action: But in this they are again mistaken; for, as I take it, a Witness *de auditu* is such an one, who repeats at second-hand: As if Mr. *May* had deponed, That another Person had told him he had heard Shooting. But since our Hearing is as much to be depended on as our Seeing, in what concerns the proper Object of the Ear, Mr. *May's* Testimony, which chiefly consists of what he heard and saw himself, is not in the Sense of Law *de auditu*. Mr. *May* depones he heard the Shooting; and the next Day that he came down, he saw the *Worcester* riding, with another Ship at her Stern; and that he saw some of the Crew come a-shore in a Boat; and that they told him that they had brought in a Ship; and that *Coge Commodo*, or the *Lingrister*, told him he had bought the Ship. He saw and handled the *Black's* Wounds: H h h h 2

Wounds: he was Eye and Earwitness to *Madder's* Threatning, and imposing a rigorous Silence. In all this there is nothing properly *de auditu*; for that the Seamen told him they had brought in a Ship, did not depend barely upon their telling, but upon these Circumstances, that they were the Persons brought it in; and that the Ship was riding under his Eye at the Stern of the *Worcester*. And just so what he heard from *Cage Commodo*, and the *Linguister*, being upon the Place, and seeing the Ship under his Eye, is not to depone only *de auditu*, but has as much Evidence, as is necessary to create a full Certainty in the Mind of any reasonable and indifferent Person.

As for the other Circumstances, I beg Liberty to forewarn you, *Gentlemen*, That every Thing material is proven; and that even as to the least Circumstance, there is some Evidence. That the Goods were not regularly marked, as is ordinary in fair Trade, is proven by the Oaths * *Masters of Ships* of * *Skippers*: That the Seal of the *African Company* was seen in the Hand of Captain *Madder*; is deponed by *Glen*, a Seal-Cutter, who could not well be mistaken in a Matter of that kind. And in like Manner, that there was something aboard of the *Worcester*, which would not be found, tho' they should tear her Board from Board; is deponed by *James Wilkie*. None of these Circumstances are absolutely without Evidence: And the rest of the Libel, both what is essential, and even as to lesser Circumstances, is distinctly and plainly proven.

To conclude, *Gentlemen*, As, on the one Hand, you are to be very tender of admitting that for a Proof, in a Case of Life and Death, which ought not to be admitted; so you must be careful not to reject such Evidence, as must convince the whole World, that these unhappy Criminals are guilty of the cruel and atrocious Crimes libelled. Take the Matter in its whole *Series*: The affected Darkness in the Entry to the Undertaking, a Correspondence in Cypher, wherein the Parties were neither to be mentioned on the Cover, nor in the Letters, nor were they to subscribe. That the Cargo was inconsiderable, and chiefly composed of Arms, not to the Value of a Thousand Pounds Sterling. And it seems almost ridiculous, that a Ship of 200 Tuns, with 20 Guns mounted, sailed by 36 Men, should be sent to the *East-Indies* upon an ordinary Adventure, with so invaluable a Cargo: And join with that the Evidence of the Murder and Robberies, mentioned in the Indictment. Consider how much Light the Providence of GOD has discover'd in so dark a Crime committed in a Place so distant and solitary; and I am confident, you will conclude with me, That the Murder and Piracy is proven.

* *Speak to the Jury.* The Advocates for the Pannels did also on their Part * *speech* the Assize, by resuming the Defences for the Pannels, and for taking off the Weight of the Probation led against them, and by alledging what could be further said for their Exculpation and Defence.

* *Off-hand by word of mouth.* But these Speeches having been made * *extempore*, & *viva voce*, albeit the Advocates for the Pannels were desired at the printing of this † *Process*, † *Trial.* to give in to be printed a full Copy of what they had said in Defence to the Assize; yet they declined to do the same.

The Judge of the High Court of Admiralty and

Assessors ordain the * *Assize* presently to inclose, and to return their Verdict upon *Friday* next, being the Sixteenth of *March* Instant, at ten a Clock in the Forenoon; and the † *hail Fifteen* Assessors to be present, each under the Pain of Three Hundred Merks, and continue the Dyet till that Time: and ordain the Pannels to be carried back to the respective Prisons.

ROBERT FORBES, I. P. A.

CURIA JUSTICIARIA *supreme Curie Admiralitatis tenta in Prætorio, vel novæ Domo Sessionis Burgi de Edinburgo, decimo sexto die Mensis Martii. 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnistoun, Joannem Home de Black-adder, & Joannem Cockburn de Ormistoun, Assessores.*
Curia legitime affirmata.

The said Day, the Persons who pass'd upon the Assize of Captain *Thomas Green*, Commander of the Ship the *Worcester*; Captain *John Madder*, Chief Mate of the said Ship; *John Reynolds*, Second Mate; *Thomas Linstead*, Assistant Supercargo; *James Burn*, Boatswain; *James Simpson*, Gunner; *Andrew Robertson*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen and Alexander Taylor*, Seamen; *John Bannantine*, Seaman; returned their Verdict in Presence of the said Judge and Assessors; whereof the Tenor follows.

Edinburgh, the 14th of *March*, 1705, The * *Assize* having inclosed, did chuse Sir *James Fleming*, of *Rathobyres*, to be their † *Chancellor*; and *William Neilson*, Merchant in *Edinburgh*, to be their Clerk: and having consider'd the Two Indictments pursued at the Instance of Mr. *Alexander Higgins*, Procurator-Fiscal of the High-Court of Admiralty, against Captain *Thomas Green*, Commander of the Ship the *Worcester*; Captain *John Madder*, Chief Mate of the said Ship; *John Reynolds*, Second Mate; *Thomas Linstead*, Assistant Supercargo; *James Burn*, Boatswain there; *James Simpson*, Gunner; *Andrew Robertson*, Gunner's Mate; *John Bruckley* Seaman; *George Kitchen* Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, and *Alexander Taylor*, Seamen; *John Bannantine*, Seaman; with the Debate upon the said Indictments; and the Judge of Admiralty and Assessors, their Interloquitor, and Explanation thereupon, with the Deposition of Witnesses adduced by the Pursuer * *thereintil*:
They by Plurality of Votes, find, that there is one clear Witness as to the Piracy, Robbery, and Murder libelled; and that there are accumulative and concurring Presumptions proven, for the Piracy and Robbery so libelled: But find, that John Reynolds, Second Mate of the said Ship, was ashore at the Time of the Action libelled:

Sic subscribitur,

* *Foreman.*

Ja. Fleming, * *Chancellor.*
Will. Neilson, Clerk.

Thereafter

Thereafter Mr. *David Forbes*, Advocate, produced a † Procuratory from the Company of *Scotland* trading to *Africa* and the *Indies*, to him the said Mr. *David Forbes*. In the Terms whereof the said Mr. *David Forbes* Protested, and took Instruments. The Tenor of both Procuratory and Protest is as follows viz. The COURT of DIRECTORS of the Company of *Scotland*, trading to *Africa* and the *Indies*, Considering, That the Ship the *Worcester* and her Cargo is by Sentence of the High Court of Admiralty, found liable by way of Reprizal to the said Company, for Reparation of the Damages sustained by them, thro' the wrongous Seizure of the Ship the *Anandale*, and the Delay and Denial of Justice in *England* concerning the same, Conform to the said Companies * Process of Declarator of Reprizal, bearing a Conclusion of † Roup and Sale of the said Ship the *Worcester* and her Cargo for Reparation of the Company's said Damages, as the Judge Admiral's said Sentence, dated the third of *March* instant bears. And considering likewise, that the additional Conclusion of the Criminal Indictment, raised at the Instance of Mr. *Alexander Higgins* Procurator-Fiscal of the said High Court of Admiralty, against Captain *Thomas Green*, late Commander of the said Ship the *Worcester*, and his Crew, for Piracy, Robbery and Murder, bears over and above the Confiscation of their Escheat, Moveables in general, That the said Ship and Cargo in Special should be likewise confiscated to her Majesty's Use: The said Court of Directors do therefore, by these Presents, give full Power, Warrant and Authority to Mr. *David Forbes* Advocate, to appear for them, and in their Name and Behalf, and in Behalf likewise of Mr. *Roderick Mackenzie*, their Factor in the said Process of Reprizal, to the * Behoof of the said Company, to protest against the said additional Conclusion of the said Criminal Indictment, with all that has followed, or may follow thereupon, that the same may not in the least prejudice the said Company of the Benefit of their Right and Interest in the said Ship the *Worcester*, and her Cargo, as should accord. In Testimony whereof, these Presents are by Warrant of the said Court of Directors, signed by their President for the Time, and Counter-signed by the said Company's Secretary at *Edinburgh*, the twelfth Day of *March*, 1705 Years.

Sic subscribitur,

FRANCIS SCOT. P. C. D.

By Order of the said Court ROD. MACKENZIE
Secretary to the said Company.

Follows the PROTEST.

EDINBURGH, 16 March, 1705.
I The above Mr. *David Forbes*, Do hereby Protest in the Terms of the above Mandate, and thereupon I take Judicial Instruments in the Hands of Mr. *Daniel Hamilton*, Clerk of Court, and require the Members of Court as Witnesses.

Sic subscribitur,

DAVID FORBES.

Her Majesty's Advocate Protested * in the contrair. * On the contrary.

Which Protestations, the Judge of the High Court of Admiralty, &c. admitted and allowed them to be recorded.

The Judge of the High Court of Admiralty and Assessors, continues † Time of Trial. the † Dyet till *Wednesday* the twenty first of *March* Instant at Ten a-Clock in the Forenoon: And ordains the Pannels to be carried back to their respective Prisons.

CURIA JUSTICIARIA, *Supreme Curie Admiralitatis tenta in Prætorio, vel nova Domo Sessionis Burgi de Edinburgo, vigesimo primo die Mensis Martii, 1705, per Judicem dicta Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston Aff. Jf. rcs.*

Curia Legitime Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*.

Captain *John Madder*, Chief-Mate of the said Ship. *John Reynolds*, second Mate of the said Ship.

Thomas Linsted, Assistant to the deceas'd *Supercargo* of the said Ship.

James Burn, Boat-swain of the said Ship.

James Simpson, Gunner.

Andrew Robertson, Gunner's Mate.

John Bruckley, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter of the said Ship.

George Haines, Steward of the said Ship.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman.

Alexander Taylor, Seaman: And

John Bannantyne, Seaman in the said Ship.

The Judge of the High Court of Admiralty and Assessors, having considered the Verdict of * Assize returned against Cap- * Jury. tain *Thomas Green* Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour; Captain *John Madder*, chief Mate of the said Ship; *John Reynolds*, second Mate of the said Ship; *Thomas Linsted*, Assistant to the deceas'd *Supercargo* of the said Ship; *James Burn*, Boatswain of the said Ship; *James Simpson*, Gunner; *Andrew Robertson*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter of the said Ship; *George Haines*, Steward of the said Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman; *Alexander Taylor*, Seaman; and *John Bannantyne*, Seaman in the said Ship; upon the sixteenth Day of *March* instant; whereby it is found proven, that there is one clear Witness as to the Piracy, Robbery and Murder libelled; and that there are accumulative and concurring Presumptions proven from the Piracy and Robbery so libelled: And that *John Reynolds* second Mate of the said Ship was ashore at the Time of the Action libelled; they, in respect thereof, by the Mouth of *John Park* † Demstper, * Decern and Adjudge the said Captain *Thomas Green*, *John Madder*, *James Simpson*,

† One that pronounces Dooms. * Decree.

Henry

Henry Keigle, and George Haines to be taken to the Sands of *Leith*, within the Flood-mark, upon the first *Wednesday* in *April* next, being the fourth Day of the said Month, betwixt the Hours of Eleven a-Clock in the Forenoon and Four a-Clock in the

Afternoon, and there to be hanged upon a Gibbet till they be dead. And

* *In like Manner.* * *sicklike, Decern and Adjudge* the said *George Glen, Alexander Taylor,*

Andrew Robertson, and George Kitchin, to be taken to the Sands of *Leith*, within the Flood-mark upon the second *Wednesday* of *April* next, being the Eleventh Day of the said Month, betwixt the Hours of Seven and Twelve a-Clock in the Forenoon, and there to be hanged upon a Gibbet till they be dead. And also, *Decern and Adjudge* the said *James Burn, John Bruckley, Samuel Wilcocks, John Bannantine, and Thomas Linstead,* to be taken to the Sands of *Leith*, within the Flood-mark, upon the third *Wednesday* of *April* next, being the Eighteenth Day of the said Month, betwixt the Hours of Eleven a-Clock in the Forenoon, and Four a-Clock in the

Afternoon, and there to be hanged upon a Gibbet till they be dead: And ordain

* *Estate.* all their Moveables, Goods and *

† *Forfeited.* *Worcester* and Cargo to be † *Escheat,* and

in-brought to Her Majesty's Use; reserving to all Persons pretending Right to the said

Cargo, or any Part thereof, their respective Claims and Pretensions to be insisted in and discuss'd before the

High Court of Admiralty as accords,

† *Sentence.* which is pronounced for † *Doom;*

* *Absolve.* and * *Affolzie* the said *John Reynolds.*

JAMES GRAHAM. *J. P. A.*

The Judge of the High Court of Admiralty and Assessors, recommend to the Lords of Her Majesty's Privy Council, to give a Reprieve to *Thomas Linstead* Assistant Supercargo of the Ship *Worcester*; and desire that their Lordships would recommend him to her Majesty for Her Gracious Pardon.

JAMES GRAHAM *In presentia Assessorum.* In Presence of the Assessors.

Captain Green was afterwards executed, according to his Sentence.

Here follows some Confessions and Declarations emitted by some of Captain Green's Crew, which are here set down according to their Dates, and as they were freely made in the Presence of the Persons therein mentioned, and are only here subjoined not

* *Trial.* *as any Part of the * Process, but for the further Satisfaction of all that shall be pleased to read the Premisses.*

Edinburgh 16th March. 1705.

DECLARATION by *Thomas Linstead,* emitted in Presence of *Sir James Steuart* Her Majesty's Advocate, hereto subscribing with the said *Linstead.*

T *Thomas Linstead* declares, That being in the Ship the *Worcester* as Assistant to the Supercargo, when the Vessel came to *Callicoilan*, upon the Coast of *Malabar*, which was about the Beginning of the Year 1703, *Mr. Hammond* and he were sent a-shore to look after the Goods they had sold, and

the Returns they expected at *Callicoilan* and *Keilon*; That the Ship the *Worcester* left *Callicoilan* with her Sloop in *January* 1703, for to go to *Calicut*, and other Places up that Coast; but within five or six Days after the Ships parting, there came in Fisher-Boats to *Callicoilan*, who told them that their Ship the *Worcester* had had an Engagement at Sea, and that it was the Sloop that first attack'd the Vessel, and that they fought until they were out of sight of the Fishermen, who could give no further Account of it. But thereupon the Declarant and *Mr. Hammond* wrote and sent a Messenger either to *Cochin* or *Calicut*, to know what was become of the *Worcester*; and that they got a Return after some Days, that they should mind their Business, and not concern themselves with any Thing that Callant the Supercargo did aboard. That some Days thereafter, the Declarant met with *Coge Commodo* in the *Ibeck* of *Keilon*, who told him, that he had bought a Ship, and he took the Declarant aboard; that the Vessel was about 100 Tons, and did bear about twelve or thirteen Guns, and that she appeared to be of the Country Build. And *Coge Commodo* said, he had bought her from the Pirates of *Cota* or *Burgara*, which are two little Pirating Towns on either side of a River on the Coast of *Malabar*; but when the Declarant came to *Keilon*, the *Dutch* and *Portuguese* there told him, that that Vessel which *Coge Commodo* had bought was brought in in the Night Season by some of the Crew of the *Worcester*, and that her Top-mast was taken down, and her Sails taken off, and the Yards lower'd; and that the *Dutch* and *Portuguese* made no more reckoning of it, because 'tis what is ordinary on that Coast. That the Declarant and *Mr. Hammond* stayed, for two or three Months after their parting from the Ship, at *Callicoilan* and thereabouts, until the Ship the *Worcester* came back to the Road of *Callicoilan*, and that there he went aboard: That when he went aboard, he told them what he had heard, but they gave him no Account of the Action; nor could he learn more of it. That the Doctor was a-shore at *Ibeck* while the Ship was at Anchor at *Callicoilan*, and that at that Time the Declarant was gone up to *Callicoilan*, and knows no more of the Doctor's being a-shore. That the Sloop with *Mr. Loveday* and others aboard did first come back to *Callicoilan*, and advertised the Declarant and *Mr. Hammond* to be in readiness, for the Ship was coming back; and that when she came back they went aboard, and the Declarant went aboard at *Anjango*, from whence they sailed to *Bengal*. And this the Declarant declares to be a Truth. *Causa scientiæ patet.*

T. Linstead.

J. A. STEWART.

Edinburgh, 27 March, 1705.

IN Presence of *Mr James Graham* Judge of the High Court of Admiralty, *George Haines* one of the Crew of the *Worcester*, being desirous to make a Confession of what he knew in relation to the Crimes for which he and the rest of the Crew are pursued; Declared, That when the Ship the *Worcester* was in the Downs, the Declarant received a Letter from a Friend in *London*, telling him, that it was surmised in *London* that their Ship was going out upon some ill Design; and that he had likeways another Letter from his Father to the same Purpose, and heard the Gunner *James Sympson* say, he had also another of the same Nature. The Declarant declares, that thereafter he used all

his

his Endeavours to get ashore, and accordingly he having got leave to see some Friends aboard the *Fleet-Frigat* that was then riding in the *Downs*, he got into her Long Boat that was then going ashore, but some of the Frigate's Crew having got notice where the Declarant was, after he went ashore, they came to him, and having drunk with him to some Pitch, persuaded him to go aboard of his own Ship again; and the Declarant was accordingly carried aboard, in one of the Boats belonging to the Town of *Deal*. And some Time thereafter, the Declarant designed likewise to have got into a Man of War, riding hard by their Ship; but Mr. *Callant*, the Supercargo, came after him, and brought him back: And the Declarant believes the Name of the Man of War was the *Salisbury*. That the Ship *Worcester* sailed from the *Downs* the 8th of *March*, 1702, in the Morning. That in the Month of *June*, or *July* thereafter, the Ship arrived at *Delagoa*, where their Sloop was built of Timber, and other Materials which they had brought from *England* aboard the Ship. That having sailed from *Delagoa*, some few Days before they came upon the Coast of *Malabar*, he heard some of the Crew, and particularly *John Bruckley* the Cooper talk of turning Pirates, and persuading others of the Crew to go in with them. That when they came upon the Coast of *Malabar*, and had been there about a Month, they endeavoured to take a large Country Boat; and for that end, the Sloop endeavour'd to get betwixt the said Boat and the Shore, that so the Ship might come up with the said Boat; but there being several Hands aboard, and the Boat having Fifty Oars, out-sailed both Ship and Sloop, and got off. Declares, That *Coge Commodo* was aboard the Ship the Time of the aforesaid Chase; and that he drew his *Sabre*, and encouraged the Crew of the *Worcester*. Declares, That hereafter the Ship and Sloop sailed for *Cochin*, with a Design to have cleaned both at that Place; (the Sloop being much spoil'd with Worms) but the Governor would not allow them to be cleaned there; and therefore they went up to *Callecut*, where the Sloop was cleaned and refitted, and mann'd with about Eight Men, and Two Guns, Two Patteraroes, and other Small Arms and Ammunition put aboard; and then the Sloop alone sailed up towards *Tillicberry*, and stayed away from the Ship about Eight Days. Declares, That the Sloop took no Goods along with her when she went out; but when she returned, she had aboard Eight Hog-heads of *Rack*, and knows not how she came by them. But *John Roberts*, one of the Crew who had been with the Sloop at that Time, was very melancholy after his Return; and the Declarant having a *Cocunut*, full of *Rack* in his Hand, desired *Roberts* to take a Part; but he would not, and went down to his Hammock mightily concern'd: And afterwards told the Declarant, that the Reason of his Concern and Melancholy, was, That he was accessary to the cutting off of some Mens Heads at *Sacrifice Rock*, betwixt *Tillicberry* and *Callecut*. Declares, That the Sloop did sail by her self from *Callecut* thereafter; and the Ship followed down to *Callicoilan*, and did there meet with the Sloop: and having discover'd a Ship coming as from the *Southward*, the Sloop was under Sail, and made to get in betwixt the said Ship and the *Offing*, that so she might not get to Sea: And the Ship coming nearer to the *Worcester*, in which the Declarant was at the Time; the *Worcester* slip her Anchors, and made towards the foresaid Ship, and at length came up with her, and fired a sharp Shot, to cause her to come to;

which she did accordingly, by breaking her Head-sails back to the Masts; and that thereafter she was boarded. Declares, That the Ship was about Seventy Tuns Burden, and square-sterned, and painted in the Quarters with Red and Yellow; and that she had a Main Deck, and Quarter Deck, and a little Fore-Castle, and was of the *Indian* Build: And that there was in the Ship, when boarded, about Twelve or Fourteen Men, all white, and sickly, as the Declarant clearly perceived before the Ship was boarded. But when the Declarant was endeavouring to know of what Country the Men were, *Edward Carry*, one of the *Worcester's* Crew, knock'd him down with a Hand-spike into the Midship-Hatch: But he afterwards heard amongst the Crew, that the Men of the taken Ship were *Britons*. Declares, That he knew not what became of the Men which were aboard of the taken ship, not having been able to come above Deck, with the Stroke which he received from *Edward Carry*, and whereof he yet bears the Mark: But declares that the Sloop went off before he came above Deck, and stayed away for Three or Four Days; and that the Declarant thereafter heard the Men were put into the Sloop. And what was done with the said Men of the taken Ship he cannot tell; but doubts not they were murdered and made away, because they could not be put ashore at any Place at hand on that Coast; there being *English* and *Dutch* Factories all along the Coast, very near each other. Declares, That these of the Crew who went with the Sloop from the Ship at that time, were Mr. *Loveday*, *Thomas Calcute*, *Andrew Robertson* Gunner of the Sloop, *John Roberts*, *Edward Carry*, *Duncan Mackay*, *Alexander Taylor*, and *Antonio Ferdinando* the *Black*; but cannot be positive who besides were there. Declares, That the next Evening after the Action, the Ship which was taken the Day before, was carried in by some of the Crew to *Callicoilan* and sold to *Coge Commodo* for 1500 *Rupies*: and that the Goods of the said taken Ship were some Bales and Matts of *Cbina Roots*, and Four Chests of Copper; which Chests were sold afterwards at *Bengal*, to a *Bannion* Merchant named *Tagodas*. Declares, That some Days after the Action, the Declarant was sent ashore with a Letter to the Supercargo; and that he then heard that *Coge Commodo* to whom the Ship was sold, was a great Assister of all Pirates, and was very serviceable to *Kidd* and *Avery* when upon that Coast, and bought off their Goods, as the Declarant was credibly informed of the People on that Coast. And declares, That the Time the Declarant was on Shore, the Supercargo, Mr. *Linstead*, *Reynolds*, *Hammond*, and the Doctor were a-shore. And the Declarant did likewise see *Antonio Ferdinando*, the *Black*, at the *Ibeck* of *Callicoilan*, who complained of a Wound in his Arm. Declares, That after the Action, and before the Declarant went ashore, the Doctor *Charles May*, came aboard from the *Ibeck* of *Callicoilan*; and seeing the Chests which had come out of the taken Ship upon the Deck, he asked Captain *Madder*, What did all that Lumber upon the Deck? And that *Madder* answer'd him with a Curse, and told him to mind his *Plaster-Box*, and ask no Questions. Declares, That while the Ship was upon the Coast of *Malabar*, she sprung a Leak in the Strake next the Keel, which made the Crew to pump constantly: However they went not into any Place upon the Coast of *Malabar*, to refit her, but sailed to *Bengal*, which was about Five Weeks Sailing; and there the Ship was refitted, not only of the Leak, but of an Hurt which the Ship got in the Action, in the
Plank,

Plank, betwixt the Midship's Crupper and the Chestree, and a new Plank put in, in the Larboard side, where the Hurt was. *Declares*, That the Declarant did keep a Note, by way of Journal, during the Voyage, which contained the Substance of what he now declares in relation to the above Particulars; and that when the Ship was seized in the Road of *Leith*, he heaved the same over-Board, lest it should have fallen in the Seizers Hands. *Declares*, That he would have emitted this Declaration and Confession sooner, but that he was always made believe by Captain *Green's* Agents, that the Defences made for the Crew, would certainly bring them off: *And if they did all agree in one Mind, and keep close Mouths, there would be no Fear; for nothing could be otherways proven that could do them Harm.* And declares, That *Wilcocks*, the Chyrurgeon's Mate, told the Declarant, that he saw a Letter from the Owners of the *Worcester*, in *London*, to Captain *Green*; which bore, *That altho' the Crew were condemned in Scotland, they had Pardons ready to send down for them.* And this the Declarant was likewise informed of from the Carpenter's Wife.

George Haines.
J. A. GRAHAM.

Edinburgh, 28 March, 1705.

** appeared.* IN Presence of Sir *Robert Forbes*, Judge of the High Court of Admiralty, ** compeared Gorges Haines*, one of the Crew of the Ship the *Worcester*, and declared that he now adds to his former Declaration; That after the Ship therein mentioned was seized, he saw the Men which were therein killed and murdered with Pole-Axes and Cutlaces, and saw their dead Bodies put into the Sloop, and thereafter thrown over-board: And, to the best of the Declarant's Knowledge, the said Men so killed were *Scotsmen*; the Declarant having heard them speak the *Scots* Language. And further declares, That the said Ship then seized, was understood by the Crew of the *Worcester* to have been Captain *Drummond's* Ship; and particularly he heard Captain *Madder*, *John Bruckley*, and the deceas'd *Edward Carry*, say so. And further adds, that he would have emitted what is above before this Time, but was afraid lest his mentioning the Ship so seized to belong to Captain *Drummond*, and the Men aboard of the same to have been murder'd, might have rendered the Government offended, and obliged them to deal hardly with the Declarant. And this he declares to be Truth, as he shall answer to GOD.

George Haines.
ROB. FORBES.

Edinburgh, 31 March, 1705.

IN Presence of Mr. *James Graham*, Judge Admiral, *John Bruckley*, Cooper of the Ship *Worcester*, being desirous to make a Confession of the Crimes, whereupon he and the rest of the Crew were pursu'd; declares, That some Time after the Ship the *Worcester* came upon the Coast of *Malabar*, that she and the Sloop gave Chase to a Country Boat, which escaped by reason of her Oars. That afterwards the Ship and Sloop sailed in Company to *Cochin*, where they were denied Access to clean; and there-

fore they thereafter sailed to *Calicut*, where the Sloop (which had been spoiled by the Worms) was hal'd upon the Shore, and clean'd, and thereafter was mann'd with about 10 Men, and 2 Guns, 2 Patteraroes, with other small Arms put aboard. From *Calicut*, the Sloop was order'd to sail towards *Tillicberry*, but there was no Goods sent along; and in about six or eight Days thereafter, the Sloop came back in Chase of another Ship. *Declares*, That when the Ship the *Worcester* saw the Sloop in Chase of the other Ship, she slipt her Anchors, and made out to Sea to meet them. *Declares*, That he saw the Sloop board the said Ship towards Night; and that the Long-Boat was after order'd to be mann'd, and Captain *Madder* went along in the Long-Boat. *Declares*, He does not know what became of the Men who were on Board the taken Ship; but that the Declarant did see they were white Men. And the Reason why he knows not what became of the Men, is, that the Declarant was never on Board the taken Ship; and that the Sloop which had boarded the Ship, was ordered away next Morning; and he doubts not but the Men were amongst which were taken out of the Prize Ship. *Declares*, That the Ship which was taken, was mann'd with some of the *Worcester's* Crew, and sailed alongst with the *Worcester* till they came to *Callicoilan*, where they found the Sloop. *Declares*, That whilst the *Worcester*, with the other Ship, came in sight of the Sloop, the Sloop weighed Anchor, and stood to the Offing; so that the taken Ship came into *Callicoilan* betwixt the Sloop and the *Worcester*; and all three came to an Anchor together. *Declares*, That after they came to an Anchor, the taken Ship rode under the Stern of the *Worcester*, and was thereafter sent into *Callicoilan* River, and sold to *Coge Commodo*, as the Declarant supposes, *Declares*, That thereafter the Declarant was sent ashore for Water to the *Ibeck* of *Callicoilan*, where he met with Doctor *May*; and that he sent on Board a *Pinguetta*, with Water, according to his Orders. *Declares*, That some Time after they came to an Anchor before *Callicoilan*; and before the Declarant was sent ashore for Water as above, they saw a Ship at Sea coming from the *Southward*; that the Sloop was under Sail at that Time, being a cruising about: That she sailed towards the Sea, and bore down the Ship towards the *Worcester*. That the *Worcester*, when the Ship came near, slipt from her Anchors, and made towards the Ship; which thereafter was boarded, first by the Sloop, and then by the *Worcester*, about ten or eleven a Clock in the Forenoon. *Declares*, That there was both *Whites* and *Blacks* on Board that Ship, and most part *Whites*; but the Declarant did not know what became of them; but that the Sloop went off in a few Hours after the Engagement and did not return till after Two or Three Days. That the Declarant does not know what became of that Ship; but declares, that he was in a *Moorish* King's House, with about six of the Crew; and that that King was *Coge Commodo's* Master, who had bargained for one of the taken Ships; the Declarant cannot be positive which: And that at the same time the Supercargo, who was along with them, presented the King with a small Fowling-Piece. *Declares*, That the Declarant stayed ashore, trimming the Casks, for about six Weeks thereafter: And does not remember at present any more of the Affair. And declares, he cannot sign but by this Mark.

+
JAMES GRAHAM.

Edin.

Edinburgh, 3. April. 1705.

IN Prefence of Sir *Robert Forbes*, Judge of the High-Court of Admiralty, compeared *John Bruckley*, one of the Crew of the Ship the *Worcester*; and declares, That he adheres to his former Declaration, emitted before Mr. *James Graham*, Judge-Admiral, the thirty first of *March*. And now adds, That the Men which were aboard the Ship, which was seized before *Callicoilan*, were for the most part *White Men*; and the Declarant heard them speak the *Engliff* Tongue, being in Number about Twelve or Fourteen. And declares, That Captain *Madder* was in the Sloop, and one of those That boarded the said Ship; and that the Men were put into the Sloop, and carried away to the *Northward* in the Sea; and the Declarant never heard any more of them. And that the Goods aboard the taken Ship were brought into the Ship the *Worcester*, and consisted of *China Root*, and

four Chests of Copper; which Chests were sold at *Bengal*, to a *Bannian* Merchant. And further adds That the Men seized in the taken Ship were killed after they were put into the Sloop, and before they were carried to the Sea *Northward*. And further adds, That immediately after the Action was over, the Declarant did hear the Supercargo, *Callant*, Captain *Madder*, *John Roberts*, and *Edward Carry* say, That the seiz'd Ship was Captain *Drummond's* Ship, belonging to the *Scots African Company*. And adds, That when the *Worcester* sailed from the *Dowms*, the Declarant did not know where the Ship was bound; but heard it frequently said, they were going upon a Discovery. And declares this is the Truth, as he shall answer to GOD. And declares he cannot write, but by this Mark.

+

ROBERT FORBES.



A P P E N D I X.

