

Q. Whether he has seen her in the Chamber when the Dutchess was a-bed there?

A. Yes, very often.

Q. How came she that was Cook-maid to be in the Chamber?

A. He says he can't tell the Reason, or what Business she had there; but there she was for one Thing or other, best known to her self, he does not know.

Q. Whether when the Dutchess was at Fox-Hall, any Relations of Sir John Germaine came to her there?

A. Yes, they would come and see her.

Q. Who were they?

A. Mrs. Brienne and Mrs. Judith; he says he does not remember that Mrs. Brienne has lain there, but Mrs. Judith has.

Q. Where it was, and upon what Occasion he met with *Elleanor Vanefs* after he carried her over into *Holland*?

A. I met her in *Amsterdam*.

Q. Whether he came over into *England* with her, and upon what Occasion?

A. I met her at *Amsterdam*; and she ask'd me what Business I had there, whether I had a Matter; and I said No.

Q. When was that?

A. About a Year and a half, to his Remembrance.

Q. Whether he came over with her the last Time?

A. Yes, he came over into *England* with her in Company, about six or seven Weeks since.

Q. Where has she been since he came into *England*?

A. She was in Lodgings.

Q. Where?

A. He put her into private Lodgings, that she should be secure.

Q. Why did you put her into private Lodgings?

A. Because he was afraid, in the Circumstances that he is now, that some body might give them some Affront, or do them an Injury; and therefore he thought it best to be in some Place of Security.

Q. What particular Reason had he why he should take private Lodgings, or have that Fear upon him?

A. He says, that when he was last here, Sir John Germaine came up one Night in a great Passion, and swore, and said, some body would betray him.

Q. I desire he might repeat that again?

A. Sir John Germaine came one Night up Stairs, and said, that *Nicholas*, this Rogue, would betray him.

Q. Who was that?

A. He says 'twas one *Nicholas Rusbett*, that served him or both, he can't tell, but he was in his Service; that he heard these Words, and that he thought in these Circumstances, the securest Way would be to take private Lodgings.

Q. What brought him into *England* the last Time? Whether he was spoke to, to come, and for what Purpose?

A. He says, that about two or three Years ago he happened to meet with a Friend, and he desired him if he heard of a good Place for him in *England*, to let him know of it, for he would go and serve there again.

Q. Whether he was spoke to, to come over, or was *Elleanor Vanefs* spoke to, and what was the Occasion?

A. My Lord ask'd him if he would speak the Truth, and do him any Service; and whether he would bring this Girl along with him.

Q. Who was it that spoke to him?

A. My Lord Duke and my Lord *Howard*.

Q. When was that?

A. It was about a Year ago.

Q. Where was he at that Time?

A. He was in *London*.

Q. Did he go over of his own Accord, or was he sent into *Holland*, who it was that sent him over, and for what?

A. It was a Friend of his Acquaintance, that he desired, in case he heard of a Place, to send for him.

Q. Who sent for *Elleanor Vanefs* over?

A. He says, that after he had promised my Lord Duke and Lord *Howard* to speak the Truth of what he knew, they desired him, that if he met with *Elleanor Vanefs*, to desire her to come over, and speak the Truth of what she knew.

Q. How long after did you meet with *Elleanor Vanefs*?

A. 'Tis about twelve Months since I met with her.

Q. When was the first Time that he spoke to *Elleanor Vanefs* about her coming over to speak the Truth?

A. 'Tis about a Year since.

Q. How long is it since they resolved to come over?

A. About twelve Months.

Q. Whether he was acquainted with *Elleanor Vanefs* before he met with her in Sir John Germaine's Service?

A. He says never.

Q. You say you went from Sir John Germaine's Service in *Suffolk-street*, and you say when you came to him again he lived in the *Cock-pit*; did you find *Elleanor Vanefs* there then?

A. He says he found her at the *Cock-pit*.

Q. When he waited on Sir John Germaine in his Chamber, who waited on the Dutchess in her Chamber?

A. There was one *Susannah Barrington*, and *Elleanor Vanefs*.

Q. But who waited upon her in her Chamber?

A. *Susannah Barrington* did, to dress her.

Q. Whether he had seen any of Sir John Germaine's Relations in the Chamber, when this Lady and Sir John Germaine were a-bed together?

A. Yes.

Q. Name them?

A. He says, he saw Mrs. *Brienne*, and Mr. *Daniel Germaine* there.

Q. Did you see Mrs. *Judith* there?

A. He does not remember that he saw Mrs. *Judith* in the Room while they were a-bed together, but the other he hath seen when they were a-bed together, but at different Times.

Q. Whether ever he hath seen the Dutchess at any other Place?

A. He has been at the Chapel with her, and elsewhere.

Q. Where?

A. At my Lord *Peterborow's*, and in her own House?

Croſs Examined.

Q. I deſire he may reduce this to a Certainty, what Time he went out of *England*, and look upon his Note again?

He look'd upon his Note, and 'twas dated Eighth February, One thouſand ſix hundred ninety-two.

Q. How long after this went he out of *England*?

A. He went away as ſoon as the Wind was favourable.

Q. Can he recollect the Time?

A. He ſays 'twas ſome time before *Eaſter*, for he came into *Holland* about *Eaſter*.

Q. When he told his Grace the Duke of *Norfolk* and Lord *Howard* he would be true to them, whether he was in any Service at that Time?

A. No, he was in no Service at that Time.

Q. How long had he been out of Employ?

A. He has none yet.

Q. But how long had he been out of Employ, or Service, before he made this Propoſal to the Duke, or my Lord *Howard*?

A. He ſays, he went away about the Twenty-ſeventh of *June*.

Q. Is it the ſame Year his Paper ſpeaks of, that he ſpoke to my Lord Duke?

A. No, 'twas not; he ſpoke to my Lord Duke about twelve Months ago.

Q. But how long had he been out of Service when he ſpoke to my Lord Duke? when did he leave Sir *John Germaine* the laſt Time?

A. 'Tis about three Years and half ago; 'twill be four Years in *June* next.

Q. Has he been in any Service ſince that Time?

A. No, he hath not.

Q. How has he lived ſince then?

A. He ſays he has ſomething of his own in his own Country, upon which he may ſubſiſt ſome time.

Q. I think he ſaid, he ſaw Sir *John Germaine* and the Dutcheſs in Bed together, in the Houſe where ſhe now lives?

A. Yes.

Q. Then I deſire he will tell, if he knows any of the Dutcheſs's Servants that were about her at that time?

A. Yes, he does.

Q. Then, that he will name them?

A. *Henry Keemer*.

Q. What's become of him?

A. They told he was dead; and there was *Suſan Barrington*.

Q. I deſire he will tell of ſome of the Servants that lived with the Dutcheſs at that Time, beſides that Perſon that is dead, and the other which is gone beyond Sea, as they ſay?

Mr. Northey answer'd. We don't ſay ſhe is gone beyond Sea.

A. He does not know any other.

Q. Then, that he will tell what Month he ſaw them in Bed together?

A. He can't remember the Month, or the Day; but if they will aſk him the Reaſon why he remembers it, he will tell it them.

Q. If you can come to any Certainty about the Time of the Year, or the Month?

A. He can't ſay the Month, or any particular Time.

Q. What Servant he ſaw in the Houſe, or who let him in?

A. He had himſelf the Key of the lower Room, and could come in when he pleas'd.

Q. Whoſe Servant was he at this Time he ſpeaks of? Whether he was a Servant to the Dutcheſs or to Sir *John Germaine*?

A. He was Servant to Sir *John Germaine*.

Q. He was ſaying he could tell a Reaſon to fix the Time, let him recollect himſelf of the Time?

A. He can't remember the Time, but he came into the Room to bring a Clyſter, and he was deſired to ſtay a little till my Lady Dutcheſs got up.

Q. That he may be poſitive whether he had a Key to the lower Room of the Dutcheſs's Houſe?

A. He ſays he had a Key of the Door that goes into the Park, and he could come into the Houſe by it, for it was the Key of the Houſe.

Q. What Servant was it that brought him up, for that Key only let him into the lower Room?

A. Sometimes *Suſan Barrington*, and ſometimes *Henry Keemer*.

Q. What Room the Lady Dutcheſs lay in?

A. 'Tis a Room that looks into the Park.

Q. 'Tis not a Ground-Room, I ſuppoſe?

A. No, 'tis up Stairs.

Q. How many Stories?

A. He can't tell what Degree it was.

Q. Being aſk'd that Queſtion again upon the reading his Depoſitions, he ſays he can't tell how many Stories; but, if you pleaſe, he will deſcribe the coming into the Room as well as he can.

Q. Deſcribe the Coming into the Room?

A. That as you come upon the left Hand, there is a Way to go into the Dutcheſs's Room; when you have paſſed the little Chamber-door, you go into a Place full of *China*; and, after that, you come to the Dutcheſs's Bed-chamber. On the other ſide, going up Stairs, there is a little Room, where *Suſan* told him ſhe lay; and afterwards you come into a Room where the Chimney is, as he thinks, on the right Hand, and he thinks there are two Windows that look into the Street, he is not very certain; and in the Room upon the left Hand there is a Door into a great Room, and from that great Room you can go into the Lady Dutcheſs's Room. It was ſo at that Time, to the beſt of his Remembrance.

Q. How many Rooms are there upon a Floor?

A. There are a matter of 4 Rooms upon a Floor.

Q. Whether he has ſpoke with any body that he knows is acquainted with this Houſe ſince he was examined here before?

A. He ſays he has ſpoke to nobody ſince, that has given him any Account of the Houſe.

Q. Which Side of the Park does the Window of my Lady Dutcheſs's Room look into?

A. Towards the Pond where the Braſs Statue is.

Q. Does the Bed-chamber look towards the Braſs Statue?

A. He durſt not go to look out at the Window for fear of being diſcovered, but he could ſee the Water.

Q. Whether he knows the Horſe-Guards?

A. Yes.

Q. Whether he knows *Arlington*-Houſe?

A. Yes.

Q. Whether the Window does look towards *Arlington*-Houſe, or the Horſe-Guards?

A. He hath been there ſeveral times, but it was not his Buſineſs to go to the Window; but when he was in the Room he could ſee the Water.

Q. Whether he could tell which Way the Window look'd?

A. He did not live in the Houſe, but went there

there sometimes upon Messages; and when he was there, 'twas not his Business to go to the Window, but he could see the Water when he was in the Room.

Q. Whether the Window was on that side of the little Door that he came in, or on t'other side?

A. Upon the left Hand coming in. He says he has explain'd himself as to the entering in, and he can say no more to it.

Q. Was it one or two Pair of Stairs that the Dutchess lay?

A. He can't be positive, whether one or two Pair of Stairs.

Q. Who brought him up that Time he brought the Clyster?

A. Susan Barrington.

Q. Who told him, at the Cock-pit, 'twas the Dutchess of Norfolk?

A. Sir John Germaine, her self, and the whole House told him so.

Q. Did he before that Time know the Dutchess?

A. No.

Q. Did you never see other Women there besides this Lady?

A. Yes.

Q. Did you know all the rest that you saw there?

A. No, he did not know them all.

Q. Whether he was not told the rest of the Women were of great Quality too?

A. He never was told so, nor did he inform himself whether they were or no.

Q. At Fox-ball, and at the Cock-pit, I think, he spake as if he undress'd Sir John Germaine and the Dutchess; whether he undress'd them both?

A. Not the Dutchess.

Q. What Year was it they were at Fox-Hall?

A. It was before he went to Ireland, and after he came from Ireland; but he can't precisely tell the Time.

Q. Whether he has been in any Service since One thousand six hundred ninety-six, when he left Sir John Germaine's?

A. No.

Q. Whether when he came, about a Year ago, into England, there was Application made to him in order to make a Discovery; or, whether he offer'd of himself to make it?

A. He never did offer himself.

Q. Who was it that first ask'd him the Question?

A. 'Twas my Lord Howard.

Q. Where did you meet my Lord Howard? and upon what Occasion?

A. He says, That 'twas that Person that he had address'd himself to, to get him into Service here, that was the Occasion of their meeting together.

Q. Did you know the Lord Howard before?

A. No.

Q. Where was the Place they met?

A. He call'd him to his House.

Q. My Lord, or that Person?

A. He says, That Person to which he address'd himself to get a Place, told him he had found one.

Q. Name that Person.

A. Richardson.

Q. Where does he live?

A. I don't know.

Q. Were you acquainted with him before?

A. Yes.

Q. Where had you been acquainted with him?

A. At London; 'tis a Woman.

Q. Whether he can describe the Room, or the Furniture of the Room, where this Noble Lady and Sir John Germaine were a-bed together, where she lives now?

A. He can't remember any thing of the Furniture.

Q. Was it hung or wainscoted?

A. He says, he can't tell, and yet was there often.

Q. Pray, who was the Clyster for?

A. For Mr. Germaine.

Q. Where was it to be administred?

A. A-bed.

Q. Who was a-bed?

A. My Lady Dutchess was a-bed too.

Q. Was it to be administred at the same time as he and the Dutchess were a-bed together?

A. No.

Q. Was the Dutchess there?

A. He laid the Syringe to the Fire-side, till such time as the Dutchess rose.

Q. Apothecaries are exact in point of Time in making their Bills.

A. He says, I compos'd the Clyster my self, but he did not compose it at the Dutchess's House, but at Mr. Germaine's.

Q. Did you stay with Sir John Germaine till all was over?

A. No; as soon as he had given it him, he went home to Mr. Germaine's House.

Q. Whether he pretends to speak of any other Time he saw the Dutchess in Bed with him at her House in Duke-street, but when he carried him the Clyster?