THE foregoing Account of the Trial of Captain *Green* and his Crew, being taken * closely from the Records of Court; and the usual form of the Court being to hear and discuss Objections against the Witnesses, before they be examined, *viva voce*, without any written Debate; it is therefore thought fit here to add the Objections that were made against the Witnesses, and the Answers given thereto, with the Interlocutors pass'd thereon; that there may be nothing wanting to the Reader's full Information.

And first, it was objected against *Antonio Ferdinando*, the Cook's Mate, That he could not be a Witness, because of his Poverty; he not being worth (as the Stile of the Court is) the *Queen's* * *Unlaw*, that is, ten Pounds *Scots*, in case he should transgress: And so, according to the Law of this Kingdom, was to be rejected. 2. That he was not a Christian, and therefore could not be received as a Witness against Christians, specially in a Pursuit that reached their Lives and Fortunes. Nor could he indeed be supposed to have the just Knowledge of the Religion of an Oath.

To which it was answer'd, 1. That tho' the Standard of Ten Pounds *Scots*, settled by the Law and Custom of this Kingdom, as to the Quality of Witnesses, might well be refused in a Trial of Crimes of this Nature against the Law of Nations, and which were to be tried accordingly; yet the Matter of Fact was false; *Antonio Ferdinando*, being worth more than ten Pounds *Scots*, by the very Wages due to him; and which, by the Pannels own Books, were attested to be fifteen Shillings *per Menssem*, whereof, to this Hour, he hath got no Payment. 2. *Antonio Ferdinando* was a Christian, as he himself owned from the Beginning; and that he was born of Christian Parents: Like as it's known, that such Names are only given to Christians. Besides, tho' his not being a

* *Objection.*

Christian might be a * Prejuge against him, yet it could be no just

Exception against his Testimony as a Witness; since he both profess'd the Knowledge of GOD, and the Conscience of an Oath, as he had often declared.

The Judge and Assessors having consider'd the foresaid Objections and Answers, they repel the Objections in respect to the Answers, and allow the Witness to be admitted.

2. It was objected against *Antonio Francisco* That he was not worth ten Pounds *Scots*; and had indeed nothing; besides, that he was no Christian, but a Servant or Slave to Captain *Green*; and also had no Religion.

To which it was answer'd, 1. That tho' ten Pounds *Scots* be the Rate of Witnesses in our *Scots* Law; yet, as hath been said, this Rule cannot * vie in the Case of the * *bear*. Crimes libelled, committed against the Law of Nations in remote Parts, & *in alto Mari*, in the deep Sea; which made the Crimes to be Crimes excepted. And it's known to be the Rule and Privilege, as to Crimes atrocious and * occult; and therefore ex- * *hidden*. cepted to exempt even the Witnesses from the ordinary Qualifications. Nor was *Antonio Francisco* to be reckon'd no Christian; since, 1. He bears a Christian Name; and next declares, that a Christian Mistress he had in *Pegg*, who gave him to Captain *Green*, did first procure him to be Baptized and Christned. And 3. He professes the Knowledge of the true GOD. Nor, being a Christian, can he be reckoned any longer a Slave.

But upon the whole, as to these Two, and the whole other Witnesses; the Nature of the atrocious Crime against the Law of Nations, with the Manner of their having been committed, and the Endeavours used for their Concealment, ought principally to be remembered; since thereby, in the Opinion of all Lawyers, they become Crimes excepted: And that it is the known Privilege of Crimes excepted, to relax from the ordinary Rules, and to proceed on such Evidence as the Matter

doth afford, the Substance of the Probation being only observ'd.

The Judge and Assessors having considered the foresaid Objections, and Answers, they repel the Objections, in respect of the Answers, and allow the Witness to be admitted.

3. It was objected against *Anne Seaton*, that she could not be a Witness, because a Woman.

To which it was answered, that in Crimes where the Probation proceeds not upon *Testes requisiti*, but such as Providence offers, even Women are admitted. But 2. It's the general Opinion and Practice over all, that Crimes atrocious, occult and excepted, a Woman is never refused.

The Judge and Assessors having considered the foresaid Objection and Answer, they repel the Objection in respect of the Answer, and allow the Witnesses to be admitted.

to England, but only our Letter, in which you may insert the Names of any Dead; and for the Care and Secrecy of those who go in the Sloop, in case no Letter or News comes to England, but our Letter concerning our Business, then we will on the return of the Ship give the Master and Crew one Month's Pay gratis, and they shall also have their Shares of the Benefit promised the Ship's Company for the Whale Fishing.

By a Letter dated London, 3 February, 1702, from Captain T. B---y to Mr. Callant, the said Captain advises him in these Words,

For the greater Security of our Affairs, when you write by the Alphabet in your Instructions, I would have you carry the last Letter of each Word to be in the room of the first Letter to the next Word, as for Example.

Captain Thomas Bowrey, Sir wee are all well.
Captai nthoma fbowre yfi rwe ear eal lwell.

Make no Title (as is usual) to begin your Letter, nor no Date, nor Compliment, no Name at last; But let all be comprehended in the Lines of your Letter, so as to make no distinction, and make but one Paragraph of all your Letter, and if any Men dead, set their Names immediately after your own Name subscribed to the Letter, all in Characters before directed, and please to keep this as Directions therein.

By another Letter from the said Captain T. B---y to the said Mr. Callant, dated London, 16 February 1702, he adds concerning the foresaid Character in these Words,

On further Consideration, I think I have committed an Error in my Letter to you Yesterday, it being written in it as, viz.

Captai nthoma fbowre yfi rwe ear eal lwell.
That is,
Captain Thomas Bowrey, Sir we are all well.

Now, I doubt the naming any Name in the beginning, or making any Complement there, may be a Means to find the Key of the Alphabet, therefore pray Strike out of the Letter I sent you Yesterday, as above done, and begin directly with your Business, following the Directions given you. And whereas you are ordered to direct your said Letter to me, I would not have you mention my Name in the Subscription, but direct the said Letter to Mr. Nicholas Pope Scrivener, in Nicholas Lane, London, to pay 5 l. to the Bearer as in your Instructions.

* Excerpts out of the Instructions and Letters found in Captain Green's Books, to which Sir David Dalrymple's Speech to the Jury relates.

Extracts.

IN the Instructions or Orders given by the Freighters of the *Worcester*, Captain Thomas Green Commander, to Mr. Robert Callant Supercargo there occurs one Article in these Words,

We would have you write us by all Opportunities, especially from Sinda, by any Ships bound from thence to Persia; and for the greater Secrecy, especially of the Letter to be sent to Mauritius for us, here under is an Alphabet for you to write us by; your Subscription must be in common English, directing all such Letters to Captain Thomas Bowrey in Well-close-Square, London.

(Nota, At this Place the whole Alphabet is insert distinctly, and above each Letter a different Character is set down, to be used in Place of the Letters of the Alphabet.)

When your Cargo for England is provided, or near compleated, then we would have you sell the Sloop for what you can get, and invest the Produce in Goods for England.

And lower amongst the same Orders in another Article are these Words,

You must engage the Master of the Sloop not to let any Letter from himself or any other be sent

CLXXXII. *The Trial of ROBERT FEILDING, Esq; at the Old-Baily for Bigamy, in marrying the Duchess of Cleveland, his former Wife being then living, Dec. 4. 1706. 5 Ann.*

On Wednesday the 4th of December, 1706, at the Sessions House in the Old Baily, This Day came on the Trial of Robert Feilding, Esq; for Felony, in Marrying her Grace the Duchess of Cleveland; Mary Wadsworth, his first Wife, being then alive. The Court being sat, proceed in this manner.

Clerk of Arraignment. **S** E T Robert Feilding to the Bar. (which was done.)

Robert Feilding, hold up thy hand (which he did).
Cl. of Arr. Robert Feilding, you stand indicted by the Name of Robert Feilding, late of the Parish of St. James's, within the Liberty of Westminster, in the County of Middlesex, For that you, on the ninth Day

Day of November, in the fourth Year of Her now Majesty's Reign, at the Parish aforesaid, in the County aforesaid, took to Wife one Mary Wadsworth, Spinster, and the same Mary Wadsworth, then and there had for your Wife; and that you the said Robert Feilding, afterwards, viz. on the twenty fifth of the same Month of November, in the Year aforesaid, at the Parish of St. Martins in the Fields, in the said County, did feloniously take to Wife the most noble Barbara Duchess of Cleveland (the said Mary Wadsworth, his former Wife, being then living) against the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

How say'st thou, Robert Feilding, art thou Guilty of this Indictment, or not Guilty?

Feilding. Not Guilty.

Cl. of Arr. Culyrit. How wilt thou be tried?

Feilding. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. Call the Jury. Mr. Feilding, if you except to any of the Jury, you must do it before they are sworn.

Feilding. I do not challenge any of them.

The Jury sworn, viz.

Francis Chapman,	Edward Beswell,
Thomas Mosdy,	John Mills,
Peter Lovigne,	Richard Hazzard,
Hugh Merchant,	Samuel Chace,
Joseph Dwenish,	Thomas Teomond,
Edward How,	John Johnson.

Proclamation made, That if any can inform the Queen's Justices, and the Queen's Council, of any the Matters the Prisoner stands charged with; let them come forth and they shall be heard.

Mr. Raymond. My Lord, and you Gentlemen of the Jury, I am, in this Case, Council for the Queen. The Prisoner at the Bar, Robert Feilding, stands indicted, That he on the ninth Day of November, in the fourth Year of her now Majesty's Reign, &c. (the Indictment repeated). To which Indictment he has pleaded not Guilty, and put himself on God and his Country, which Country you are. I hope if we prove the Indictment, you will find him Guilty.

Sir Ja. Mountague. My Lord and Gentlemen of the Jury, I am of Council with the Queen against the Prisoner, Mr. Robert Feilding, who stands indicted for taking to Wife Barbara Duchess of Cleveland, after he had before marry'd one Mary Wadsworth, who is still alive: This is a Crime that amounts to Felony; and tho' the Law doth not take away from him that shall be convicted thereof, the Benefit of his Clergy; yet, since it is such a Crime as doth take away from the Prisoner the Assistance of Council, I shall only state Matter of Fact, which is as followeth.

About a Year ago, or a little better, there was a young Lady left a Widow by Mr. Deleau, and reputed a great Fortune; Mr. Feilding thinking himself qualified for the greatest Fortune, had a Design upon this Lady; and in August, 1705, he applied himself to one Mrs. Streights to consult with her, and contrive some Method how he might have Access to court this Widow. This Mrs. Streights had no Acquaintance with the Widow her self but knew Mrs. Charlott Villars was acquainted with her, and used to cut her Hair; so the best Thing they could think of at that Time, was to make

Mrs. Villars their Friend, that by her Means he might have Admittance into the Lady's Company; for he did not question if the Lady had but once a Sight of his very handsome Person, she would have the same Affection for him, that he had met with from other Ladies, even on their first seeing of him. Mrs. Villars was promised 500*l.* to bring this Affair about; and tho' she doubted with her self, whether she could ever accomplish it, yet by these Means she might perhaps make a Penny of it to herself; and thereupon she promises Mrs. Streights to use her endeavour to serve the Major-General, meaning Mr. Feilding, tho' Mrs. Villars could not be sure such an Overture would be well received by Mrs. Deleau: Yet being acquainted with one Mary Wadsworth, a young Woman not much unlike in Person to Mrs. Deleau, she imagined it would be no difficult Matter for her to set up the said Mrs. Wadsworth to represent Mrs. Deleau; and accordingly it was done, and Mr. Feilding proved so intent upon the Matter, that he went in few Days to Doctors-Commons, to see for Mr. Deleau's Will (and found thereby that Mrs. Deleau was left very considerable). And that he might judge the better whether 'twere truly the Fortune she was represented to him, he took a Copy of the said Will, and soon after went to Mrs. Villars and told her, That what Mrs. Streights had said concerning Mrs. Deleau's Fortune was true: And being very well satisfied with her Fortune, he was resolv'd to get a View of her. Soon after, Mr. Feilding went to Tunbridge, and after two or three Days stay there, returned and called at Waddon, the Place where Mrs. Deleau resided, with a Pretence to see the House and Gardens, but in reality it was to see the Widow; he thought nothing else was then to be done, but to give the Lady a sight of his handsome Person he designed to lay at her Feet; but it happened that the Lady would not be seen her self, but her Servants were permitted to shew him the Gardens, and he fancied himself that he had had a Sight of Mrs. Deleau too; for a Kinswoman of Mrs. Deleau's looking out into the Garden while he was there, gave him the Sight of a Woman at the Window, and he presently concluded it could be no body but Mrs. Deleau admiring Beau Feilding. About three Days after Mr. Feilding's Return from Tunbridge, which was about a Fortnight after St. Bartholomew-tide last was Twelve-month, he told Mrs. Villars of his calling at Waddon, and that he had acquainted the Duchess of Cleveland of the fine Gardens that were there, and he said that her Grace had a great Desire to see them, and therefore directed Mrs. Villars to go from her Grace to Mrs. Deleau, to ask the Favour of her to permit her Grace to see the House and Gardens. Accordingly Mrs. Villars went down to Waddon; and Mrs. Deleau treated her very civilly, and told her whenever her Grace pleased, she should see her House and Gardens; but as she was a Widow she could not attend upon her Grace: But tho' the Duchess was expected after this, yet she did not go, for indeed she did not know any Thing of the Message. So the next Time Mr. Feilding attempted to see her, was at a Horse-Race at Banstead-Downs, whither he went for that Purpose, but did not see her. After this, or some Time before, he sent a Letter to Mrs. Deleau's House, but the Servants when they saw the Name to it, knowing the Character of Mr.

Feilding, threw it into the Fire.—When Mrs. *Villars* found that the Duchess of *Cleveland* knew nothing of her being sent to *Waddon*, and that it was only a Contrivance of Mr. *Feilding's* to get an Opportunity of seeing Mrs. *Deleau*, and that in Truth he had never seen her, she resolved to play Trick for Trick with him, and thereupon proposed the Matter to *Mary Wadsworth*, the Woman I before mentioned to be of her Acquaintance, but one that Mr. *Feilding* did not know, and one that would not worst her self much by such an Undertaking, whether it succeeded or not. Mrs. *Wadsworth*, upon the first opening of it readily embraced the Offer, and thereupon Mrs. *Villars* went to Mr. *Feilding* and told him, she had proposed the Matter to the Lady (Mrs. *Deleau*) which she at first rejected, but at last did give a favourable Ear to it; and that she did not fear, but if Matters could be prudently managed, his Desires might be accomplished.—A little before my Lord-Mayor's Day last was Twelve-month, she told Mr. *Feilding* that she had at length obtained of the Lady the Favour of a Promise of an Interview, and that she was shortly to bring her to his Lodgings, but he must take care not to let her know they were his Lodgings, or to give her the least Cause to suspect he had any Thing to do there: Accordingly Mrs. *Villars*, the Evening of my Lord-Mayor's Day, brought Mrs. *Wadsworth* in a Mourning Coach and Widow's Dress to Mr. *Feilding's* Lodgings: He was not within at the Time they came thither, but being sent for, came in soon after, and was extremely complaisant for some Time; but at length tho' he had been cautioned not to let the Lady know they were his Lodgings, yet he could not forbear shewing her his fine Cloaths, and what Furniture he had; and in a little Time after sent for Mrs. *Margaretta* to sing to her; and pretended he was so extremely taken with her, that nothing would satisfy him but being married that Night; but she, with a seeming Modesty, check'd his forward Behaviour, and made a shew of going away in displeasure; but before they parted, he prevailed upon her to promise not to put off their Marriage longer than *Wednesday* Seven-Night. My Lord Mr. *Feilding* rightly judged by this Conversation what an Interest he had fix'd in the Lady, and looking upon himself to be sure of her, he actually went to a Goldsmith and bespoke a Ring, and directed himself what Posie should be engrav'd. When the Day came which had first been agreed on, sham Pretences were made, not to seem over-hasty in so serious a Matter, and the Marriage was put off till the *Friday* following, being the 9th of *November* last was Twelve-month; at which Time Mrs. *Villars* and the Lady came again to Mr. *Feilding's* Lodgings, where he received her with an extraordinary Transport of Joy, and the Marriage must immediately be proceeded on; but she for some Time framed several Put-offs, and at length made an Offer to have gone away; but Mr. *Feilding* by no Means would permit her to go, without making her his own, which he was resolved should be done presently; and to make all Things sure, he ran out and lock'd the Chamber-door to keep her and Mrs. *Villars* in, whilst he went for a Priest; and taking Coach immediately drove to Count *Gallas's* the Emperor's Envoy; when he came to his Gate, he enquired of the Porter for one *Francisco Drian*, that was stiled, *The Father*

in Red upon account of a red Habit he usually wore; but he not being within, Mr. *Feilding* asked for another Father; and one Father *Florence* was called to him, whom he acquainted with the Business he came about; but whilst he was treating with Father *Florence*, the Father in Red luckily came in, and Mr. *Feilding* immediately took him away with him in the Hackney-Coach to his Lodgings. My Lord, and Gentlemen, we shall shew you that this Father in Red stay'd there about an Hour, and then went away.—We shall shew your Lordship likewise, That Mr. *Feilding* and *Mary Wadsworth* supped together, and after Supper he was actually marry'd to Mrs. *Wadsworth*. And that this Marriage was consummate, we shall prove by several Particulars, viz. That clean Sheets were laid upon the Bed, and all Ceremonies performed that are usual upon such Occasions; and they actually went to Bed together, and lay together all that Night; and the next Day the Lady and Mrs. *Villars* went away, and as Mr. *Feilding* supposed, to *Waddon*, the Widow *Deleau's* House; to which Place your Lordship and the Jury will find he directed his Letters to her afterwards, and in the Supercriptions stiles her the Countess of *Feilding*. To corroborate this Evidence we shall likewise prove to your Lordship, that about a Week after, he lay with her again at the very same Lodgings; and we can make it appear that he hath lain with her Three several Times since this first Night, twice before, and once after his Marriage with the Duchess of *Cleveland*. My Lord, we shall shew you that he made her Presents, furnish'd her with Money, and treated her as his Wife, until the Cheat was found out, which was not till *May* after; and then finding how he had been served, that instead of marrying a Fortune of 60000*l.* he had been impos'd upon and marry'd one not worth so many Farthings, he discarded her in great Wroth.

My Lord, we will call our Witnesses who will prove to your Lordship, step by step, how this Matter was brought about; and first we will begin with Mrs. *Villars*.

Mrs. *Villars* sworn.

Mrs. *Villars*. My Lord, there came one Mrs. *Streights* to my Lodgings and wanted to speak with me (it was *Bartholomew-tide* was Twelve-month) but I was not at home; when I came home, they told me Mrs. *Streights* had been there, and left word that I was always out of the way when it was to do my self good; she said it would be five hundred Pounds out of my way if I did not come to her. I met with her and Mr. *Feilding*, and being acquainted with Mr. *Feilding's* Design upon Mrs. *Deleau*, he asked me whether I knew the Lady? I said I had no particular Acquaintance with her, but I used to cut her Hair; He told me that he was in Love with her, and asked me whether I would assist him in his Courtship? And whether a Marriage might be brought about? I told him I could not tell, I did not know whether I had that Interest in the Lady as to be made serviceable in such a Design. Mr. *Feilding* enquired very strictly after her, and said, he would try Means to come into her Company that he might gain her Acquaintance: Upon which we parted at that Time.—And about three Days after Mrs. *Streights*

Streights came to my House again, and said, Mr. *Feilding* would speak with me. I went to him; and he told me, he found that the Lady was worth 6000*l.* as he had been told before. He asked me where it was she liv'd? I told him, in *Coptbal-Court*, near the *Change*. I told him likewise where her Country-House was; That it was at *Waddon* in *Surrey*. Mr. *Feilding* told me, He would go to *Tunbridge*, and call by the way to see the Gardens; and by that means he might have an Opportunity of seeing Mrs. *Deleau*; which he did accordingly. I was sent for again; and he told me he had seen the Gardens, and they were very fine: And that he saw the Lady through a Casement; and that she might have the more perfect View of him, he took divers Turns in the Garden, pull'd out his Watch and set it by the Sun-Dial: And that he came round the Country, and almost murder'd his Horses, to get a Sight of her. But he desired to be in her Company, that he might have a full View of her. He desired me to go to Mrs. *Deleau*, and tell her, that the Duchefs of *Cleveland* had heard a great Character of her Gardens, and was very desirous to see them.—— I went and acquainted Mrs. *Deleau* with it: She said, she would not refuse a Woman of her Quality; but would take it as a great Favour, to shew her any Thing that belong'd to her: But desir'd that it might not be that Week, but the Week following; because she was to see a Race on *Banstead Downs*. I told Mr. *Feilding* this; and he made Answer for the Duchefs of *Cleveland*, and said, The Duchefs was not well; and could not go to see the Gardens. When I found that Mr. *Feilding* did not send me from the Duchefs, but from himself, I was out of Countenance, that I should innocently impose upon the Lady. Mr. *Feilding* told me, he would go and see the Race upon the *Downs*; and when he came back, he would send for me, and acquaint me whether he had seen the Lady. And when he came to Town again, he sent Mrs. *Streights* to me, to come to him; and when I came to him, he told me he saw Mrs. *Deleau*, he believed, upon the *Downs*. Mr. *Feilding* made a Bow to them, and they to him. He said, From thence he went to *Epsom*, and sent a Letter to be deliver'd into Mrs. *Deleau's* own Hands, by a Servant of his, not in a Livery. I think it was accordingly deliver'd. Mr. *Feilding* told me, Mrs. *Deleau* read it, and said it required no Answer: and said no more. Mr. *Feilding* asked me, whether I could not get a Letter to Mrs. *Deleau*? He said, he was much in Love with her. I told him, I believ'd he was mistaken; and that it was another whom he saw.—— I perceiv'd that he had no Knowledge of Mrs. *Deleau*.—— I acquainted a young Woman (whom I supposed he might have seen) with his Inclination (Mrs. *Wadsworth*): She said, she did not expect to be so happy; but wish'd it might be so. I engag'd to Mr. *Feilding* to do what I could to bring it about.—— There were divers Letters pass'd between them till my Lord-Mayor's Day. Divers Presents were sent from Mr. *Feilding*, by me, to the Lady. The first Present was a Gold Apron, struck with Green: That was the first Present Mr. *Feilding* sent to Mrs. *Wadsworth*, whom he thought was Mrs. *Deleau* all the while; but it was Mrs. *Wadsworth*. I did not think Mrs. *Deleau*, who was a great Fortune, would agree to marry a Man of Mr. *Feilding's* Character. Mr. *Feilding* kept sending of Presents and Letters from that

Time, from the latter End of *Bartholomew-tide*, to my Lord-Mayor's Day. He sent her a Suit of white Sattin Knots, and Gloves, and other Things. He desir'd I would bring her to his Lodgings on my Lord-Mayor's Day, at Night; which I did about nine a Clock, in a Mourning Coach. Mr. *Feilding* was not at home, but came immediately. When he came in, he fell down upon his Knees, and kiss'd her, and express'd Abundance of fond Expressions. He asked her, *why she stayed so long? And whether she loved Singing?* He said, He would send for *Margaretta* to come up. When she came, Mr. *Feilding* bid her sing the two Songs which he lov'd;——which she did; The one was, *Charming Creature*; and the other was *Ianthe the Lovely*. After which, Mr. *Feilding* sent for two Pints of Wine, and some Plumb-Cakes. He urg'd very much to marry her; but she declin'd it, and made him a Promise to come to him the *Wednesday* following. In the *interim* she sent him a Letter, to acquaint him she could not come according to her Appointment; but she would come to him on the *Friday* following, which was the 9th of *November*. Then he sent her another Letter, to desire her not to fail, but come to his Arms; and told her, That there wanted nothing but the Holy Father to join their Happiness; for their Hearts were all one already. And when *Friday* came, Mrs. *Wadsworth* and I went to Mr. *Feilding's* Lodgings again: He was not within; but came running into the Room in a little Time after with a great deal of Joy, and took Mrs. *Wadsworth* into his Arms, and said, *Nothing could ease his Mind, but a Promise to make him happy, in marrying him presently.*—— He said, he would fetch the Priest; but Mrs. *Wadsworth* refused his Proposal, and would have dissuaded him from going then; and desired him to put it off till another Time, and would have gone away. But he would not hear of it; and said, She had disappointed him before; and that he repented he had let her go away before; but now he was resolv'd to make her his own, before she went away. Mr. *Feilding* then went for the Priest, and lock'd the Chamber-Door after him, and took the Key with him, for fear Mrs. *Wadsworth* should go away; and order'd *Boucher* to let no Body into the Dining-Room till his Return. Mr. *Feilding* returned in a little Time, and brought a Priest with him, in a long Red Gown lin'd with Blew, and a long Beard, and a Fur Cap. Mr. *Feilding* told her, that this was the Holy Father that was to make them one. Mr. *Feilding* then ordered the Man to lay the Cloth, and fetch a Dish of Pickles to Supper.—— At supper Mrs. *Wadsworth* seem'd cautious; and for fear the Priest should not be in Orders, said, *How shall I know that this is a Priest in Orders?* Mr. *Feilding* question'd him. Then the Priest pull'd a Picture out of his Pocket, about the Bigness of a Crown-Piece; and told them, *That none but Priests had such Pictures.* And that she might be still further satisfied, she desired another Token.

After this, *Boucher*, and the rest of the Servants were order'd down Stairs. Then the Priest call'd for Water, Salt and Rosemary, to make Holy Water. *Boucher* brought up Water and Salt, but could get no Rosemary. Mr. *Feilding* and I received it at the Dining-Room Door. Then Mr. *Feilding* lock'd the Door, and took the Key in the Inside. Mr. *Feilding* ask'd Mrs. *Wadsworth*, Whether it should

be done in the Bed-Chamber, or Dining Room? Mrs. *Wadsworth* agreed it should be in the Bed-Chamber. There were none present, but Mr. *Feilding*, Mrs. *Wadsworth*, the Priest, and my self. The Priest made Holy-Water, and blessed it: Then he set Mrs. *Wadsworth* at the right of Mr. *Feilding*: the Priest stood before them and read the Ceremony in *Latin*, as I understood; and Mrs. *Wadsworth* said, *She was not yet satisfied he was a Priest*. Then he laid down his Book, took from under his Gown a Piece of Silk like a Scarf, that was mark'd with a Cross in the middle; and said, None but Priests us'd such a Thing. Then Mrs. *Wadsworth* was well satisfied he was a Priest. Says Mr. *Feilding* to her, *Do you think, my Dear, that I could have any Body to do this Business, But the Holy Father?* Mrs. *Wadsworth* was well satisfied till he came to that Part, *Wilt thou have this Woman to thy wedded Wife?* She desir'd it might be spoke in *English* by him as well as he could. He did so. He ask'd Mr. *Feilding*, *Whether he would have this Gentlewoman to be his wedded Wife?* He said, *Yes, with all my Heart*. He asked the Lady then, *Whether she would have this Gentleman for her Husband?* She said, *Yes*, faintly: But says Mr. *Feilding*, You don't speak it so earnestly as I do: You must say, *With all my Heart and Soul*; which she did. Then the Priest blessed the Ring, and gave it to Mr. *Feilding*, to put it on the Lady's Finger. He said something in *Latin*, but what it was I know not. Then we went into the Dining-Room. *Boucher* brought up Wine; and when a'l had drank, the Priest was discharg'd. Mrs. *Wadsworth* and I went into the Bed-Chamber, and I put her to Bed. Mr. *Feilding* called her his *Dear Wife*, the Countess of *Feilding*; and said, He would make haste and fly to her Arms. After I put her to Bed, he went to Bed to her; and order'd me to come into the Room to see them in Bed; which I did. I rose the next Morning, and came to Mr. *Feilding*'s Room, where *Boucher* came soon after to light a Fire: Then I saw Mrs. *Wadsworth* in naked Bed with Mr. *Feilding*, Mrs. *Wadsworth* put on her Cloaths as soon as she could; and a Hackney Coach was call'd for her, and she went away. At parting with Mr. *Feilding*, she told him, she did not know when she could return; but about a Fortnight after, she came again. There were Fires made in both Rooms, and Candles lighted up; clean Sheets upon the Bed, and every Thing prepared for her lying there. Mrs. *Wadsworth* went to Bed. Mr. *Feilding* did not come home till late that Night. I saw them that Night in Bed, and went into the Room the next Morning, and saw them in Bed again: She rose, and went away as before. Mr. *Feilding* desir'd her not to stay so long as she had done before; for if she did, he would come and fetch her. She promis'd him she would return sooner. Mr. *Feilding* kept sending of Letters to her between Times, which was about fifteen or sixteen Days, till she came to him again. He desired her to come to him, and he would be at home to receive her. She accordingly came to him, after having given him notice of her coming. He was not at home when she came; but She went to Supper by herself. — She had for her Supper some toasted Cheefe, a Pint of Wine, and a Bottle of Oat Ale. When he came home to her, he ask'd her, *Why she did not send for something better for Supper?* They went to Bed again, as before; and I saw them in Bed together. Mrs. *Wadsworth* got up in the Morning;

Mr. *Feilding* treated her; and away she went as before. Then Mr. *Feilding* kept writing to her [which Letters are inserted in their proper Places] and desir'd her to come to him again, as being the last Night she should lie with him at his Lodgings; for he was going to leave his Lodgings for altogether, and be with her Grace the Duchess of *Cleveland*. Mrs. *Wadsworth* came; but neither Mr. *Feilding* nor *Boucher* were at the Lodgings: But she had not been there long, but *Boucher* came in, and said, That he had brought his Master's Night-Gown and Slippers from the Duchess of *Cleveland*'s.

Council. Mrs. *Villars*, You say, most of the Service was in a Language you did not understand.

Mrs. *Villars*. It was, my Lord—But one Part of it was in *English*. I heard Mr. *Feilding* say, *He would take this Lady to be his wedded Wife*.

Council. Who is that Lady?

Mrs. *Villars*. That Lady Mrs. *Wadsworth*; pointing at her; (she being in Court).

Council. What did you hear Mrs. *Wadsworth* say?

Mrs. *Villars*. I heard her say, *That she took Mr. Feilding to her wedded Husband*.

Council. What did you observe else that was remarkable?

Mrs. *Villars*. I saw the Ceremony of the Ring performed. I saw the Priest bless the Ring with Holy-Water, and sign himself with the Sign of the Cross. The Priest held Mrs. *Wadsworth* by the lower Joint of the Finger and put the Ring on.

Council. What is Mrs. *Wadsworth*'s Christian Name?

Mrs. *Villars*. *Mary*.

Council. What did he say further, when he said, *I take thee to be my wedded Wife?*

Mrs. *Villars*. He named no Name, but *I take this Lady, &c.* — The Priest ask'd him, *Whether he took her with all his Heart and Soul?* He said, *I take her with all my Heart, and Soul, and Blood, and every thing else*.

Council. What Time was this?

Mrs. *Villars*. It was *Bartholomew-tide* was Twelve-month, as near as I can remember to the Time.

Council. Did Mr. *Feilding* tell you he had been at *Waddon*?

Mrs. *Villars*. Yes, he did; and said, That he had seen the Lady thro' the Window, whence he fell in Love with her.

Council. Why was this Marriage kept private?

Mrs. *Villars*. Because Mr. *Feilding* took the Lady to be Mrs. *Deleau*.

Justice Powel. How long was it before it was discover'd?

Mrs. *Villars*. It was not discover'd till the latter End of *May* last, or the Beginning of *June*.