A. Yes, my Lord, he says he has.

Q. Let him tell the Times and Circumstances.

A. He says, he can't very well remember the Times, but he had sometimes Business there, to bring and carry Letters.

Q. When was that Time of the Clyster?

A. It was about two Months before he left them.

Q. Was that the last time he saw them together?

A. That was the last Time.

Q. How long before that did he see 'em together?

A. Long before that Time, in the same House.

Q. He says, he has seen Sir John Germaine and the Dutchess in Bed together elsewhere. Did he never see them in Bed together at the Mill-bank?

A. He has seen them there two or three Times a-bed together.

Q. When did your Master order you to prepare a Clyster?

A. He had Order to come and wait for Mr. Germaine at the Dutchess's; and, that Mr. Germaine coming to the Dutchess's late, he order'd him to bring the Clyster next Morning.

Q. At what Time he came the next Morning?

A. He had Order to bring it at 9 a-Clock, and he brought it at the appointed Hour, and waited in the little Room where Susan was till he was call'd in.

Q. He says, he waited for Sir John Germaine, by his Orders, at the Dutchess's, till 'twas late; which of the Dutchess's Servants did he keep company with?

A. He says, he remembers very well it was Mr. Keemer.

Q. Whether that time that he saw Mr. Germaine and the Dutchess in Bed together at Mill-bank, if it was after the first time he was sent out of England when the Bill was depending before the Lords?

A. 'Twas after.

Q. What Year did you see them a-bed together at Mill-bank?

A. 'Twas a day or two before Mrs. D'avenant di'd. A day or two before she di'd Mr. Germaine came to Mill-bank, and staid there about eight Days.

Nicola Haujeur.
Depositions

Depositions of *William Bayly*.

Die Sabbati 25 Februarii, 1699.

William Bayly ſworn.

Q. D'YE know Sir *John Germaine* and the Dutcheſs of *Norfolk*?

A. Yes.

Q. Was you Servant to Sir *John Germaine*?

A. Yes.

Q. In what Capacity?

A. Three Years I wore his Livery, and three Years I was his Steward.

Q. When did you firſt come to live with him?

A. Three Weeks before the King was crown'd.

Q. Was there any Converſation between Sir *John Germaine* and the Dutcheſs of *Norfolk*? D'ye know that they liv'd together, or kept Company one with another?

A. No; I never knew them live together, but ſeen them keep Company together, but never ſaw any Incivility between them.

Q. Where ſaw you them in Company together?

A. I ſaw them in Company in my Maſter's Houſe.

Q. How long ago?

A. About five Years ago.

Q. Where did your Maſter then live?

A. He liv'd then where he does now.

Q. Did the Dutcheſs of *Norfolk* ever lie there?

A. Never, to my Knowledge.

Q. What was the Time ſhe uſually came there?

A. Commonly in an Afternoon.

Q. How often have you ſeen her there?

A. Two or three times.

Q. At what Time did ſhe uſe to come? and, At what Time did ſhe uſe to go away?

A. She uſed to come there about Four or Five a-Clock in the Afternoon, and might ſtay there about two or three Hours.

Q. You are upon your Oath, and pray tell whether you ever ſaw them in Bed together?

A. By all that's good, I never ſaw them in Bed together.

Q. Did the Lady Dutcheſs uſe to come thither Mask'd or Unmask'd?

A. She us'd to come Mask'd, but put it off when ſhe came into the Houſe.

Q. Who uſed to come with her?

A. There uſed to come Mr. *Keemer* with her.

Q. What Company? Did no other uſe to come with her to Sir *John Germaine's* Houſe?

A. Yes, another Servant, Mr. *Carter*.

Q. Who was in the Room with them in Sir *John Germaine's* Houſe?

A. Mr. *Keemer* ſtay'd commonly with them all the Time they dined, and after Dinner; the other Servants and I were in the next Room to them, and commonly, when they had Occaſion, they would call Mr. *Keemer*.

Q. Was there no other Servant but Mr. *Keemer* that they uſed to call upon?

A. Yes; a Gentlewoman, Mrs. *Suſan Barrington*.

Q. Have you ſeen her lately?

A. No, not theſe ſix Months.

Q. D'ye know if your Maſter uſed to go to the Dutcheſs's Houſe?

A. Yes, I have heard ſo, but I can't ſay ſo poſitively.

Q. Did you ever go with them to the Dutcheſs's Houſe?

A. No; but I have gone with them as far as the *Horſe-Ferry*.

Q. When was the laſt Time you ſaw them together?

A. I can't tell; I have been out of my Maſter's Service theſe four Years.

Q. How long before you left your Maſter's Service, d'ye think it was that you ſaw them together?

A. I can't tell, but I think it might be about half a Year.

Q. He has gone with his Maſter as far as the *Horſe-Ferry*; pray then let him be aſk'd where he left his Maſter?

A. I left him at the *Horſe-Ferry*.

Q. What Orders did your Maſter give you when you left him?

A. He order'd me to go Home, and keep the Houſe.

Q. D'ye know whither your Maſter was gone then?

A. I may judge he went to the Dutcheſs, but I can't ſwear he went there.

Q. Did Sir *John Germaine* come home to Bed that Night?

A. Some Nights he came, and ſome he did not.

Q. Did you carry Cloaths to him at any Time?

A. I have carried Cloaths for him to Mr. *Keemer*, the Dutcheſs's Servant.

Q. Where did *Keemer* live when you carried Cloaths to him?

A. In a little Street going to the *Bowling-Alley*.

Q. Who did he live withal?

A. He told me he lived with the Dutcheſs, but he was a Houſe-keeper, and had a Houſe there.

Q. Did you always carry Cloaths to Mr. *Keemer* for your Maſter?

A. Sometimes I carried his Cloaths to Mr. *Keemer*, and ſometimes Mr. *Keemer* came to me for them.

Q. Did you apprehend that your Maſter was then at the Dutcheſs's, or at Mr. *Keemer's*?

A. I can't tell where he was: How can I tell? I answer as punctually as I can.

Q. When *Keemer* came to you for Cloaths, what Account did he give you where your Maſter was?

A. He gave no Account.

Q. Whether did you ever ſee the Dutcheſs and your Maſter together at any other Place but his own Houſe?

A. Never.

Q. When you carried the Cloaths to *Keemer's*, did your Maſter lie at Home that Night or not?

A. Sometimes he lay at Home, and ſometimes he did not: Many times my Maſter has been at the Dutcheſs of *Mazarine's* from Four a-Clock this Day till Twelve the next.

Q. Repeat it again, for that's material.

A. My Maſter has taken his Chair at his own Back-door at Four a-Clock on a *Saturday*, and not come Home till *Sunday* at Twelve a-Clock.

Q. Where has your Maſter been at that Time, when he ſtay'd out all Night?

A. At the Dutcheſs of *Mazarine's*; and when

he lost his Gold, he has sent to me for more Gold.

Q. Did he ever send to you for any Cloaths when he was there?

A. Never.

Q. D'ye know where he was when he sent to you for Cloaths?

A. No, indeed.

Q. D'ye know *Nicholas Hoster*?

A. Yes, I know him very well; I saw him here just now.

Q. Did you know him when he waited on Sir *John Germaine*?

A. Yes, he succeeded me, and I succeeded him again.

Q. You was Footman when you went to Sir *John Germaine*: When was that? and, What Year did you leave off your Livery, and serve him as his Steward?

A. I can't tell.

Q. He succeeded *Hoster*, and *Hoster* succeeded him: Pray let it be ask'd him, at what Time he came into his Master's Service, when he succeeded *Hoster*?

A. 'Twas about the same Time that the Trial was here before.

Q. How long was it e'er *Hoster* return'd again to serve Sir *John Germaine*?

A. To the best of my Knowledge, it was three Years; for I receiv'd and paid Money for my Master, and *Hoster* was away all that Time: *Hoster* won't deny it, if he were call'd in.

Q. You say that you succeeded *Hoster* at the Time when the Trial was here: How long before that Time did you return to your Master's Service?

A. About three Weeks before the King was Crown'd I came to my Master, and serv'd him three Years, and wore his Livery; and he was pleas'd, after Mr. *Hoster* went away, to make me lay out his Money, to be Caterer for him, and to keep his Gold, and to the best of my Knowledge 'twas three Years before *Nicholas* succeeded me again.

Q. How long was it before he came back again to serve Sir *John Germaine*?

A. Before I saw him in my Master's House, and that he took my Place from me, 'twas three Years.

Q. Did you not see Mr. *Hoster* in *England* before that Time that you went out of your Master's Service?

A. No; I beg your Lordship's Pardon, I will recollect my Memory for that; as I have a Soul to be sav'd, now 'tis come into my Mind, my Master sent for *Nicholas* into *Holland* about a Year before *Nicholas* did come over: My Master told me, before he came, that he would send for *Nicholas* again, and that I and *Nicholas* should have the Charge of his House. *Nicholas* came over, and we had the Play at our own House: *Nicholas* staid there some Time, but he did not like his Business, and so he went away again, because he could not have all the Money.

Q. About what Time did *Nicholas* come into *England*, after the Trial was before this House?

A. I can't resolve you.

Q. Had you no Certificate of Leave, or Discharge, when you left your Master's Service?

A. No; my Master was so kind, that he brought me immediately into the Excise, as soon as I was out of his Service.

William Bayly cross-examin'd, *Lunc* 26 Februarii, 1699.

Q. When you carried the Cloaths to Sir *John Germaine's*, was it the Time when you wore his Livery?

A. I carried no Cloaths to him when I wore his Livery?

Q. Had you no Discourse with the Dutchess's Agents since *Saturday Night*?

A. No, I have not seen them, nor don't know them.

Q. He says, he saw the Dutchess of *Norfolk* at the Cockpit, at Sir *John Germaine's* House where he now dwells: Pray recollect you self, that you may be positive as to the Time.

A. I can't resolve you as to the Year, 'tis so long ago; I believe 'tis about five Years ago.

Q. Can you be positive that it is not more?

A. To the best of my Knowledge, 'twas about five Years.

Q. Can you be so far certain, that you can say 'twas not more?

A. I can't swear 'twas more, but I believe it may be five Years, more or less.

Q. You say you saw her two or three times there: Was it all in one Year, near the same Time or Month? Can you reduce it to any Certainty?

A. I believe it might be in Summer.

Q. All in one Summer?

A. Yes, I believe, all in one; to the best of my Knowledge there was never a Winter between the Time that I saw her first and last.

Q. Did you know the Dutchess of *Norfolk* before that Time that you saw her in your Master's House, and took her to be the Dutchess of *Norfolk*?

A. I did not know her before the Trial was here.

Q. Did you know her any Time after that Trial, before the Time you saw her in Sir *John Germaine's* House?

A. I was not sure that it was she, only as I had it from Mr. *Keemer*.

Q. Then you don't undertake of your own Knowledge to say that it was she?

A. I can't swear that 'twas she, but as Mr. *Keemer* told me; I don't know whether I should know her now or not, 'tis so long since I saw her; I believe it is five Years, if not more.

Q. Did you see her before or after you saw her at Sir *John Germaine's* House?

A. The first time they told me 'twas she, I met her in her Coach in the *Pallmall*, with two other Gentlewomen with her, a little before the Trial was here: I followed the Coach, and the Dutchess went into some Lady's House in *Dover-street*, and they told me the Dutchess was the first Woman that went out; this is the first time that e'er I saw her, that I know of, 'till such time as *Keemer* told me 'twas she.

Q. Whether do you know *Nicholas*?

A. I know him very well.

Q. Can you tell how long it is since he came last into *England*?

A. No, he has been here two or three times in *England*, since I left my Master.

Q. How long before this Examination saw you him, or spoke with him?

A. I

A. I did not ſee him above theſe three Years.

Q. How long before you came hither as a Witneſs did you ſee him?

A. I have not ſeen him theſe three Years till I came hither to be a Witneſs, and did admire to ſee him here, that a Man that had got his Bread under his Maſter ſhould appear here againſt him, it is ſo ungrateful a thing.

Q. How came it you had ſo much Curioſity as to follow the Dutcheſs's Coach?

A. I had a Mind to ſatiſfy my own Humour.

Q. D'ye know how *Nicholas* lived ſince he was out of his Maſter's Service?

A. No, I never ſaw him, nor had any Account of him at all, nor have ſeen him theſe three Years till now.

Q. Did you know when *Nicholas* and *Elianoꝝ Vanefs* went out of *England*?

A. No, I never knew when they went, nor when they came.

Q. Don't you know what Buſineſs he went out of *England* about, the Time you took his Place?

A. I know not the Buſineſs he went out of *England* upon.

Q. Did he at any Time tell you he was to get away to hide himſelf from coming hither?

A. No, I heard not one Word from him at the Time of his parting.

Q. What reaſon had you to ſay upon the firſt Sight of *Hofier*, that he was ungrateful for coming hither?

A. I ſhould think my ſelf ungrateful to eat a Gentleman's Bread ſeven Years, and do him all the Spite and Malice I could.

Q. Repeat thoſe Words?

A. I ſhould think my ſelf very ungrateful to proſecute; if I ſhould do any Harm to a Maſter that I had ſerved ſo many Years, I ſhould think my ſelf very ungrateful, let him think of himſelf what he pleaſes.

Q. He added ſome other Words?

A. For any thing I know, it is Spite and Malice.

Q. Where did you live when you followed the Dutcheſs's Coach?

A. At Mr. *Germaine's*.

Q. This Man is a Witneſs, and ſo is *Hofier*; let him explain himſelf what he means, and where-in there is any Difference between him and *Hofier*, for both are Witneſſes?

A. I ſay, I ſhould think my ſelf very ungrateful, if I would do any Harm to a Man whoſe Bread I did eat ſo long, and had got ſo much Money under him.

Q. What Harm does *Hofier* do, being a Witneſs againſt the Dutcheſs of *Norfolk*? what Harm is that to Sir *John Germaine*?

A. I don't know.

Q. D'ye reckon it ungrateful to ſpeak the Truth to the Prejudice of a Maſter?

A. No, I would not ſpeak an Untruth for all the Maſters in the World.

Q. Where is there any Fault more in *Hofier* than in you?

A. I know not.

Q. Whether did *Elianoꝝ Vanefs* live with Sir *John Germaine* when you liv'd there?

A. I know not who ſhe is.

Q. This Woman that was here as a Witneſs?

A. Yes, ſhe liv'd there.

Q. What Time went ſhe away from Sir *John Germaine's* Service?

A. I know not, I cannot tell, indeed.

Sign'd,

WILLIAM BAYLY.

Die Martis, 5^o Martii, 1699.

Council and Witneſs being call'd in for the Dutcheſs of *Norfolk* (and the Duke's Council being preſent) the Examination of the Witneſſes, taken Yeſterday in Short-hand and tranſcribed, were read to them, and ſubſcribed, (*viz.*)

Die Lune 4^o Martii, 1699.

Thomas Hawkſworth ſworn, depoſed as followeth:

Queſt. DO you know *Elianoꝝ Vanefs*? and did you live in the Dutcheſs of *Norfolk's* Family?

Anſw. I came to live with the Dutcheſs about *October*, 1691. and left her in *September*, about two Years within two Months: *Elianoꝝ Vanefs* lived there when I lived there, and was Cook-maid.

Q. When did ſhe leave the Dutcheſs's Service?

A. About the beginning of *January*, or the latter end of *December*, 1691.

Q. On What Occaſion went ſhe away?

A. She was turned away, to the beſt of my Remembrance, for keeping Company with *Dutchmen*.

Q. Whether uſed ſhe any other Office but in the Kitchen? or had ſhe Acceſs to the Dutcheſs's Chamber?

A. Never; ſhe was not allowed to come any higher than the firſt Floor: She uſed to clean that Room next the Street, one Pair of Stairs next the Door, and the Back-Parlour even with that, but was not ſuffered to come into the Dutcheſs's Chamber.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*; ſhe was conſtantly in the Dutcheſs's Chamber, and uſed to warm her Bed.

Q. You ſay that *Vanefs* was allowed to come no higher than the firſt Floor; explain that.

A. The Kitchen is under-ground backward; that Room *Vanefs* cleaned waſ even with the Street, a Ground-Room; the Laundry-maid clean'd the next Pair of Stairs.

Q. What was the Laundry-maid's Name?

A. *Suſan*; ſhe's dead.

Q. Do you know how long?

A. No.

Q. Did you ever ſee *Vanefs* in the Dutcheſs's Chamber.

A. Never in my Life; I never heard ſhe was allowed to come there.

Q. How

Q. How long is it since you liv'd with the Dutchess?

A. About six or seven Years, or very near it.

Q. D'ye remember the Bill that was brought into Parliament against the Dutchess, while you lived there?

A. I came to the Dutchess the *October* before that Bill was brought in.

Q. Was *Vaness* turned away before that?

A. She was gone a Month or thereabouts before that.

Q. D'ye remember the Month?

A. To the best of my Remembrance, 'twas about the latter End of *December*, or the beginning of *January*.

Q. Was there any Stir about the *Dutch* Foot-Soldiers haunting *Vaness*?

A. I never saw any, but have heard the Servants say they did.

Q. Can you say what Time it was? Whether before or after the Bill?

A. Before I heard any thing of the Bill she was gone.

Cross-Examined.

Q. Where do you live now?

A. With Sir *Thomas Barnardiston*.

Q. What Station were you in, when you lived with the Dutchess?

A. A Footman.

Q. Do you know *Hofier* then?

A. No.

Q. Where did the Dutchess live, when you came first to her.

A. Upon the Row between the *Horse-Ferry* and *Mill-Bank*.

Q. How long did you live there?

A. A Fortnight or thereabouts; not much more.

Q. Do you know where she liv'd before?

A. No.

Q. Do you know Sir *John Germaine*? And, on the Oath you have taken, did he ever come to the Dutchess's House while you liv'd with her?

A. I never saw him in the House; I never saw any unhandsome Thing by the Dutchess all the Time I lived with her.

Q. Did you never see Sir *John Germaine* with her?

A. No, never, and I had the Privilege of the first Floor and the second Floor, and help'd to rub the Rooms, and sometimes I rubb'd the Lodging-Room.

Q. Had you the Privilege of going up Stairs in the Morning?

A. No, it was one *Peacock* that rubb'd the Room above Stairs.

Q. Did you know *Vaness*? Was she Servant to the Dutchess when you liv'd there?

A. Yes, she was.

Q. Can you be positive as to the Time of her going away?

A. As near as I can tell, it was in the beginning of *January*, 1692. I came in the *October* before, and she went away the *January* following.

Q. Were you by, when she was discharg'd?

A. No.

Q. Who paid her her Wages?

A. I can't tell.

Q. Did you never see *Vaness* in the Dutchess's Chamber?

A. Never.

Q. Did you attend at the Dutchess's Chamber in the Morning?

A. Not constantly; we took it by Turns.

Q. Did you never attend in her Chamber when she was a-Bed?

A. No.

Q. Who was it of her Women that attended in her Chamber?

A. *Susan* —, *Frances Knight*, and *Susan Barrington*.

Q. When did you see *Susan Barrington* last?

A. About five Years ago.

Q. Did she constantly attend in the Dutchess's Chamber?

A. She and Mrs. *Knight* carry'd Coals constantly to warm the Bed?

Q. How old was you when you liv'd with the Dutchess?

A. About eighteen Years old.

Q. How old are you now?

A. I think about Seven and twenty.

Thomas Hawksworth.

Die Lune, 4 Martii, 1699.

John Peacock sworn, deposeseth as followeth:

Quest. DID you live with the Dutchess of *Norfolk* in 1691?

A. 'Tis six Years since I left her Service, last *January*, or thereabouts; I liv'd two Years and a half with her, or thereabouts; I came in *August*, and stay'd till *January* two Years following, or thereabouts.

Q. Did you live with the Dutchess, when the first Trial, as they call it, came on in Parliament?

A. Yes, I liv'd with her before and after.

Q. Did you know *Vaness*?

A. I knew one whose Name was called *Leua*.

Q. What was her Business?

A. Below Stairs in the Kitchen; I never saw her in any other Room, but the outer Room next to the Street, and I was there all the while she was there, and after she was gone.

Q. Did you ever see her in the Dutchess's Bed-Chamber?

A. No; the Work she was employ'd about was dirty Work; I never saw her clean, but nasty, and could not eat the Victuals of her dressing.

Q. Was you there before *Vaness*?

A. Yes, I was in the House some time before her Grace came over, to help the Upholder, and to carry Looking-Glasses and Stands.

Q. When did she come over?

A. She came to *Mill-Bank*, but I know not when she came over: My Lady *Peterborow* order'd me to do what I did.

Q. Was you Servant there to the Dutchess before she came over?

A. I never saw my Lady Dutchess before she came there, except some Years before at *Drayton*, when he liv'd with her.

Q. Who hired you?

A. I

A. I came there by the Lady *Peterborough's* Order, and had my Victuals at my Lord *Peterborough's*.

Q. Who hired you?

A. I was not hired at all.

Q. How long did you live at *Mill-bank*?

A. I liv'd about two Years and a Quarter, or somewhat more.

Q. What was your proper Buſineſs, when you liv'd with the Dutcheſs?

A. When the Dutcheſs went abroad, I went with the Coach; and when ſhe ſupp'd or din'd at home, I laid the Cloth, Forks and Spoons.

Q. Did you ever wait above Stairs?

A. Yes, I have waited above Stairs.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*, one *Suſan*, and one *Suſannah*.

Q. Upon your Oath, did you ever ſee this Woman, *Helena*, go into the Dutcheſs's Bed-chamber?

A. I never once ſaw her there all the Time I ſtaid there; I rubb'd the Bed-chamber with a long Rubbing-bruſh; I never ſaw her there, nor above Stairs.

Q. Do you know at what Time it was ſhe came to live with my Lady Dutcheſs?

A. Yes; ſhe came while I was there.

Q. Did you live with the Dutcheſs before ſhe came to *Mill-bank*?

A. I liv'd at no other Place with the Dutcheſs, but at *Mill-bank*, and at *Drayton*.

Q. D'ye know how *Vaneſs* left the Dutcheſs's Service; and why?

A. Yes, upon Complaints of Diſorders, and her ill dreſſing the Victuals.

Q. What Diſorders?

A. There were Men came to the Door to enquire for her, twice, or more.

Q. Did you ſee the Fellows?

A. Yes, I ſaw the Fellows, they came to the Door in the Duſk of the Evening, and I acquainted the Dutcheſs with it, and told her Grace, I did not think it ſafe for her Houſe, becauſe I had the Charge of Silver Spoons and Forks.

Q. What ſort of Men were they?

A. One of them appear'd to be a Foot-Soldier in a blue Coat.

Q. In what manner was ſhe put away, or left the Houſe?

A. Upon theſe Complaints, the Dutcheſs ſaid ſhe wou'd turn her away.

Q. Did you hear the Dutcheſs ſay ſo?

A. Yes.

Q. Was that before the Trial at the Lord's Houſe, or after?

A. To the beſt of my Remembrance, it was before the Trial, the latter End of *December*, or the Beginning of *January*, but I can't be poſitive; I think 'twas the latter End of *December*.

Q. Did ſhe go away before the Trial, or not?

A. I think, before the Trial, but I am not ſure: Yes, at the Time of the Trial, I remember another Cook.

Q. Are you ſure of that?

A. Yes, I am ſure of it; 'twas the Coachman's Wife, one *Goffing*.

Q. D'ye know *Hauſeur* or *Nicola*?

A. No.

Q. You lived at *Mill-bank* two Years; D'you know no ſuch Man?

A. I never heard his Name before; I had no Acquaintance with him, nor ever ſaw him about Houſe.

Croſs-Examined.

Q. Where do you live now?

A. Near *Huntingdon*; I board in a Houſe there.

Q. How long have you been out of Service?

A. Ever ſince I left my Lady Dutcheſs.

Q. How do you live then?

A. I board in a Houſe; I follow no Employment, but live on my own, except to teach Children, two, three or four, out of Charity.

Q. When came you to the Dutcheſs's Service firſt?

A. I ſerved her about ten or twelve Years ago, but I can't remember the precise Time, 'tis ſo long ſince.

Q. How long did you live with her then?

A. I lived with her about half a Year at *Drayton* in *Northamptonſhire*; I went about *November*, and ſtaid to *Lady-Day* following.

Q. How long was it before you came to live with her the laſt Time?

A. I can't tell.

Q. You ſay you came to live with her about two Years and a Quarter; what Time was that?

A. I can't tell, but that may be eaſily found; I liv'd with her about ſix Years ago, or thereabouts.

Q. How long did you leave the Dutcheſs, after the Hearing came on in this Noble Houſe?

A. I don't know; it was about a Year and three Quarters, or two Years, I can't be poſitive.

Q. Was it after the Trial began?

A. Yes, I think the Trial began in *January*, and 'twas a Year after it began.

Q. Can't you be poſitive what Time you came to live with the Dutcheſs?

A. I came about *Auguſt* to *Mill-bank*, but the Dutcheſs was not come then, but the *October* following my Lady Dutcheſs came.

Q. Where did the Dutcheſs live then?

A. I don't know, I was at the Lady *Peterborough's*; I help'd her Servants to carry Things, and to get Things ready.

Q. Did you know where the Dutcheſs liv'd then?

A. No; ſome ſaid ſhe liv'd in *Flanders*, others in *Holland*, and ſome in *France*.

Q. Was you never at *Vaux-ball* while the Dutcheſs liv'd there?

A. I was never there while the Dutcheſs lived there, if ſhe did live there.

Q. Was you never there where ſhe did live?

A. When no body liv'd there, I have ſeen the Houſe where they ſaid ſhe did live.

Q. How long ago is that?

A. I know not how long ago, but 'twas in the Summer-time.

Q. How came you to take notice of that Houſe more than the reſt of the Houſes in *Vaux-ball*? Who was it told you the Dutcheſs lived there?

A. I think it was one that was _____

Q. You ſaid the Dutcheſs went ſometimes by Water; did you go along with her at that Time?

A. Yes, I did, with ſome other Company.

Q. Was

Q. Was you ever sent to the House, to fetch Goods from thence?

A. No.

Q. Who went with you, when you went with the Dutcheſs there?

A. One Mrs. *Bluffers*, and two or three other Ladies.

Q. D'ye know Sir *John Germaine*?

A. I never ſaw him, but in his Coach, as he was going along the Street; I never ſaw him in any Houſe, or any other Place, ſitting or going, but in his Coach.

Q. Was you never at his Houſe?

A. I never was at his Houſe, nor any Place where he lived.

Q. You ſay you were at the Dutcheſs's Chamber to rub the Room?

A. Yes, I was.

Q. Did you not ſee *Vaneſs* there?

A. No.

Q. Can you take it upon your Oath that you never ſaw her there?

A. No, I never ſaw her there; but I ſaw *Suſan Barrington* there.

Q. What Service did *Suſan Barrington* do there?

A. She help'd to dreſs and undreſs her Grace, and to mend Linnen, as I think.

Q. When ſaw you her laſt?

A. 'Twas about the 9th, 10th, or 11th of *Auguſt* laſt, at the *George Inn* in *Huntingdon*.

Q. D'you know where ſhe lived then?

A. She was at *Huntingdon* then, and came with the Lady Dutcheſs to take a Stage-Coach for *London*; ſhe was at the *George Inn* in *Huntingdon*, I think, about *Auguſt* laſt.