Justice Powel. When was the Time Mr. *Feilding* was marry'd?

Mrs. *Villars*. It was the 9th of *November* was Twelve-month.

Council. What was the Reason why the Marriage was carry'd on so privately?

Mrs. *Villars*. The Reason was, because Mrs. *Deleau* had a Father alive, who had in his Hands a Part of her Fortune; and for fear of disobliging him, Mrs. *Wadsworth*, that went for Mrs. *Deleau*, was willing it should be kept private.

Council. Can you tell the Reason of its being discovered?

Mrs. *Villars*.

Mrs. Villars. Mrs. Wadsworth sent to Mr. Feilding for Money.—Then Mr. Feilding found he had not a Woman of that Fortune which he took her to be. When Mr. Feilding did find it out, he took Mrs. Streights into a Closet, at the Duchefs of Cleveland's, and sent for me there: Then Mr. Feilding wanted to have the Presents returned. Mr. Feilding then beat me, and asked me whether that was a fit Wife for him? And then took a Thing made of Steel at one end, and a Hammer at the other end; and told me, if I would not unsay what I said of his Marriage with Wadsworth, he would slit my Nose off: And that he would get two Blacks; the one should hold me upon his Back, and the other should break my Bones.

Justice Powel. One would have thought you should have been afraid to have seen Mr. Feilding.

Mrs. Villars. My Lord, It was not till then found out.

Sir Ja. Mountague. My Lord I think she hath clearly proved the Marriage; and that she saw them three times in Bed together, in the Space of six Weeks after the Marriage.

Mr. Feilding. By what Name did Mrs. Wadsworth go?

Mrs. Villars. By no Name at all.

Mr. Feilding. Did I ever appear with her in Publick?

Mrs. Villars. No, never.

Mr. Feilding. What was the first Place I saw her in?

Mrs. Villars. The first Place you saw her, was at your Lodgings, last Lord Mayor's Day, was Twelve-month.

Mr. Feilding. My Lord, I desire it may be asked her, how she came to think that I should send such mean Presents as she hath mentioned, to a Lady of Mrs. Deleau's Fortune? They were not at all suitable to Mrs. Deleau.

Justice Powel. Ay, Mrs. Villars, What say you to that? Mr. Feilding thinks it a very strange Thing, that he should send such Trifles to a Lady of Mrs. Deleau's Quality.

Mrs. Villars. He did think, at that Time, that he made his Addresses to Mrs. Deleau; and I am sure such Presents were sent; and he was really marry'd to her, and marry'd her for Mrs. Deleau.

Justice Powel. Mrs. Villars, Mr. Feilding desires this Question should be ask'd you; When was the first Time you acquainted the Duchefs of Cleveland with this Matter?

Mrs. Villars. I will tell your Lordship. Mrs. Feilding, that is now, told me, Mr. Feilding beat her at the Lodge at Whiteball (I did not see the beating) and said, she should have Occasion to bring me upon my Oath, to prove that Mr. Feilding was marry'd to her the ninth of November. I went with Mrs. Feilding to the Duke of Grafton, and told him, I was sure he was marry'd the ninth of November before.

Justice Powel. How long was it after the beating, before you and Mrs. Feilding went to the Duke of Grafton?

Mrs. Villars. It was about three Weeks.

Justice Powel. Are you sure it was before that Time that there was any Parting betwixt Mr. Feilding and the Duchefs of Cleveland.

Mrs. Villars. Mrs. Feilding acquainted me with it her self, that the beating was before the Difference between the Duchefs of Cleveland and Mr. Feilding.

Council. Altho' you did not see what pass'd at Whiteball; Whether was this before the Difference between the Duchefs and Mr. Feilding?

Mrs. Villars. I believe it was about a Fortnight or three Weeks.

Mr. Feilding. How came it to pass that it was not discovered till now of late?

Mrs. Villars. It was not discover'd till she sent to Mr. Feilding for Money, about May, after the Marriage.

Justice Powel. Why did you not apply yourself to Mr. Feilding for the Reward?

Mrs. Villars. I was to have no Reward.

Mr. Feilding. Mrs. Villars, What Reward did the Duchefs of Cleveland promise you?

Mrs. Villars. I never saw the Duchefs of Cleveland; and I was never promis'd any Reward.

Justice Powel. Was you not to have had a Reward for helping Mr. Feilding to Mrs. Deleau?

Mrs. Villars. Mrs. Streights left such word at my Lodgings; but I had no Promise of it from Mr. Feilding.

Sir Ja. Mountague. My Lord, Mrs. Villars has given you so full an Account of every Thing I have open'd, that all that we have to do now, is to support Mrs. Villars's Evidence; and to make it appear to your Lordship, that she is right in all these Particulars that she tells you of. And the better to make our selves understood, we will go on, and give your Lordship an Account how these Things were carry'd on from Time to Time. But first we shall prove to your Lordship, How that after Mr. Feilding was thus marry'd to Mrs. Wadsworth, he did actually marry the Duchefs of Cleveland.

Mr. Feilding. My Lord, I do not deny my Marriage to the Duchefs of Cleveland.

Sir Ja. Mountague. Then, my Lord, we will not trouble you with any Proof of that Matter, but go on with making out the Circumstances of his Marriage with Mrs. Wadsworth; and we shall verify, in every Particular, Mrs. Villars's Evidence. And first we shall prove, that he actually took a Copy of Mr. Deleau's Will. For that call Mr. Searle (who was sworn).

Sir James Mountague. Mr. Searle, Give my Lord and the Jury an Account of what you know of Mr. Feilding's coming to Doctors Commons, to see the Will of Mr. Deleau.

Mr. Searle. My Lord, I am a Servant to Mr. Cottle, Proctor to the Prerogative Office. Mr. Feilding came to Doctors Commons about the Beginning of Michaelmas Term, 1705, and desired me to search, and see whether Mr. Deleau's Will was come into the Office, or no. I look'd in the Kalendar, and found it was come in; and spoke to the Clerk, in whose Possession it was, and he read it over to him; and he desired a Copy of it, which I wrote out. Mr. Feilding came in three Days after for it, but it was not done. I desir'd him to come another Time; which he did, and had it.

Council. Who did he bespeak it of?

Mr. Searle. He bespoke it of me, and had the Copy of me.

Council. When was this?

Mr. Searle. It was about the Beginning of Michaelmas Term.

Sir James Mountague. The next Thing we shall prove, is, that Mr. Feilding was actually at Waddon, Mrs. Deleau's House: And we shall prove that even by Mrs. Deleau (who was sworn).

Council.

Council. Pray, Madam, have you any Acquaintance with Mr. *Feilding*?

Mrs. Deleau. None at all.

Council. Do you remember he came to your House in the Country?

Mrs. Deleau. He did about *Bartholomew-tide* was Twelve-month.

Council. When he was there, had he a sight of you, Madam?

Mrs. Deleau. No, my Lord; he was not in the House, but in the Garden.

Council. Do you know Mrs. *Villars*?

Mrs. Deleau. I do, my Lord.

Council. Did she ever come to you upon such a Message, That my Lady *Duchess of Cleveland* and Mr. *Feilding* had a Desire to see the Gardens?

Mrs. Deleau. She did so; and it was about the same Time Mr. *Feilding* had been there, or some little Time after, I believe.

Council. Did you go to the Race on *Banstead Downs*?

Mrs. Deleau. No, my Lord.

Council. Did Mrs. *Villars* use to Cut your Hair?

Mrs. Deleau. No, my Lord—Her Mistress did.

Council. Was there any Letter brought to your House from Mr. *Feilding*?

Mrs. Deleau. I heard there was.

Council. Who receiv'd the Letter from Mr. *Feilding*?

Mrs. Deleau. Some of the Servants, but I receiv'd none; but some of the Servants receiv'd it. I was then at my Father's, and left Orders that they should take in no Letters but such as came from my Relations, which would come by themselves.

Council. When had you Notice of Mr. *Feilding's* being at your House?

Mrs. Deleau. My own Butler came up, and acquainted me Mr. *Feilding* was below. He came to my House with the Character of Major General *Villars*. I did not see him; but here's the Lady that saw him out of the Window; who, it seems, he took for my self.

(*That Lady sworn.*)

Council. My Lord, we only bring this Lady to prove what the first Witness said, That Mr. *Feilding* saw Mrs. *Deleau* thro' a Window—Madam, Do you remember Mr. *Feilding* was at *Waddon*, and when?

Lady. He was there about *Bartholomew-tide* was Twelve-month. I did see him thro' a Window, and inform'd my Cousin of it.

Council. Then call Mr. *Boucher* (*who was sworn*).

Council. Mr. *Boucher*, Pray give my Lord and the Jury an Account of all you know of this Matter.

Mr. Boucher. My Lord, I went with Mr. *Feilding* to my Lord-Mayor's Show last Lord-Mayors Day was Twelve-month. He went in his Chariot to Mr. *Feilding's* a Linnen-Drapers at the *Tree-Legs* in *Cheapside*. I looked into the Balcony and saw Mrs. *Villars* there—My Master came down again, and went to Sir *Basil Firebrass's*; from thence I was order'd to go home, and meet my Master in *Bond-Street*; which I did. He ask'd me whether any body had been at his Lodgings to enquire for him? I said, no, and went home again. Then I found the Lady and Mrs. *Villars* at Mr. *Feilding's* Lodgings. They had been there but a little time, but Mr. *Feilding* came in. Mr. *Feilding* complemented the Lady, and ask'd her if she lov'd Singing? Mrs. *Margaretta* was sent for, and accommodated this

Lady and Mrs. *Villars* with two Songs. Mr. *Feilding* treated them with a Bottle of Wine and a Plumb Cake—*Margaretta* went away; and soon after Mrs. *Villars* and this Lady went away. So, says Mrs. *Heath* afterwards to me, Do you know what Woman of Quality that is in the Coach? This Mrs. *Heath* is the Landlady where Mr. *Feilding* lodged. Mrs. *Villars* and the Lady went away in a Coach. She was in a Mourning-Dress, and the Coach was a Mourning Coach.

Council. What Time was this?

Mr. Boucher. It was my Lord-Mayor's Day was Twelve-month, on the twenty-ninth of *October*.

Council. Well, go on, and tell what you know of the Marriage.

Mr. Boucher. Not long after this, my Master order'd me to be at home, to get clean Sheets for the Bed, Wax-Candles, and Sconces, and Fires in both the Rooms: He told me some Ladies would be there that Night; and order'd if he was not at home when they came, to tell them, that he would be there presently. Accordingly they came, and he was not at home; but in a little Time he came and went up to them. Some time after that, he came down Stairs in great Haste, and said, *Boucher*, go and bespeak a Dish of Pickles. I did so; and brought over a Cloth, and the rest of the Things, and left them in the Window. I stay'd by the Stairs till he came back in a Hackney-Coach, with a Priest along with him in a long Gown, and long Beard, and a Furr-Cap; I knew him to belong to the Emperor's Envoy; and I heard Mr. *Feilding* call him Reverend Father. Then I was order'd to set the Table and Glasses, and Wine, and Things of that kind, upon the Side-board. I waited at Table all the while. When Supper was over, Mr. *Feilding* order'd me to go down and fetch Water, Salt, and Rosemary, I went and got Water and Salt, but could get no Rosemary. Then I was order'd to go down, and they were lock'd in about three quarters of an Hour: He then call'd, *Boucher*, says he, will you fill some Wine?—I did so, and perceiv'd upon the Thumb of this Lady, upon her Left Hand, a plain Gold Ring, which before Supper she had not. When this was over, the Priest went away. Presently after, says Mr. *Feilding*, take the Sheets from my Bed, and lay them on the other Bed, for Mrs. *Villars*; and see that none lie there. I told my Master 'twas done. Mrs. *Villars*, in the mean time, put the Lady to Bed. When I came down to tell them of it, I saw the Lady's Clothes upon a Stool in the Chamber; and Mrs. *Villars* folding them up, and laying them in another Room. I then light Mrs. *Villars* to Bed, and then went to Bed my self. In the Morning I was call'd to make a Fire; I then perceiv'd Mr. *Feilding* and this Lady in Bed together. The Fire being made, I was order'd to get a Hackney-Coach. Mrs. *Villars* dressed the Lady hastily, and she was carried away in the Hackney-Coach. About a Fortnight after, Mr. *Feilding* order'd me to prepare the Lodgings again. This Lady came to my Master's Lodgings That Night, and had something for Supper; my Master order'd me to get ready Mrs. *Villars's* Bed: I did so. In the Morning was called down to make a Fire, which I did: the Curtains being open next the Fire, I perceiv'd them in Bed again. I was order'd to get a Hackney-Coach, which I did; and they went away again. This was about the Twenty fifth of *November*. Soon after this, I understood by some of the *Duchess of Cleveland's* Servants, that Mr. *Feilding* was

was marry'd to my Lady Duchefs. At the same time Mr. *Feilding* ordered me to go to Mrs. *Heath's* to bring his Night-Gown, Cap and Slippers to the Duchefs of *Cleveland's* House, and to attend the next Morning with clean Linnen, his Wig, &c. And about, or on the Fifth of *December*, says he, *Boucher* get my Lodgings in Order again, for I expect Mrs. *Villars* and the Lady to be there; which accordingly I did. I was sent from the Duchefs of *Cleveland's* with his Night-Gown, Cap and Slippers. Mrs. *Villars* and the Lady came accordingly that Night, and had a boil'd Chicken for Supper. Mr. *Feilding* and the Lady lay together that Night; and in the Morning I saw them in Bed together; and when she got up, she went away again in a Hackney-Coach. That was the last time I saw the Lady in Mr. *Feilding's* Lodgings.

Council: Were you at *Epsom* with Mr. *Feilding*?

Mr. *Boucher*. I was there with him, and went to *Waddon* with him to Mrs. *Deleau's*. Mr. *Feilding* went into the Gardens and walk'd in them.

Mr. *Feilding*. I would ask you, *Boucher*, whether the Priest that came in a Red Gown lin'd with Blue, whether you did not sometimes see him dine at the Duchefs of *Cleveland's* House?

Mr. *Boucher*. I did see him there, I cannot say often; but once I am sure I did.

Justice Powel. Was it not that Priest that was there that Night upon which Mr. *Feilding* was suppos'd to be married, at the Duchefs of *Cleveland's*?

Mr. *Boucher*. I saw him there once.

Justice Powel. Was it before or after that suppos'd Marriage?

Mr. *Boucher*. I cannot be positive whether it was before or after.

Mr. *Feilding*. Whose Servant are you at this time?

Mr. *Boucher*. I am now Cook to Coll. *Webb's* Regiment.

Mr. *Feilding*. How came you here?

Mr. *Boucher*. My Master desir'd me to go to the Duke of *Grafton's* House, where his Grace told me I was to justify the Truth of what I knew of Mr. *Feilding's* Marriage; that's all. I was sent for to *England* by my Master.

Mr. *Feilding*. I desire to know whether he did not only make Mrs. *Villars's* Bed, but lie with her likewise?

Council. Call Mrs. *Martin* (who was sworn).

Sir *Ja. Montague*. Mrs. *Martin*, Will you give my Lord and the Jury an Account of what you know of Mrs. *Villars's*?

Mrs. *Martin*. I know Mrs. *Villars*.

Council. What do you know of her, and of any Body else coming to your Sister's House after Mr. *Feilding*?

Mrs. *Martin*. The next Day after the Lodgings were taken, Mrs. *Villars* came and ask'd for the Major-General, and continued coming almost every Day as long as he was at our House.

Council. What time did Mr. *Feilding* come first to your House?

Mrs. *Martin*. It was the beginning of *October* was Twelve-month.

Council. Did you ever see any other Gentlewoman come with her?

Mrs. *Martin*. My Lord, on my Lord-Mayor's Day at Night I saw Mrs. *Villars* come in, and another Gentlewoman with her.

Council. Did you see the Coach they came in?

Mrs. *Martin*. There are others that saw the Mourning-Coach.

VOL. V.

Council. What time was this?

Mrs. *Martin*. It was my-Lord Mayor's Day at Night.

Council. Where do you live?

Mrs. *Martin*. At Mrs. *Heath's*, my Sister's in *Pall-Mall*, at that time.

Council. Did Mrs. *Villars* and the Lady continue there all Night?

Mrs. *Martin*. No, they did not.

Council. Was there any Body came in afterwards?

Mrs. *Martin*. I did not see any Body.

Council. How long did they continue in your Sister's Lodgings that Night?

Mrs. *Martin*. I cannot tell.

Council. Did you see them there again?

Mrs. *Martin*. The second time was about *November*.

Council. Who came then?

Mrs. *Martin*. I did not see them come in; but Mrs. *Villars* came into the Parlour, and said, that there was the same Lady that had been there the Night before.

Council. Did they stay then that Night?

Mrs. *Martin*. I believe they stay'd there that Night.

Council. Did you see them go away in the Morning?

Mrs. *Martin*. I did not see them in the Morning.

Council. Did you ever see any Body come at them whilst they were there in an extraordinary Habit, a Red Gown, &c.?

Mrs. *Martin*. There was a tall Man knock'd at the Door in a long Gown, Blew Facing, and Furr-Cap, with a long Beard. He was conducted to the Major-General's, up Stairs.

Council. Do you remember the Supper that Night?

Mrs. *Martin*. I remember a Dish of Pickles.

Council. How long did the Gentleman in Red stay?

Mrs. *Martin*. I know not; I did not see him go away again,

Council. Do you remember that the Lady and Mrs. *Villars*, with a Gentleman in Red, and Mr. *Feilding* were together?

Mrs. *Martin*. I remember when they were together, *Boucher* was sent down.

Council. Do you remember any Bed got ready?

Mrs. *Martin*. I remember that Orders was given to his Servant to make ready a Bed, and to put on clean Sheets.

Justice Powel. Do you believe there was any Marriage that Night?

Mrs. *Martin*. I do not know any thing of the Marriage.

Council. Then call Mrs. *Heath* (who was sworn).

Sir *Ja. Montague*. Mrs. *Heath*, give an Account what time Major-General *Feilding* came to take Lodgings at your House.

Mrs. *Heath*. About the beginning of *October* last was a Twelve-month.

Council. Do you remember that one Mrs. *Villars* came to see him there?

Mrs. *Heath*. Yes, frequently, my Lord, she has been in my Parlour, and told me there frequently, that she came from a Lady of Quality.

Council. Did you ever see this Lady?

Mrs. *Heath*. I never saw her, my Family being retired from Lodgers.

Council. What Discourse did you hear from *Boucher*?

K k k k

Mrs. *Heath*.

Mrs. *Heath*. He said that a Woman of Quality was there, and that she came there two or three Times with Mrs. *Villars*.

Council. What Time did you hear of that Lady's being there first?

Mrs. *Heath*. On my Lord-Mayor's Day; for I dined in the City, and when I came home, my Family acquainted me with it. Mrs. *Villars* came down to me one Night, which was the Night the Man in Red was there, but I did not see him.

Sir *Ja. Mountague*. Do you know of their staying there all Night?

Mrs. *Heath*. Mrs. *Villars* came to me, and said that her Lady was a Person of Quality worth 80000*l*. she shewed me a little Picture, which she said was her Lady's Picture: That Night she came to me, and desired that the Lady and she might lie in a Room up two Pair of Stairs; for they had stay'd late, and did not care to go home. I disputed it, but she said we should have no trouble, for *Boucher* should make the Bed, and the General's Sheets should serve them.

Council. Do you remember at any Time after that, that Mr. *Feilding* came to you, and rail'd against Mrs. *Villars*?

Mrs. *Heath*. He did come to my House, after he had discharged my Lodgings, and he told me that Mrs. *Villars* was a very bad Woman; and that she imposed a Woman of the Town upon him for a Woman of Quality.

Council. What Time was it that Mr. *Feilding* told you so?

Mrs. *Heath*. It was two or Three Months ago, but I don't well remember the Time; says he, *Damner*, I do not know how she contrived it, but I saw her at a Woman of Quality's House in the Country. He said this at that Time.

Council. Let's hear it again.

Mrs. *Heath*. Mr. *Feilding* told me, That Mrs. *Villars* was a Bitch, and had imposed a base Woman upon him, instead of a Woman of Quality. He said likewise, That he thought he saw the Lady look out of a Window of a Person of Quality's House in the Country.

Justice Powel. Mrs. *Heath*, Did you ever hear or believe that they were married?

Mrs. *Heath*. I did not believe it a Marriage, but a Conversion; because his Man came down into the Parlour, and asked for Salt and Water and Rosemary; which occasioned these Words, Lord, said I, I fancy they are making a Convert of this Woman; because they said it was a Priest above. And his Man at that Time said, there was a Priest above.

Mr. *Feilding*. Did my Man, at that Time, tell you I was married to that Woman, or any Time else?

Mrs. *Heath*. Nothing, my Lord; no body told me Mr. *Feilding* was married at that Time.

Council. Then call Mrs. *Margaretta* (who was sworn).

Mrs. *Margaretta*. My Lord, I remember that Mr. *Feilding* sent for me to his Lodgings in *Pall-Mall*; I was sent for in the Evening, but I can't tell how long it was before he was married to my Lady *Duchess*.

Council. What Company was there in the Room at that Time?

Mrs. *Margaretta*. I cannot tell.

Council. What were the Songs you sung?

Mrs. *Margaretta*. I sung several Italian Songs, and one English, and that was *Iantbe the lovely*.

Council. Who was then in the Room?

Mrs. *Margaretta*. No body was there then, as I remember, but the Gentlewoman, Mr. *Feilding* and I.

Council. What sort of Woman was this you speak of?

Mrs. *Margaretta*. She was in Mourning; she had a Velvet-Scarf. I never heard her speak, for he desired me to sing that Song, *Iantbe the lovely*; for he said he had the Original of it, and had translated it out of *Greek*.

Justice Powel. Were you then more than once at Mr. *Feilding*'s Lodgings?

Mrs. *Margaretta*. But once; and I saw no more there than the Gentlewoman that sat by the Fire with her Back towards me. But I did not see her Face, nor hear her speak.

Justice Powel. What Time was it?

Mrs. *Margaretta*. I cannot tell justly the Time; it was dirty Weather and dark: I believe it might be about Six a Clock, but am not sure.

Mr. *Feilding*. My Lord, she says there was but one Woman there: Mrs. *Villars* was not there.

Justice Powel. Name the Persons that were there.

Mrs. *Margaretta*. There was that Gentleman in Mourning, whose Name I do not know, Mr. *Feilding*, and my self; there was no body else that I saw; and no body could be there, but I must see them, for I was Mistress of all the Doors.

Justice Powel. Did Mr. *Feilding* pretend it was to entertain his Wife?

Mrs. *Margaretta*. No; he desired me to come to him, and left a Direction at my Lodgings, and said there were some People of Quality there; and when I came I saw none but the Lady that sat by the Fire.

Council. Then call Mrs. *Price* (who was sworn).

Council. Mrs. *Price*, do you live at Mrs. *Heath*'s House?

Mrs. *Price*. I do.

Council. Give an Account to my Lord of the Mourning-Coach coming to Mr. *Feilding*'s Lodgings on Lord-Mayor's Day was Twelve-month.

Mrs. *Price*. I saw a Mourning Coach come to Mr. *Feilding*'s Lodgings at Mrs. *Heath*'s House, but did not see the Ladies come out of it; two Ladies were lighted into Mr. *Feilding*'s Lodgings, Mrs. *Villars* and another; and Mrs. *Villars* followed the other Lady up Stairs, and immediately Mrs. *Villars* came down, and ask'd for the General: *Boucher* in the mean Time came in, and told them he would be there presently. Accordingly he came. They continued some Time, and when they were gone, the Coach was gone.

Council. Was Mrs. *Margaretta* there?

Mrs. *Price*. I did not see her.

Council. Do you know of any other Time of their coming there?

Mrs. *Price*. Some time after my Lord Mayor's Day, this Gentlewoman and Mrs. *Villars* came again; at the same Time Mrs. *Martin* told me she let in a Gentleman in Red, in an *Armenian* Habit; but I cannot tell what he came there for; I think his Man *Boucher* said he was a Priest.

Council. Whilst the Priest was there, do you remember *Boucher*'s coming down for any remarkable Thing?

Mrs. *Price*. I remember *Boucher* came down, but do not remember what he came down for.

Council. How long did they stay the second Time?

Mrs. *Price*.

Mrs. Price. They staid there all Night; there were clean Sheets put on the Bed, and Lodgings prepared for the Lady and Mrs. Villars.

Council. Do you know Mrs. Villars?

Mrs. Price. I did know Mrs. Villars by her coming to Mr. Feilding.

Justice Powel. Do you know what Reputation Mrs. Villars has?

Mrs. Price. I do not, my Lord.

Mrs. Heath called again.

Mrs. Heath. My Lord, I never had any Acquaintance with Mrs. Villars, no more than by her coming to the Major General. One Mrs. Howard came with her, and she has told me that she was a Woman of no Reputation, and that she was a Singer too, my Lord.

Council. Then call Thomas Sone (who was sworn).

Council. What do you know of Mr. Fielding's buying a Ring of you? Give us an Account of it?

Mr. Sone. I know Mr. Feilding, by Sight; he bought a Gold Ring of me, but I cannot remember the Time.

Council. How long ago do you think it is?

Mr. Sone. I believe it may be a Year ago.

Council. Was there any Posy in it?

Mr. Sone. Yes, I grav'd a Posy whilst he took a turn in the Alley: The Posy was by his Direction (*Tibi Soli*).

Council. Who did you deliver this Ring to?

Mr. Sone. I sold it out of my Glafs to Mr. Feilding.

Council. Swear Mr. Wilkins. (*He was sworn.*)

Council. What do you know of Mr. Fielding's buying a Ring of Mr. Sone? The Time when this Ring was bought?

Mr. Wilkins. It is about a Year and Two Months ago; I was by when the Gentleman gave Direction for it; and I saw him write down (*Tibi Soli*).

Council. Then swear the Register of Doctors-Commons.

Th: Register of Doctors-Commons sworn.

Council. Shew the Register the Ring.

Register. My Lord this Ring was brought by my Lady Duches's Proctor with the Letters.

The Ring produced, and shewn to Mr Sone the Goldsmith, who deposed, That that was the Ring which he made for Mr. Feilding; and the Posy the same which Mr. Feilding directed.

Council. How do you know it to be the same which you sold to Mr. Feilding?

Mr. Sone. I know it to be the same by my Mark and Work.

Mr. Cooke, Proctor, sworn.

Mr. Cooke. My Lord, there was a Ring brought, it is the same that was exhibited in Court, and the Ring was brought first of all by the Lady, Mrs. Feilding; it was afterwards in the Custody of my Brother; my Brother brought it to me, and I delivered it to the Register, and believe it to be the same Ring by the Posy (*Tibi Soli*).

Council. Now, my Lord, we shall prove Mr. Fielding's coming to Count Gallas's for a Priest.

Call Constantine Pozzy (who was sworn).

Council. Where do you live?

Pozzy. I am a Servant to the Emperor's Envoy.

Council. Do you know Mr. Feilding?

Pozzy. I know General Feilding by Sight; I remember one Night he came and asked for the Father in Red? I told him that he was not within;

then he ask'd for Count Gallas's Almoner (meaning Father Vanderber, his Lordship's first Chaplain) but he happened not to be within neither. I told him that Father Florence, one of the Chaplains was within. Then said Mr. Feilding call him to me; I did so. Upon which Mr. Feilding gave me Half a Crown. Mr. Florence came immediately to Mr. Feilding.

Council. Was there a Priest at that Time in Red that had a long Beard?

Pozzy. My Lord had such a Priest then; after Mr. Florence and Mr. Feilding had been discoursing some Time in the Hall together, Mr. Florence went up Stairs to Count Gallas; whilst Mr. Florence was up Stairs, the Father in Red came in; I saw Mr. Feilding and the Father in Red go away together in the Hackney-Coach before Mr. Florence came down.

Council. What Time was this?

Pozzy. It was in November, the beginning of it.

Council. Did you hear what Mr. Feilding and Mr. Florence did discourse of?

Pozzy. No, nothing.

Council. Then swear Mr. Florence (who was sworn).

Council. Give my Lord and the Jury, an Account of what you know of Mr. Feilding's coming to you.

Mr. Florence. I have seen Mr. Feilding.

Council. Upon what Occasion had you any Discourse with him?

Mr. Florence. It was on Friday Night, Post-Night, about the beginning of November, Constantine Pozzy came under my Chamber-Window, called to me and said, Here is Major General Feilding, he wants one of the Chaplains, he desires to speak with you. I went to him immediately, and introduced him into the Hall. The Major General spoke to me in French. Sir, says he, I come here to look for the Father in Red; but I understand he is not at home; you will do as well, be pleased to go along with me, He told me he had courted a young Lady for some Time, and now found her well disposed, and therefore desired me to go along with him to marry them. I understood there had been some Treatment between him and the Duches of Cleveland, and therefore I ask'd him whether it were to the Duches; He did not inform me. I told him I did not care to do any Thing out of the House; and desired him to let me ask my Lord; says he, give my Service to Count Gallas and tell him. I went up to him and spoke to him, and told him the Business Mr. Feilding came about. He bid me, says he, What you do, do it wisely. When I came down Mr. Feilding was gone, I was told that the Gentleman in Red came in, and that Mr. Feilding and he were gone away together.

Council. That which he would have you to do, was to have married him with a certain Lady, was it not?

Mr. Florence. It was so.

Council. What Time was that?

Mr. Florence. It was upon Friday, I am sure.

Council. Had you any Discourse with Mr. Feilding after this?

Mr. Florence. The next Sunday after this, says he, I give you many Thanks for the last Favour. I knew of no other Favour I did him but this.

Council. Then call Matthew Paul (who was sworn).

Council. Do you give my Lord and the Jury an account of Mr. *Feilding's* beating a Gentlewoman; and if any Marriage was claimed at that Time by a Gentlewoman.

Paul. Mr. *Feilding* came to *Whiteball-Gate* in a Chariot; he sitt out of it. There was a Hackney Coach brought two Women; one of these Women got out of the Coach, and came up to Mr. *Feilding*: Mr. *Feilding* call'd her *Bitch*; the Lady call'd him *Rogue*, and said she was his *lawful Wife*; at that Mr. *Feilding* having a Stick, he punch'd it at her; it happen'd upon her Mouth, and made her Teeth bleed. He order'd the Centry to keep her till he was gone, and he would give 'em a Crown. She said, as I told you before, that she was his *lawful Wife*, and for that Reason they did not care to meddle with her.

Council. Sir, Do you know what Time this was?

Paul. I cannot justly tell: It was as near as I can judge, about the latter end of *May*.

Council. Pray call Mrs. *Feilding*, and let the Witness see if he knows the Woman again that he saw Mr. *Feilding* beat.

Mrs. Feilding called into Court.

Council. Is this the Woman you saw?

Paul. This is the Woman, my Lord, I really believe.

Council. Then swear Mr. *Seymour* (who was sworn).

Council. Do you know Mr. *Feilding*?

Mr. Seymour. Yes, Sir.

Council. Do you remember his beating any Woman at *Whiteball-Gate*?

Mr. Seymour. Yes, Sir.

Council. What Time was it?

Mr. Seymour. It was in the last Summer, but I cannot be positive to the Time.

Council. Do you know the Gentlewoman when you see her?

Mr. Seymour. Yes, I do; that's the Gentlewoman (pointing to Mrs. *Feilding*) I am sure of it.

Council. What did she say to Mr. *Feilding*?

Mr. Seymour. She said to him, you are a *Rogue*, I am your *lawful Wife*.

Council. Then swear Captain *Eaton* (who was sworn).

Council. Captain, do you know any Thing of Mr. *Feilding's* beating a Woman?

Captain Eaton. I was at the *King's Arms Tavern*, and whilst I was there, the Drawer came to me, and told me there was two Women would speak with me; this Woman (pointing at Mrs. *Feilding*) and another, whom she call'd *Mother*. She told me she was married to Mr. *Feilding*, before he was married to my Lady *Duchess*, and desired me to acquaint my Lord Duke of *Northumberland* with it, that the *Duchess of Cleveland* might know of it: I told her I did not design to concern myself about it. She told me she had been much abused by him.

Council. What Time was this?

Captain Eaton. It was some time before the 18th of *August*; it was the latter End of *June* or beginning of *July*.

Council. Was it before the Difference between Mr. *Feilding* and my Lady *Duchess*?

Captain Eaton. It was before that Time.

Council. Now we shall produce Mr. *Feilding's* own Letters, where under his Hand your Lordship will find he took Mrs. *Wadsworth*, for Madam *Deleau*.

Divers Letters produced in Court.

Council. Call Mr. *Lilley*. (He appears).

Council. Do you know these Letters to be Mr. *Feilding's* Hand-Writing?

Mr. Lilley. I am a Stranger to his Hand, *Boucher call'd.*

Council. Can you read and write?

Boucher. Yes, my Lord, I can.

Council. Do you know these Letters to be Mr. *Feilding's* Hand-Writing?

Boucher. This is his Hand, I believe. I have seen him write an hundred Times; I have had the Curiosity to observe his Hand, and this is his own Writing.

Council. Then swear *Frances Beale* (who was sworn).

Council. Do you know Mr. *Feilding's* Hand-Writing?

Beale. I do my Lord.

Council. Do you know that Letter to be his Hand?

Beale. I have seen him write several Times, and believe it to be his Hand.

Council. Now, my Lord, we will beg the Favour to read these Letters, and first of all, one directed

To the Countess of *Feilding*.

Sunday Night.

I Hope my Dearest Wife will easily believe that nothing can be Welcomer to me than the Assurance of her Health; but as I received hers but this Day, I could not have the Felicity of seeing her to Morrow, and she have notice of it; therefore if she thinks fit on Thursday next at Four a-Clock, I will see her at *Puggy's*, and there endeavour to repair this tedious Absence.

Eternally Your own, *Feilding.*

Another Letter proved to be his Hand by *Boucher* and *Beale*:

To my Dearest Wife, the Countess of *Feilding*, *Friday.*

I Had return'd my Dear Wife's Favour long before now, but my Lady *Duchess's* Sickness on one hand, and more than ordinary Business (of which I will give my Dear a particular Account) on the other hand, has not given me a Moment of Time to write to my Love. *Puggy* brings you the Set of Knots you desir'd, and the Pattern of the *Damask*; or if my dearest Life wants any Thing else, she may with Pleasure command it; for I am never so well pleas'd as when employ'd by my Dearest Wife, and must be ever her affectionate Husband, till Death,

Feilding.

Another Letter proved by *Boucher* and *Beale*.

Nov. 27. 1705.

THE last Letter I had from my dearest Wife has mortified me much, finding, that notwithstanding all my Kindnesses, she taxes me with Coldness in my Letters, which I call Heaven to witness I never in the least intended; and beg my Dearest to give me some Warning before she taxes me of Unkindness. *Puggy* tells me that my Dear designs to come to Town to Morrow, which I hope she will put off till another Day, because I am obliged to be at her Grace's to morrow all the Afternoon, and till late at Night; but any other Day my Dear shall find she is always welcome to the *Arms*

Arms of him who loves her more than Life it self; and I shall never fail of giving her fresh Proofs that I am, Her loving and affectionate Husband,
Feilding.

Justice Powel. It is plain it is his Hand; and that he wrote to one whom he terms his Wife.

Council. Do you know these Letters to be writ by Mr. Feilding and sent to his Wife?

Mrs. Villars. I have seen them before, and I believe them to be Mr. Feilding's Hand. I saw Mr. Feilding write them, as well as I can see by my Eyes; and when he had writ them, he deliver'd them into my Hands, and order'd me to deliver them to his dear Wife.

Council. What does he mean by Puggy in his Letters? Who is Puggy?

Mrs. Villars. He us'd to call me Puggy.

Council. My Lord, we have done for the present (having proved clearly his Marriage with this Woman) without Mr. Feilding denies his Marriage to the Duchess of Cleveland.

Mr. Feilding. My Lord, I own my Marriage with the Duchess of Cleveland.

Justice Powel. Mr. Feilding, You have heard from the Evidence that hath been given against you, That you were married to another Woman, before you were married to the Duchess of Cleveland: And now is the Time to make your Defence.

Mr. Feilding. All the Evidence against me, consists in what Mrs. Villars hath said: She is the only Evidence that swears positively to this Fact; the rest are very inconsistent with themselves. I beg of your Lordship in a Case so nice as this is, where my Honour and Reputation, and every thing that is dear lies at Stake, that the Evidence in this Cause may be clear and positive. Mrs. Villars (my Lord) hath forsworn herself; 1. In that she swears she cut Mrs. Delean's Hair: Mrs. Delean takes notice, that she never cut it. And as to her Reputation; it's so bad, that when our Witnesses are heard, I hope your Lordship will see little Reason to believe any thing she says to be true. My Lord, we will prove, that she hath been in Custody of a Master of *Bridewel*; that there she hath received the Correction of the House; therefore I think she is not fit to appear as Evidence in this Court. She swears, that the Singing-Woman was at the Marriage; but it appears she was not, for the Singing-Woman contradicts it. And as to this Mrs. Wadsworth, who they set up, she was married to another Man, one Bradby.

Justice Powel. I must deal plainly with you, Mr. Feilding, from the Proof: I cannot speak of Mrs. Villars's Credit, for she is an ill Woman (no doubt) from her own Evidence, in that she put a false Woman upon you: But her Evidence is well supported by Circumstances of Time and Place; and all of them put together bid fair for a Proof, that you were married to this Woman. You may call what Witnesses you please to Mrs. Villars's Reputation, and they may be heard. No Woman of Reputation will bring a mean Woman to a Man, instead of a Person of Quality. I think you say, Mrs. Wadsworth was married to another Man at the same Time: Indeed that will be to the Purpose, if you can make it out.

Mr. Feilding. My Lord, I can: She was married to another Husband, one Bradby. Call Elizabeth Basset (who was sworn).

Justice Powel. Do you call this Woman to be Witness to the Marriage?

Mr. Feilding. My Lord, I do.

Justice Powel. Do you know Mrs. Wadsworth?

Mrs. Basset. My Lord, I do not know her from another Woman; but there was a certain Woman, two or three Months ago, came to take a Name out of the Register-Book.

Council. What Register do you speak of?

Mrs. Basset. The Register of Marriages in the Fleet.

Council. Who keeps that Book?

Mrs. Basset. I keep it at present: My Father-in Law is the Keeper of them; but he is sick, and therefore he hath left them in my Charge.

Council. Where is your Father?

Mrs. Basset. He is not able to appear.

Council. Do you keep them in your Custody?

Mrs. Basset. Yes, I do.

Council. Does nobody else come at them but your self?

Mrs. Basset. No, not this Twelve-month; since they have been in my keeping.

Council. Who then makes the Entries?

Mrs. Basset. These were my Father's Books when he was in Health.

Council. What can you say of this Woman;

Mrs. Basset. I do not know her. But some time ago there was a Woman came to my House: She told me, she wanted to speak with Mr. Basset. I told her she could not speak with him. She pressed to speak with him: But when I told her he was ill, and could not be spoken with; says she to me, Here is a Marriage in your Book of one Lilly Bradby and Mary Wadsworth. Says she to me, If you'll put it out of your Book, I'll give you a Piece of Money.

Council. Is this the Woman that made you this Offer?

Mrs. Basset. I will not swear to the Woman: I never saw her but that one Time, my Lord, I am not positive in the Matter; but I believe it is.

The Certificate of the Marriage read.

Lilly Bradby marry'd to Mary Wadsworth, the 28th of October 1703. The Man of St. James's, the Woman of St. Margaret's Westminster.

Justice Powel. Who us'd to write down the Certificates in the Register-Book?

Mrs. Basset. Several People, my Lord, we hir'd to do it.

(The Place of the Register shewn Mrs. Basset.)

Council. Have not you yourself look'd upon this Place now given as Evidence?

Mrs. Basset. Yes, I have.

Council. Whose Hand is that? *(Pointing to the Certificate.)*

Mrs. Basset. It is my Father-in-Law's: He that was Clerk of the Fleet.

Council. Is the whole Leaf of his Hand-writing?

Mrs. Basset. I cannot tell.

Justice Powel. Can you read Writing?

Mrs. Basset. Yes, my Lord.

(The Certificate view'd by the Court, and prov'd to be a different Hand from the rest.)

Council. There are Hands various in this Book.
Mrs. Basset.

Mrs. *Basset*. My Husband's Brother us'd to make Entries sometimes.

Sir *James Mountague*. Does your Husband's Brother use only to make Entries at the latter end of the Book?

Mrs. *Basset*. I don't know.

Council. Do you know when the Entry was made?

Mrs. *Basset*. I do not know when the Entry was made.

Council. Do you remember, that there were any Gentlemen with you to examine the Book?

Mrs. *Basset*. Yes, Sir, there were.

Council. Did you shew them this very Book?

Mrs. *Basset*. I did not; because Mrs. *Wadsworth* said there would be some trouble about it.

Council. Have you several Registers at the same Time?

Mrs. *Basset*. Yes, there are several Ministers, and therefore are Entries made in several Books.

Council. Why were you so friendly to Mrs. *Wadsworth*; when the Gentlemen came to examine the Book for this Register, and you shew'd them other Books instead of this?

Mrs. *Basset*. I did not shew them that, because Mrs. *Wadsworth* desired me,

Council. What did Mrs. *Wadsworth* give you?

Mrs. *Basset*. She gave me nothing. I will not say it was Mrs. *Wadsworth*.

Council. Do you remember you shew'd any Books to these Gentlemen, where there were Marriages registred in 1703?

Mrs. *Basset*. The Book is at Home in my House.

Council. Do you keep two Books for the Register of Marriages, for one and the same Year and Time?

Mrs. *Basset*. There are several Books; and we Enter sometimes in one, and sometimes in another; by reason that there are several Ministers, and each hath his particular Book.

Council. Did the Gentlemen ask you at that Time, whether there were more Books of Marriages?

Mrs. *Basset*. I do not remember.

Council. How many Books have you of that Year?

Mrs. *Basset*. But Two.

Council. Did you shew them any false Book? That is, Did you shew them a false Register of Marriages for a true one?

Mrs. *Basset*. I know nothing of that.

Mr. *Feilding*. Call Mrs. *Drinkwater* (who was sworn).

Justice Powel. Do you know Mrs. *Villars*?

Mrs. *Drinkwater*. I have known her above a Year.

Justice Powel. What is her Character and Reputation?

Mrs. *Drinkwater*. I know nothing of that — But I know so far of her, That she said she was married to Colonel *Feilding* on the fifth of *November*: She accordingly gave it out that she was with Child by him. And that she told me, that the Duchess of *Cleveland* proffer'd to give her 200 *l.* and 100 *l.* a Year, for fifteen Years, if she would prove a Marriage with Mr. *Feilding*: But that she would do more for Mr. *Feilding* for 40 *l.* than she would for the Duchess of *Cleveland* for a much greater Sum. And said, it was purely Want, that made her comply with my Lady Duchess's Desire. I have read all the Letters between Mrs.

Villars and the Colonel; and I never heard of any Marriage between Mrs. *Bradby* and Mr. *Feilding*, but between Mr. *Feilding* and Mrs. *Villars*.

Council. When was this Discourse between you and Mrs. *Villars*?

Mrs. *Drinkwater*. I cannot tell exactly the Day; but the Time they were marry'd was the fifth of *November* was Twelve-month, as she said.

Sir *Ja. Mountague*. You pretend to say, she said, That if Mr. *Feilding* gave her 40 *l.* she would do more for him, than she would do for a greater Sum from my Lady Duchess. How long was this ago when she said this?

Mrs. *Drinkwater*. It was about three Months, or better.

Council. Where was this Discourse pray?

Mrs. *Drinkwater*. It was at her Lodgings, when she lodged at the Back-side of *Red-Lion Square*, at a Widow Gentlewoman's House.

Council. How came you to be there when this Discourse was?

Mrs. *Drinkwater*. She, some Time before, gave me an Invitation to her Lodgings; and I went to give her a Visit, and then this Discourse happen'd.

Council. Who was by then?

Mrs. *Drinkwater*. None but I and She. She said it was Want and Necessity, that made her act after this manner.

Mr. *Feilding*. Did she not send for you, to tell you she was going to forswear herself?

Mrs. *Drinkwater*. She talk'd of it first.

Council. When did you tell the Colonel of it?

Mrs. *Drinkwater*. I do not know justly the Time.

Council. How long have you been acquainted with Colonel *Feilding*?

Mrs. *Drinkwater*. Not but since this Thing happen'd. I never had any further Conversation with him, than to speak in her Behalf to him. But I have this further to say, that an Outlandish Man came to me about a Fortnight's Distance, and said, If I could do any thing on the Behalf of the Duchess of *Cleveland*, it would be a considerable Sum of Money in my way.

Council. Where do you live yourself?

Mrs. *Drinkwater*. I live in the same House where Mrs. *Villars* lodged: I am a Servant to one Captain *Howard*: My Master is now in the Service.

Council. Who lives in the Family?

Mrs. *Drinkwater*. We have none but a Footman and my Master.

Mr. *Feilding*. Call Mrs. *English* (who was sworn).

Justice Powel. What have you to say?

Mrs. *English*. My Lord, I went down to Mrs. *Villars*'s Lodging the Morrow after last *Valentine's* Day, for some Money; for I washed for her. Says she, I have none at present. She told me, she would send to her Spouse for some. A Gentleman came in and said, I have none for you: Says he, my Master says, If a Crown will do, he will send it you out of Charity; but he cannot supply your Extravagances. On the fifth of *November* (she said) she was marry'd to Mr. *Feilding*; and she said, she would have Money from Mr. *Feilding*, or she would send her Soul to the Devil.

Mr. *Feilding*. Call Mrs. *Fletcher* (who was sworn). Give my Lord an account of what you know of Mrs. *Villars*.

Mrs. *Fletcher*. All I know of her and Mrs. *Bradby* is, Mrs. *Villars* lived with me a Twelve-month. She told me she had had two Bastards; one

one by my Lord *Torrington*, the other by my Lord *Stamford*.

Justice Powel. How long was this ago, that she was at your House for a Twelve-month?

Mrs. Fletcher. It was about four Years ago. She confess'd she had had two Bastard-Children; and that she had been in *Bridewel*. I have nothing more than from her own Tongue, that she was a very infamous Woman.

Sir Ja. Mountague. Mistress, How long have you been acquainted with *Mrs. Villars*?

Mrs. Fletcher. She was recommended to me by one in the Court, and by her good Behaviour.

Sir Ja. Mountague. Would you have a Correspondence with a Woman that had two Bastards? Pray what is your way of Living in the World?

Mrs. Fletcher. My Husband is a broken Mercer; he allows me 20*l.* a Year.

Council. What Vocation are you of?

Mrs. Fletcher. I drive little Trade, but work Plain-Work.

Sir Ja. Mountague. You are acquainted with *Mr. Feilding*; are you not?

Mrs. Fletcher. I know him.

Council. How long have you known him?

Mrs. Fletcher. About three or four Years.

Council. You would not scruple to assist *Mr. Feilding*, if he wanted a fair Lady. Look upon that Letter, and see whether it be your Hand-Writing, or no?

[Then a Letter was shew'd her.]

Mr. Longford. If you deny it, we will prove it.

Mrs. Fletcher. It is my Hand-Writing.

Justice Powel. Mistress, you can say no more of it?

Mrs. Fletcher. No, my Lord.

Mr. Feilding. Call *Mrs. Gardiner*,

[Who was sworn.]

Justice Powel. What have you to say?

Mrs. Gardiner. My Lord, *Mrs. Villars* lodged in my House; and she came one Morning.

Council. When was it?

Mrs. Gardiner. It was the 6th of *November* last was Twelve-month; She came in then, and had been abroad all Night. She told me, she was married to *Colonel Feilding*. She gave a Pair of Gloves to me, and to this Gentlewoman; and likewise gave Favours and Garters in the House. But she desired me to keep it secret. *Mrs. Bradby*, about a Fortnight or three Weeks before *Christmas*, came into *Mrs. Villars's* Lodging, and happened to fall down as if she had been in a Swoon; and within a few Days she fell in Labour.

Justice Powel. Was it a Boy, or a Girl, she was deliver'd with?

Mrs. Gardiner. I was not there. It was not at my House, but at new Lodgings.

Justice Powel. Where was it she was brought to bed?

Mr. Feilding. We can bring Evidence of that, my Lord.

Justice Powel. Woman, how can you swear, that she was brought to bed before *Christmas*?

Mrs. Gardiner. I may say it, my Lord, because here is one, I believe, that will swear it. *Mrs. Villars* her self told me so; and the Midwife said she deliver'd her, for which *Mrs. Bradby* gave her a Guinea. The next Day after her Fall she was very ill, and continued so till she was brought to bed.

Justice Powel. Was she big?

Mrs. Gardiner. She was past breeding; she was very big.

Mrs. Drinkwater call'd again.

Justice Powel. What can you say about *Mrs. Bradby's* Labour?

Mrs. Drinkwater. My Lord, *Mrs. Villars* and I were at *Mrs. Bradby's* Labour.

Council. When was this?

Mrs. Drinkwater. To the best of my Remembrance, it was about a Fortnight before *Christmas*; but she did not look before *February*. I do not know, but the Fall she had in *Mrs. Villars's* House, might be the Occasion of her coming before her Time.

Justice Powel. Was she deliver'd of a live or dead Child?

Mrs. Drinkwater. I do not remember that, my Lord.

Council. Was it a Boy or a Girl?

Mrs. Drinkwater. I know not that neither.

Justice Powel. I thought verily that if you were at her Labour, that you could tell whether she had a Child or no Child?

Mrs. Drinkwater. There were others that were at her Labour, can justify that the Midwife said she had a Child.

Council. Don't you know what became of the Child afterwards?

Mrs. Drinkwater. To the best of my Knowledge, I think it died as soon as it was born.

Council. Just now you said, you did not know whether it was alive or no?

Mrs. Drinkwater. Here is *Madam Luet* will justify it.

Mrs. Villars call'd again.

Justice Powel. *Mrs. Villars*, Do you know she was with Child?

Mrs. Villars. I know that she miscarried.

Council. What time was it?

Mrs. Villars. After *Christmas*.

Mr. Feilding. Call the Keeper of the House of Correction (who was sworn).

Justice Powel. What can you say?

Keeper. All that I know of *Mrs. Villars*, is, that she was a Prisoner in the House where I live.

Justice Powel. Where is that?

Keeper. In *Westminster*. I remember this Person was in my Custody above five Years ago.

Justice Powel. Had she the Correction of the House?

Keeper. She had not the Correction of the House, because she was then with Child.

Mr. Feilding. Call *Mr. Minors* (who was sworn).

Justice Powel. *Mr. Minors*, What have you to say?

Mr. Minors. My Lord, in *October* was Twelve-month, when *Mr. Feilding* lodged at *Mrs. Heath's*, I was then with *Mr. Feilding* almost every Day; I saw this Woman there every Day, except *Saturday* and *Sunday*. I din'd there, and there was *Mrs. Margareta*, and sung these Songs which she spoke of now. Two or three Days after this, *Mr. Feilding* communicated to me his Treaty of Marriage with the Duchefs of *Cleveland*, and spoke to me to settle some Writings between them. (He produced the Writings). *Mr. Feilding* desired me that I would be ready with them by the beginning of *November*, or the latter end of *October*. This is all I can say of this matter. As to the Women, I saw these, and abundance of common Women of the Town: I saw him take no more notice of *Mrs. Bradby*, than he did of any of the others.

Justice Powel. When did you see *Margareta* there?

Mr. Minors.

Mr. *Minors*. I cannot speak to a Day; but she was at Dinner when I dined there about *October* was Twelve-month.

Mr. *Feilding*. Call Mr. *Chomley* (who was sworn).
Justice *Powel*. What can you say?

Mr. *Chomley*. My Lord, Not long ago there was a certain Person taken up, by the Name of *Villars*, about a Twelve-month ago.

Justice *Powel*. Do you know her when you see her?

Mr. *Chomley*. My Lord, I believe that is the Person (pointing at her) but whether she was committed or not, I cannot say. I have seen her divers times at a lewd time of Night, when she ought to have been at home.

A Letter produc'd of Father Dryan's, and shewn to Mr. Florence.

(Mr. *Florence* sworn).

Council. Mr. *Florence*, Do you know this Letter?

Mr. *Florence*. I have seen it, and given an Answer to it accordingly.

Council. Is it *Dryan's* Hand?

Mr. *Florence*. I cannot say positively it is his Hand. There are some more of his Letters in the House; I cannot believe, or disbelieve it.

Council. Could *Francis Dryan* speak *English*?

Mr. *Florence*. Very little.

Council. How long was he in *England*?

Mr. *Florence*. About Eleven Months. He hath been gone a considerable Time.

Justice *Powel*. This Father that is now gone, Did he speak *English* at all?

Mr. *Florence*. He was learning of it. Some *English* he could speak; for I taught him from time to time.

Justice *Powel*. Do you think that he could enquire for Mr. *Feilding* in *English*?

Mr. *Florence*. I believe he might say, Is Mr. *Feilding* at home? But could speak little Sense in *English*.

Justice *Powel*. Do you think that if he were desired to speak these Words, *I take this Man for my Husband*, that he understood so much.

Mr. *Florence*. I believe he might say what another said before.

Then the Queen's Council reply'd.

Sir *Ja. Mountague*. My Lord, Mr. *Feilding's* Defence consists of Two Parts. First, he does endeavour to falsify his Marriage with Mrs. *Wadsworth*, by contradicting the Evidence of Mrs. *Villars*; and for that he calls divers to prove Mrs. *Villars* to be a dishonest Woman. My Lord, we think there is no Occasion for us to make a Reply to that Particular, since we our selves do not pretend to say she is a Woman of very good Reputation. That which we insist upon is, that Mr. *Feilding* hath been impos'd upon, and marry'd this Woman; and this we hope we have prov'd not only by Mrs. *Villars's* Evidence, but by other concurring Circumstances, which are so strong, that they cannot possibly be deny'd. And as to these Facts, he hath not at all contradicted our Evidence. For he does not so much as give your Lordship an Account how he came by the Ring, or for what End and Purpose he bespoke it. He does not deny that he directed the Posy of it to be *Tibi Soli*. So that, my Lord, he gives no manner of Answer to all these Matters.

In the next place, he seems to admit that he had been foolish enough to be thus impos'd upon by these Intriguing Women. But, says he, they have not gain'd their Point; for this imposing upon me signifies nothing, because this Woman was Wife to

another Man, when we said she was marry'd to Mr. *Feilding*. Now this sort of Defence does, in great measure, admit the Thing we contend for, His Marriage with Mrs. *Wadsworth*; and whether he hath made it appear that this Marriage is null and void, shall be taken into Consideration next, by making some few Observations on the Nature of the Evidence that he hath produced to prove this Woman's Marriage with another Man. He says she is the Wife of one *Lilly Bradby*. That Man, by the Book, is describ'd to live in St. *James's*, and the Woman to be of St. *Margaret's Westminster*. But he hath not so much as given you any Account that there is such a Man in the World, that he would have to be the suppos'd Husband of this Woman. In the next place, they have not undertaken to produce one Witness that was by at this Marriage, not one Witness. And what do they rely upon to prove this Wedding? Truly, nothing but the Register-Book; and the Man that keeps the Register-Book is not here. It's true, indeed, they say that it's a true Register, but we desire the Jury may inspect it; for it appears by divers Circumstances to be a Counterfeit-Entry; for it is written in another Character than what the rest are; and it is written in the lower part of the Leaf, where we may suppose a Vacancy left to insert such a thing as this is, upon occasion. The Person that wrote it is not here. The whole Year that is set down here, is all entirely one Hand Writing; and it is not at all like the Writing of this Entry. I think they pretend to say, there is something of the like Hand Writing in the same Book; and that they make use of to be a corroborating Circumstance. But that appears likewise to be at the latter end of another Book. The Book is Rub'd, and this Entry is writ below Lines without a Rule.

My Lord, this is what I think fit to take Notice upon the View of the Thing. We had an Intimation given us of this Book. It was rumour'd about the Town that this was the Defence which we were like to meet with. Therefore we did send to all Places where suspicious Registers were kept, and among the rest to this Fleet-Register. My Lord, we shall shew you that our Witnesses went to enquire for this Book; but there they found no Book where this Entry was written. It's a very unaccountable thing that this Book should be concealed. Here is a Woman indeed gives you a Reason why she did it. She says she did it, because she was desired to keep it secret by a Woman whom she never saw before; and of whom she says she never had a Penny. This, methinks, is very extraordinary. But this very Book was shewn them, if my Instructions be true, and the Place where this Entry is made was then a Blank, and filled up since. There was no such Entry at that time when they look'd upon it. This is all we shall say in respect of the Register, which is all the Evidence they bring to prove this Marriage.

But there is another thing they insist upon; They make it an Objection, That this Father in Red was seen at Dinner with the Duchess of *Cleveland*, after Mr. *Feilding* was marry'd to my Lady Duchess. As to that Matter, we say it does not appear when that time was; nor do they make it out that the Father in Red did know that he was married to the Duchess of *Cleveland* at that time; tho' in Fact they might be marry'd. Twenty People might be at Dinner there, and yet might be ignorant of this Marriage. It's possible that a Man may eat and drink with another, and yet not know whether he be married or unmarried. They do not make it appear that there was any Occasion given at Table that would

would give rise to such a Discourse. The Man not having an Opportunity to speak of it, to what end and purpose should he do it? The next thing they insist upon, and have endeavour'd to prove, is, That Mrs. Feilding was with Child, and brought to bed the Christmas after she was marry'd to Mr. Feilding. But they do not pretend to tell whether the Child she was brought to bed of, was dead or alive; or whether it was a Boy or a Girl; but at last it proved a Miscarriage. We have given your Lordship an Account how it is likely she should be with Child; for we have proved to you undoubtedly that she was married to Mr. Feilding; that they lay together several Times; and we have no Reason to suspect Mr. Feilding's Ability. Mr. Feilding knew she was with Child by him. He was the proudest Man in the World of this Thing, and call'd it young Lord Tunbridge. To prove this, my Lord, here is a Letter written by himself. The Stile is something peculiar too; it is directed, *To the best of Wives, Anne Countess of Feilding.* Now, my Lord, Mrs. Delean, whom Mr. Feilding thought he had married, her Name is Anne, but Mrs. Feilding's Name is Mary.

The Letter produced and prov'd by Boucher and Beale, and it was directed
To the best of Wives, Anne Countess of Feilding,
at Waddon.

Novem. 14. 1705.

There is nothing can please me more upon this Occasion, than to hear my Dearest Wife say I have made her sick, by turning her Liver; for without that we could not hope for a young Lord Tunbridge; which would be, the next to my Dear herself, the most welcome Present to my Arms. Make haste then, my Dearest Life, to Cultivate the young Spark; and be sure you don't starve my Boy. As for your coming to me, it wholly depends upon yourself, who can best judge when it is most proper to come to me; which you can do, by giving out you are to stay all Night in London; and then you and Puggy have nothing to do but to come to me at Bed-time, and so we may go to Bed and lye till Morning, when Puggy may come again and call you. Adieu my Soul's Love, whom I must ever value more than Life.

Feilding.

Council. Call Mr. Longford (who was sworn).

Sir Ja. Mountague. Were you directed to go to the Fleet, and look into the Register-Book?

Mr. Longford. Mr. Attorney General telling me that he heard there would be some Pretence of a Marriage that would be set up, advised me to enquire after it. I was informed, that some Certificate was, or would be given in the Fleet. I went with Mr. Rescorloe to see the Books. We looked all over those Months for the Year 1703. This Book is the very Book I take it to be, but am not positive. That which we saw, I observed had an Entry dated the Year 1705, before the Marriages in the Year 1704, in yellowish Ink at the top of a Leaf.

Council. Call Mr. Rescorloe (who was sworn).

Sir Ja. Mountague. Do you remember that you saw that Book?

Mr. Rescorloe. I do remember that I saw that Book with Mr. Longford. Mr. Longford and I went by the Attorney General's Order, to search the Books at the Fleet, to see whether we could find any Entry of Lilley Bradby's Marriage with Mrs. Wadsworth. This Woman that gave her Evidence here brought in this Book, and we look'd back for three Years. We found no such Entry as she shews here

VOL. V.

in this Book. We ask'd her again, whether there were any other Books of Entries of Marriages? She said, No. I ask'd her, whether there had been any one there to see after such a Certificate; She said, there was a Woman and a Man about a Week or Fortnight ago. I ask'd her, whether she shewed them this Book? She said, she had shew'd them this Book, and they gave her a Shilling for searching it. She said positively there was no such Certificate entred in the Book, and that there was no other Book for the Entry of Marriages. We search'd the Month of October more strictly; we look'd for the very Certificate with the greatest Care and Industry that could be. We went to Basset's House, who, this Woman said, was not at home. She laugh'd in her Sleeve, and said, he was a doating Man; and if he spoke two Words, he could not speak a third. I do really believe this to be the Book. I took good Notice of the Blank where this Certificate is entred, and did remark that there was a vacant Space under this Certificate, where was no Writing. Mr. Longford and I turned back again to the Year 1705, which was put before the Year 1704, and observed it then, as it appears now, to be the Book, Except this Entry. I do believe it to be the same Book we then saw.

Sir. Ja. Mountague. There is but one thing more that I would mention, which is, that the Woman in the Top-knot confess'd, that this Letter was her own Hand-Writing. I desire it might be read.

The Letter was read. It is directed

To Major-General Feilding.

Tuesday Morning.

ALL that know the Name of Major General Feilding, must own the Generous and Charitable Actions that your Honour daily bestows upon 'em. I, among the rest, shall ever acknowledge your Goodness. It's Necessity that forces me to dispose of this Picture. Your Honour is a nice Judge of Painting, as well as an Admirer of such Pieces, which makes me humbly present it to you first; and in accepting the same, your Honour will highly oblige, as well as serve,

Your humble Servant,

M. FLETCHER.

POSTSCRIPT.

I long to see you. For your Encouragement, to grant me that Favour; I am now acquainted with a young Lady that's Pretty, and lives in good Fashion. Your Honour will oblige me in letting me receive your Commands.