Q. You ſay you liv'd at the Dutcheſs's Houſe at *Mill-bank*, before the Dutcheſs came thither: Did *Vaneſs* come with her, or was ſhe hired after?

A. I think ſhe came with the Dutcheſs.

Q. D'ye know whence the Dutcheſs came, when ſhe came there?

A. As I have heard, ſhe came from *Fox-hall*: When my Lady Dutcheſs went thither by Water the Summer after, I was told, that my Lady liv'd at ſuch a Houſe in *Fox-hall*.

Q. Didn't you know that my Lady Dutcheſs liv'd at *Fox-hall*?

A. I never knew my Lady Dutcheſs till ſhe liv'd at *Mill-bank*.

Q. What Account had you at the Dutcheſs's Houſe where ſhe was then?

A. People ſaid ſhe was in *Flanders*.

Q. D'you know when *Vaneſs* came to live with the Dutcheſs?

A. I believe ſhe came to live with the Dutcheſs at *Mill-bank*.

Q. D'ye know when ſhe was diſcharg'd out of her Service?

A. I think 'twas the latter End of *December*, or the Beginning of *January*; I think ſo, but I don't ſpeak poſitively.

Q. Was you by when her Wages were paid?

A. No.

Q. Have you ever ſeen her ſince?

A. No, I never ſaw her from that Hour to this.

Q. Where have you liv'd ſince you left the Lady Dutcheſs's Service, and how? Have you any Eſtate?

A. I have a ſmall Matter to live on; I live near *Huntingdon*, I was born near there; 'tis my native Place; I have liv'd there about four or five Years, or within ſeven Miles of that Place, or thereabouts.

Q. Did *Vaneſs* dreſs the Dutcheſs's Dinner when ſhe lived there; for it ſeems ſhe was not good enough to ſerve you?

A. Yes, ſhe did dreſs the Dutcheſs's Dinner, but I did not care to eat Victuals of her Dreſſing.

Q. When did you firſt complain to the Dutcheſs, that Men follow'd *Vaneſs*? or, that you apprehended Danger by her being there?

A. I can't tell.

Q. Was ſhe diſcharg'd immediately after that?

A. I think ſhe was diſcharg'd immediately after that.

Q. You ſay there were ſome other Ladies that went with the Dutcheſs to *Fox-hall*; can you name them?

A. Mrs. *Marſhal*, and ſome others; but I can't be poſitive.

Q. Did you know Mrs. *Briane*?

A. No, I never heard her Name before.

Q. Did the Dutcheſs eat always at *Peterborough-houſe*, or *Mill-bank-houſe*, as you call it?

A. Sometimes ſhe eat abroad, and ſometimes at home.

Q. Who dreſs'd her Victuals when ſhe eat at home?

A. *Lena*.

Q. What d'ye mean by *Mill-bank-houſe*?

A. *Peterborough-houſe*.

Q. Who did you hear ſay the Dutcheſs lived at that Houſe at *Fox-hall*?

A. The Dutcheſs was going by Water, and told the Ladies then, that That was the Houſe ſhe had liv'd at, at *Fox-hall*; and walking in the Garden of the ſaid Houſe, told 'em ſo.

JONAS PEACOCK.

Die Luna 4^o Martii, 1699.

Frances Knight ſworn, depoſeth as followeth:

Q.ſt. **H**OW long have you liv'd in the Dutcheſs of *Norfolk*'s Family?

Anſw. Twenty-ſeven Years, or upwards.

Q. With whom did you live all that Time?

A. With the Lady Dutcheſs's Father, the Lady *Peterborough*, and the Dutcheſs.

Q. Did you live with the Dutcheſs when ſhe liv'd at *Mill-bank*?

A. Yes, I liv'd with her at her firſt coming there.

Q. Have you been with her ever ſince?

A. Yes.

Q. Did you know *Vaneſs* in the Dutcheſs's Family at *Mill-bank*, and what Employ had ſhe there?

A. Yes, I know her very well; ſhe was in the Kitchen.

Q. Did you uſe to be in the Dutcheſs's Bed-chamber, and about her Perſon?

A. Yes, I was the firſt in the Morning there, and the laſt at Night, conſtantly.

Q. Did you know *Elleanor Vaneſs* there; and did ſhe uſe to come into the Dutcheſs's Chamber?

A. She

A. She never came there.

Q. Where uſed ſhe to employ her ſelf?

A. In the Kitchen.

Q. Was ſhe well enough in Cloaths, cleanly enough, and fit to come into the Dutcheſs's Chamber?

A. No, ſhe was not.

Q. What Time went ſhe away; and upon what Account?

A. My Lady put her away, becauſe Soldiers came and aſk'd for her, and ſent for her to Ale-houſes about Ten a-Clock at Night. I went up one Morning, and complain'd of her to my Lady Dutcheſs, and told her that Soldiers haunted her, aſk'd for her, and ſent for her to Ale-houſes at Ten a-Clock at Night: And my Lady Dutcheſs ſaid, ſhe would not keep a Servant that kept ill Hours.

Q. Was this before the Trial?

A. Yes, my Lady put her away, upon my ſpeaking this.

Q. Do you know why ſhe was put away?

A. Yes, for having Soldiers haunt her Company.

Q. Conſider well what you ſay?

A. Yes, my Lords; I ſpeak what my Conſcience tells me: Here I am before the Lords, I muſt ſpeak Truth.

Q. How far can you recollect your ſelf, if it was before the Trial, or not, that ſhe was put away?

A. It was before the Trial.

Q. How long?

A. I can't remember; I think it was about a Quarter of a Year, I can't tell exactly, but it was near upon.

Q. How near was you to the Dutcheſs? What was your Employment?

A. I help'd to get her to Bed, as her Chamber-maid.

Q. Did *Elianor Vanes* never undreſs her?

A. No, never in this World.

Q. Did you never know her come into the Dutcheſs's Chamber?

A. Never, never. Oh, fie! never indeed.

Q. D'ye know *Nicholas Hauſeur*?

A. I don't know him: There were many aſk'd for Mr. *Keemer*, but I did not know them, for he has many Acquaintance.

Q. Did you know *Thomas Hawkſworth*, your Fellow-ſervant?

A. Yes, he came when my Lady came to *Mill-bank*; Mr. *Peacock* came before; they were both Servants together.

Frances Knight *Croſs-Examined.*

Q. You ſay you lived Twenty-seven Years and upwards with the Dutcheſs and her Mother; Do you live with the Dutcheſs ſtill?

A. Yes.

Q. How long is it ſince you liv'd with her Mother?

A. After the Dutcheſs was marry'd, I came to live with her and my Lord Duke.

Q. Have you been in her Service ſince?

A. Yes.

Q. After the Duke parted with my Lady Dutcheſs, where did ſhe go to live?

A. She liv'd at *Mill-bank*, and no where elſe that I know of.

Q. Came you to live with her ſoon after her

Marriage? and have you lived with her ever ſince? and, did ſhe ever live at *Vaux-ball*?

A. I never lived with her at *Vaux-ball*.

Q. Then you have not lived with her ever ſince?

A. I have lived with her ever ſince; I have taken my Oath, and as near as I can tell you.

Q. Where did the Dutcheſs live before ſhe came to *Mill-bank*?

A. She liv'd at *Vaux-ball*?

Q. Did not you live with her there?

A. No, I broke my Leg, and was brought to her Mother's, and ſtaid there a Twelvemonth; Mr. *Peters* was my Surgeon, he can tell it: I came here to ſpeak the Truth.

Q. Don't be angry?

A. No.

Q. Did you continue with the Dutcheſs till you broke your Leg?

A. Yes; and when I broke my Leg, I went home to her Mother's.

Q. When left you the Dutcheſs after ſhe parted with my Lord Duke?

A. I left her at *Mill-bank*.

Q. Do you know the Queſtion that's aſk'd? When did you leave the Dutcheſs after ſhe parted with the Duke?

A. I know no ſuch Queſtion as you aſk. I ſpeak the Truth as well as I can.

Q. Where did my Lady Dutcheſs go, when you left her?

A. I went away lame, and cou'd do her no Service.

Q. Where did you come to my Lady Dutcheſs again, when you were well.

A. At *Mill-bank*.

Q. Was you ever with her at *Vaux-ball*?

A. I was not there, becauſe I was lame.

Q. Was you ever at *Vaux-ball*?

A. I told you I broke my Leg.

Q. Was you ever at *Vaux-ball*; or not?

A. I tell you I was lame.

Q. Was you ever at *Vaux-ball* at any Time?

A. I tell you I was lame; I give you Answer to your Queſtion. I tell theſe noble Lords, that every Word I ſpeak is Truth.

Q. But you are ſwore to ſpeak the Whole Truth.

A. I ſpeak the Truth. Why ſhould you do ſo?

Q. Was you ever with the Dutcheſs at *Vaux-ball*?

A. I was not able to be there with her.

Q. Was you there with her, or not?

A. I was not able to go thither.

Q. Was you never there?

A. I was not able to go thither.

Q. Was you never there, or not, with the Dutcheſs?

A. No, I never was at *Vaux-ball* in my Life, but at *Mill-bank* and *Whiteball* I have. *Memo-randum* in this Interlineation was alter'd, upon reading over her Examination, *Yes; I have been there; but I did not ſtay there.*

Q. Was you ever there with the Dutcheſs, or not?

A. I was not there: I tell you I was not there, I was lame.

Q. Was you never there with the Dutcheſs at any Time?

A. No, I tell you, I was lame: I was never there with the Dutchess.

Q. Where was the Dutchess before she came to *Mill-bank*?

A. That I can't tell.

Q. Where was she when you broke your Leg?

A. I left her at *Mill-bank*, with her Mother.

Q. Where did you find her, when you came again?

A. I found her at her Mother's.

Q. Can't you tell where she was in the mean Time?

A. No.

Q. Was you never told by any of the Family where she was at that Time?

A. No.

Q. Did *Vanefs* come to the Dutchess when she liv'd at *Mill-bank*?

A. Yes.

Q. How long did she live with her after?

A. I can't tell; but a short Time.

Q. Do you know *Susanna Barrington*?

A. Yes.

Q. When did you see her last?

A. About three Weeks ago.

Q. Is she not in the Dutchess's Service still?

A. I'll tell you the Truth: She receiv'd a Letter from *Flanders*, acquainting her that her Mother was dead: She was very much afflicted with it: And when the Dutchess came in, I told her Grace that *Susan* had receiv'd a Letter that her Mother was dead, and I did desire my Lady to give her Leave to go to *Holland*; and she's there.

Q. Did you see the Letter?

A. I saw it.

Q. Was it from her Mother, or from her Sister?

A. Yes, 'twas from her Sister, that her Mother was dead.

Q. Was *Susanna Barrington* in the Dutchess's Service when this Bill was depending?

A. No.

Q. How long is it since you received that Letter?

A. 'Tis about three Weeks ago.

Q. How long is it since you went?

A. A Fortnight to Day.

Q. Did you see her any Time these three Weeks?

A. No, no.

Q. Did you not live with her in the House, and did you not see her?

A. She has been gone about a Week.

Q. D'you know Mrs. *Judith*?

A. No.

Q. D'ye know Mrs. *Briane*?

A. I have heard her Name, but am not acquainted with her.

Q. Had you any Discourse with *Vanefs*, when she came to *Mill-bank* to live with the Dutchess?

A. No, I never lik'd her Discourse.

Q. Did you ever hear the Dutchess say that she liv'd at *Vaux-Hall*?

A. No.

Q. Do you know Sir *John Germaine*?

A. I know him by sight.

Q. Did you never see him at the Dutchess's?

A. No.

Q. Did you ever see him at *Mill-bank*; or at her House here?

A. No, my Lords, never.

Q. Did *Vanefs* come along with the Dutchess when she came to *Mill-bank*, or, was she hired after her Return?

A. She came after her Return to *Mill-bank*.

Q. What Time went she away?

A. I can't tell the Day; that's a hard Question. She went away, on my speaking to the Dutchess, that she was haunted with bad Company.

Q. Did not she dress the Dinner, when the Dutchess dined at home?

A. Yes, but she never dined at home but very seldom.

Q. Can't you tell when *Vanefs* went away?

A. No.

Q. Did you know *Nicholas Hoyer*?

A. No, I know no such Man. There were many People came to Mr. *Keemer*, Lords Servants, and others, I don't know such People.

Q. You have heard that the Dutchess liv'd at *Vaux-ball*.

A. Yes.

Q. At what Time did she live there?

A. I can't tell you; I was sick in Bed.

Q. You may recollect about what Time was it.

A. I was lame in *March*, this Month: I can't tell what Year.

Q. D'you know what House she liv'd in?

A. Yes; 'twas one Sir *Thomas Grosvenor's*, at *Mill-bank*.

Q. I ask you what House she liv'd at, at *Vaux-ball*?

A. I know not.

Q. How came you to know the Dutchess liv'd at *Vaux-ball*?

A. You ask what I can't tell you.

Q. You daren't tell.

A. Yes, I'll tell the Truth, before all the House of Lords.

Q. You said she liv'd at *Vaux-ball*?

A. No, I never said it.

Q. Whence came the Dutchess, when she came to *Mill-bank*?

A. She came from the Place she did; I did not ask her the Question, I durst not be so bold.

Q. Can't you tell when she came to *Mill-bank*; nor from what Place she came?

A. I can't tell the Day when she came. I don't ask from what Place People come.

Q. When did you know Sir *John Germaine* first?

A. I saw him first with my Lord Duke there, at his House in the Square.

Q. Did you never know him keep Company with the Dutchess?

A. No, but only with the Duke of *Norfolk* there; I speak in the Presence of God.

Sign'd,

FRANCES KNIGHT.

Die Lunæ 4^o Martii, 1699.

William White sworn, deposesh as followeth:

Quest. DID you live with the Dutchess of *Norfolk* for some Years past?

Ans. I liv'd with her since the first Week of the first Trial, about six, or seven, or eight Years ago.

Q. What

Q. What Care was there taken about the Dutcheſs's Door in the Park?

A. I generally went out the first in the Morning; the Door had two Bolts, a Cross-Barr, and an Iron Chain; besides, these I unbolted every Morning, and unbarr'd, when I went out early.

Q. Did you ever hear or understand that *Hofier* had a Key to that Door?

A. I never knew any thing of it, nor know not of what Use it could have been; for he could not come in till the Door was unbolted.

Q. Say positively, whether ever you have heard, that this Man had a Key to that Door?

A. I never heard of it.

Q. Did you never see him come in at that Door?

A. Yes.

Q. How? Upon what Occasion?

A. I happen'd to be going out my self, and to open the Door for him. His Business, I was told by my Lady Dutcheſs's Maid, was, That she had lent Money to a Man in *Holland*, and she wrote a Letter to be carry'd by this Man to her Silter, to get this Money; and she sent another Letter by one *Bull*, to carry to *Holland*, to get the Money, as she told me.

Q. Did you let him in?

A. I unbolted the Door, and let him in.

Q. Did you find that this Man used to come freely to the House, at that Door, by any Key?

A. No, I never knew it.

Q. Who did he come to?

A. To *Susan Barrington*.

Q. Did you ever see him above Stairs with her?

A. No; he might come in, and I not see it.

Q. Did the Dutcheſs or Servants say any thing that he had Leave to come in?

A. I never examin'd that, because any body that had Business had Leave to come in, as Tradesmen, and others.

Q. Did they tell you in the House, that *Hofier* was at Liberty to come into the House with a Key?

A. No, never.

Q. Had you ever any Discourse with *Hofier*?

A. I was one Day coming from *Cbange*, and met Mr. *L'Eſtrange* and this *Hofier*. *L'Eſtrange* told me, that he was ill of the Gripes. I told him, that the best Thing for it was burnt Claret; and he, and I, and *Hofier* went to a Tavern in *Smithfield*: And while we were together, *Hofier* reflected upon his Master, saying, His Master had used him ill, and deserv'd to be ill used. Mr. *L'Eſtrange* heard these and some more Words; Mr. *L'Eſtrange* told me, that he spoke to that purpose, He was resolv'd to be reveng'd of his Master.

Q. What did he say of his Master?

A. He said his Master had used him very ill; he had many threatenng Words; he said his Master was an ill Man, and deserv'd to be ill used, and the Time would come when he should repent it.

Q. When did he say these Words?

A. 'Twas about *Michaelmas* two Years ago, or a Year ago, I can't tell which.

Cross-Examined.

Q. You say you liv'd with the Dutcheſs the first Week of the first Trial: Was *Vanefs* there at that Time?

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A. She was gone before I came.

Q. How long?

A. I can't tell; I never saw her there, to the best of my Remembrance, but have heard there was such a one in the Family.

Q. Did you know *Hofier*?

A. I see him come in at the Back-door.

Q. Whose Servant was he then?

A. The first Time I did not know; but a little after, I was told he was Sir *John Germaine's*.

Q. What Occasion had he to come to the Dutcheſs's House?

A. I know not, but about the Business of the Letter.

Q. How often did you see him there?

A. Two or three Times, or more.

Q. With whom?

A. With *Susan Barrington*.

Q. What was his Business with her?

A. About the Money, as she told me. He went along with that Woman; she sent a Letter by him; and she sent Letters by some other *Dutchmen* into *Holland*, about the Money.

Q. Did he ask for any other Servant?

A. Not that I know of.

Q. Did you see him above Stairs with her?

A. I never saw them in any Apartment but that Place below, where the Lumber is, near the Park-door.

Q. D'you know *Susannah Barrington*?

A. I know her very well.

Q. D'you know where she is now?

A. Her Mother died about the 10th of *January*, and then I saw her all in Tears; and she went away after this Account of her Mother's Death.

Q. When did you see her last?

A. I have not seen her this Fortnight or Month, that I know of, that I could distinguish her from another Woman, except she had a Mask on.

Q. How long before this Trial saw you her?

A. About a Fortnight: She gave me an Account that her Mother died the 10th of *January*, in *Holland*.

Q. When did she go away?

A. I did not take notice of the Time she went away.

Q. Did you know *Hofier* at any other Place but at the Lady Dutcheſs's?

A. Never, but as I have seen him in the Park, and with Mr. *L'Eſtrange*.

Q. Was you never with him at Sir *John Germaine's*.

A. Never.

Q. D'you know Sir *John Germaine*?

A. After I had lived with the Dutcheſs some Time, I was told by some in the Street, that that was his Coach, and his Livery, and that he was the Man that there was so much Noise about.

Q. Did you never see him in the Dutcheſs's House?

A. I never saw him in no Part of my Lady Dutcheſs's House, nor in no Apartment; and I am the only Man that goes up and down Stairs.

Q. Did you never see him in the Dutcheſs's Company at any other Place?

A. No.

Q. Did you constantly lie at the Dutcheſs's House?

A. When the Dutcheſs was last at *Drayton*, I lay at *Richmond* two or three Nights.

L. 1 2

Q. Did

Q. Did you lie constantly there, when the Dutchess was there?

A. I was sick near a Month, and all that Time I lay at my Wife's; but most commonly lay at the Dutchess's, since she is come to *Duke-street* to live.

Q. You say, You used to open the Door in the Park first in a Morning; what Time did you use to open it at?

A. At Six, Seven, or Eight a-Clock in a Morning; there was no certain Hour, but I generally open'd that Door.

Q. Did you ever know *Hausfeur* come in at any other Door but that?

A. Yes; one wet Day he came in at the Street-door, before the Porter and all the Servants, and ask'd for the same Woman.

Q. Did he never ask for any other Body?

A. I never heard him ask for any but *Susan Barrington*, for she was his Country-woman.

Q. If *Nicholas* got in at the Park-door, could not he get up Stairs?

A. If he could get in at that Door he talks of, he could not get into the Dutchess's Apartment; for there was a Room betwixt that, where the Plate and Jewels lay, that no Key could open: That if he could get up two Pair of Stairs, he could not get in there.

Q. If he had a Key, and got in at any Door, cou'dn't *Susan Barrington*, when he came in, without any difficulty, lead him round the House?

A. I can't say but she might, but I never saw him, but below Stairs with that Woman, and then he went away without going up Stairs.

Q. Did you never see him bring any Thing to the House?

A. No.

Q. You nam'd one *L'Estrange*, that you saw with him at the Tavern, what is he?

A. He was my old Fellow-Servant at the late Duke of *Norfolk's*.

Q. What Discourse had you with him then?

A. He complain'd to me of his being ill, and I gave him the best of my Advice.

Q. What Time was it that *Nicholas* had those threatenng Words against his Master?

A. About Ten, Eleven, or Twelve a-Clock at Noon.

Q. How long ago is it?

A. I can't tell if it be a Year, or two Years; 'twas a little after *Michaelmas*, but whether it be one Year, or two Years, I can't tell.

Q. Cou'dn't Mr. *L'Estrange* tell?

A. I ask'd Mr. *L'Estrange*, and he cou'd not tell.

Q. Whose Servant was *Nicholas* then?

A. He was no body's Servant then: He rail'd against his Master at that Time for turning him away.

Q. Did you not know who was his Master a Year or two ago?

A. He told me, he was out of Place.

Q. Did you not know him to be Sir *John Germaine's* Servant, when he came to the Dutchess's?

A. I did not know it when I first saw him and *Susan* together; but some time before he went away, I heard he was his Servant.

Q. But you say, you did not know Sir *John Germaine* about two Years ago?

A. I did not know him so, as to speak to him.

WILLIAM WHITE.

Die Lunæ 4^o Martii, 1699.

Matthew Mac-Donnell sworn, deposes as followeth:

Quest. HOW long have you liv'd with the Dutchess of *Norfolk*?

Ans. Four Years at *Lady-day* next.

Q. In what manner was the Door going out to the Park kept? Had any body a Key to it that was not of the Family? Did it use to be left open?

A. 'Twas not to be left open; 'twas very unsafe to be left open; besides, it was bolted and lock'd.

Q. Was there particular Care taken of that Door?

A. Yes; I my self bolted it very often at Night.

Q. Did you often unbolt it in a Morning?

A. Yes.

Q. Whether or not, the Time that you lived there, did you know any body, that was not of the Family, come with a Key to open that Door?

A. Never.

Q. Did you know *Hausfeur*, or *Nicholas*? Had he a Key to that Door?

A. I never knew it.

Q. Did you ever see him come in at that Door?

A. I open'd that Door for him once or twice, when he rung.

Q. When was that?

A. In an Evening.

Q. What did he come about?

A. I do not know; but he ask'd for *Susan*, my Lady Dutchess's Servant.

Q. Did you ever see him go up Stairs?

A. I never did hear he went up in my Life.

Q. When he ask'd for *Susan*, did he go up then?

A. No; I call'd her to him, and I never saw him go up Stairs.

Q. Did you stay with him all the while *Susan* was with him?

A. No, I had no Business; I went my way.

Q. Was *Nicholas*, when he rung, in the Park, or at the inner Door?

A. In the Park.

Cross-Examined.

Q. Did you know whose Servant *Nicholas* was?

A. I did not know, nor I ask'd no Questions.

Q. How often have you seen him at the Dutchess's?

A. Three times.

Q. Did he always ask for *Susannah Barrington*?

A. One time he ask'd for Mr. *Keemer*.

Q. Who was Mr. *Keemer*?

A. He was the Dutchess's Servant.

Q. Did you use to stay with him? or, did you leave him?

A. No, to tell you the plain Truth, I thought he came to court *Susan*, and did not stay with him.

Q. Did you ever see him up Stairs in *Susan's* Room?

A. I never saw him there.

Q. What Employment have you under the Dutchess's?

A. I am her Foot-man.

Q. When did you see *Susan* last?

A. On

A. On *Tuesday* Seven-night in the Morning.

Q. Not ſince?

A. No.

Q. Where did you ſee her then?

A. At the Dutcheſs's Houſe.

Q. What became of her after that?

A. She ſaid, her Mother died lately in *Holland*, and ſhe was going there.

Q. When did you hear her ſay ſo?

A. I heard her ſay ſo ſeveral times before ſhe went away; a Month, or a Quarter of a Year, before ſhe talk'd of going to *Holland*.

Q. Upon your Oath, don't you know that ſhe is at the Dutcheſs's?

A. I know not of her being there.

Q. Can you take it upon your Oath when ſhe was firſt wanting?

A. I ſaw her on *Tuesday* Seven-night laſt, in the Morning.

Q. How came you to know ſhe was gone, if you don't know the Time when ſhe went?

A. I did not know ſhe was gone, till I went home from the Houſe here.

Q. Who told you ſhe was gone?

A. The Servants.

Q. She was there when you came hither?

A. On *Tuesday* Morning I did ſee her.

Q. Has the Dutcheſs another in her Station?

A. There is one *Mrs. Cambell*, that dreſſes my Lady Dutcheſs, but ſhe does not live there.

Q. Did ſhe uſe, in *Suſan*'s Time, to come and dreſs the Dutcheſs?

A. Yes, ſhe uſed to come ſometimes.

Q. Has the Dutcheſs taken any body to do *Suſan*'s Work?

A. I know not of any.

Sign'd,

MATTHEW + MAC-DONNEL.

Die Lunæ 4^o Martii, 1699.

Mr. Robert Welburne ſworn, depoſeth as followeth:

Queſt. WHAT Account can you give of Mr. *L'Eſtrange*'s having Notice to be a Witneſs?

Anſwer. I was told by the Dutcheſs, That *L'Eſtrange* had been with her, and gave her an Account of ſome Particulars between *White*, and him, and *Nicholas*; That, having the Griping in the Guts, they went into a Tavern together; That he heard *White* and *Nicholas* talk together very loud, but he told me he had the Gripes, and could not ſo well mind what he ſaid, but he heard him uſe hard Words againſt his Maſter, but he could not remember that he ſaid he would be reveng'd upon his Maſter; but he would recollect himſelf, and, if he could remember, he would ſay what he could: He told me, he had been bred in the *Norfolk* Family.

Q. Did you aſk Mr. *L'Eſtrange* about this Matter?

A. Yes: Mr. *L'Eſtrange* told me, He remember'd they were together, and heard *Nicholas* ſpeak very hard, ill Words againſt his Maſter, but he could not be poſitive what they were; but what he could remember he would ſpeak, if that

would do the Dutcheſs any Service. He deſir'd my Lady Dutcheſs would give him notice the Night before, and he would appear.

Q. When was this?

A. 'Twas *Tuesday* or *Wednesday*; I think 'twas *Wednesday*.

Croſs-Examined.