Justice Powel. Gentlemen of the Jury, The Prisoner, Mr. Robert Feilding, stands indicted for a capital Offence, for Felony, in marrying a second Wife, his first being then alive. This is the Offence charged against him. The Council for the Queen have called several Witnesses to prove this Matter upon him. And the first is one Mrs. Villars. She hath given her Evidence from one end to the other, if you believe what she swears. She swears, that one Mrs. Streights came first to her Lodging, and she was not at home; but lest word that she must needs speak with her; that she was always out of the way when any thing offer'd that would do her a Kindness; and that it would be 500 l. out of her way if she did not see her. It seems, that when Mrs. Streights met her, she acquainted her with Mr. Feilding's Inclinations; and being inform'd that she was acquainted with the Lady, that she us'd

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to cut her Hair, thought that she might have such an Interest in her, as to be made serviceable to bring the Matter about; which if she was, it might be worth 500 *l.* to her. Mrs. *Villars* undertakes the Business to bring Mr. *Feilding* and Mrs. *Deleau* together; she did readily accept of it; thereupon Mr. *Feilding* and she discours'd together concerning this Matter: she told him she was acquainted with Mrs. *Deleau*, and that she would do the best she could to bring it about. Mr. *Feilding* upon this went to Mrs. *Deleau's* Country-House at *Waddon* in *Surry*, that thereby the Lady might have an Opportunity of seeing him. She says Mr. *Feilding* told her that he had Access to the Gardens; that when he was there he saw the Lady through the Glass-Window; he was willing to give the Lady a full View of him, therefore he stood still and set his Watch by the Sun-Dial, and took several Turns in the Garden; and he did afterwards send a Letter to her. Mrs. *Villars* was afterwards sent of a Message, as tho' it was from the Duchess of *Cleveland*, to acquaint the Lady that the Duchess had a great mind to see the Gardens. Mrs. *Deleau* told Mrs. *Villars* that she should be proud that a Person of her Quality should come to her. She said that Mr. *Feilding* sent her, and she found afterward that the Duchess of *Cleveland* did not intend to go; nay, that she knew nothing of the matter. But see how she managed the matter, and play'd this Trick upon Mr. *Feilding*; it is no better, if true. They agreed together that Mrs. *Deleau* should come to a Place where Mr. *Feilding* should appoint; that something of Musick, or some Entertainment should be provided, they contrived when it should be, the Time was on my Lord-Mayors Day at Night, and according to Appointment Mrs. *Villars* came with Mrs. *Deleau*, as Mr. *Feilding* thought, but in reality it was one *Mary Wadsworth*, which represented Mrs. *Deleau*; she came in a Mourning Coach, and dress'd in a Widow's Habit; after this manner they came to Colonel *Feilding's* Lodgings in *Pall-Mall*. The Lady truly was not to know that they were Mr. *Feilding's* Lodgings; however Mr. *Feilding* was not at home, but it was not long before he came: He came up to the Lady: You have heard what Addresses he made to the Lady, and how much Love he express'd towards her: Ask'd her, whether she lov'd singing? one *Margaretta* was sent for, and sung two Songs. Mr. *Feilding* was so taken with her he would have marry'd her presently; but she being coy, modestly declin'd it, and so they parted for that Time. Mrs. *Villars* was to bring her afterwards, which was on the 9th of *November*, on the Night the supposed Wedding was; Mrs. *Villars* brought her. When she came there, Mr. *Feilding* propos'd to be married to her forthwith; she seem'd to be shy at present, but Mr. *Feilding* said he would fetch the Priest immediately; he lock'd them in, took the Key with him, and returned in three Quarters of an Hour; the Priest she describes to be in a long red Gown lin'd with blue, a long Beard and a Fur-Cap upon his Head, so he brought him along with him; when he came, he said, *This is the Man that should join their Hearts together*. She tells you further that Mrs. *Wadsworth* question'd the Priest; required of him a Proof to shew he was a Priest in Orders. The Priest pull'd a Picture of the Pope out of his Pocket, which he said was a Credential for Priests. After Supper the Marriage was propos'd, whether it should be in the Dining-Room, or Bed-Chamber? That

was the Question. The Lady thought the Bed-Chamber best; he thought so too. Well then, in the Bed-Chamber it must be. The Priest did want Water, Salt and Rosemary, Things that he us'd in Performance of the Ceremony; *Boucher* was sent down for them; he brought up Water and Salt, but could get no Rosemary: After these Things were brought up, *Boucher* the Servant was turned out, and the Doors were shut. Then there was no Body present but Mr. *Feilding*, the Lady, the Priest and Mrs. *Villars*. Then she tells you of the Ceremony of the Wedding, the Ceremony of the Water, and the Ceremony of the Ring. After that was done, they proceeded to the Marriage; the Office was in *Latin*; when they came to the marriage Words, *I take thee to be my Husband*, &c. Mrs. *Wadsworth* desir'd it might be spoke in *English*; thereupon Mr. *Feilding* did say it in *English*, *I take this Woman to be my wedded Wife, with all my Heart and with all my Soul*. The Gentlewoman she said her Part likewise in *English*; *I take this Man to be my wedded Husband*; but Mr. *Feilding* observing her to speak it too low, desir'd her to speak it as earnestly as he did: Whereupon she did say, *I take this Man to be my Husband, with all my Heart, and with all my Soul*. The Ceremony of putting on the Ring the Priest directed; that was, to take hold of the End of one of her Fingers and put it on; she saw that done, and when the Ceremony was over, the Priest went away; that when he was gone away, she undressed the Bride, and put her to Bed, and then gave notice to Mr. *Feilding* that the Lady was in Bed. Then Mr. *Feilding* went to Bed, and she saw them in Bed together. Then she went to Bed herself in a Lodging that was provided for her up another Pair of Stairs: That the next Morning she arose, came down, went into the Room where there was a Fire made by *Boucher*: that then she saw them in naked Bed together. If you believe her, she swears the Marriage by this Priest, and the Consummation of it. Mrs. *Villars* goes further, and swears, that she brought her *two other Times*, and that those Times she saw them in Bed together as Man and Wife. I ask'd Mrs. *Villars* at last, how Mr. *Feilding* came to be undeceiv'd? She says, it was kept secret from *November* to *May*. Then Money was wanted; that was a great Disappointment to Mr. *Feilding*, for he thought he had marry'd a Lady that would have furnish'd him with Money. Then he discover'd the Fraud, and found he had been impos'd upon; then he was angry with her, beat her, and call'd her Names. Indeed, Gentlemen, I must deal plainly with you, if her Evidence stood alone, her Reputation is shaken to that degree, that in Truth, where a Man stands upon his Life, one would not have a great Regard for what such a Woman swears, if it were not supported otherwise. Now, tho' by her self she be not a good Evidence, yet the Matters of Fact which she swears to, are likewise proved by the concurrent Testimony of others.

First, They call *Boucher*, and truly he fortifies her Evidence in a great many Particulars, gives an Account of Mrs. *Villars* bringing Mrs. *Wadsworth* to Mr. *Feilding's* under the Character of a Person of Quality; gives an Account, just as she does, of their coming to Mr. *Feilding's* Lodgings in a Widow's Habit and Mourning Coach; their having a Treat of Plumb-Cake and two Bottles of Wine. He further gives an Account of their coming a second Time, and an Account of the Priest;

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knew the Priest; knew him to be the Emperor's Envoy's Priest. He remembers the Priest coming to the Place; he remembers also the Circumstances of being sent for Water, Salt and Rosemary. He says he was order'd down, and the Chamber-door was shut, and the Priest was then in the Chamber with Mr. Feilding, the Lady, and Mrs. Villars; and that when the Priest was gone, Mr. Feilding and the Lady went to Bed; that *he saw them in Bed together*; that the People that were below, when Boucher was sent down for Salt and Rosemary, they could conclude no otherwise but that they were making this Lady a Convert. Now Gentlemen, this is a material Thing, that there was a Priest at that Time, and they were private together; this is a concurrent Evidence to strengthen Mrs. Villars's Testimony. There is Mrs. Martin, Mrs. Heath, and Mrs. Price, they remember several of these Matters perfectly well. Mrs. Martin saw this Person and her Mourning Coach; she saw the Lady and Mrs. Villars go up Stairs, and the Time when the Priest came in, she let him in; describes him by his particular Habit as the rest do. Mrs. Heath remembers Mrs. Villars coming with a Woman that she thought was a Woman of Quality, but saw not the Priest. Mrs. Villars told her she was worth 8000*l.* she ask'd her whether she might lie there that Night, for it was too late to go home? She agreed they should lie together, Mrs. Villars and Mrs. Wadsworth. But now here is another Circumstance that hath mighty Weight in it, that is, the Ring; they have brought the Person of whom Mr. Feilding bought the Ring to the Value of 20*s.* that the Ring was ready made, and Mr. Feilding directed the Posy (*Tibi Soli*) to be engrav'd in it. There was another Man by when Mr. Feilding bought the Ring and order'd the Posy for it; and this *very Ring with this Posy* has been produc'd first by the Proctor and Register; the Proctor does say it was first brought to him by Mrs. Wadsworth, who came to retain him in an Action of Nullity of Marriage; he took notice of the Ring, and said that it had this Posy in it. Afterwards when Mrs. Wadsworth came again he was not at home; it was in the Hand of his Brother, and he is sure it is the same Ring. The Goldsmith swears it to be that Ring Mr. Feilding bought of him; he knew it by the Mark and Workmanship of it; for Goldsmiths know one another's Work. This Gentlemen, hath a great deal of Weight in it; it is a very great Circumstance, unless they could tell you, which they have not, upon what Occasion this Ring was bought at this Time.

Gentlemen, They give a further Account of this Matter by the Testimony of Letters, which they prove to be Mr. Feilding's Hand. Mrs. Villars was the Carrier of these Letters; Mr. Feilding stiling her in them by the Name of *Puggy*, a Name by which it seems he us'd to call her. These Letters are proved by Boucher and a Lady in the Gallery, to be Mr. Feilding's Writing. These Letters have been read to you, they are written as from a Husband to a Wife; in them he owns her to be his *Wife*, calls her Countess of Feilding, stiles himself *her Husband*. These Letters have been read to you. This, Gentlemen, as I remember, is the Substance of the Evidence that hath been given for the Queen.

Sir *Ja. Mountague*. My Lord, be pleas'd to take notice of Mr. Feilding's going to the Emperor's Envoy for the Father in Red.

Justice Powel. It is true, I had forgot the Evidence of Mr. Florence a Chaplain, that is a Priest, now belonging to Count Gallas the Emperor's Envoy, and the Porter. They tell you about this Time Mr. Feilding did come to enquire for this Priest; and gave the Porter half a Crown (by a good Token); but the Priest he asked for not being at home, he enquired for Mr. Florence; he told Mr. Florence that he had been in Love with a young Lady a good while, but now had prevailed with her to marry him. And seeing the Father in Red was not there, he desired he would go along with him and do the Office. Mr. Florence told him it was improper for him to go without the Envoy's Leave; he went up to the Envoy and acquainted him with it, the Envoy gave him Caution to do it with Discretion; but when he came down again, in seems that the Red Father had been with Mr. Feilding in the mean Time, and were both gone together.

Now, Gentlemen, you hear what Defence Mr. Feilding makes against this great Charge against him.

First, He calls a great many Witnesses to prove that this Mrs. Villars was married, as she pretended to Colonel Feilding, and that she was a very common Woman, so far as that she has been in a publick House of Correction; and one of their Witnesses does bear hard upon her Testimony; that is, that she should declare to her that she was married to Colonel Feilding, and that my Lady Duchess should say to her, If you can make that out that you are married to Mr. Feilding, she would give her two hundred Pounds, and settle 100*l.* a Year upon her for fifteen Years together. Then as for Mrs. Wadsworth, they call you divers to prove that she was brought to Bed about *Christmas* after this supposed Marriage. But when they came to be examined they did not prove very much of that; for indeed it proved to be a Miscarriage; the Woman could not say she saw the Child, could not tell whether it was a Boy or a Girl; whether it was dead or alive; it did not appear by their Evidence that she went out her Time with a Child. Another part of Mr. Feilding's Evidence is this, to prove Mrs. Wadsworth married to another Person; and then admitting she was married to Mr. Feilding, 'tis a null Marriage. To prove that Mrs. Wadsworth was before married to another, they have brought the Book of Marriages of the *Fleet*, and in that Book there is an Account of one *Lilley Bradby*, married such a Time to Mrs. *Mary Wadsworth*; the Man of *St. James's*, the Woman of *St. Margaret's Westminster*. The Woman of the *Fleet*, in whose Custody this Book was, pretends that Mrs. Wadsworth came to her, and desired if any came to see the Book, that she would not let them see the Entry of her Marriage; and why? Because there would be Trouble about her Marriage. This Woman swears that there were two Men came to search the Book but she shewed them another Book; but this Book she did not shew them. She was ask'd whether she had two Books of Marriages for the same Year; She said she had several Books for the same Year: One Parson made his Entry in one Book, and another Parson in another Book. She pretends she did not shew them this Book; but the Book she shewed them was at home. I cannot conclude much from what this Woman hath said; but Gentlemen you have look'd upon this Book, and if you are satisfied from this Evidence, that *Mary Wadsworth* was married to

Bradby at this Time, I confess *Mr. Feilding* will not be within the Statute. You have look'd into the Book; they give you no Account that there was ever any such Man as *Bradby*, nor of no Co-habitation; but a meer Book is produced, and not of the *best Credit* neither; it is entred in the Bottom of the Leaf, but not in the Middle: it is written with *another coloured Ink*, and in *another Hand*, I ask'd the Woman whether she knew the Man that wrote it? She said yes; and it was her Husband's Brother's Hand. He is alive, why is not he produced?

Gentlemen, They have called no Witnesses to prove the Marriage with *Lilley Bradby*. There were two Gentlemen on the other side, they went to the *Fleet* to search the Books of the Entry of this Marriage. They say that a Person inform'd them that there had been there a Man and a Woman before them; these Gentlemen went and desired to see the Book, particularly for the Year 1703. They say the Woman did produce the Book of Marriages, but they could not see such an Entry; she denied to them that she had any other Book for that Year; they cannot swear positively that this is the Book that was shewn them; but one of them says he believes it to be the same, for in that which he saw, he observed Entries of the Year 1705, before the Year 1704. He took good notice of it, and so it is found in Court. The other Gentleman says, he took particular notice of the Space that was in the Book, where this Entry is now written. Now the Woman does not bring the other Book she pretended to have shewn them. Now, as to the Labour, they have produc'd a Letter under *Mr. Feilding's* Hand, whereby *Mr. Feilding* takes notice of her being with Child, directs the Letter to *Anne Countess of Feilding* at *Waddon*; he took it that he had married *Mrs. Deleau*, for her Name is *Anne*, he directed his Letter to her Country-Seat. There is another Thing of *Mr. Feilding's* coming to *Mrs. Heath*, and complaining what an ill Woman *Mrs. Villars* was, for she had served him a base Trick, instead of

a Woman of Fortune, she had put a common Woman upon him. Gentlemen, You have heard the Account too concerning his beating of her; for this Woman, it seems, was troublesome to him at *White-Hall*; she demanding him as her Husband, said she was his lawful Wife; he struck her and caused her to be held till he got away from her.

Gentlemen, It is a very great Charge, upon *Mr. Feilding*, it is true, if there be Evidence to maintain it; it does not really depend upon *Mrs. Villars's* Evidence; for if her Evidence were to stand alone, no Credit should be given to it; but as it is supported by concurring Evidence, I leave it with you, whether it be not sufficient to find *Mr. Feilding* Guilty. But if you think that *Mrs. Wadsworth's* Marriage to *Lilley Bradby* is proved sufficiently, then, altho' you think *Mr. Feilding's* Marriage with *Mrs. Wadsworth* sufficiently prov'd yet you are to find for the Defendant.

The Jury having withdrawn for some Time, brought in their Verdict, *That Mr. Feilding was Guilty of the Felony he stood indicted of.*

Mr. Feilding (in case he was found Guilty) had obtained the Queen's Warrant to suspend Execution of this Sentence; and then by his Council took Exceptions to the Indictment, and moved in Arrest of Judgment; but they were answered by the Council for the Queen; but *Mr. Feilding* having obtained a Suspension of the Execution, the Judges by a *Cui' adviseare vult* (as the Form is) suspended giving Judgment till the next Sessions, and accepted Bail for *Mr. Feilding's* Appearance the next Sessions.

The next Sessions, being the fifteenth of *January* following, *Mr. Feilding* appear'd, and his Council waving their Exception (as being Frivolous) he was ask'd what he had to say why the Court should not proceed to Judgment and Execution? And then he craved the *Benefit of his Clergy*; which was allow'd. And then Judgment was given (as usual) That he should be burnt in his Hand. But he having the Queen's Warrant to suspend Execution, he was admitted to Bail.



The Proceedings against Robert Feilding, Esq; in Doctors Commons.

Notwithstanding *Mr. Feilding* was found Guilty of Felony at the *Old Baily*, her Grace the Duchess of *Cleveland* having instituted a Cause of Nullity of Marriage against the said *Mr. Feilding*, by reason of a former Marriage with the said *Mary Wadsworth*, in the Arches Court of *Canterbury*; and having by Examination on Oath, of divers credible Witnesses, made good and sufficient Proof of the several Articles of the Libel by her Grace exhibited in the said Court against the said *Mr. Feilding*, did proceed to obtain the Sentence of the said Court; and accordingly on the 23d day of *May*, in the Year of our Lord God 1707, the Right Worshipful Sir *John Cooke*, Kt. Dr. of Laws, Official Principal of the said Court, then judicially sitting in the Common Hall of *Doctors Commons, London*, being then present the Duke of *Grafton*, the Duke of *Northumberland*, the Earls of *Litchfield*, *Suffex*, *Fersey*, and the Lord *Quarrendon*; as also the respective Proctors of her Grace the Duchess of *Cleveland* and *Mr. Feilding*, did, at the Petition of her Grace's Proctor,

read and promulge his definitive Sentence in *Latin*, of the Tenor following, *viz.*

“ **I**N the Name of God, Amen. We *John Cooke*,
 “ Kt. Dr. of Laws, Official Principal of the
 “ Arches Court of *Canterbury*, lawfully appointed,
 “ rightly and duly proceeding, having heard, seen,
 “ understood, and fully and maturely discuss'd
 “ the Merits and Circumstances of a certain Cause
 “ of Nullity of Marriage, by reason of a former,
 “ now depending before us, between the most noble
 “ Lady, *Barbara* Duchess of *Cleveland*, the
 “ Party Agent and Complainant, on the one Part;
 “ and *Robert Feilding*, Esq; of the Parish of *St.*
 “ *James's Westminster*, in the County of *Middle-*
 “ *sex*, the Party against whom it is complain'd,
 “ on the other Part. The Parties aforesaid lawfully
 “ appearing before us in Judgment, by their
 “ Proctors respectively; and the Proctor for the
 “ said most noble Lady, *Barbara* Duchess of *Cleveland*,
 “ praying Sentence to be given, and Justice
 “ to be done to his Party; and also the Proctor
 “ of

“ of the said *Robert Feilding*, Esq; praying Justice
 “ to be done to his Party: And having carefully
 “ and diligently search’d into, and consider’d of the
 “ whole Proceedings had and done before us in this
 “ Court; and having observ’d all and singular the
 “ Matters and Things, that by Law in this Be-
 “ half ought to be observ’d; We have thought
 “ fit, and do thus think fit to proceed to the giv-
 “ ing our Definitive Sentence, or Final Decree,
 “ in manner following; viz.

“ Forasmuch as we have by the Acts enacted,
 “ deduced, alledged, exhibited, propounded, prov-
 “ ed and confessed, That the Proctor for the said
 “ most noble Lady, *Barbara* Duchess of *Cleve-*
 “ *land*, hath fully and sufficiently proved and
 “ founded his Intention in a certain Libel, and
 “ other Matters now remaining in the Registry of
 “ this Court, propounded and exhibited in this
 “ Cause on the Part and Behalf of his said Client;
 “ And that nothing hath been, on the Part and
 “ Behalf of the said *Robert Feilding*, effectually ex-
 “ cepted, deduced, alledged, exhibited, propound-
 “ ed, proved and confessed, which might, or could
 “ in any wise (touching our Sentence hereafter to
 “ be pronounc’d) hurt or weaken the Intention of
 “ the said most noble Lady, *Barbara* Duchess of
 “ *Cleveland*:

“ Therefore, We *John Cooke*, Knight, Doctor
 “ of Laws, the Judge aforesaid, having first called
 “ upon God, and setting him alone before our Eyes,
 “ and having heard Council thereupon; do pro-
 “ nounce, decree, and declare the before-named
 “ *Robert Feilding*, Esq; and one *Mary Wadsworth*,
 “ mentioned in the Proceedings of this Cause, be-
 “ ing free from all Contract and Promise of Mar-
 “ riage with any other (so far as appears to us)
 “ on the ninth Day of *November*, in the Year of
 “ our Lord God 1705, at a Place mentioned in
 “ the Libel in this Cause, did contract Marriage,
 “ and did solemnize, or procure the same to be
 “ solemnized between them; and did afterwards
 “ consummate the same: And that the said *Robert*
 “ *Feilding* and the said *Mary Wadsworth* were, and
 “ are Man and Wife. And that the said *Robert*
 “ *Feilding* Esq; after the Solemnization and Con-
 “ summation of the aforesaid Marriage, not hav-
 “ ing the Fear of God before his Eyes, on the
 “ 25th Day of the said Month of *November*, in
 “ the said Year of our Lord God, 1705, and in
 “ the Place also in the aforesaid Libel mention’d,
 “ did contract a pretended Marriage with the said
 “ most noble Lady, *Barbara* Duchess of *Cleve-*
 “ *land*. And also we pronounce, decree, and de-
 “ clare, that the said pretended Marriage, or ra-
 “ ther a Shew of Marriage, between the said *Ro-*
 “ *bert Feilding* and the said most noble Lady, *Bar-*
 “ *bara* Duchess of *Cleveland*, at the Time and
 “ Place libellated, was solemnized, or rather pro-
 “ phaned; the said *Mary Wadsworth*, alias *Feil-*
 “ *ding*, being then and since living. And also we
 “ pronounce, decree, and declare the same pre-
 “ tended Marriage, or rather Shew of Marriage,
 “ between the said *Robert Feilding* and the said
 “ most noble Lady, *Barbara* Duchess of *Cleveland*,
 “ so as aforesaid contracted and solemnized, or ra-
 “ ther prophaned, by reason of the former Mar-
 “ riage between the said *Robert Feilding* and the
 “ said *Mary Wadsworth* solemnized and consum-
 “ mated, was, and is, from the Beginning, void,
 “ and of no Force in Law, and doth, and ought
 “ to want the Force and the Effect of the Law.

“ Therefore, by this our Definitive Sentence, or
 “ our Final Decree, which we now promulge in
 “ these our Writings, We do pronounce, decree,
 “ and declare, the said most noble Lady, *Barbara*
 “ Duchess of *Cleveland*, was and is free from any
 “ Bond of Marriage with the said *Robert Feilding*,
 “ and had and hath the Liberty and Freedom of
 “ Marrying with any other Person.”

The Original Sentence was Signed thus,
 JOHN COOKE.

The aforesaid Sentence having been publickly
 read by the Judge, at the Time, Place, and in
 the Manner aforesaid; the said Judge did decree
 one or more publick Instrument or Instruments
 thereof to be made (at the Petition of her Grace’s
 Proctor) by Mr. *Henry Farrant*, the principal Re-
 gister of the said Court, which accordingly he
 hath since issued under the publick Seal of the
 Office of the said Judge, on the Day following,
 viz. the 24th of *May*, 1707.

On *Wednesday*, the 25th Day of *June*, in the
 Year of our Lord 1707, before the Right Wor-
 ship Sir *John Cooke*, Knight, and Doctor of
 Laws, Official Principal of the *Archbishop’s Court* aforesaid, in his Dwelling House at *Doctors Commons*; in the Presence of the said Mr. *Henry Farrant*, No-
 tary Publick, and Principal Register of the said
 Court; Mr. *Feilding*, by his Proctor, did renounce
 all Benefit of Appeal from the said Sentence, in the
 manner following, viz.

“ Appearing personally Mr. *Edward Cooke*, Proc-
 “ tor for her Grace, the most noble Lady, *Barbara*
 “ Duchess of *Cleveland*; and Mr. *Thomas Willy-*
 “ *mott*, Proctor for the said *Robert Feilding*, Esq;
 “ At which Time, the said *Willymott* did exhibit a
 “ certain Letter, or Epistle of the Tenor follow-
 “ ing; viz.

Mr. *Willymott*,
 W H E N Sentence is given in Behalf of her Grace
 the Duchess of *Cleveland*, pray enter no
 Instrument of Appeal, for I shall proceed no further
 therein.

Your Friend and humble Servant,

FEILDING.

“ And the said *Willymott* alledg’d, That the said
 “ Letter was all of the proper Hand-Writing of
 “ the said *Robert Feilding*; and that he the said
 “ *Willymott* receiv’d the said Letter from the said
 “ *Robert Feilding*. And the said *Willymott* further
 “ alledged, that no Appeal from the definitive Sen-
 “ tence given by the said Judge on the Part and Be-
 “ half of the said most noble Lady, *Barbara* Duchess
 “ of *Cleveland*, had been, or was interposed by, or
 “ on the Behalf of the said *Robert Feilding*. And the
 “ said *Willymott*, as Proctor of the said *Robert Feil-*
 “ *ding*, did renounce all Benefit of Appeal from the
 “ said Sentence, in the Presence of the said *Cooke*,
 “ as Proctor of the said most noble Lady, *Barbara*
 “ Duchess of *Cleveland*; who, on the Part and
 “ Behalf of the said most noble Lady, *Barbara*
 “ Duchess of *Cleveland*, accepted the aforesaid Al-
 “ legation and Renunciation of the said *Willymott*;
 “ and then also pray’d the golden Ring, and se-
 “ ven Letters, by him exhibited on the Part of her
 “ Grace, and annexed to the Libel in this Cause, to
 “ be

“ be deliver’d out of the Registry of this Court, for
 “ the Use of her said Grace. Whereupon the Judge,
 “ at the Petition of the said *Cooke* (the said Let-
 “ ters being first registred in the said Court) de-
 “ creed the said golden Ring, and the seven Let-
 “ ters, to be delivered to the most Noble Lady,

“ *Barbara* Duchess of *Cleveland*, or to the said
 “ *Cooke*, for the Use of her Grace; as by Act of the
 “ Court had been expedited at the Time and Place
 “ aforesaid, and now remaining in the principal Re-
 “ gistry of the said Court, Relation being thereunto
 “ had, doth and may more fully appear.”



CLXXXIII. *The Trials of* JAMES STIRLING *of Keir, and*
Others in Scotland, for High-Treason, Nov. 15. 1708.
 7 Ann.

CURIA JUSTICIARIA,
 S. D. N. Reginae, tenta in novo
 Domo Sessionis Burgi de Eding-
 burgh, decimo quinto Die Mensis
 Novembris, Millesimo, Septingentesimo,
 Octavo; per Nobilem & Potentem Comitem,
 Georgium Comitem de Cromertie, &c.
 Justiciarium Generalem, & Honorabiles Viros
 Adamum Cockburn de Ormiston, Justiciarium
 Clericum; Dominos Joannem Lauder de
 Fountainhall, Gulielmum Anstruther de eodem,
 & Gilbertum Eliot de Minto; Magistrum
 Robertum Steuart de Tillicoutrie, & Ma-
 gistrum Jacobum Erskine de Grange; Com-
 missionarios Justiciarum Dicit. S. D. N. Re-
 ginae.

Curia Legitime Affirmata.

Intran.

James Stirling, Laird of Keir.
Archibald Seaton, Laird of Touch.
Archibald Stirling, Laird of Carden.
Charles Stirling, Laird of Kippendavie; and
Patrick Edmonston, of Newtoun.

Indicted and Accused at the Instance of Sir James Steuart, Her Majesty's Advocate, for Her Highness's Interest, and as having Special Warrant from Her Majesty for that Effect. That where, by the Law of GOD, and the Laws of this, and all other well-govern'd Realms, the Crime of Treason and Lese-Majesty, and the Treasonable and Unlawful Rising and Continuing in Arms, are most Atrocious and Heinous Crimes, punishable by Forfeiture of Lands, Life and Estate, or other Pains of Law. Likeas by the Act of Parliament, Jac. I. Par. 1. Cap. 3. it is statute, That no Man openly rebel against the King's Person, under the Pain of forfeiture of Life and Goods. And by the Act of Parliament, Jac. II. Par. 6. Cap. 24. it is statute, That who commit Treason against the King's Person, or Majesty, or who rise in Feire of Weir against him, shall be punished as Traitors. And by the Act of Parliament, Car. II. Par. 1. Sess. 1. Cap. 3. it is declared to be High-Treason, for the Subjects more, or less, upon any Pretext, to rise and continue in Arms; and to make Treaties or Leagues with Foreign Princes or States, or among themselves, without His Majesty's Special Authority first interponed. And by the Act of Parliament, Car. II. Par. 1. Sess. 2. Cap. 2. it is statute, That if any Person shall Plot, Contrive or

Intend. Death and Destruction to the King, or Bodily Harm tending thereto; or Deprive, Depose, or Suspend Him from the Stile, Honour, and Kingly Name of this, or any other His Majesty's Dominions; or levy War or take up Arms against Him, or any Commissionate by Him; or entice Strangers, or others, to invade any of his Dominions, and express and declare such Treasonable Intention; he shall be adjudged a Traitor, and punish'd as in the Case of High-Treason. Likeas by the Act of Parliament, 1702. intituled, Act Recognizing Her Majesty's Royal Authority, it is declared, That it shall be High-Treason in any of the Subjects of this Kingdom, by Writing, Speaking, or any other manner of way, to disown, quarrel, or impugn Her Majesty's Royal Power and Authority, or Right and Title to the Crown. And by the Act of Parliament, 1703. intituled, Act Asserting and Recognizing Her Majesty's Authority, it is again statute and declared, That it shall be High-Treason, in any of the Subjects of this Kingdom, to disown, quarrel or impugn, Her Majesty's Right and Title to the Crown of this Kingdom, or Her Exercise of the Government thereof. *NEVERTHELESS it is of Verity, That the said James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonston of Newtoun, all and each of them were guilty of the said Crimes, in sua far as they all, and each of them, shaking off all Fear of GOD, and Regard to Her Majesty's Person, Authority and Laws, upon one or other of the Days of the Months of February March or April last, when an Invasion of that Part of Great-Britain called SCOTLAND was threaten'd, by an Enemy-Fleet of Ships with Forces, and an Army aboard, sent by the French King or by the Pretender, who went some Time by the Name of the Prince of Wales, and now assumes to himself the Name, Stile and Title of King James, as King of Her Majesty's Dominions; with a manifest and open Design to invade Her Majesty's Dominions, and to destroy Her Majesty and Her good Subjects; at least to deprive and depose Her Majesty from the Stile, Honour, and Princely Name of these Her Dominions; Did convocate and convene in Arms, with others their Accomplices; such as Major William Graham, Alexander Steuart, Uncle to Ardvorlich, George Seaton, Brother to the said Archibald Seaton, and Mr. Charles Fleeming, alias Hay, Brother to the Earl of Wingtoun, all since absconded, and upon the same Account declared Fugitives: And thus did rise and continue in Arms without Her Majesty's Special Authority first interponed;*

poned; and did levy War, and take up Arms against Her Majesty. And farther, they having never before qualified themselves by any Mark of good Affection to Her Majesty or Her Government, did (at the Time aforesaid) gather themselves together, with their Accomplices, in Arms, with Swords and Pistols, and other offensive Weapons, in an open Correspondence with the said Enemies and Invaders, at the very Time of their said Invasion; and being so convocate and convened in Arms, did march in one Body, or Company, with their said Accomplices, several Days and Nights, to and from several Places, in the Shires of Stirling, Perth, and other Shires adjacent, on purpose to encourage and strengthen the said Invaders, or at least to raise Her Majesty's other Subjects in Rebellion against Her. Like as for that End, they did openly drink to the good Health of their Master, as they called him; who could be none else but the said Pretender. And did by their said Rising in Arms, and open Correspondence with Her Majesty's said declared Enemies, and otherways, entice them and others to invade Her Majesty's Dominions, to the destroying of Her, and Her good Subjects; at least to deprive and depose Her from the Title, Honour, and Princely Name of Queen and Sovereign of this and Her other Dominions; or at least thereby endeavour the Alteration of the Right of Succession to the Crown, so happily by Law settled upon Her Majesty and Her Successors. By all which, they, and each of them were guilty, Art and Part, of the foresaid Crimes of Treason, Rebellion, and Lese-Majesty, at least of Treasonable Rising and Convening in Arms, without Her Majesty's Special Authority first had thereto; at least of a most unlawful Convocation in Arms, in a most dangerous and threatening Season and in open Correspondence with the said Enemies and Invaders; to the Destruction of Her Majesty's Government, and of the Quiet and Peace of Her Dominions. Which Crimes, all or any of them, being found proven against all or any of the forenamed Persons, by the Verdict of an Assize, before the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary; They, and each of them, ought to be condemn'd by Sentence and Doom of the said Lords Commissioners, to forfait their Lands, Lives and Goods, as Traitors; and be otherways punished in their Persons and Goods, by the Pains of Law, to the Example and Terror of others to commit the like in Time coming.