Q. Did the Lady Dutcheſs tell you what Mr. *L'Eſtrange* ſaid?

A. Yes; that gave me the Occaſion to ſpeak of it. He ſaid, he heard *Nicholas* ſay hard, ill Words againſt his Maſter, but not that he heard him ſay he would ſtudy to be reveng'd. Perhaps, ſays he, there might be ſome other Words. That he was in the Kitchen, and would endeavour to recollect who was there beſides; and if he had two or three Days Time, he would enquire.

Q. Did you let him know you was concern'd for the Dutcheſs?

A. Yes; and he told me he would tell me what he could ſay in this Matter; and he ſhould be ready to appear at any Time, if that would be for the Dutcheſs's Advantage.

Q. Did he tell you he was going abroad into *Holland*?

A. Not one Word.

Q. Did you intimate to him, when the Dutcheſs was to make her Defence?

A. I think I did, but I can't be poſitive; but he took no notice to me, that he would not be there.

Q. D'you know Mr. *La Fontaine*?

A. Yes, I know one *La Fontaine*.

Q. Is he in the Dutcheſs's Service?

A. I believe not.

Q. D'you know whether he is at *Drayton*?

A. I have ſeen him at *Drayton*.

Q. Did he live with Sir *John Germaine*, that you know of?

A. Never, that I know of.

Q. When ſaw you *Suſan Barrington*?

A. I can't be poſitive; but I think, not this Month or ſix Weeks.

Q. Ha'n't you ſeen her ſince this Bill was brought in?

A. Poſitively, I have not.

ROBERT WELBOURN.

Die Lunæ 4^o Martii, 1699.

Elianor Monfort ſworn, depoſeth as followeth:

Queſt. TELL the Lords if you know *Nicholas Hoſier*, and on what Account you came to know him.

Anſw. This *Nicholas* lodg'd two or three times at my Houſe. My Huſband was a *Dutchman*, and he was a *Dutchman*; they were like Brothers, they lov'd one another.

Q. What know you of this Man, this *Nicholas*?

A. My Huſband told me, that this Man *Nicholas*, (I did not know no other Name he had;) my Huſband told me, that he had a Deſign to rob his Maſter, and that he knew where his Gold and his Jewels lay, and had made falſe Keys, and would watch his Opportunity, when his Maſter was at Play, or out of Town; and left the Keys at her Houſe.

A. Your

Q. Your Husband told you so?

A. Yes, my Husband bid me send for this Man. These were his last dying Words.

Q. Your Husband had a sad Misfortune. When was't your Husband told you so?

A. When he was in Prison.

Q. How long ago is that?

A. About eight or nine Years ago last *Christmas*. I would not have your Lordships think my Husband was so bad a Man; he was only Condemn'd and Executed for changing Ten Pounds of his own Money.

Q. What were your Husband's last dying Words?

A. He desired me to send for this Fellow, and deliver those Things he left at my House. I sent for him, he came, and had some Keys in a Drawer, that my Husband told me he had left there. He took two or three Keys, and put them in his Pocket, and look'd mightily out of Countenance.

Q. What did your Husband say to you?

A. He bid me give *Nicholas* the Keys, and bid him have a Care, and keep good Company.

Q. When was that?

A. A Week or a Fortnight before my Husband was executed.

A. Did you acquaint *Nicholas* with what your Husband said of him?

Q. No, an't please your Honours; I only told him, my Husband charg'd me to give him those Keys; but being in Trouble, and having a great many Enemies, I talk'd no further with him.

Q. What did *Nicholas* say to you?

A. He look'd out of Countenance, and told me he would come and see me another Time; but he never did; so that I did not see him again till I saw him in the *Meuse*, and then he told me that he would come to see me; but he never did, but always shunn'd me.

Q. How long have you known *Nicholas*?

A. These eight or nine Years. I knew him when he was Footman to Sir *John Germaine*, and I knew him when he was his Gentleman. I knew him when he went, and I knew him when he came: He is like a Sea-Rat, he comes and goes when he pleases. I hope in God Almighty it will be consider'd by this House, that such a Fellow's Witness should not be taken in such a great Concern.

Signum,

ELEANOR + MONFORT.

Then the Dutchess's Council pray'd that *Mac-Dannel* may be examin'd, as to the withdrawing Witnesses, and that it be taken in Writing: Which was agreed to, and he examin'd.

Then the Dutchess's Council proceeded to examine other Witnesses, and their Evidence taken in Short-hand.

Then Mrs. *Pitts* being call'd for, and not appearing, *William Godfrey* being sworn, said to this effect:

I Went to Serve Mrs. *Pitts* on Friday Morning: When I came to her House there was no body. A Woman with a Pitcher of Water went in: I ask'd her for Mrs. *Pitts*; she said, She was not at home. I shew'd her the Order, and left a Copy of it upon the Table. She was loth to

receive it; she said, the Lady would be within quickly. The Woman's Name was *Olivet*. The last Night I went again, and a Woman came out and said, Mrs. *Pitts* was not at home. Then she spake in *French* to me: I did not understand her. I left a Note for her to attend this Day.

Then the Dutchess's Council pray'd, That some Agreements between the Duke and Dutchess, in 1694, may be read out of the Deeds executed for that purpose: Which was agreed to, and read accordingly.

Die Martis 5^o Martii, 1699.

Francis Negus sworn, deposeth as followeth:

Quest. I Desire Mr. *Negus* may be ask'd, Whether the Dutchess of *Norfolk* did not send some Message by him? The Words I don't confine him to; but, Whether the Message sent by him to my Lord Duke was not to this purpose; That notwithstanding the Articles, she desir'd to know from his Grace in what Manner she should live; and, that she would be govern'd by his Directions?

Ans. I think 'twas much about the Time of the Transaction of these Articles the Dutchess sent to me. Mr. *Longueville* was Council for the Duke, and Sir *Thomas Powys*, for the Dutchess. Mr. *Longueville* took what Care he could; and when they came to talk of their living separately, I took it only to be an Apprehension and Fear that my Lord Duke would confine the Dutchess to some House. My Lady Dutchess sent for me; I waited on her, and she express'd her self very sensibly of the Misfortunes of the Duke and her self, that such Differences should have been between them; and she was desirous to let my Lord Duke know, and desir'd me that I would let my Lord Duke know it, that she would avoid all Company that should give him any Offence, and that she would not so much as pay a Visit, but where he liked. I acquainted my Lord Duke with something to this purpose; for she often said to me, more than once or twice, That if she happen'd to die before my Lord Duke, she would leave him her Estate; and I know I have said so to my Lord Duke.

Q. Whether, from that Time, do you know that the Duke sent any Message of Complaint to the Dutchess, to the Place where she liv'd, that he would have her live in any other Way?

A. I know nothing of that Matter.

Q. Do you know whether my Lord Duke ever desir'd her to come and live with him?

A. I never heard of any such Thing.

Q. Did he ever send to her, to avoid any Company?

A. I never heard of any such Thing.

Q. Whether had you any Directions to attend the Duke, That he would give Way in a Controversy between the Dutchess and a Noble Lord of this House, whether he would wave his Privilege?

A. I have great reason to desire Sir *Thomas's* Favour in this Matter; I know not what he aims at. I was call'd to the Bar before, to speak the Truth as to the Matter of the Privilege; I know not what he means by it.

Q. I meant it only as an Instance of a Civil Message between the Duke and Dutchess, own-

ing

ing her as his Wife, and that this was a Meſſage that beſpoke a good Underſtanding between them?

A. Will you have me to give an Answer to Sir Thomas, my Lords? I confeſs, the Duke did ſend for me, and aſk'd how the Settlement and Agreement were betwixt the Duke and the Dutcheſs, becauſe of this Matter of the Privilege.

Q. I did not mean that; but only as a late Inſtance of the Duke's owning the Dutcheſs ſo far?

A. When the Duke ſent for me, he would know, whether by the Agreement he was oblig'd to let her have the Privilege: I ſaid, I underſtood it ſo; and tho' he had no Mind to do it, but as he had waved his Privilege, in the Caſe of an Uncle, he would do it for her.

Q. What would have been the Conſequence, if the Duke had not waved his Privilege? Would not that have defended her from a Suit?

A. That you may make uſe of as you pleaſe.

Sir Thomas Powys. I would only make this Uſe of it, as an Inſtance of Kindneſs between the Duke and Dutcheſs.

FRANCIS NEGUS.

After the Examination of Francis Negus, he being before ſworn, the Dutcheſs's Council declar'd they had finiſhed their Evidence.

Whereupon the Duke's Council deſir'd to call a Witneſs or two, to ſupport Nicholas Hauſeur's Reputation. Then William Allen was ſworn and examined.

Die Martis 5^o Martii, 1699.

William Allen ſworn, depoſeth as followeth:

Queſt. D'You know Nicholas Hauſeur?

Anſw. Yes.

Q. How long have you known him?

A. Three Years.

Q. Did you not know him before that Time?

A. I knew him about three Years ago.

Q. Had you any Dealings before that Time?

A. I had Dealings with him when he liv'd with Mr. Germaine.

Q. What were his Dealings?

A. As honeſt and fair as any Man could deſire.

Q. What Office had he under Mr. Germaine?

A. He was Cook to Mr. Germaine, I ſuppoſe.

Q. What! was he, Cook to him?

A. He bought in the Goods, and he paid me honeſtly for what he bought.

Croſs Examined.

Q. What Trade are you?

A. A Butcher.

Q. Then he paid you his Maſter's Money for his Maſter's Goods?

A. Yes, he paid me very honeſtly.

Q. When ſaw you him laſt?

A. I ſaw him when I was ſummon'd here by the Order of this Houſe, but not before of late.

Sign'd,

WILLIAM W. ALLEN.

The Duke's Council mov'd for Copies of the Examinations and Journals; which was granted,

and then the Council withdrew. The following Orders were made:

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examinations, ſign'd by the Witneſſes this Day, and Entry in the Journal, be deliver'd to either Side; and, That the Examinations taken this Day in Short-hand be tranſcrib'd, in order to be read to the Witneſſes To-morrow.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That To-morrow, at Twelve a-Clock, this Houſe will proceed to hear the Examinations taken this Day, read to the Witneſſes, relating to the Duke and Dutcheſs of Norfolk, and all Lords ſummon'd to attend.

Die Mercurii 6^o Martii, 1699.

After the Examination taken Yeſterday, relating to the Duke and Dutcheſs of Norfolk, were read to the Witneſſes, and they ſigning them, the Dutcheſs's Council mov'd to have Copies of the Depoſitions taken on either Side, and then withdrew.

Die Martis 5^o Martii, 1699.

Matthew Mac-Donnel ſworn, depoſeth as followeth:

A. I Was going to Mr. Strange's Houſe, and I ſaw my Lord Howard of Eſcrick coming that Way, and he went to the Door and knock'd. I made up to the Door, and a Girl open'd the Door. My Lord aſk'd if Mr. Strange was within, and ſhe answer'd, Yes. Then I went to the Door, and aſk'd if Mr. Strange was at home; ſhe answer'd, No, he went away on Thursday. I aſk'd, By Packet-boat, or how? She ſaid, By Long-Sea. I thought ſhe told my Lord he was within, and ſo I came away.

Signum,

MATTHEW + MAC-DONNEL.

Die Martis 5^o Martii, 1699.

Richard May ſworn, depoſeth as followeth:

Queſt. D'You know Nicholas Hauſeur?

A. I never ſaw him till Sunday Fortnight laſt.

Q. Where ſaw you him then?

A. At my Lord Duke of Norfolk's. I had a Command from my Lord Duke to take him in there.

Q. Where?

A. To lodge him in my Lord Duke's Houſe: I am his Houſhold-Steward; he commanded me to provide for him in the Houſe.

Q. I don't deſire you ſhould do any Thing unbecoming to my Lord Duke; but you are upon your Oath, and you muſt tell the Truth?

A. I'll freely tell what I know.

Q. Can you give me any Account where he was before that Time?

A. I never ſaw nor heard of him till then.

Q. Hath he been there ever ſince?

A. Yes; I made Provision for him, by his Grace's Command.

Q. Do you know Vanes? Where hath ſhe been?

A. On Sunday was Fortnight ſhe came thither likewise,

likewise, and I was order'd to take Care for her.

Q. Where was she lodg'd?

A. In my Lord Duke's House in *St. James's Square*.

Q. Has she been there a Fortnight?

A. Yes, a Fortnight last *Sunday*, and coming here to attend the Lords.

Q. Had she the Liberty of the House; or was she kept close?

A. They were kept only as they desir'd themselves; no body was deny'd Liberty to see them: They desir'd to be there, sooner than any Place.

Q. D'you know that those People have been sent for, and how long before they came?

A. I was never privy to any thing of that nature: I had no Knowledge of their Names, nor whence they came.

Q. Do you know of any Money issued out for their coming over?

A. Not one Penny.

Q. Do you know of any Reward they have had, or are to have?

A. I know not of any Reward they have had, or are to have.

RICHARD MAT.

Die Martis 5^o Martii, 1699.

Christopher Raine sworn, *deposeth as followeth*:

Quest. ARE you Servant to the Duke of Norfolk?