Sic subscribitur,

J A. S T E U A R T.

P U R S U E R S.

Sir James Steuart, of Goodtrees, Her Majesty's Advocate.

Mr. William Carmichael, one of Her Majesty's Solicitors.

Sir Walter Pringle; and

Sir Francis Grant.

Advocates

Procurators in D E F E N C E.

Sir Patrick Home.

Sir David Forbes.

Sir James Steuart.

Mr. Alexander Macleod.

Mr. James Graham.

Mr. Walter Steuart.

Mr. John Elphinston.

Mr. Colin Mackenzie.

Mr. Charles Cockburn; and

Mr. David Lauder.

Advocates.

My Lord Advocate judicially produced Her Majesty's Letter, authorizing and requiring his Lordship to raise and infilt in the aforesaid Process; whereof the Tenor follows, superscribed thus:

A N N E R.

“ Right Trusty and Well-beloved, We greet
 “ you well. Whereas James Stirling, Laird of Keir,
 “ Archibald Seaton, Laird of Touch, Archibald Stir-
 “ ling, Laird of Carden, Charles Stirling, Laird of
 “ Kippendavie, and Patrick Edmonston, of New-
 “ town, were about the Time of the late intended
 “ Invasion apprehended by Warrants, for Suspicion
 “ of Treason, and treasonable Practiccs, against Us
 “ and Our Government; and have since been com-
 “ mitted by Warrants for High-Treason, Depositi-
 “ ons upon Oath having been made against them:
 “ Our Will and Pleasure is, and We do hereby
 “ authorize and require you, to raise a Process in
 “ the ordinary Form, before the Commissioners of
 “ Justiciary, against them, and each of them, for
 “ the treasonable Practiccs werewith they, or any
 “ of them, are, or shall be charg'd. And herein you
 “ are to take the Assistance of Sir David Dalrymple,
 “ Mr. William Carmichael, Sir Walter Pringle, and
 “ Sir Francis Grant, Advocates; or any two of them,
 “ if necessary; and who are hereby required to con-
 “ cur with you accordingly. For all which, this
 “ shall be your Warrant.” Given at Our Castle at
 “ Windsor, the nineteenth Day of July, 1708, in the
 “ seventh Year of our Reign.

By Her Majesty's Command,

Subscribed thus, S U N D E R L A N D.

Directed on the Back thus,

To Our Trusty and Well-beloved,

Sir James Steuart, Our Advo-
 cate for Scotland.

Which being read in Prefence of the said Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, they ordained the same to be recorded.

Sic subscribitur,

C R O M E R T I E, I. P. D.

Thereafter, there was a Petition presented to the said Lords, by James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonston of Newtown, humbly shewing, “ That the Petitioners
 “ being indicted at the Instance of Her Majesty's
 “ Advocate, for the Crimes of Treason and Lese-
 “ Majesty; and this being the Day of their Com-
 “ pearance and Trial, they had according to the
 “ Privileges allowed to all the Lieges, and confirm'd
 “ by Acts of Parliament, made choice of the fol-
 “ lowing Lawyers, to appear before their Lordships
 “ in their Defence; viz. Sir Patrick Home, Sir Da-
 “ vid Forbes, Sir James Steuart, Mr. Alexander
 “ Macleod, Mr. Walter Steuart, Mr. James Graham,
 “ Mr.

“ Mr. Colin Mackenzie, Mr. Charles Cockburn, and
 “ Mr. John Elphinston. And it being also usual in
 “ Cases of Treason, That Lawyers are publicly
 “ authorized and warranted to manage the Trials
 “ in their Pannels Defence; therefore humbly cra-
 “ ving their Lordships would be pleased to allow
 “ of the Petitioners Choice of the Lawyers above-
 “ mentioned, and to authorize these Gentlemen
 “ accordingly, as the said Petition bears.

Which being consider'd by the said Lords, They,
 by their Deliverance thereon, allowed such Advoca-
 tes as the Pannels should think fit to employ to
 appear and debate for them in the above-mentioned
 Indictment; they being already sufficiently autho-
 rized by Law for that Effect.

Sic subscribitur,
 C R O M E R T I E, I. P. D.

The said Indictment being read, and fully debated
viva voce, in Presence of the said Lords, Pannels
 and Assizers; the said Lords, Justice-General, Ju-
 stice Clerk, and Commissioners of Justiciary, or-
 dained the Pannels to give in their Information
 thereon betwixt and *Wednesday's* Night next: and
 Her Majesty's Advocate to give in his, betwixt and
Friday's Night thereafter, in order to be record-
 ed; and continued the Dyet till *Monday* next,
 at nine a Clock in the Forenoon; and ordained
 the whole Assizers and Witnesses to attend then,
 each of them under the Pain of one Hundred
Marks; and the Pannels to be carried back to
 Prison.

INFORMATION for the Laird of Keir, and Others, against her Ma- jesty's Advocate.

IT is alledged for the Pannels, denying always
 the Indictment, and hail Articles and Qualifi-
 cations thereof; 1. That the Indictment is not re-
 levantly libelled, in respect it does not condescend
 upon any Overt-Act or Deed done by them, that
 could possibly be stretched to infer the Pains li-
 belled; and the Acts of Parliament libelled on, ex-
 pressly require such Facts and Deeds, to infer the
 Pains of Treason therein mentioned. As *Act 3.*
Parl. 1. James I. That none rebel openly or no-
toriously. And *Act 14. Parl. 6. James II.* bears, *And*
if it happens, any within the Realm, openly or no-
toriously against the King to Rebel, or make War
against the King's Lieges, against his Forbidding, &c.
 And *Act 2. Sess. 2. Parl. 1. Charles II.* has these
 Words: *And shall, by Writing, Printing, Preach-*
ing, or other malicious and advised Speaking, ex-
press or declare such their Treasonable Intentions,
&c. And the *Act 1702.* bears, *That it shall be High-*
Treason, by Writing, Speaking, or any other manner
of way, to dishonour or impugn Her Majesty's Royal
Authority, &c. Which Laws and generally all Laws,
 as well as the Nature of Crimes, require, That
 the same should be by express Words, Writs, or
 Deeds: and not strained by remote Inferences and
 Conjectures: And in the present Case, there is nei-
 ther Words, Writ, or Deeds condescended on, that
 could possibly be drawn to infer the Crimes li-
 belled.

2. Whereas the Indictment bears, That the Pan-
 nels did convocate and convene in Arms, with
 others their Accomplices, and so did rise and con-
 tinue in Arms, without Her Majesty's Special Au-
 thority first interponed; and did levy War, and
 take up Arms against Her Majesty, &c. It is an-
 swered, That albeit Levying War against Her Ma-
 jesty, or rising and continuing in Arms without
 Her Majesty's Authority, be undoubtedly Treason
 when duly qualified; yet there is no Circumstance
 of Fact, Word or Writ, condescended on in the
 Indictment, that can be imagined to infer a Rising
 in Arms, or Levying War against her Majesty. And
 albeit the Law statutes anent Rising in Arms, or Le-
 vying War generally; yet in all Libels duly found-
 ed thereupon, the Subsumption must condescend
 upon Particular Facts and Deeds, capable to be
 found and construed a Rising in Arms. The Com-
 mon Law expresses it thus: *Qui injuste Principis*
bellum gesserit, delictumve habuerit, exercitum con-
paraverit. And our Law, *Act 75. Parl. 9. 2. Ma-*
ry, explains what it is to rise in Arms; *viz. That*
no manner of Persons attempt to do, or raise any
Band of Men of War, or Horse or Foot, with Cu-
verins, Pistolets, Pikes, &c. or other Munitien il-
legal whatsoever, for Daily, Weekly, or Monthly
Wages, in any Times to come, without special Licence
in Writ had of our Sovereign Lady, and Her Succes-
sors thereto. And Sir George Mackenzie, in his Ob-
 servation on *Act 2. James I.* defines Rising in Arms
 thus: *The Rising of Men in warlike manner, by*
Mustering them, or Forming them in Companies, or
Swearing them to Colours. Nor are these Quali-
 fications by themselves sufficient, unless there be a
 formidable Number: And therefore he cites the
 Case of *Macleod of Affint, Feb. 2. 1674,* where
 the Lords of Justiciary refused to sustain the Arti-
 cles wherein it was libelled, the raising of Men,
 and disposing of them under Colours, to be rele-
 vant; except it were alledged, that they were an
 hundred Men or upwards, and were under Co-
 lours, or mustered under weekly or daily Pay.
 Whence it is evident, that the Rising in Arms must
 be by publick and notour Appearance of Compa-
 nies in Arms, so as their Design and Opposition to
 Authority could not be doubted; whereof the least
 Shadow cannot be alledged in this Case.

3. Whereas the Libel bears further, That the
 Pannels did gather themselves together, with their
 Accomplices, in Arms, with Swords and Pistols,
 and other offensive Weapons, in an open Corre-
 spondence with the said Enemies and Invaders, at
 the very Time of the Invasion. It is answered,
 That the said Article anent Correspondence is not
 relevantly libelled; their being no particular Con-
 descendance of any Acts of Correspondence pass'd
 betwixt the Pannels and the Enemy, as is necessary
 to be condescended on for inferring the Crime li-
 belled. Correspondence with the Enemy, in the
 Common Law, is thus express'd; *Quive hostibus*
nuncium literasve miserit, signumve dederit, fece-
ritve dolo malo quo hostes consilio juventur. And
 no such Fact or Qualifications can ever be pre-
 tended, or alledged in this Case and their meet-
 ing together so few in Number of near Relations
 and Neighbours, as it were lawful for them to do
 at all times, so the accidental Circumstance of an
 imminent Invasion could never render the same un-
 lawful. Nor could their Travelling together for
 some Space in the Country, be strained to any De-
 sign of encouraging Enemies, or to raise the Sub-
 jects in Rebellion; whilst they were no other ways
 appoint-

appointed or attended, than as they (and others of their Character) do usually travel, in a most peaceable manner, without giving the least Occasion, by Word or Deed, to any Rebellion or Sedition. And as there was not then any Body of Men in Arms in the Kingdom, against Authority, to whom they could be imagined to resort; so it is an Evidence that they had no mind of Convocating themselves against Authority, that they did not use the Means in their Power, by convocating their Tenants and Followers in Arms, either for assisting themselves, or giving Countenance and Encouragement to others on any such Designs.

4. Whereas the Libel mentions, That the Pannels did openly drink to the good Health of their Master, as they called him; who could be none else but the *Pretender*; it is no ways relevant. 1. Because the drinking of any Person's Health is not a Crime, their being no Law against it. 2. There is no Person named, whose Health is said to be drunk; and therefore cannot infer any Crime. And the Gloss put thereupon, That it could be no other but the *Pretender*, is only a Conjecture and uncertain Inference of the Pursuers; which can be no wise sufficient to fix a Crime upon others, who can only be answerable for what is clearly express'd and declar'd by them, by plain Words, Writs, or Deeds.

It was reply'd for the Pursuer, 1. That the Libel was most relevant, in so far as it did expressly bear, That the Pannels did rise and continue in Arms, without her Majesty's Special Authority first interponed: And the said *Act 5. Parl. 1. Car. II.* declares it *Treason to the Subjects, or any Number of them, more or less, upon any Ground or Pretext whatsoever, to rise and continue in Arms, without His Majesty's Special Authority.* And the particular Qualifications and Circumstances of their said Rising in Arms, will appear from the Probation.

2. The Pannels rising in Arms, leaving their own Houses, and marching in a Body thro' the Spires of *Stirling* and *Perth*, in Company with the other Persons mention'd in the Libel, whereof some have been since denounced for not Compearance, to underly the Law therefore; at the same time that the Nation was threatned by an Invasion of a *French* Fleet, with Land-Forces Aboard, cannot be understood to be upon any other Design, than on purpose to encourage and strengthen the Invaders, and in open Correspondence with them, especially whilst the Pannels can adduce no reasonable Cause for their so Convocating and travelling together; and this was sustain'd *Treason* in *Caldwell's* Case.

3. The Laws libelled on, do not only make actual Rising in Arms, and Levying War against the Sovereign, to incur the Crimes and Pains of *Treason*, but likewise any Attempt so to do: For any Attempt or *Conatus* in the Case of *Treason*, is to be punished with the same Pains as the consummate Crime, as the Law says, *Eadem enim severitate voluntatem sceleris qua effectum puniri Jura voluerunt.* And Attempts are reckon'd as *Treason* in the Acts above-mention'd.

4. The Libel bearing Art and Part, is sufficiently relevant, notwithstanding the Generality thereof, such Libels being expressly ordained to be relevant by the *Act of Parliament 151. Parl. 12. Ja. 16th.* So that no Objection can be sustained against the Libel as Irrelevant, upon the Account of the Generality thereof, since Art and Part is libelled; which takes off any Objection, for not particularly condescend-

ing upon the Pannels Accession to the Crimes libelled.

It is Duplyed for the Pannels to the *First*, That albeit the Rising in Arms without Authority be mention'd in General, to infer the Crime of *Treason*, since the Law could not descend to every particular Qualification, that might happen to infer Rising in Arms to be *Treason*, but left the same to be determined by the Judges competent: Yet the Pursuer of a criminal Libel must adduce special Qualifications, and circumstantiate Matters of Fact, that may be sufficient to infer, That the Pannels did reasonably rise in Arms, or otherways the Libel cannot be sustain'd. For as it could not be allowed to libel in General, that a Person is guilty of Murder, so no more can it be allowed to libel in General, that a Person is guilty of rising in Arms without Authority; the Propositions in these Libels being equally founded in Law; but the Subsumption must be cleared and qualified by circumstantiate Matters of Fact, inferring the respective Crimes; and if it were otherways, these evident Inconveniences would follow.

As, 1. That the Pannels would be deprived of the Benefit of Exculpations, which could not easily be brought to meet with general Libels; whereas special circumstantiate Matters of Fact might have been more readily taken off by proper particular Grounds of Exculpation, whereby the Deeds condescended on, might be applied to other reasonable Causes, that might wholly exclude the *animus delinquendi*, or *dolus*, requisite in all Crimes.

2. This Inconveniency would likewise be inevitable, That the Assize would become Judge of the Relevancy, as well as of the Probation. For if the Libel bearing in General, the Pannels to be guilty of rising in Arms against Authority, should be sustain'd, and the Qualifications left to be determin'd by the Probation, then the Assize would be Judges both of the Relevancy and Probation; for they behoved to determine, whether the Qualifications arising from the Probation, did amount to a Rising in Arms, or other Crimes, generally mention'd in the Statute: whence it might come to pass, that Pannels might be put to the Knowledge of an Inquest upon irrelevant Crimes; and therefore Crimes should be particularly subsumed, as *Sir George Mackenzie* observes in his *Criminals Tit. Libels.* Page 465.

To the *2d.* it's Duplyed, That whether the Pannels Travelling for some Space from their own Houses, either for Diversion or Business, in the most peaceable Manner imaginable, had happen'd in the Time in the threatned Invasion or not, could never alter the Nature of that Deed, since it cannot so much as be pretended, that they were *versantes in illicito*; the Travelling in such a peaceful Manner singly with Domestick Servants, being unquestionably allowed by Law. And this Defence of the Pannels Travelling in their usual Manner, and with their ordinary Equipage, was so evident of it self, that the Pursuers acknowledged there could nothing culpable be inferred from it at other Seasons; but that the Crime now insisted on, was founded, in that their Meeting and Travelling was the Time of the threatned Invasion, when a Fleet of Enemies Ships was upon the Coast. And yet the Libel does not bear, that the Pannels knew of any such Design, or that the *French* were actually upon the Coast; and without this Knowledge, the Circumstance which the Pursuers insist chiefly to make the Crime, was, as to the Pannels, no Circumstance at all. So that the Libel shortly resolves in the Pannels Travelling

with their ordinary Equipage, after their usual way, in a peaceable Manner; which neither in common Sense, nor in the Construction and Interpretation of our Law, and Opinion of our Lawyers above-mention'd, can be pled a Rising in Arms against Her Majesty or Government, or give the Occasion of the least Suspicion of any Intention that way. Neither can Suspicions, albeit there had been more evident Grounds for them, be sufficient to infer a Crime; the Law saying expressly, That *ex suspicionibus nemo est damnandus, Leg. 5. ff. de Pœn.* And whereas it is pretended, that the Pannels have given no reasonable Account of their Progress and March at that Time; and therefore leaves place for the Pursuers Conjectures; the same is no ways of any weight to fortify the Pursuers Libel; it being sufficient for the Pannels to alledge, That the meeting of a few Gentlemen, and Travelling with Swords and Pistols, as they were hitherto used, does not infer a Rising in Arms. And to pretend that the Pannels should give special Accounts of their Progresses, is plainly to found a Criminal Charge or Libel *super inquirendis*, and so expressly discharged by Law: And doubtless it is sufficient for the Pannels to say, that their Meeting or Travelling together with such small Retinue, and in such peaceable and unprovided Manner, could not give the least Jealousy to any Person whatsoever; and if this Defence were not sustained, the natural Liberty of the Lieges would be very much circumscribed; and no Man could be sure, but the Action of his Life which he intended should be most innocent, should be the most fatal, as concluding him under Treason, and the worst of Crimes. And the Practique in *Caldwel's* Case is greatly differenced from this, in that there was a considerable Body of Men with all sorts of Arms actually in Rebellion against the Government at the Time; and that *Caldwel*, with his Associates, likewise of a Considerable Number, had intercepted common Posts, and particularly some Letters to the Earl of *Eglintoun*, a Privy-Counsellor, which was an Overt-Act, and sufficiently declared their bad Design; besides these Sentences were reduced, and the Persons restored *per modum Justitiæ*.

To the 3d. it is Duplyed, That albeit it be generally received by Lawyers, that Attempt or *Conatus* in Treason is punishable as Treason; yet that is never to be understood of a naked Design or *actus animi*; the Law saying expressly, that *Cogitationis pœnam nemo patitur Leg. 18. ff. de Pœn.* and *neminem qui male facere voluit plesti equum est nisi quod factum voluit etiam fecerit.* But that *Voluntas* or *Conatus* mention'd in Law, must break out into an external Act; if not consummating the intended Crime, at least in choating the same, so as to become a Deed obvious to the external Senses, before it can be subjected to the Censure of human Laws. And albeit *Dolus* or *Propositum* be requisite in all Crimes; yet not as it is latent in the Mind, but as it is express'd and declar'd by an external Act. And so *Mattheus de Crim. in Proleg.* says, *Dolo contrahi crimen diximus, per dolum autem factum dolum intelligimus.* As it is clear by the express Statutes libelled upon, particularly the said Act 2d. sess. 2. Parl. 1st Ch. II. That Treasonable Intentions should be expressed and declared by Writing, Printing, or advised Speaking, before the same can be said to have inferred the Pains mention'd in the Act; yea, even where there was Writing alledged upon; yet in Mr. *Robert Caddel's* Case, that was not found sufficient to infer the Crimes in the Statute, unless it should have been qualified, that the Writing was published, and out

of the Writers's Hand, whereby the Attempt would become manifest; and in the Case of an Overt-Act, which was the Point upon which *Balmerino's* Trial proceeded; and without which, no Crime could have been found against him. And in the present Case, as the Pannels had truly no manner of ill Design, so no external Act whatsoever is, or can be condescended on, either of Word or Deed, that infers any Design of the Pannels to oppose Authority, or to act any thing contrair to Law, or their Duty to the Sovereign; for as they used their natural and innocent Liberty of Travelling in a peaceable Manner with their near Relations and Neighbours, for their Diversion or Business, so when they were called by Authority, they did not absent or withdraw themselves, but readily appeared and gave Obedience, upon the first Citation.

To the 4th. it is Duplyed, That the Libelling of Art and Part, is not sufficient to exclude the Objection upon the Generality of the Libel, because Art and Part relates to the particular criminal Facts, and Qualifications thereof libelled, and includes an Alternative, that the Person complain'd upon, was either Actor, or Art and Part of the criminal Facts and Deeds particularly libelled. Which general and indefinite Qualification of Accession, Law and Custom had not allowed, without a more special Condescendence of the Parties Accession to the Deeds libelled, which could only be certainly and distinctly known by the Probation: But still that does not take off the Necessity of special Condescendences of the Qualifications that make up the principal Crime libelled, without which Pannels could not have the Benefit of Exculpations; nor could the Relevancy be determined by the Judges, but remitted with the Probation to the Assize, which always has been cautiously shunned as of dangerous Consequence. And in the present Case, the sustaining of the Libel in the Generality thereof above-mention'd, would be a most dangerous Preparative; it being evident, that if a few Gentlemen, Meeting and Travelling together with their ordinair Retinue and Equipage, which is generally with Swords and Pistols, could be thought to fall under the Act of Parliament, of Rising in Arms without the Sovereign's Consent, no Gentleman in the Kingdom could be free from Grounds of a Criminal Process, if the bearing such Weapons should be construed a Rising in Arms; and few or many, making no Difference, as the Pursuer contends, it would necessarily follow, that two or three Persons meeting or Travelling with Swords or Pistols, might be liable to a Process of Treason, as rising in Arms without Authority; which were most absurd, and of dangerous Consequence to the Lieges. And as no Company can ever be found to have met and travelled in a more peaceable and inoffensive manner than the Pannels have done, doing no Injury by Word or Deed, to any Person whatsoever, and travelling in such a simple Manner, as did exclude all imaginable Jealousy of their having any Warlike Designs, or creating the least Disturbance to themselves or others, and giving a ready Obedience when called by Authority on a simple Citation: So they ought to be Assoizied from the said groundless and irrelevant Libel.

The Pannels shall not take up the Lords Time in informing more particularly upon the other Circumstances of the Libel, such as drinking of Healths, Correspondence, and enticing of the Country; by reason that my Lord Advocate did not insist upon these in the Debate, but only pretended

to have libelled them as Aggravations, which is of no Moment in a Proceſs of Treason, and can be of no manner of Effect in this Caſe, where the Crime libelled is ſo manifeſtly elided. *Sic ſubſcribitur,*
Alexr. Macleod.

*Information for her Maſteſty's Advocate
againſt the Lairds of Keir, Touch,
and others, now Priſoners in the
Tolbooth of Edinburgh.*

HER Maſteſty's Advocate, holding the Indictment as repeated, and here premised, before he offer to answer and remove the Exceptions and Objections made againſt it for the Defenders; takes leave to remember what cannot well be forgot, That the Occaſion of the preſent Trial was an actual Invaſion of an Enemy-Fleet with *French, Irifh* and *Popiſh* Forces aboard, in *March* laſt, threatening an imminent Invaſion upon our Coaſt, to deſtroy her Maſteſty, and all her good Subjects, and ruin our Religion, Laws and Liberties.

Which Invaſion was the more formidable, that it was intended and carried on by *Papiſts* and *French*, and by *Irifh Papiſts*, the Dregs of both, which are certainly the worſt Characters that can be apprehended in an Enemy.

While we flood thus threatned by ſuch Enemies that had riſen up againſt us, and were ready to ſwallow us up quick, ſo that the Waters had overwhelmed us, and the Stream had gone over our Soul, if GOD had not appeared for us; and Her Maſteſty, by his Bleſſing upon her careful and moſt vigilant Conduct, interpoſed for our Delivery, and when the Enemy was upon our Coaſt, and ready to enter our *Firth*, and when all good Men were in the greateſt Suſpence of the ſaddeſt Apprehenſions of what might enſue, by turning our Country at leaſt to a Field of Blood, and Scene of all Confuſions and Miſchiefs: Yet there were found amongſt us, even among *Scots Proteſtants*, a Knot of Men who may juſtly ſeem to have wiſhed and longed for that which all Men beſides feared.

It is now indeed made an Argument to exculpate, that they were ſo few; and yet it may far more reaſonably be wondered, that there was ſo much as one Man to be found of ſuch a deſperate Reſolution and Practice.

The Five Gentlemen now in the Pannel, being of the Knot mentioned, ſo ſoon as this Invaſion was noiſed abroad, and when it was brought juſt upon our Coaſt, then they think fit to leave their Houſes, and going with their Horſes and Servants, and all well armed with Swords and Piſtols, and other invaſive Weapons, they riſe and continue in Arms, without any lawful Authority interpoſed: And thus appearing in Arms, and marching from Place to Place in ſeveral Shires, and for ſeveral Days and Nights, as it were in Correſpondence with the foreſaid Invaders, did what in them lay (if not to riſe to their Aſſiſtance, at leaſt) to diſturb Her Maſteſty's good Subjects, from the Oppoſition and Deſence that was at that Time ſo neceſſary.

It's true, when their Hopes were diſappointed, then they ſhrunk home, and ſuch of them as had more to loſe than they knew how to ſave otherways, compared and rendred when called; when

others of them that had no more Guilt, but leſs to loſe, thought fit to retire and abſcond: Whereupon Her Maſteſty moſt juſtly ordered, that the Perſons now in the Pannel ſhould be brought to this preſent Trial.

The Indictment exhibit againſt them, founds, upon moſt plain and poſitive Laws and Acts of Parliament, *That none rebel openly againſt the King's Perſon or Government; That none levy War and take up Arms againſt the King and His Government; And that for any of the Subjects, more or fewer, to riſe and continue in Arms upon any Pretext, or to attempt the ſame without His Maſteſty's ſpecial Authority firſt interpoſed, it ſhall be High-Treason; and that if any levy War, or take up Arms againſt the King, or entice Strangers or others to invade, and expreſs and declare ſuch treaſonable Intentions, he ſhall be adjudged a Traytor, and puniſhed as in the Caſe of High-Treason.* And then the Indictment ſubſumes in the very Terms of the Law, *That at ſuch a Time, and in ſuch a Manner, and with the other Circumſtances mentioned, the Defenders did actually riſe and convene, and continue in Arms without Her Maſteſty's ſpecial Authority firſt interpoſed; which in Law is juſtly conſtrued to be the Levying of War, and taking up Arms againſt Her Maſteſty, and did plainly appear to be in a real Correſpondence with, and for the Encouragement of the French Invaders; whom thereby, and otherways they did entice, to the invading of Her Maſteſty's Dominions, and the deſtroying of Her and all Her good Subjects: Of which Crime the Defenders being Actors, Art or Part, ought to be puniſhed with the Pains of Law.*

To this Indictment the Defenders made Answer, denying the Crime libelled with all its Qualifications; that the Indictment is not relevant, in reſpect it doth not condeſcend upon any Overt-Act or Deed that can be ſtretched to infer the Crime, or any treaſonable Intention; and that all the Acts of Parliament libelled upon, require ſuch open Facts and Deeds; and the Act of Parliament, *Car. II. Parl. 1. Seſ. 2.* requires expreſſy, *That by Writing, Printing, Preaching, or other malicious and adviſed ſpeaking, ſuch treaſonable Intentions ſhould be expreſſed or declared; nothing of which can be found in this Caſe.*

To which it is replied, 1. That it is granted, That neither inward Thoughts nor Intentions, unleſs ſome way expreſſed or declared, can be made criminal, and far leſs treaſonable; but on the other Hand, when the Law and Acts of Parliament does ſet down a ſpecifick palpable Deed, ſuch as riſing and continuing in Arms, which is viſibly an open Overt-Act, and requires no more for the declaring of the Rebels Intention, ſave his ſo riſing and continuing in Arms, without having Her Maſteſty's Authority interpoſed; what more can be required, either as to the Overt Act, ſince the Fact it ſelf is truly and openly ſuch; or as to the Certainty of the Parties Intention when the Law hath aſcertained it, *viz.* By the want of Authority; which is plainly the preſent Caſe? But 2. It is to be adverted, That our old Laws libelled upon, do indeed bear open and notour Rebellion: As likeways, *The levying of War againſt the King and His Perſon and Government:* But theſe Laws having been found very liable to the very Exceptions that the Defenders now make againſt the Indictment, when in the Year 1661 this came to be conſidered, and the Parliament judged fit to aſcertain and define the Crime of Treason, ſo as every Man might moſt plainly underſtand it, and

that there could be no Place for any of the former Evasions: The Act of Parliament condescends upon rising and continuing in Arms, as the very open and Overt Act requisite to the Crime; and withal fixes the treasonable Intention, upon this one Qualification, That the rising and continuing in Arms, is without His Majesty's Authority interponed, a Negative that proves it self, and requires no other Evidence. 3. As to what the Act of Parliament, *Car. II. Par. 1. Sef. 2. Cap. 2.* requires, *That such treasonable Intentions should be expressed and declared;* these Words are plainly subjoined to a long Enumeration of several Points and Kinds of Treason, and are certainly only to be applied to the Cases wherein the Intention may be doubtful, but can never in any good Sense or Reason be applied to such Deeds as the Law itself declares to be open and to import the Intention, such as rising and continuing in Arms, levying of War, or taking up Arms, where both the Deed and the Intention are manifest, and by Law declared and condemned. And in effect to alledge, where there is an open rising in Arms, or a levying of War, or the Maintaining a Fort or Garrison, That yet the Intention should be desiderate, where the Law requires no more to prove, but that it is done without Authority, is visibly absurd.

Secondly, Where it is objected, that albeit rising and continuing in Arms without Her Majesty's Authority be undoubtedly Treason, yet it must still be qualified by some Circumstances of Fact, Word or Writ, to infer the Intention; and to libel rising in Arms is but general, and it ought to be cleared by some particular Fact and Deed libelled, to make the rising criminal. Thus the common Law says, *Qui injussu principis bellum gesserit, delictumve habuerit exercitum Comparaverit, &c.* And our Act of Parliament, *Q. Mary,* explains the Matter, *viz. That no Man raise Bands of Men of Weir on Horse or Foot, with Pistols and other bellical Arms, for daily or Monthly Wages, without special Licence, &c.*

To all which it is answered, that it is granted by the Defenders, that rising and continuing in Arms, if duly qualified to be against Her Majesty, is undoubtedly Treason: But then it is not as evident, that all the Qualification that the Act of Parliament requires, is, that the same be done without Her Majesty's Authority? So that where the Qualification is so plainly Defined, to require any farther, is to impose on the Law. It's true, that the Act *Queen Mary,* speaks of raising of Bands of Men of Weir, and keeping them under Pay; and the Common Law may also have something of that Nature. But if the Act of Parliament 1661, thought fit so far to secure the Prerogative as to cut short and forbid all rising in Arms without Her Majesty's Authority, under the Pain of Treason, is not this plain Law, which the Defenders could neither misken, nor ought to have transgressed?

The Case of *Affint* is much insisted on, That it was not found to be a treasonable Rising, unless there had been more than an hundred Men convened, and mustered under Colours and Pay. But 1. A Practick cannot change the Law. 2. The Reason of that Practick is manifest, *viz.* That *Affints* Convocation was covered with another Colour and Pretext, and was certainly not against the Government; and therefore the said Qualifications were required, which doth no ways hold in this Case.

For to deal plainly, and to cut off all the Defenders groundless Pretexts, that they were only innocently convened, that they had no Arms, but such as are

ordinary and allowed to Gentlemen in their Travelling; that they were only a small Number of Friends and Neighbours for their Diversion and Recreation: That they had no Correspondence with the Invaders, tho' their meeting and travelling together happened about that Time: And *lastly,* that if they should be overtaken on the Fact and Deed libelled against them, none could be in Safety to travel with Arms, even in the smallest Company.

To all this it is answered, 1. For all that the Defenders have alledged or can alledge for Excuse, yet their meeting and marching in Arms, at the Time and Manner that they did, is generally under this Prejugee by all that ever heard it, that it was at least the height of Folly, and had the worst of Appearances.

But 2. If the Defenders would have the Deed to be considered with all its Circumstances, it is not declined. Now as to the Deed it self, it is open and palpable, *viz.* rising and continuing in Arms. 2. It has all the Qualification that Law requires to make it criminal, *viz.* That it was without Her Majesty's Authority being interponed. But 3. Admit of all the Circumstances that the Defenders can alledge for alleviating, are they not only bare Supposition and Question? What if they meet by Rencounter? What if they met for Diversion? Are not such Meetings ordinary? And what was acted by them against the Government? All which do not import so much as one positive colourable Excuse. Whereas to consider the Deed certainly condemned in Law on the other side, with its undeniable Circumstances, *viz.* That the Defenders left their own Houses, having no just Occasion to invite them abroad: That they met in such a Company as perhaps all of them never met before; that they met well mounted, and with Swords and Pistols of all sorts, better appointed than most Men that go to War; that they were thus well mounted and armed, beyond what the Law and Act of Parliament 1693, allows to Men of their Fashion, there being none of them qualified to the Government; that all this happened when the Invasion was generally known, and just upon our Coast: That they marched backward and forward for several Days and Nights, as it were hovering in expectation of what they look'd after: That they did not at all dissolve and go home, until their Hope of the Invasion was lost; and that since several of them have absconded. Can any Man lay and reflect upon these Things together, but he must say, That besides their being clearly Guilty in the Terms of Law as having risen and continued in Arms without her Majesty's Authority, which in the Construction of Law, is to levy War against Her Majesty, their Intention was as treasonable as the Law presumes: so that upon the whole, this Judgment may be both righteously and safely pass'd in this Matter, *viz.* That their rising and continuing in Arms at the Time and in the Manner, and with the other Circumstances libelled, without Her Majesty's Authority first interponed, was Treason, unless they could exculpate, by at least some colourable or probable Pretext, which they never can prove, or have so much as alledged.

Nor could a Judgment of this Nature so clearly founded, be of the least ill Consequence or Inconvenience, since every ordinary Meeting bears its own Excuse; nor can indeed a lawful Meeting of this Sort be found without Excuse. And further, it would secure the Government according to the true Intention of the Law, against all suspicious and evil Designs and Attempts in Time coming.

The Defenders object, That the Indictment doth not libel relevantly, as to the Point of Correspondence with the Invaders; which should be qualified by a Condescendance on the particular Acts of Correspondence; and, as the Common Law expresses it, That *Hostibus nunciis literasve miserunt, signumve dederunt, feceruntque dolo malo quo hostes consilio juventur.*

To which it is answered; If Correspondence with Invaders had been the principal Crime libelled, the Defenders might have contended for such a Condescendance *quo modo* they corresponded: But when the Correspondence is only libelled, *viz.* an open and real Correspondence, by their rising at the same Time in Arms without Authority, that a Foreign Enemy was actually invading: This real Correspondence, or this Correspondence *in re ipsa*, is more than sufficient to make out the Presumption of Law; *viz.* That their Rising and Continuing in Arms without Authority, was plainly against Authority. If at the Time of the Invasion, some Hundreds of disaffected Persons had got together in Arms; would it have been doubted, but that their getting together at that Time in Arms, without Her Majesty's Authority, was really to correspond with the Invaders, and to countenance and encourage them in their Invasion. If then all the Difference be, that the Defenders did convene in a smaller Number; it only remains to be considered, That the Act of Parliament doth expressly declare against any Number, their Rising and Continuing in Arms without Authority; and that the same is Treasonable; which fully reaches the Number libelled.

As to what is added, of their being so small a Number, and only armed in the ordinary Manner accustomed by Gentlemen Travellers; it is already answered, and withal it is certain, that the greatest Mischiefs may have their Rise from small Beginnings. And as for the Defenders, they were very early in their Appearance, and visibly did what in them lay, both to encourage the Invaders, and to raise an Insurrection in the Country: And it was only the Goodness of God, and her Majesty's vigilant Conduct, that cut off both their further Hopes, and the increasing of their Numbers; which might have been infallibly expected, if the Invasion had succeeded.

The Defenders take notice of that Part of the Indictment, which alledges, That they did openly drink the good Health of their Master, who could be none else but the Pretender; which they alledge is no ways relevant to infer the Conclusion of the Libel.

To which it is answered, That the foresaid Drinking having been only mentioned in the Libel, for a further Illustration of the Defenders Intentions, it is granted, that *per se* it is not relevant to infer a Crime. But, 2. Being joined with the other Circumstances above mentioned, even in its doubtful Sense, it cannot be denied to import a further Discovery of these Gentlemens Intentions, in appearing and continuing in Arms without Authority; which (in Effect) is the principal Crime, sufficiently declared by the Act of Parliament itself, tho' it were not adminiculate by this and the other Circumstances above-mentioned.

The Defenders go on to resume and answer the Charge brought against them; but the whole of the Matter being above abundantly cleared, it may suffice to notice, that they still insist, That the Rising in Arms libelled without Authority, is but ge-

neral, and so could not infer the Crime of Treason, unless more particularly qualified: Whereas it is certain, that the Rising in Arms is a specifick Act; and of the which, if libelled circumstantiately as to Time and Place, as it here is, makes a most particular Libel: and for qualifying the Intention of the Act, and of the Risers, all that the Law requires, is, That the rising and continuing in Arms, be without her Majesty's Authority first interposed; which, in the Construction of Law, is to levy War against her Majesty.

The Defenders alledge, That to libel rising in Arms in general, is no better than to libel Murder in general: But if Murder be libelled circumstantiately, as to the Person murdered, and the Time and Place; the Libel is no doubt particular and relevant, without any further Qualification. What then should hinder, why rising and continuing in Arms circumstantiately libelled as to Time and Place, and plainly qualified as the Law requires, (*viz.* without her Majesty's Authority) should not also be a particular and relevant Libel of Treason?

But the Defenders say, That by such a Libel they are deprived of the Benefit of Exculpation. But this is wholly groundless; it having been often said, That if the Defenders can but qualify any probable Pretext for their rising and continuing in Arms without Authority, to take of the Presumption of the Law, it should be admitted. But when they can qualify no Pretext, nor can assign the least probable Cause for their rising and continuing in Arms as they did, except it was to countenance Invaders, or to raise Insurrections within the Country; how is it possible, that this their rising in Arms without Authority, as is libelled, should not be Treason? Nor is there any thing here left to the Judgment of the Assize, save most plain and palpable Matter of Fact; *viz.* That the Defenders rose, and continued in Arms; which being qualified as the Law requires, *viz.* That it was without her Majesty's Authority, it inevitably presumes the treasonable Intention; which being further joined with the Circumstances mentioned in the Indictment, cannot but evince to all Men, That the rising and continuing in Arms without Authority, and in the Circumstances above-mentioned, was an Overt-Act of Rebellion; specially when nothing is, or can be adduced, to give it a more probable Interpretation.

The Defenders insist much, That they were not *versantes in Illicito*; That they only went out for Diversion, or Business, with their ordinary Arms and Servants: But what can be more *Illicitum*, than to rise and continue in Arms without Authority; the very Deed forbid by the Law as Treasonable? And what need of any further Qualifications of their Intention, since the Law makes *without Authority* to be sufficient? And the Indictment doth also superadd most pregnant Circumstances, to verify their ill Intention? which are not so much as offered to be cavilled, except by, What if this? or, What if that? which plainly signify nothing.

The Defenders seem to insinuate, That they did not so much as know there was an invading Fleet upon our Coast: But it is so notour, that at that Time the Invasion was universally known, and likewise signified by a Proclamation That this Alledgeance is manifestly disingenuous.

But the Defenders further alledge (*Esto*) That rising and continuing in Arms, as they did, was suspicious; yet Suspicions cannot found a Libel of Treason.

Treason. But the Defenders advert not, That it is not Matter of Suspicion that is objected, far less their travelling with their ordinary Horses, Arms and Equipage, as formerly they were wont; but plainly that at such a Time, when the Country was openly invaded by a foreign and most formidable Enemy, they, being never qualified to the Government should have run together in Arms, without her Majesty's Authority; which is all that the Law requires to make them guilty, and which in Effect, with the other Circumstances libelled, declares their treasonable Intentions to a Demonstration.

The Defenders say, That their Case differs from *Caldwal's*: But albeit they may vary in some Circumstances, yet it's certain, that as to the main, *Caldwal* and his Complices were found guilty of Treason, only for their raising of about Thirty or Forty, and continuing in Arms without Authority, when there was another Party in the Country engaged in an open Insurrection. So that the Defenders have in like manner risen and continued in Arms without Authority, when there was a far more dreadful Enemy imminent upon our Coast, cannot but fall under the same Construction. And that *Caldwal's* Process and Doom was afterwards reduced, signifies nothing; since it was reduced for Reasons wholly different and alien from the Case in Hand, and which are so well known, as they need not be repeated.

The Defenders do also endeavour to take off what was alledged from the Act of Parliament, That even the Attempt and *Conatus* in this Case is condemned, by telling us, that this *Conatus* doth also require an Overt-Act. But *Esso*, it be so; what more Overt-Act can be required, than open Rising in Arms? And what Doubt can there be of the Intention and Design, when both the Act of Parliament, and the other Circumstances of the Deed, do so fully clear it? And therefore it is in vain to notice either *Caldwal's* Case, wherein there was indeed no Sentence; or yet *Balmerino's* Case, where the Overt-Act was thought to be doubtful; when the rising and continuing in Arms is, in this Case, an Act both Overt in itself, and expressly defined to be such by the Act of Parliament.

The Defenders are at some Pains to make it believed, That the Libelling of Art and Part cannot sustain this Indictment. But, 1. The Advocate adheres to his Indictment, as libelled and qualified with Art and Part. 2. Though Art and Part be libelled, and the Act of Parliament makes it a Supplement for Relevancy in all Cases; yet her Majesty's Advocate finds no Necessity to enter further into that Debate, than to adhere as above; seeing that his Indictment is founded on clear Law, and that he as clearly subsumes in the Terms of Law; *viz.* The rising and continuing in Arms without her Majesty's Authority interposed; the Levying of War, and taking up Arms against her Majesty, and open Corresponding with her Majesty's Enemies, and our Invaders; and that not only by the abovementioned real Correspondence, but even by enticing them other ways to invade, as shall be proven, if needful. All which are too manifestly Acts and Deeds of Rebellion, to need the constructive Support of Art and Part, further than that Actor Art and Part, are perpetually connected together.

And therefore, upon the whole, since, as hath been said, the Country was (at the Time libelled) in the most imminent Hazard of a most destructive

Invasion; and that at that very Time, the Defenders, to the great Surprize and Astonishment of all her Majesty's good Subjects, did flee out in Arms, and convene and march, and troop together in Arms, without her Majesty's Authority, which in Law is sufficient; and that with the other aggravating and most concludent Circumstances above libelled, which were not offered to be taken off with any rational or probable Pretext: It appears to be without Question, That the Defenders fall under all the Conclusions of the Libel, and ought to be made liable in the Pains thereof.

In Respect whereof, &c.

Sic subscribitur,

J. A. STEUART.

CURIA JUSTICIARIA S. D. N. Regine, tena in novo Sessionis Domo Burgi de Edinburgh, Vigesimo secundo Die Mensis Novembris, Millesimo, Septingentesimo, Octavo; per Nobilem & Potentem Comitum, Georgium Comitem de Cromertie, &c. Justiciarum Generalem, & Honorabiles Viros Adamum Cockburn de Ormiston, Justiciarium Clericum; Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de eodem, & Gilbertum Eliot de Minto; Magistrum Robertum Steuart de Tillicoutrie, & Magistrum Jacobum Erskine de Grange; Commissionarios Justiciarum Dist. S. D. N. Regine.

Curia Legitime Affirmata.

Intran.

James Stirling, of Keir.

Archibald Seaton of Touch.

Archibald Stirling of Carden.

Charles Stirling of Kippendavie; and

Patrick Edmonston, of Newtown.

Indicted and accused at the Instance of Sir *James Steuart*, her Majesty's Advocate, and as having special Warrant for that Effect, for the Crime of Treason and Lese-Majesty in manner mentioned in the Indictment raised against them thereanent.

PURSUERS.

Sir *James Steuart*, her Majesty's Advocate.

Sir *Walter Pringle*, and

Sir *Francis Grant*,

Advocates.

Procurators in DEFENCE.

Sir *Patrick Home*.

Sir *David Forbes*.

Sir *James Steuart*.

Mr. *Alexander Macleod*.

Mr. *James Graham*.

Mr. *Walter Steuart*.

Mr. *John Elphinston*.

Mr. *Colin Mackenzie*.

Mr. *Charles Cockburn*, and

Mr. *David Lauder*.

Advocates.

The Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, having considered the Indictment at her Majesty's Advocate's Instance, against *James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonston of Newtown*, Pannels, with the foregoing Debate thereon; **THEY FIND**, The said Pannels, their rising and continuing in Arms without her Majesty's Authority, and actual Corresponding with an open Enemy upon the Coast, ready to invade this Part of *Great Britain* called *SCOTLAND*, Relevant to infer the Pains of Treason libelled against the Pannels; and repel the whole Defences proponed for the Pannels, and remit the whole to the Knowledge of an Assize.

Sic subscribitur,

CROMERTIE, I. P. D.

The said Lords, for several Causes and Considerations, continued the Dyet of the said Cause till Three a-Clock in the Afternoon; and ordained Affizers and Witnesses to attend then, ilk Person under the Pain of one hundred *Merks*, and the Pannels to be carried back to Prison.

Post Meridiem.

CURIA JUSTICIARIA S. D. N. *Reginæ, tenta in novo Sessionis Domo Burgi de Edinburgh, Vigesimo secundo Die Mensis Novembris, Millesimo, Septingentesimo, Octavo; per Nobilem & Potentem Comitem, Georgium Comitem de Cromertie, &c. Justiciarium Generalem, & Honorabiles Viros Adamum Cockburn de Ormiston, Justiciarium Clericum; Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de eodem, & Gilbertum Eliot de Minto; & Magistrum Jacobum Erskine de Grange; Commissionarios Justiciarum, Dist. S. D. N. Reginæ.*

Curia Legitime Affirmata.

Intran.

*James Stirling, of Keir.
Archibald Seaton of Touch.
Archibald Stirling of Carden.
Charles Stirling of Kippendavie; and
Patrick Edmonston, of Newtown.*

Indicted and accused at the Instance of her Majesty's Advocate, and as having special Warrant for that Effect, for the Crime of Treason and Lese-Majesty in manner mentioned in the Indictment raised against them thereanent.

PURSUERS.

*Sir James Steuart, her Majesty's Advocate.
Sir Walter Pringle, and
Sir Francis Grant.
Advocates.*

Procurators in DEFENCE.

Ut ante.

ASSIZE.

*Sir Thomas Young of Rosbank.
John Hamilton, Portioner of Newbott'e.*

*William Turnbull of Currie.
James Kinloch of Stonygate.
James Deans of Woodhouselie.*

*Henry Nisbet, younger, of Dean.
Sir James Fleeming of Rathbories.
Sir John Clark of Pennycook.
John Hunter, Merchant in Edinburgh.
David Cleland, Merchant there.*

*James Gordon, Merchant in Edinburgh.
Gilbert Campbell, Merchant there.
William Duncan, Merchant there.
Alexander Brown, Merchant there.
Robert Walwood, Merchant there.*

The Assize lawfully sworn, and no Objection of the Law made by the Pannels in the Contrary.

The Pursuer for Probation adduced the Witnesses after Deponing, *viz.*

Mr. *David Fenton*, in *Dunkeld*, aged forty Years, or thereby, married; solemnly sworn, purged of partial Counsel, examined upon the Libel, depones, That about the Time libelled, being about the twentieth or twenty first of *March*; tho' he knows not the Pannels Names, yet, by their Faces, he remembers they were at his House at *Dunkeld*, some of them two Days, and some but one Day; that two of them, that came there on *Sunday*, went away on *Monday* Morning; *viz.* *Carden* and *Kippendavie*; and that the rest went away from his House on *Tuesday*. Depones, that all of them were in Arms; all of them having Swords, and some Pistols: But he cannot remember how many Pair of Pistols he saw. That nine of them owned themselves to be Masters; and that there were seven Servants; and that he saw no other Weapons but Swords and Pistols, as said is. Depones, That all the Masters lodged in his House; but that the Servants and Horses lodged in common Stables. Depones, That he did not hear any of them speak of the Government, or the Invasion that was then intended: And that he knows nothing of their Purpose or Design of coming to his House, or why they were together. Depones, that when they went away, some of them went to the *East* Boat on the Water of *Tay*, in the way towards *Perth*; and others of them crossed at the *West* Boat, in the way towards *Strathbrand*. And this is all he knows, and is the Truth, as he shall answer to *GOD*.

*Sic subscribitur,
Da. Fenton.*

CROMERTIE.

John Maccleran, Change-keeper at the Bridge of *Turk*, aged forty six Years and upwards, married; solemnly sworn, purged of partial Counsel, examined upon the Indictment, and Interrogate, depones, That about the fifteenth of *March* last, he saw the five Pannels at his House, but that he was not at Home when they came, and came Home the next Day: And that he saw with them, *William Graham, Alexander Steuart*, Brother to *Ardvorlich*, and a Brother of *Touch's*; and remembers of none others, but some Servants, whose Names he knows not. That they went away from his House the next Morning; and that all of them had Swords, and some of them had Pistols; and saw them have some few Guns, but he knows not how many. Depones, that he was not sent on any Message, nor knows

knows of none other there being sent on any Message from his House by the Pannels; and that they went from his House straight *Eastward* towards *Lenie*: And that he did not hear them speak of any Person that they expected to meet at his House. *Causa scientie patet.* And this is all he knows; and is the Truth, as he shall answer to GOD.

And being further Interrogate, if he heard the Pannels speak of the Government, or of King *James*, or the Prince of *Wales*, or of the *French* Invasion, or of their landing in any Place in the *North*; depones *Negative*. And this is also the Truth, as he shall answer to GOD.

Sic subscribitur,
John Maccleran.
CROMERTIE.

Daniel Morrison, Servant to the Laird of *Keir*, aged twenty three Years or thereby, unmarried, solemnly sworn, purged of partial Counsel, examined and Interrogate, depones, That about the Time libelled, he saw the Pannels, with some others to the Number of ten or twelve Horse at *Dunkeld*, and at *Appinadove*, and at the Head of *Lochearn*; and that they had Swords and Pistols, but no other Weapons that he saw; depones, That the first Place he saw the Pannels, was at a Place near the Bridge of *Turk*, and went then to *Appinadove*, and from that to *Dunkeld*; depones, that he heard, That there was one *Campbell* who commanded a Party at the Bridge of *Allan*, and that *Keir* being informed thereof, and that they designed to apprehend him and his Horses, occasioned his going away with his Horses; and that *Touch* was with him that Morning, and went along with him to *Dunkeld*, and that they met *Carden* and *Kippendavie* at the Bridge of *Turk*; and that *Newtown* came there that Night, and from thence went all to *Lochearn*; depones, he heard them speak nothing of the pretended Prince of *Wales*, or of the Invasion then intended; and that *Keir*, *Carden* and *Touch*, came home together from *Dunkeld*; and that to the best of the Deponent's Memory, it was on the 23d of *March* that they were at *Dunkeld*, and that he knows not what was the Occasion of their parting; and depones, That it was on the seventeenth of that Month that they went from *Keir*: and depones that *Carden* and *Newtown* had neither Sword nor Pistol that he saw, and that none of the Servants had either Pistol or Sword, except *Keir's* Man, who had a Sword; and depones, That *Touch's* Brother, who was in Company had neither Sword nor Pistol that the Deponent saw. *Causa scientie patet.* And this is the Truth as he shall answer to GOD. And depones he cannot write. *Sic subscribitur,*

Cromertie.

Peter Wilson, Servant to the Laird of *Keir*, aged thirty Years, or thereby, *solutus*, solemnly sworn, purged of partial Counsel, examined upon the Libel, and Interrogate, depones, That about the seventeenth Day of *March* last, *Keir*, accompanied with *Touch* and his Brother, and others, to the Number of five Horse, came from *Keir*, and were that Night at the Bridge of *Turk*, where *Carden* and *Kippendavie* met them, and went all of them next Day to *Appinadove*, where one Mr. *Hay* met them; depones, That the Occasion of *Keir's* going from his House, was the Apprehensions he had of being seized with his Horses, by the Forces then

lying at *Stirling*, as he heard. Being Interrogate, if he heard the Pannel speak any thing concerning the Government, the Prince of *Wales*, and the intended Invasion, depones *Negative*; but that they heard that Admiral *Bing* had chased the *French* Fleet off the Coast, before they went from *Keir*; depones, That several of them had Swords and Pistols, but cannot be positive whether *Carden* and *Touch's* Brother had any or not; or if any of the other Servants had any, except the Deponent himself; and that they had no other Weapons that he saw; and depones, That it was at *Lochearn*, and not at *Appinadove*, that Mr. *Hay* met them. *Causa scientie patet.* And this is the Truth as he shall answer to GOD. *Sic subscribitur,*

Patrick Wilson.
Cromertie.

The Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, ordain the Assize presently to inclose, and to return their Verdict to Morrow at twelve a-Clock, in the High Council-house, and the haill fifteen Assizers to be present each of them, under the Pain of two hundred Merks.

CURIA JUSTICIARIA, S. D. N.
Reginae Tenta in Pratorio Burgi de Edinburgh, Vigesimo tertio Die Mensis Novembris millesimo Septingentesimo Octavo per Nobilem & potentem Comitem de Georgium Comitem de Cromertie, &c. Justiciarum Generalem, & Honorabiles Viros Adamum Cockburne, de Ormiltoun Justiciarum Clericum, Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de Eodem, & Gilbertum Eliot de Minto, & Magistrum Jacobum Erskine de Grange, Commissionarios Justiciarum Dioc. S. D. N. Reginae.

Curia legitime affirmata.

The said Day, the Persons who passed upon the Assize of *James Stirling* of *Keir*, and others, returned their Verdict in Presence of the said Lords, whereof the Tenor follows.

Edinburgh, 22d November, 1708.

The above Assize having inclosed, did choise Sir *James Fleeming* of *Rathbories* their Chancellor, and *Gilbert Campbell* Merchant in *Edinburgh*, to be their Clerk. And having considered the Indictment pursued at her Majesty's Advocate's Instance, as having special Warrant from her Majesty for that Effect, against *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonston* of *Newtown*, for the Crime of Treason and Lese-Majesty, with the Debate thereupon, the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary their Interlocutor pronounced thereupon, and Depositions of the Witnesses adduced, They all in one Voice Find the Libel not proven. In Witness whereof (written by the said *Gilbert Campbell*) these Presents are subscribed by our said Chancellor and Clerk, Day and Date aforesaid. *Sic subscribitur,*

James Fleeming.
Gilb. Campbell, Clerk.

After opening and reading of which Verdict of Assize, the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, Assolied the Pannels, and dismissed them from the Bar: Whereupon they took Instruments. *Sic subscribitur,*

Cromertie, I. P. D.

CLXXXIV.

CLXXXIV. *The Trial of HENRY SACHEVERELL, D. D. upon an Impeachment before the House of Lords for High Crimes and Misdemeanors, February 27, 17⁰⁹₁₀, 9 Ann. **

The First Day.

ABOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trial of *Henry Sacheverell*, Doctor in Divinity, in the manner following.

The Lord Chancellor's Gentlemen-Attendants, two and two.

The Clerks of the House of Lords, with the two Clerks of the Crown in the Courts of *Chancery* and *King's-Bench*.

The Masters in *Chancery*, two and two.

Then the Judges.

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

The Yeoman-Usher of the House.

The Gentleman-Usher of the Black Rod.

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

The Serjeant at Arms, with his Mace.

Then one of the Heralds.

Then the Lord Chancellor alone.

The Lords being seated in the Place for that Purpose prepared in *Westminster-Hall*, and the Commons in a Committee of the whole House being in the Seats prepared for them, and the Managers for the House being at their Lordships Bar, the Serjeant at Arms made Proclamations as follow.

Serjeant at Arms. O yes! Our Sovereign Lady the Queen doth strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Serjeant at Arms. O yes! *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, or thou forfeitest thy Recognizance.

Then Doctor *Henry Sacheverell* came to the Bar and kneeled; his Counsel, *viz.* Sir *Simon Harcourt*, Mr. *Dodd*, Mr. *Phipps*, Mr. *Dee*, and Dr. *Henchman*, standing near him at the Bar; and rising again by Direction of the Lord Chancellor, the Serjeant at Arms again made Proclamation as follows.

Serjeant at Arms. O yes! Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of themselves and all the Commons of *Great Britain*, against *Henry Sacheverell*, Doctor in Divinity; all Persons concerned are to take Notice that he now stands upon his Trial, and they may come forth, in order to make good the said Charge.

Lord Chancellor. Doctor *Sacheverell*, it is needless to give you any Directions concerning your Behaviour during the Time of your Trial, or the ordering your Defence, because the Lords have not only allowed, but assigned you the Counsel you desired, some both of the Civil and Common Law, who will be able to direct and advise you, not only in

the Substance, but Form of your Defence. The Lords have also made an Order for summoning all such Witnesses as you have propounded to appear for you. And that you might be the better able to provide for your Defence, you have had your Liberty on the first Application for it, and giving Security for your Appearance; you have also had all the Time you thought fit to desire, in order to prepare for your Defence: So that you ought ever to remember, that their Lordships have used towards you all the Indulgence you could reasonably expect.

Then the Clerk, by Direction of the Lord Chancellor, read the Articles of Impeachment, Doctor *Sacheverell's* Answer, and the Replication of the House of Commons, as follows.

ARTICLES exhibited by the Knights, Citizens, and Burgeses, in Parliament assembled, in the Name of Themselves and of all the Commons of Great Britain, against *Henry Sacheverell*, Doctor in Divinity, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

WHEREAS his late Majesty King *William* the Third, then Prince of *Orange*, did with an armed Force undertake a glorious Enterprize for delivering this Kingdom from Popery and Arbitrary Power; and divers Subjects of this Realm, well affected to their Country, joined with and assisted his late Majesty in the said Enterprize: And it having pleas'd Almighty God to crown the same with Success, the late happy Revolution did take Effect, and was established. And whereas the said glorious Enterprize is approved by several Acts of Parliament, and amongst others, by an Act made in the first Year of the Reign of King *William* and Queen *Mary*, intituled, *An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and also by one other Act made in the same Year, intituled, *An Act for preventing vexatious Suits against such as acted in order to the bringing in their Majesties, or for their Service*; and also by one other Act made in the same Year, intituled, *An Act for appropriating certain Duties for paying the States General of the United Provinces, their Charges for his Majesty's Expedition into this Kingdom, and for other Uses*: And the Actings of the said well-affected Subjects in Aid and Pursuance of the said Enterprize, are also declared to have been Necessary, and that the same ought to be justified. And whereas the happy and blessed Consequences of the said Revolution are, the Enjoyment of the Light of God's true Religion established among us, and of the Laws and Liberties of the Kingdom; the Uniting her Majesty's Protestant Subjects in Interest and Affection, by a legal Indulgence or Toleration granted to Dissenters; the Preservation of her Majesty's

jeſty's Sacred Perſon; the many and continual Benefits ariſing from her Maſteſty's wife and glorious Adminiſtration, and the Proſpect of Happineſs for future Ages, by the Settlement of the Succeſſion of the Crown in the Proteſtant Line, and the Union of the two Kingdoms. And whereas the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, did, by their Addreſs of the Seventeenth of December, in the Year of our Lord One thouſand ſeven hundred and five, lay before her Maſteſty the following Vote or Reſolution, *viz.* *That the Church of England, as by Law eſtabliſhed, which was reſcued from the extremeſt Danger by King William the Third of glorious Memory, is now, by God's Bleſſing, under the happy Reign of her Maſteſty, in a moſt ſafe and flouriſhing Condition; and that whoever goes about to ſuggeſt or inſinuate that the Church is in Danger under her Maſteſty's Adminiſtration, is an Enemy to the Queen, the Church, and the Kingdom:* And by their ſaid Addreſs did humbly beſeech her Maſteſty to take effectual Meaſures for making the ſaid Vote or Reſolution publick, and alſo for puniſhing the Authors and Spreaders of ſuch ſeditious and ſcandalous Reports; and on the twentieth Day of the ſame December her Maſteſty was pleaſed to iſſue her Royal Proclamation accordingly. Yet nevertheleſs the ſaid Henry Sacheverell preach'd a Sermon at the Aſſizes held at Derby, Auguſt the Fifteenth, in the Year of our Lord One thouſand ſeven hundred and nine, and afterwards publiſhed the ſame in Print, with a Dedication thereof; and the ſaid Henry Sacheverell alſo preach'd a Sermon at the Cathedral Church of St. Paul, before the Lord Mayor, Aldermen, and Citizens of London, on the fifth Day of November laſt, being the Anniverſary Thankſgiving to Almighty God for the Deliverance from the Gunpowder-Treafon, and for beginning the late happy Revolution, by giving his late Maſteſty a ſafe Arrival here, and for completing the ſame, by making all Oppoſition fall before him, till he became our King and Governor; which ſaid Sermon he the ſaid Henry Sacheverell likewiſe publiſhed in Print, with a Dedication thereof to Sir Samuel Gerrard, Baronet, Lord Mayor of the City of London; and with a wicked, malicious, and ſeditious Intention to undermine and ſubvert her Maſteſty's Government and the Proteſtant Succeſſion as by Law eſtabliſhed; to defame her Maſteſty's Adminiſtration; to aſperſe the Memory of his late Maſteſty; to traduce and condemn the late happy Revolution; to contradict and arraign the Reſolutions of both Houſes of Parliament; to create Jealouſies and Diviſions amongſt her Maſteſty's Subjects; and to incite them to Sedition and Rebellion.