A. Yes.

Q. D'you know *Hausfer*?

A. I have seen him, but am not acquainted with him.

Q. How long is it since you saw him?

A. It is within this Fortnight.

Q. Did you not see him any time further off?

A. No, I am positive of it.

Q. Where did you see him first?

A. In *St. James's*.

Q. In what Place there?

A. At his Grace's House.

Q. Hath he been there ever since?

A. Yes.

Q. Was there a Woman call'd *Vaness* with him?

A. Yes.

Q. Did they come at the same Time?

A. Yes.

Q. How long ago?

A. A Fortnight; it may be, not so much.

Q. Had they the liberty of the House, to take notice where they were?

A. They had liberty to go where they pleased.

Q. Did they go abroad since they came there?

A. I can't tell; not to my Knowledge.

Q. D'you know whether they went out of the House upon any Occasion?

A. Not to my Knowledge.

Q. Who brought them there?

A. I don't know.

Q. D'you know whence they came?

A. No.

Q. Did you not understand where they lodg'd before?

A. No, I am a Stranger to them both; I never saw them before.

Q. Saw you them when they came first?

A. No, I was not at home.

CHRISTOPHER RAINE.

Die Martis 5^o Martii, 1699.

Edward Cotter sworn, *deposeth as followeth*:

Quest. ARE you Servant to the Duke of Norfolk?

Ans. Yes.

Q. D'you know *Nicholas Hausfer*?

A. I did not know him but since this Trial.

Q. How long ago is that?

A. About a Fortnight.

Q. Do you know where he had been before?

A. No; I knew nothing of him, where he was, nor what he was.

Q. Came *Helena* the Dutchwoman with him?

A. Yes, the Woman came with him since the Trial; I never saw them before.

Q. Did you never know them go out of Doors since they came, but to this House?

A. Never, no where else.

Q. Who brought them to the Duke's?

A. I know not.

Q. Whence came they, d'you know?

A. I can't tell.

Q. Did they never report in the House, whence they came?

A. No, I never heard where they lived, nor how they behaved themselves.

Q. Do you know whether ever any Reward was given them?

A. No.

Q. I desire he may be ask'd, whether he has not known before, for some Time past, within this Fortnight or three Weeks, more or less, Meetings in *Somerset-house*, in order to this Trial?

A. The Thing is this; I was one Night at *Somerset-house* with my Lord Duke, 'twixt Six and Seven a-Clock; but I can't tell how long it is, whether it be three Weeks or a Month; it is no more, that I know.

Q. What were you there about?

A. I went there with my Lord Duke.

Q. Upon your Oath, Was there any Thing then done there, relating to this Trial?

A. Upon my Oath, I did not know but 'twas concerning my Lord *Howard* of *Escrick*.

Q. Was he there with the Duke?

A. Yes.

Q. Did you know who they went to?

A. No.

Q. Upon your Oath, Don't you know whether they went to *Madam Pitts*, or no?

A. They went to some House, but I don't know her Name they went to.

Q. Was there any body else there, but my Lord Duke, and my Lord *Howard*?

A. God knows. My Lord Duke call'd me to the Door, and sent me on a Message; and I went, and came again.

Q. Who did you see there when you came again.

A. I saw none but my Lord Duke, and another that I did not know.

Q. Who did you see go in?

A. None but my Lord Duke, and my Lord *Howard*?

EDWARD COTTER.

Di

Die Martiſ 4^o Martii, 1699.

Francis Huddleſtone ſworn, depoſeth as followeth.

Queſt. UPON your Oath, d'you know of any Meetings, relating to this Trial, that hath been within ſome Time paſt?

A. For Meetings, I know not any thing of them.

Q. Do you underſtand the Queſtion?

A. I know nothing of any Meetings.

Q. Have you not been at any Place where any thing has been done, relating to this Trial, againſt the Dutcheſs of Norfolk?

A. I don't underſtand any thing of the Trial. I know nothing of the Dutcheſs of Norfolk?

Q. Pray give a poſitive Answer; Have you not been preſent, or do you know of no Meeting, relating to the Proceedings againſt the Dutcheſs of Norfolk?

A. I never was at no Meeting.

Q. Who do you live with?

A. I live with my Lord Howard.

Q. Was you ever preſent at *Somerſet-Houſe*, where my Lord Howard and others met?

A. I have been at *Somerſet-Houſe*, but know nothing of any Concerns.

Q. D'you know *Vanefs*?

A. I know no ſuch Perſon.

Q. D'you know *Nicholas*?

A. I don't know him.

Q. Pray answer poſitively; Do you know one *Nicholas*, call'd *Hauſeur*?

A. I know ſeveral of that Name, but I know not who you mean.

Q. I mean one that lived with Sir *John Germaine*?

A. I know him not; I never had any Con- verſation with any Body that liv'd with Sir *John Germaine*.

(*Nicholas call'd in.*)

Q. Did you ſee any ſuch Man as appears here, at *Somerſet-Houſe*?

A. I know no ſuch Man as is call'd *Nicholas Hauſeur*: I know ſeveral call'd *Nicholas*, but none of the *Hauſeurs*.

Q. Look upon this Man; Have you ſeen him before or not?

A. Yes; I have ſeen him twice or thrice; but I knew not who you meant before.

Q. How long is it ſince you ſaw him firſt?

A. About a Fortnight ago.

Q. Have you not ſeen him at *Somerſet-Houſe*?

A. Never.

Q. Where did you ſee him?

A. In *Gerrard-ſtreet*.

Q. Was that all the Places you ſaw him at?

A. I ſaw him no where elſe.

Q. Whoſe Houſe did you ſee him at?

A. At Captain *Soames*'s Lodging.

Q. Did you not ſee a *Dutchwoman* there, one *Helen Vanefs*?

A. There was a Woman with him; I do not know her Name.

Q. Did you not ſee her at Captain *Soames*'s?

A. She was with this Gentleman there.

Q. Did you ſee her at no other Time or Place?

A. No.

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Q. Who elſe was there then?

A. Captain *Soames*, my Lord *Howard*, and one or two more. I was but at the Door. I have ſeen this Man go in. I was but a Footman waiting at the Door. I knew not the others that were there.

Q. Did you know no more that were there?

A. My Lord *Howard* was in the Houſe, but I know not if he were with them.

Q. Did you ever ſee *Helen Vanefs* before that Time?

A. I have ſeen the Woman ſince, but never ſaw her before.

Q. Did you never ſee her any where elſe?

A. Never any where elſe but at this Houſe, going and coming.

Sign'd,

FRANCIS H Huddleſtone.

The Council being withdrawn, the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examination, read to, and ſigned by the Witneſſes to Day, be deliver'd to either Side.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will peremptorily proceed to hear the Duke of *Norfolk*'s and Dutcheſs of *Norfolk*'s Council, to ſumm up the Evidence on both Sides, on *Friday* next, at Twelve of the Clock, and all the Lords ſummoned to attend.

The Evidence having been ſumm'd up, the Lords, after a long Debate, and a Division of the Houſe, committed the Bill, by a Majority of Sixteen.

Whereupon the Dutcheſs immediately preferred the Petition recited in the Order 8^o Martii.

Die Veneris 8^o Martii, 1699.

UPON reading the Petition of *Mary*, Dutcheſs of *Norfolk*, ſhewing, that by the Bill now depending for diſſolving the Marriage between the Duke of *Norfolk*, and your Petitioner, her Jointure and Marriage-Agreements are to be ſet aſide, and other Things in the Petition mentioned, and praying to be heard by her Council, touching the ſeveral Claims and Intereſt, and ſeveral Clauſes in the Bill: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Petitioner ſhall be heard by her Council to Morrow at Eleven of the Clock, at the Committee of the whole Houſe, to whom the ſaid Bill ſtands committed; at which Time ſhe is to produce her ſaid Marriage-Agreement and Writings, as in the Petition is ſet forth: At which Time the Duke's Council may be preſent, if he think fit.

Matth. Jobnſton, Cler. Parl.

Upon which an Order was made for Council to prepare a Clauſe for the 10,000 *l*.

The Dutcheſs's Council having reſuſed to join in drawing any Clauſe, tho' they adviſed a Petition about the Jointure and Marriage-Agreement, the Duke's prepared a Clauſe, to which the Lords added a few Words, and paſſ'd it as in the Bill. The Bill being ſent down to the Commons, the Dutcheſs preſented the following Petition.

M m

To

To the Honourable the Knights, Citizens, and Burgeſſes, in Parliament aſſembled.

The Humble Petition of MARY, Dutcheſs of *Norfolk*.

SH EW E T H,

THAT for putting an End to all Differences between the Duke of *Norfolk*, your Petitioner's Husband, and your Petitioner, ſeveral Articles of Agreement were entered into, and executed in *April*, 1694, by the ſaid Duke, your Petitioner, and your Petitioner's late Father, the Earl of *Peterborough*, whereby, and by Deeds executed purſuant thereunto, the Duke had his then deſired Advantage, and hath fully enjoyed the Benefit thereof: That your Petitioner, about the Time of perfecting the ſaid Deeds, ſignified to the ſaid Duke by Mr. *Negus*, that ſhe ſhould always readily comply with all ſuch Orders in her Way of Living and Converſation, as he ſhould think fit to appoint. Notwithſtanding which, and without ever ſignifying any Diſſatisfaction to or with your Petitioner, and without any manner of Notice, or previous Proceeding in the common and ordinary Courſe of Juſtice, and to take from your Petitioner that legal Trial in the Eccleſiaſtical Court, which by the Laws of this Realm (as ſhe is adviſed) ſhe is entituled unto, did on the 16th of *February* laſt, exhibit a Bill in the Houſe of Peers, entituled, *An Act to Diſſolve the Duke of Norfolk's Marriage with the Lady Mary Mordaunt, and to enable him to marry again*. Upon which the Pro-

ceedings were ſo very quick, two Witneſſes lately brought from beyond the Seas being forthwith examined againſt your Petitioner, and your Petitioner charged with Facts ſuppoſed to be committed many Years ſince, and long before the Date of the ſaid Articles, could not be prepared to make her Defence as ſhe would have done, if the Proceeding had been againſt her according to the known Laws of the Land. The Places of Abode of the Witneſſes produced againſt her being yet not known or diſcovered to your Petitioner: And your Petitioner having Notice, that the ſaid Bill is paſſed the Houſe of Lords, and ſent down for the Concurrence of this Honourable Houſe,

Your Petitioner prays ſhe may be heard by her Council at Law and one Civilian againſt the ſaid Bill, before any Proceedings be had thereon by this Honourable Houſe,

And your Petitioner ſhall pray, &c.

MARY NORFOLK.

A Day being appointed by the Houſe of Commons for the Committee to proceed, the Duke cauſed the Papers following to be publiſhed.

T H E Duke of *NORFOLK*'s C A S E; W I T H R E A S O N S for paſſing his B I L L.

IF Want either of Precedent for a Parliamentary Divorce, before going through the tedious and ineffectual Methods of *Doctors-Commons*, or of Demonſtration of Fact, have hitherto deprived the Duke of *Norfolk* of that Relief againſt his Wife's Adultery, which the Divine Law allows; the late Statute made in the like Caſe, and the coming in of two, who, while the Duke's former Bill was depending, had been ſent away, to prevent that Diſcovery which they now make; cannot but be thought to remove all Objections againſt an Act of Parliament, not only for the Benefit of the Duke, but of the Publick, as a Means to preſerve the Inheritance of ſo great an Office and Honours to Perſons of the true Religion.

And ſince Biſhop *Cozens*'s Argument, in the Lord *Roffe*'s Caſe has made it evident, that thoſe Canons which govern the Spiritual Court in this Matter, are but the Remains of Popery; nothing can be now requiſite to ſatisfy the moſt

ſcrupulous of the Reformed Religion, but to ſet the Duke's Proofs of his Lady's Adultery in a true Light.

The Reputation which the Dutcheſs had maintained, of Wit and Diſcretion, made it difficult for many to believe, that ſhe could be ſurprized in the very Act of Adultery, as had been formerly proved. And tho' it then appeared, that one *Henry Keemer* lived with the Dutcheſs while ſhe went by a feigned Name, at a Houſe hired for her at *Vaux-ball* by Sir *John Germaine*'s Brother; and that *Nicola*, who then lived with Sir *John*, uſed to receive Wood ſent from the Dutcheſs to Sir *John*'s Houſe by the Cock-pit; the withdrawing of *Nicola*, and carrying with him the *Dutch Maid*, equally entrusted with the Secret on Sir *John*'s Side; left no Evidence of their conſtant Converſation, but *Keemer* ſince dead, and *Suſannah Barrington*, who had the like Truſt from the Dutcheſs.

Keemer,

Keemer, though very unwillingly, ſome Years ſince confeſſed his living with the Dutcheſs at *Vaux-ball*, where he pretended ſhe was obliged to conceal herſelf for Debt; and what Share *Sufannab* had in the Secret was unknown, till *Nicola* appeared: *Nicola* coming into *England* ſome time ſince, in Expectation of a Service, expreſs'd his Readineſs to diſcover what he knew, and to endeavour to bring with him the *Dutch Maid*.

^a She proves, that for two Months the firſt Summer after the King came for *England*, Sir *John Germaine* and the Dutcheſs lived together as Man and Wife, and were ſeen in Bed together by her, Mr. *Briane*, and his Wife, Sir *John's* Siſter; and that *Nicholas Hauſeur*, Sir *John's* Valet de Chambre, uſed to be aſſiſting to him; as the Dutcheſs's Woman, *Sufannab Barrington*, was to her, at going to Bed, and riſing.

She proves the like Converſation at *Vaux-ball*, and the Dutcheſs's Houſe at the *Mill-bank*, till the Duke's firſt Bill for a Divorce was depending; within which time, *Nicholas Hauſeur*, by Sir *John's* Order, carried away her and *Sufannab Barrington*, with Intention of going for *Holland*, to prevent their being examined to what they knew; but the Wind proving contrary, they could not go till the Bill was rejected; and then Sir *John* fetch'd back *Sufannab*, who was moſt uſeful to the Dutcheſs; but *Hauſeur* went for *Holland* with *Ellen*.