A R T I C L E I.

He, the ſaid Henry Sacheverell, in his ſaid Sermon preach'd at St. Paul's, doth ſuggeſt and maintain, *That the neceſſary Means uſed to bring about the ſaid happy Revolution, were odious and unjuſtifiable: That his late Maſteſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance: And that to impute Reſiſtance to the ſaid Revolution, is to caſt black and odious Colours upon his late Maſteſty and the ſaid Revolution.*

A R T I C L E II.

He, the ſaid Henry Sacheverell, in his ſaid Sermon preach'd at St. Paul's, doth ſuggeſt and maintain, *That the foreſaid Toleration, granted by Law,*

is unreaſonable, and the Allowance of it unwarrantable: And aſſerts, That he is a False Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience: That Queen Elizabeth was deluded by Archbiſhop Grindall, whom he ſcurriloſly calls a False Son of the Church, and a Perfidious Prelate, to the Toleration of the Geneva Diſcipline: And that it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons intitled to the Benefit of the ſaid Toleration; and insolently dares, or deſies, any Power on Earth to Reverse ſuch Sentences.

A R T I C L E III.

He, the ſaid Henry Sacheverell, in his ſaid Sermon preach'd at St. Paul's, doth falſely and ſeditiouſly ſuggeſt and aſſert, *That the Church of England is in a Condition of great Peril and Adverſity under her Maſteſty's Adminiſtration; and in order to arraign and blacken the ſaid Vote or Reſolution of both Houſes of Parliament, approved by her Maſteſty as aforeſaid, he, in Oppoſition thereto, doth ſuggeſt the Church to be in Danger; and, as a Parallel, mentions a Vote, That the Perſon of King Charles the Firſt was voted to be out of Danger at the ſame Time that his Murderers were conſpiring his Death; thereby wickedly and maliciously inſinuating, That the Members of both Houſes, who paſſed the ſaid Vote, were then conſpiring the Ruin of the Church.*

A R T I C L E IV.

He, the ſaid Henry Sacheverell, in his ſaid Sermons and Books, doth falſely and maliciously ſuggeſt, *That her Maſteſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution: And that there are Men of Characters and Stations in Church and State who are False Brethren, and do themſelves weaken, undermine, and betray, and do encourage, and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment; and chargeth her Maſteſty, and thoſe in Authority under Her, both in Church and State, with a general Male-Adminiſtration: And, as a publick Incendiary, he perſuades her Maſteſty's Subjects to keep up a Diſtinction of Factions and Parties; inſtills groundleſs Jealouſies, foments deſtructive Diviſions among them, and excites and ſtirrs them up to Arms and Violence: And that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſion upon the Minds of her Maſteſty's Subjects, he the ſaid Henry Sacheverell doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture.*

All which Crimes and Miſdemeanors the Commons are ready to prove, not only by the general Scope of the ſame Sermons or Books, but likewiſe by ſeveral Clauſes, Sentences, and Expreſſions in the ſaid Sermons or Books contained; and that he the ſaid Henry Sacheverell, by preaching the Sermons, and publiſhing the Books aforeſaid, did abuſe his Holy Function, and hath moſt grievouſly offended againſt the Peace of her Maſteſty, her Crown and Dignity, the Rights and Liberties of the Subject, the Laws and Statutes of this Kingdom, and the Proſperity and good Government of the ſame. And the ſaid Commons, by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any time hereafter, any other Article or Impeachment againſt the ſaid Henry Sacheverell; and alſo of replying to his Answers, or any of them, and of offering Proofs

of all the Premises, or of any of them, and of any other Article or Impeachment that shall be exhibited by them, as the Case, according to Course of Parliament, shall require, do pray that he the said *Henry Sacheverell* be put to answer to all and every the Premises; and that such Proceeding, Examination, Trial, Judgment, and exemplary Punishment, may be thereupon had and executed, as is agreeable to Law and Justice.

The ANSWER of Henry Sacheverell, Doctor in Divinity, to the ARTICLES exhibited by the Knights, Citizens, and Burgeses in Parliament assembled, in the Name of themselves and of all the Commons of Great Britain, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

THE said *Henry Sacheverell*, saving to himself all Advantages of Exception to the said Articles for the Generality, Uncertainty, and Insufficiency thereof, and of not being prejudiced by any Words or want of Form in this his Answer, admits, That at the Request of *George Sacheverell*, Esq; High Sheriff of the County of *Derby*, he preached a Sermon at the Assizes held for that County, on the 15th Day of *August*, one thousand seven hundred and nine; and that at the Desire of the Right Honourable Sir *Samuel Garrard*, Baronet, Lord Mayor of the City of *London*, he also preached a Sermon at the Cathedral Church of *St. Paul*, before the said Lord Mayor, and the Aldermen and Citizens of *London*, on the fifth Day of *November* last; and that he caused the said Sermons to be printed: But denies that he preached, or caused the same to be printed or published, with any such wicked, malicious, or seditious Intent, as in the Preamble of the said Articles is affirmed; the said *Henry Sacheverell* having been induced to print the Sermon he preached at *Derby*, at the Request of the Gentlemen of the Grand Jury for that County, to whom he humbly presumed to dedicate the same, as the most publick Acknowledgment he was capable of making, for the peculiar Honour he had received by their publick Approbation of that Sermon. And the said Lord Mayor having been pleased to express his good Liking of the said Sermon preached at *St. Paul's*, the said *Henry Sacheverell*, at his Request, caused the same to be printed, with a Dedication thereof to him. And for Answer to the said Articles, humbly saith,

Answer to First Article.

To the first Part of the first Article, the said *Henry Sacheverell* denies, That, in his said Sermon preached at *St. Paul's*, he doth suggest and maintain, that the necessary Means used to bring about the happy Revolution were odious and unjustifiable. Nor doth he in any Part of that Sermon affirm any Thing concerning the necessary Means used to bring about the happy Revolution. The said *Henry Sacheverell* is so far from reflecting on his late Majesty, or the happy Revolution, that he endeavours, in that Sermon, to clear the Revolution, and his late Majesty, from the black and odious Colours which their greatest Enemies has endeavoured to cast upon both.

And as to that Part of the said Article, whereby the said *Henry Sacheverell* is charged with suggesting and maintaining, that his late Majesty, in his Declaration, disclaimed the least Imputation of Resistance;

the said *Henry Sacheverell* doth acknowledge himself to have made such Suggestion; and declares, that he made it not in Dishonour, but in Vindication of his said Majesty. The Resistance the said *Henry Sacheverell* represents the late King to have disclaimed, being such a Resistance as tended to the Conquest of this Realm, as plainly appears from that Part of his late Majesty's Declaration which is referred to, and *verbatim* set forth at the Bottom of the same Page, in which he mentions his late Majesty's declaiming any such Imputation.

Whether the said *Henry Sacheverell* was mistaken or not, in expressing himself as if the late King had disclaimed any Imputation of Resistance, when he the said *Henry Sacheverell* meant thereby, that the late King disclaimed the Imputation of a Design of Conquest, he humbly conceives, such a Suggestion by him, plainly designed for the Honour of the late King, cannot in any reasonable Construction be thought a Reflection on his said Majesty, or deemed any Crime or Misdemeanor.

For the further Justification of what the said *Henry Sacheverell* said in Reference to his late Majesty's having disclaimed any the least Imputation of Resistance, the said *Henry Sacheverell* humbly observes, That in his late Majesty's Declaration, the following Passages are contained: *We have thought fit to go over to England, and to carry over with us a Force, sufficient, by the Blessing of God, to defend ourselves from the Violence of Evil Counsellors.— We think fit to declare, that this our Expedition is intended for no other Design, but to have a free and lawful Parliament assembled.*

As to the last Charge in the said Article, the said *Henry Sacheverell* denies, That he doth in his said Sermon suggest and maintain, that to impute Resistance to the said Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution. The Persons whom the said *Henry Sacheverell*, in his Sermon describes, as casting black and odious Colours upon his late Majesty and the Revolution, are not those who impute Resistance to the late Revolution, of whom the said *Henry Sacheverell* affirms nothing, but those new Preachers and new Politicians, who teach, in Contradiction to both Gospel and the Laws, that the People have the Power vested in them, the Fountain and Original of it, to cancel their Allegiance at their Pleasure, and to call their Sovereign to Account for High Treason against his Subjects; nay, and to dethrone and murder him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence; who are Maintainers of anti-monarchical Schemes, and of such damnable Positions as are, by the Laws of Church and State, condemned for Rebellion and High Treason; and who urge the Revolution in Defence of such Principles. Unless, therefore, those who impute Resistance to the Revolution, be the same with those new Preachers and new Politicians above specified, the said *Henry Sacheverell* affirms nothing concerning them.

The said *Henry Sacheverell*, upon the strictest Search into his said Sermon preached at *St. Paul's*, doth not find that he hath given any the least colourable Pretence for the Accusation exhibited against him in this first Article, but barely by his asserting the utter Illegality of Resistance to the Supream Power upon any Pretence whatsoever; for which Assertion, he humbly conceives he hath the Authority of the Church of *England*, which in divers Passages of her Homilies, too large and too numerous to be here specified, but by the said *Henry Sacheverell* ready to be produced, hath taught and incul-

inculcated this Doctrine, as founded on the Word of God; particularly in the second Part of the Sermon of Obedience, contained in the former Book of Homilies, set forth in the Time of King *Edward* the VIth, where are these Words: *Here good People, let us all mark diligently: It is not lawful for Inferiors and Subjects in any Case to resist and stand against the superior Powers; for St. Paul's Words be plain, that whosoever withstandeth, shall get to themselves Damnation; for whosoever withstandeth, withstandeth the Ordinance of God.*

Which said Book of Homilies is affirmed in one of the Thirty Nine Articles of Religion, which concern the Confession of the true Christian Faith, to contain a godly and wholesome Doctrine, and is ordered to be read in Churches, by the Ministers, diligently and distinctly, that they may be understood of the People. And the said *Henry Sacheverell*, in further Maintenance of the said Doctrine and Position, contained in the Book of Homilies, and of the Authority of those Books, saith, That by an Act of Parliament made in the thirteenth Year of the Reign of Queen *Elizabeth*, intituled, *An Act for the Ministers of the Church to be of sound Religion*, 'tis enacted, *That no Person should thereafter be admitted to any Benefice with Cure, except he should first have subscribed the said Articles in the Presence of the Ordinary, and publicly read the same in the Parish Church of that Benefice, with Declaration of his unfeigned Assent to the same.* And that by an Act made in the fifth Year of her present Majesty's Reign, intituled, *An Act for securing the Church of England as by Law established*, it was enacted, *That the said Act, made in the said thirteenth Year of the Reign of Queen Elizabeth, should remain and be in full Force for ever; and be inserted in express Terms in any Act which should be made for ratifying the Union of the two Kingdoms of England and Scotland; and therein declared to be an essential and fundamental Part thereof.* And the said Act was accordingly inserted in express Terms, in an Act for the Union of the two Kingdoms; and thereby ratified and declared to be an essential and fundamental Part thereof.

And the said *Henry Sacheverell* doth further humbly insist, and is advised, that the aforesaid Assertion is agreeable to, and warranted by, the Common Law of *England*, and divers Acts of Parliament now remaining in full Force.

The said *Henry Sacheverell* doth with all Humility aver the Illegality of Resistance on any Pretence whatsoever to be the Doctrine of the Church of *England*, and to have been the general Opinion of our most orthodox and able Divines, from the Time of the Reformation to this Day: This Doctrine hath, in the most solemn Manner, been taught in that University, whereof he hath been for more than twenty Years a Member; this hath been often, with publick Approbation of each House of Parliament, preached and printed; and in Terms of greater Force than any used by the said *Henry Sacheverell*, hath by the Right Reverend Fathers of our Church, dead and living, been avowed and maintained.

And the said *Henry Sacheverell* was the rather induced to preach against the Doctrine of Resistance of the supream Power upon the fifth Day of *November*, because on that Day the Church commemorates our Deliverance from the traiterous Attempts of rebellious Papists, and because the Lawfulness of resisting the supream Power, was originally a Popish Doctrine; for which Reasons, as he humbly conceives, the Rubrick of the Office appointed for

that Day, by her late Majesty Queen *Mary* (of blessed Memory) directs, That after the Creed, if there be no Sermon, shall be read one of the six Homilies against Rebellion.

Whilst therefore the Church of *England* as by Law established, is in a safe and flourishing Condition under her Majesty's happy Administration, whilst Popish Tenets are by all good Protestants condemned and abhorred, whilst the Laws of this Realm continue in their full Force and Vigour, the said *Henry Sacheverell* humbly hopes, that a dutiful Son of that Church, a sincere Protestant, and a faithful Subject of her Majesty, shall not suffer for asserting the Doctrine of Non-resistance of the supream Powers. But if this Doctrine be declared erroneous, and it should please God that he should suffer for asserting it, he trusts that God will enable him to shew his steady Belief of this Doctrine, by a meek and patient Resignation to whatever shall befall him on that Account.

Answer to the Second Article.

To that Part of the second Article which charges, that he the said *Henry Sacheverell* doth suggest and maintain, *that the Toleration granted by Law is unreasonable, and the allowance of it unwarrantable;* the said *Henry Sacheverell* saith, That, upon the most diligent Enquiry, he hath not been able to inform himself that a Toleration hath been granted by Law; but admits, that an Act did pass in the first Year of King *William* and Queen *Mary*, intituled, *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws.* Which Exemption the said *Henry Sacheverell* doth not any where maintain or suggest to be unreasonable; or that the Allowance of it is unwarrantable; but hoped, that he had prevented any such Misapprehension, by declaring his sincere Meaning in these Words, contained in his Sermon preached at *St. Paul's*; — *I would not be here misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence which the Government hath condescended to give them, which I am sure all those who wish well to our Church, are ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescribed them.*

If there be any other Expressions concerning Toleration, which may seem to carry a dubious Sense in any other Parts of his Sermon, he hopes that they will not be applied to the Exemption granted by Law, but will be interpreted agreeably to his avowed Approbation of that Law.

And to such Part of the said second Article as charges, that the said *Henry Sacheverell* asserts, *That he is a false Brother with Relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience;* he the said *Henry Sacheverell* saith, That he having so plainly declared himself in Favour of the Exemption granted by Law, when he blames those, who, upon all Occasions, defend Toleration and Liberty of Conscience, cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence which he himself approves and defends: He doth indeed suggest it to be one Part of the Character of a false Brother, *upon all Occasions to defend Toleration and Liberty of Conscience; and to excuse the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high.* Which universal Defence of Toleration, and Excuse of Separation, attended with the laying the Fault of such Separation

tion upon the true Sons of the Church, are by him jointly mentioned in one and the same Clause of the Sentence, and in one and the same Branch of the Character. So that his Reflection doth not extend to all who defend Toleration and Liberty of Conscience, much less to those who defend the Exemption granted by Law to Protestant Dissenters; but to such only, who at the same Time they defend universal Toleration and Liberty of Conscience, do also excuse the Separation, and lay the Fault thereof upon the true Sons of the Church, for carrying Matters too high. And these he did then, and still doth, with all Humility, conceive to be justly blameable, and, if Members of this Church, to be false Brethren.

And as to that Part of the second Article, whereby the said *Henry Sacheverell* is charged with asserting, *That Queen Elizabeth was deluded by Archbishop Grindall, to the Toleration of the German Discipline*; he the said *Henry Sacheverell* saith, he humbly conceives he hath good Authority from the Histories and Monuments of those Times for such Assertion; but whether he hath, or hath not, he humbly apprehends such Assertion to be no Proof of his maintaining or suggesting, That the Exemption of Protestant Subjects dissenting from the Church of *England* from the Penalties of certain Laws, granted by an Act made in the first Year of the Reign of King *William* and Queen *Mary*, (which Exemption he supposes to be intended by the legal Indulgence or Toleration granted to Dissenters, mention'd in the Preamble of the Articles, and by the Toleration granted by Law, mentioned in this second Article) is unreasonable, or the Allowance of it unwarrantable. For he is humbly of Opinion, that there is a wide and manifest Difference between a Toleration of the *German* Discipline, and an Exemption of Protestant Dissenters from the Penalties of certain Laws; between a Toleration allowed merely by the Regal Power, and an Exemption granted by Act of Parliament; which Exemption he is so far from thinking unreasonable or unwarrantable, that from the bottom of his Heart he wisheth it, under the same Restrictions and Limitations, extended to all her Majesty's Protestant Subjects throughout the whole Kingdom of *Great Britain*.

And as to such Part of the second Article, whereby the said *Henry Sacheverell* is charged with scurrilously calling the said *Archbishop Grindall* a false Son of the Church, and a perfidious Prelate; the said *Henry Sacheverell* humbly hopes, that any harsh Expressions he hath used concerning that Prelate, may be rather excused, because the said *Archbishop* having permitted Innovations to be obtruded on the Church, did thereby incur the high Displeasure of so good and pious a Princess as *Queen Elizabeth*, by whose Order he was suspended, and continued under such Suspension to the Day of his Death. However, the said *Henry Sacheverell* presumes, that no Words spoken of an *Archbishop* above one hundred and twenty Years since deceased, will, in Construction of Law, amount to an High Crime and Misdemeanor.

And as to such Part of the second Article, whereby the said *Henry Sacheverell* is charged with maintaining, *That it is the Duty of superior Pastors to thunder out their Ecclesiastical Anathema's against Persons entituled to the Benefit of the said Toleration*; he the said *Henry Sacheverell* saith, That he doth not maintain or suggest that it is the Duty of superior Pastors to thunder out Ecclesiastical Anathema's against Persons entituled to the Benefit

of the Toleration; which Persons, where he speaks of such *Anathema's*, are neither by him mentioned nor intended; but if the Expressions by him unapplied to any, must be determined to any one sort of Persons, he humbly conceives, that the Connection of his Discourse will determine them to those schismatical and factious Persons, who take Permission for Power, and advance Toleration immediately into an Establishment; and such schismatical and factious Persons, he humbly apprehends, are not the Persons entituled to the Benefit of the Act of Exemption, which was designed only to give some Ease to scrupulous Consciences in the Exercise of their Religion.

And as to the last Part of the second Article, whereby the said *Henry Sacheverell* is charged with insolently daring or defying any Power on Earth to reverse such Sentences; the said *Henry Sacheverell* saith, That the Sentence which he the said *Henry Sacheverell* dares any Power on Earth to reverse, is such, and such only, as is ratified in Heaven; and such Sentence he still affirms to be by any earthly Power irreversible; and hopes it will not be thought Insolence in him to affirm, what he conceives would be Blasphemy in any one to deny: And doth further acknowledge himself firmly to believe, that some Sentences pronounced by the Pastors of the Church are ratified in Heaven; and that some Persons exempted from Punishment by the particular Laws of the Land, may yet, by the Laws of Christ, be justly liable to such Sentence; and that Schism, or a causeless Separation from a Church imposing no sinful Terms of Communion, is a Sin, which exposes the Persons guilty thereof to the Censures of the Church.

Answer to the Third Article.

As to so much of the third Article, as charges the said *Henry Sacheverell*, *That he doth falsely and seditiously suggest and assert, that the Church of England is in a Condition of great Peril and Adversity under her Majesty's Administration; and that, in order to arraign and blacken the said Vote and Resolution of both Houses of Parliament, approved by her Majesty, he, in Opposition thereto, doth suggest the Church to be in Danger*; the said *Henry Sacheverell* denies that he hath either asserted or suggested the Church of *England* to be in a Condition of great Peril and Adversity under her Majesty's Administration; but he doth freely acknowledge, that he hath in his Sermon suggested, *That when National Sins are ripened up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom, debauched in Principles, and corrupted in Manners, and instead of the true Faith, Discipline and Worship, given over to all Licentiousness both in Opinion and Practice, to all Sensuality, Hypocrisy, Lewdness, and Atheism, then we, (that is evidently) all the Members of such a Church or Kingdom, are in Danger in such deplorable Circumstances.* And this Suggestion of Danger arising to a Church and Kingdom from Vice and Infidelity, he humbly presumes is not opposite to the Vote of the two Houses, or Seditious, but entirely agreeable to what is solemnly declared in an Act of Parliament made in the ninth and tenth of his late Majesty King *William* the Third, for the more effectual suppressing of Blasphemy and Profaneness; wherein it is affirmed, *That many Persons had of late Years openly avowed and published many blasphemous and impious Opinions, contrary to the Doctrines*

trines and Principles of the Christian Religion; greatly tending to the Dishonour of Almighty God, which might prove destructive to the Peace and Welfare of this Kingdom: And he conceives, that since the passing that Act, the detestable Crimes for the effectually suppressing of which that Act was intended, have greatly increased. And the said Henry Sacheverell saith, the Suggestions by him made of Dangers arising to us from Vice and Infidelity, he apprehends to be in no wise more seditious or repugnant to the Vote of the two Houses approved by her Majesty, than the like Suggestions occurring in the solemn Prayers of the Church authorized by her Majesty, and frequently used before each House of Parliament; wherein we beseech God, that no Sedition may disturb the State, nor Schism distract this Church; and that he would give us Grace seriously to lay to Heart the great Dangers we are in by our unhappy Divisions.

And as to so much of the said third Article, whereby 'tis charged, *That the said Henry Sacheverell, as a Parallel, mentions a Vote, That the Person of King Charles the First was voted to be out of Danger, at the same Time that his Murderers were conspiring his Death; thereby wickedly and maliciously insinuating, that the Members of both Houses who passed the said Vote, were then conspiring the Ruin of the Church;* he the said Henry Sacheverell doth say, That he doth not draw any Parallel between the Vote concerning the King's Person, and the late Vote of the two Houses, which he neither there, nor elsewhere in his Sermon, mentions: But had he suggested one Vote to be parallel to the other, which he hath not, yet would not he thereby have wickedly and maliciously insinuated, that the Members of both Houses, who passed the late Vote, were then conspiring the Ruin of the Church; but would only have intimated, that as some Persons were conspiring the Murder of the King, whilst others, no way privy to their wicked Intentions voted his Person to be out of Danger; so when the two House voted the Church of England to be in no Danger under her Majesty's Administration, there might be some others who were conspiring the Ruin of the Church; and many others, who, by their Vice and Infidelity, were drawing down God's Vengeance both on Church and Kingdom.

As the Vote of both Houses, made four Years ago, did concern those only who did then insinuate the Church of England to be in Danger under her Majesty's Administration; so it cannot, he presumes, affect those who do now suggest the Christian Faith, which is the Foundation upon which every Christian Church stands, to be endangered by those atheistical and irreligious Principles which are daily from the Press propagated amongst us, notwithstanding the Provision made by the said Act for suppressing Blasphemy and Profaneness: So that the said Henry Sacheverell thinks, that he might with Truth affirm, (as he did in his Sermon preached at Derby) *That there were never such outrageous Blasphemies against God and all Religion, Natural as well as Revealed, vented publicly with Impunity, in any Christian Church or Kingdom in the whole World, as at present in our own;* of which Assertion the said Henry Sacheverell is ready to produce undeniable and ample Proofs, if called thereto.

Answer to the Fourth Article.

As to the fourth Article, it contains several Charges of a very high and criminal Nature, of which

the said Henry Sacheverell knows his Heart to be entirely innocent; and he observes with Comfort, That whereas in the former three Articles he is said to have maintained or asserted, as well as to have suggested, the Doctrines and Things therein laid to his Charge, in this fourth Article he is not accused of maintaining and asserting, but barely suggesting what is therein contained: And he humbly hopes, that bare Suggestions or Insinuations, could they with any Colour or Probability be made out, as he is fully satisfied they cannot, will not, under the most mild and gracious Government, (at a Time when several new Laws have been made for securing the Liberties of the Subject) by your Lordships, the great Guardians of our Laws and Liberties, be adjudged sufficient to involve an English Subject in the Guilt and Punishment of high Crimes and Misdemeanors.

To the several Parts of the said fourth Article, the said Henry Sacheverell doth in all Humility answer: As to such Part thereof whereby it is charged, *That the said Henry Sacheverell, in his said Sermons and Books, doth falsely and maliciously suggest, that her Majesty's Administration, both in Ecclesiastical and Civil Affairs tends to the Destruction of the Constitution;* he the said Henry Sacheverell saith, That he hath not made any mention, in either of his Books or Sermons, of her Majesty's Administration in Ecclesiastical or Civil Affairs, or of her Ministers: So far is he from suggesting that her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution, that amongst the inestimable Blessings which are owing to our Deliverance annually commemorated on the fifth of November, he reckons this to be one, *That her Majesty, the good and pious Relict of the Royal Family, sits now happily upon the Throne of her Ancestors; and prays that God may long preserve Her, for the Comfort and Support of the Church; and professeth, that what he spoke proceeded from a tender Concern for her Majesty's Person and Government:* And in the Dedication also of his said Sermon preached at St. Paul's, solemnly declares, as he did before in his Discourse, *That his only Aim and Intention was earnestly to contend for the Safety, Rights, and Establishment of her Majesty, together with those of the Church.*

And as to such Part of the said fourth Article, whereby it is charged, *That the said Henry Sacheverell doth suggest, that there are Men of Characters and Stations in the Church who are false Brethren;* the said Henry Sacheverell saith, That the false Brethren, as described by him in his Sermon, are either those who propagate false Doctrines, or who give up the Discipline and Worship of the Church, or who are for a Neutrality in Religion, or who wish well to the Church of England, and are ready to sacrifice their Persons and Estates in their Vindication, but do not shew their Zeal in the Communion of the Church, as well as for it, in obeying her Precepts, as well as defending her Rights. These being the several sorts of false Brethren enumerated by the said Henry Sacheverell, if he should have suggested that there are Men of Characters and Stations in Church and State, (Words by no Means restrained to the highest Characters and Stations) to whom the Denomination of false Brethren, in some or more Senses of that Word, as by him interpreted, doth belong, he humbly hopes that such Suggestion would not be deemed False, Malicious, or highly Criminal.

And as to such other Part of the said fourth Article, whereby it is charged, That the said Henry Sacheverell doth suggest, *That there are Men of Characters and Stations in the Church and State, who do themselves weaken, undermine, and betray, and do encourage and put it into the Power of others who are professed Enemies, to overturn and destroy the Constitution and Establishment;* the said Henry Sacheverell denieth that he suggesteth any such Things concerning Men of Characters and Stations in Church and State. Where he speaks of those *who weaken, undermine, and betray, and encourage and put it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment,* there Men of Characters and Stations are not mentioned by him; and where he mentions Men of Characters and Stations, twelve Pages afterwards, the only Place wherein he mentions them, there he speaks nothing of weakening, undermining and betraying, or encouraging and putting it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment: And hopes therefore that he shall be no ways answerable for a supposed Reflection, which depends upon the Conjunction of Passages so widely distant from, and so little relating to each other. The Weakners, Underminers, and Betrayers of our Constitution, and the Encouragers to whom the said Henry Sacheverell doth in any Part of his Sermon refer, will, he presumes, upon a candid Examination of those Passages, appear to be one of these three Sorts of Persons; either, *First, such as by their Writings endeavour to subvert the Foundation of our Church and State; or, Secondly, such, whether Writers or others, who are for a Latitudinarian Heterogeneous Mixture of all Persons of what different Faith soever, uniting only in Protestancy, which would let into her Bowels those who neither believe her Faith, own her own Mission, submit to her Discipline, or comply with her Liturgy; which he afterwards stiles the Model of an universal Coalition; or, Thirdly, those occasional Conformists, who have so far eluded the Corporation and Test Acts, by their abominable Hypocrisy, as to have undermined the Foundations, and endangered the Government, by filling it, (as far as they could) with its professed Enemies, that is, with themselves.* Of all these, and their Encouragers, the said Henry Sacheverell confesses himself to have suggested that they do, in his Opinion, weaken, undermine, and betray the Constitution: But that either these, or their Encouragers, are Men of Characters or Stations in the Church or State, he hath not any where suggested.

And as to such other Part of the said fourth Article, which charges the said Henry Sacheverell with charging her Majesty, and those in Authority under her, both in Church and State, with a general Male-Administration; the said Henry Sacheverell saith, That he abhors the Thoughts of bringing any Charge against her sacred Majesty, whom he never mentions, but in Terms of the profoundest Duty and Respect. Nor doth he tax those in Authority with a General, or with any Male-Administration; which is a Word he hath never used, nor (as far as he can find) any other Word or Words by which the Thing is imply'd. So far is the said Henry Sacheverell from making any undutiful Reflections upon her Majesty or her Administration, that in the several Writings that he has published, since her happy Accession to the Throne, particularly in one which is an avowed Defence of her Title to the Crown, and Justifica-

tion of her entering into a War with France and Spain, he hath expressed himself with the most hearty and loyal Zeal for her Majesty's Person, Government, and Administration.

And as to such other Part of the said fourth Article, whereby it is charged, *That the said Henry Sacheverell, as a publick Incendiary, persuades her Majesty's Subjects to keep up a Distinction of Factions and Parties;* the said Henry Sacheverell saith, That he is so far from being guilty of this Charge, that in his said Sermon he invites the Separatists to renounce their Schism, and come sincerely into the Church; and complains of those who have villainously divided Us with the knavish Distinctions of High and Low Church-Men, and wishes we may be one Fold under one Shepherd; and that all those invidious Distinctions that now distract and confound Us, were lost, so that we might be terrible, like an Army with Banners, to our Enemies, who could never break in upon such an uniform and well compacted Body.

And to such other Part of the said fourth Article, as chargeth, *That the said Henry Sacheverell instills groundless Jealousies, and sements destructive Divisions among her Majesty's Subjects;* the said Henry Sacheverell saith, That in his said Sermon, he, on the contrary, rebukes and condemns those, who, by false Insinuations, and raising groundless Jealousies and Fears, embroil the Publick, and bring it into Confusion.

And as to such other Part of the fourth Article, whereby it is charged, *That the said Henry Sacheverell excites and stirs up her Majesty's Subjects to Arms and Violence;* the said Henry Sacheverell saith, God forbid that he should be guilty of so heinous a Crime, who asserts the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever; which Assertion he conceives to be the chief, if not only Ground of the Charge exhibited against him in the first Article.

In Confutation of this Charge, he begs Leave to recite one Passage out of his Sermon preached at Derby in the following Words: *We may be Partakers of other Mens Sins, if we do not, to the utmost of our Power, endeavour to prevent or obstruct their Commission, when they manifestly endanger the Good of the Publick: As we are Members of any Government, or Society, we are all obliged in Point of Honour, Interest and Conscience, to maintain its Security, promote its Welfare, and guard it against factious Designs, or seditious Conspiracies, that may threaten its Constitution, discompose its Peace, or violate and subvert its Laws. God and Nature have invested every Subject from his Cradle, with a Commission to engage, discover and disappoint the Enemies of his Church and Country; and he that is either privy to, industriously conceals, or any way abets their schismatical, illegal or rebellious Enterprizes, both in the Eyes of human as well as divine Laws, is an Accomplice and Partaker in the Guilt, a Traytor to God and his Prince, a Patron and Protector of Injustice, and a common Adversary to himself as well as all Mankind.* And the said Henry Sacheverell hopes, what he hath said in the Dedication of the same Sermon, *That there are not wanting some to preach the Truth, and others to support it, at the Expence of their Lives and Fortunes,* will not be construed as exciting her Majesty's Subjects to Sedition and Rebellion; since that Truth which he commends some for preaching, and others for supporting, is by him opposed to the Attempts of those who betray and run down the Principles