^b He confirms *Ellen's* Evidence in every Particular; and beſides the Perſons mentioned by *Ellen*, as privy to Sir *John's* lying with the Dutcheſs, names Sir *John's* Brother, *Daniel*. *Nicholas* having been found very truſty, his Maſter ſent for him to return to his Service; and gave him the Opportunity of proving the Continuance of the ſame adulterous Converſation, at ſeveral Times and Places, from the Summer, 1692, to the 26th of *April*, 1696. He ſwears he had after his Return to Sir *John's* Service, ſeen them in Bed together at Sir *John's* Houſe at the *Cock-pit*, and at the Dutcheſs's Houſe, at *Mill bank*, and where ſhe now lives; and uſed to be let into the Dutcheſs's Apartment by *Sufannab Barrington*, or *Keemer*. Nor can any Man who ſhall read the Teſtimonials given Mr. *Hauſeur* by Sir *John*; by the laſt of which it appears, that he ſerved him faithfully as his Steward, reaſonably queſtion *Hauſeur's* Credit.

^c Another, who had been advanced by Sir *John* from his Footman to Mr. *Hauſeur's* Place, and from thence to a good Office in the Excife, very unwillingly confirmed the Teſtimony of *Hauſeur* and the *Dutch Maid*, not only as to the Time of their going from the Service of Sir *John* and the Dutcheſs; but though being no Foreigner, he could not ſo eaſily be ſent away to prevent Diſcovery, and therefore was not let ſo far into the Secret as *Hauſeur* and the *Dutch Maid*; yet he ſwears, the Dutcheſs uſed to come maſk'd to his Maſter's Houſe; that he has gone with him as far as the *Horſe-Ferry*, towards her Houſe at the *Mill-Bank*; that then his Maſter ſometimes lay out all Night, and the next Morning he has carried Linnen and Cloaths for his Maſter to *Keemer's* Houſe, or *Keemer* has fetch'd them from him: And this he proves to have been ſince the rejecting the former Bill, and

about five Years ſince, when he was ſucceeded by *Hauſeur*, as before he had ſucceeded *Hauſeur*.

Two other Foreigners, *La Fountain*, who lived with Sir *John*, and was ſerved with Summons at the Dutcheſs's Houſe at *Drayton*, and *Hugonee*, who ran away from the Lord *Haverſham's* ſince Summons was taken out againſt him, ſeem to have had the ſame Truſt that *Hauſeur* had; for both declared, *That nothing ſhould oblige them to betray their Maſter's Secrets*: One ſaid, *No Court could diſpence with an Oath of Secrecy*; and both declared, *They would immediately go beyond Sea*. Summons have been taken out for Mr. *Briane* and his Wife, and Sir *John Germaine's* Brother (who are, or lately were, in Town) to confeſs or deny what *Nicola* and *Ellen* appeal to them for; and it cannot be imagined, that Sir *John* ſhould chuſe the Honour of being thought to have to do with a Dutcheſs, before ſhe clearing her and himſelf from the Imputation, by bringing his Relations to diſprove the Charge, if what is ſworn to be within their Knowledge is falſe.

And if Sir *John's* Vanity ſhould prevail with him, at leaſt it is to be preſumed that his Relations would be more juſt to him and the Lady, than to ſuffer any Thing to paſs againſt them, which they could with Truth and Juſtice prevent.

But ſince none of them appear, the World will believe their abſenting more than a thouſand Witneſſes, in Confirmation of what Mr. *Hauſeur*, *Ellen* and *Bayly* have ſworn: Whoſe Evidence not only ſtands untouch'd by any Thing offered by the Dutcheſs's Witneſſes, but is plainly confirm'd by them in the principal Parts.

This being the Nature of the Proofs, 'tis obſervable,

1. That there never yet was any Caſe of this kind, where the Evidence was not liable to greater Objections than can be made to this.

Though in the lateſt Caſe of this kind, there was full Conviction of the Lady's having Children, while ſhe lived ſeparate from her Huſband, and the Preſumption was very violent whoſe the Children were; yet this was but Preſumption, and that was weakned by the Preſumption in Law that they were the Huſband's; eſpecially, ſince there was no direct Proof of the Lover's ever lying with her.

2. Tho' in that Caſe, by reaſon of the Interval of Parliament, and Fear of the Deaths of Witneſſes, a Suit was begun in *Doctors-Commons*, 'twas taken from thence while the Suit was depending; therefore that was rather an Objection againſt proceeding in Parliament, than an Argument for it.

3. In that Caſe, ſeveral Witneſſes were examined at the Bars of both Houſes, who had not been examined at *Doctors-Commons*, nor any Notice given of their Names before their Examination.

4. It appears by that Caſe, and the preſent, that the Examinations in Parliament are more ſolemn and certain than thoſe of the Spiritual Court; which depend too much upon the Honesty of the Register, or his Deputy.

5. Before that Caſe, Parliaments have either broken through the Rules which bind the

^a *Elianoſ Vanefs* Exam. 22 Feb. 1699.

^b *Nicholas Hauſeur*.

^c *William Bayly*.

Spiritual Court, as in the Case of the Duke of Norfolk, ^a *Eliz.* where the Parliament ratified the Marriage, ^b *as lawful according to God's Law; tho' protracted and letted, by Reason of certain Decrees and Canons of the Pope's Law; or else have dissolved a Marriage where there had been no Application to Doctors-Commons, as in the Case of Mrs. Wharton, who had been married to Mr. Campbell; and yet there had been no Examination of Witnesses, but what had been before the two Houses.*

^c So long before, in the Case of Sir Ralph Sadler, upon Proof before the two Houses, that the Lady Sadler's former Husband had deserted her, and disappeared for four Years before she married Sir Ralph, the Parliament legitimated her Children by Sir Ralph.

Whereas some object against the passing the Bill, as if it would countenance a Jurisdiction in the House of Lords to examine to such Matters, in the first Instance or Originally; the Objection would be the same if it had begun, as it might, in the House of Commons; but in truth would be of equal Force against most private, and several

publick Acts, occasioned by the Examination of Witnesses of Notoriety of Fact.

Since therefore the Duke has so long, and so often in vain endeavoured to be freed from a Lady, publickly famed and proved to have lived with Sir John Germaine, as his Wife; the Duke's former Disappointment cannot but be powerful Arguments for his speedy obtaining that Justice which the Spiritual-Court cannot give him, their Power reaching no further than to that Liberty of living as she list, some Years since settled by Articles: But as none of less Art and Oratory than her Council, could have turned this into a Licence to commit Adultery, if she list, or a Pardon afterwards; had there not been Evidence of her acting according to such Construction, the Duke would have hoped she had repented of the former Injuries he had received from her; but now hopes, she shall no longer continue to bear the Name of his Wife, and put him in Danger of being succeeded by Sir John Germaine's Issue, or deprive him of the Expectation of leaving his Honours, Offices and Estate, to a Protestant Heir.

^a *Eliz. x. 31.* ^b *2 & 3 W. M.* ^c *37 H. 8.*

Bishop COZEN'S Argument,

Proving, That Adultery works a Dissolution of the Marriage.

Being the Substance of several of Bishop Cozen's Speeches in the House of Lords, upon the Debate of the Lord Ross's Case.

Taken from Original Papers, writ in the Bishop's own Hand.

THE Question is indefinitely to be spoken of, Whether a Man being divorced from his Wife, who hath committed Adultery, and is convicted of it, may marry himself to another Wife or no, during the Life of her which divorced?

The Place in St. Matthew the 5th, repeated again St. Matthew the 19th, has great Perspicuity: If it be not lawful for a Man to put away his Wife, and marry again, except it be in the Case of Fornication (for the displacing the Words, by putting the Exception before the Marriage, cannot alter the Sense) then *à contrario*, it must of necessity follow, that if the Wife be put away for Fornication, the Husband, by the Tenour of Christ's Words, is left free to marry again; which Freedom is not allowed to the Adulterers herself, nor any Man else that shall marry her.

St. Mark and St. Luke have been opposed to St. Matthew; and it has been said, that Christ's Words in St. Matthew did not properly belong to Christ's Disciples, or the Christian Church, as the Words in St. Mark and St. Luke, which are absolute, do; which is a Saying that neither I, nor, I think, no body else ever heard of before: For Christ's Sermon in the Mount was spoken to his Disciples, and especially belonged to Christians.

'Tis clear they are spoken to his Disciples; for he says to them, that they are *the Salt of the*

Earth, and the Light of the World; and that they are blessed, when they suffer Persecution for his Name's Sake; which no Man will say or apply to the Jews.

'Tis true, that in the 19th Chapter of St. Matthew, Christ answers the Scribes and Pharisees, who came to tempt him with their Question, *Whether it was lawful for a Man to put away his Wife for any Cause, as they said, Moses had permitted 'em to do.* But the Answer that Christ gave them, *That it was not lawful, but only in the Case of Adultery, for Men to put away their Wives, and marry another;* was a Rule which concerned all Christians to observe for ever after; and for that Reason was recorded by St. Matthew.

The Words in St. Mark and St. Luke are not to be taken absolutely, but to be supplied and understood by his Words in St. Matthew, as in many other Cases is clear; *viz.* the Thief upon the Cross, Baptism in the Name of the Father, Son, and Holy Ghost, &c. whereof many Instances may be brought, as the Destruction of Nineveh, &c.

But for Christ's Words, the Exception confirms the Rule, and infers a Concession, that in the Case of Fornication, the putting away one Wife, and marrying another is allowed. It is alike with divers other his Exceptions, which are found in Scripture: For brevity, I will instance in this one (*viz.*) *Except ye repent, ye shall all likewise*

wife periſh. Upon which Text, if I or any Biſhop eſe were to preach, I believe we ſhould not diſcharge our Duty, unleſs we ſhould tell the People, That if by the Grace of God they did repent, they ſhould not periſh.

The Exception here, *ei ꝓn niſi*, unleſs, is parallel with the 1 *Kings* iii. 18. *None were in the Houſe except we twain*; they two therefore were, others were not.

Such Exceptions proceeding from natural Equity, are tacitly implied in Laws, tho' pronounced in general Terms.

But as to the Exception here, the Words are not capable of any other Senſe than as I have obſerved; for except that Reſtraint be referred to marrying again, the Senſe would run thus, *Whoſoever puts away his Wife commits Adultery*; which ſtands not with Truth or Reaſon; ſince it is not the Diſmiſſion that is adulterous, but the Marriage of another. It is therefore the plain Drift of our Saviour to teach the *Phariſees* that the Marriage of a ſecond Wife, after a Diſmiſſion of a former, *Upon any other Cauſe, except for Fornication*, is no leſs than Adultery; thereby inferring, That upon a juſt Diſmiſſion for Fornication, a ſecond Marriage cannot be branded with Adultery.

Besides, the *Phariſee's* Queſtion [*Is it lawful for a Man to put away his Wife for every Cauſe?*] was not without a plain Implication of Liberty to marry another, which our Saviour well knowing, gives a full Answer, as well to what he meant, as what he ſaid; which had not been perfectly ſatisfactory, if he had only determined that one Part concerning Diſmiſſion, and not the other concerning Marriage; which Clause if two *Evangelists* expreſs not, yet it muſt be fetch'd neceſſarily from the third; ſince it is a ſure and irrefragable Rule, That all Four *Evangelists* make up one perfect *Goffel*.

The *Rhemists* and College of *Doway*, urge for the *Papiſh* Doctrine, *Rom.* vii. 2. *The Woman which hath an Husband, is bound by the Law to her Husband as long as he liveth*; but,

1. This Place is to be expounded by *Chriſt's* Words.

2. *St. Paul* hath no Occaſion here to ſpeak of Divorce, but of *Marriage whole and ſound*, as it ſtands by *God's* Ordinance.

3. He ſpeaks of a Woman who is under a Husband; ſo is not ſhe that is divorced from him.

4. *St. Paul* uſeth this to his Purpose of the Law being dead, to which we are not bound.

Nor is their Doctrine more favoured by 1 *Cor.* vii. 10. *Let not the Woman depart*; as being in her Choice whether ſhe would depart or not; but in the Caſe of *Fornication* ſhe was to depart, or rather be *put away*, whether ſhe would or not.

The Bond of Marriage is to be enquired into, what it properly is. Being a Conjugal Promise ſolemnly made between a Man and his Wife, That each of them will live together according to *God's* Holy Ordinance, notwithstanding Poverty or Infirmity, or ſuch other Things as may happen during their Lives. Separation from Bed and Board, which is Part of their Promise ſo to live together, doth plainly break that Part of the Bond whereby they are tied to live together both as to Bed and Board. The Diſtinction betwixt Bed and Board and the Bond, is new, never mentioned in the Scripture, and unknown to the ancient Church; deviſed on-

ly by the Canonists and Schoolmen in the *Latin* Church (for the *Greek* Church knows it not) to ſerve the Pope's Turn the better, till he got it eſtablished in the Council of *Trent*, at which Time, and never before, he laid his Anathema upon all them that were of another Mind; forbidding all Men to marry, and not to make any Uſe of *Chriſt's* Conceſſion.

Bed and Board, or Cohabitation, belong to the Eſſence and Subſtance of Matrimony; which made *Erasmus* and *Bishop Hall* ſay, *That the Diſtinction of thoſe two from the Bond, is meerly Chimerical and Fancy.*

The Promise of Conſtancy and mutual Forbearance, if it hinders Divorce as to the Bond, hinders it alſo as to Bed and Board; and becauſe the ſame Bed and the ſame Table were promiſed in the Marriage Contract; but the Promise does not extend even to tolerating Adultery, or malicious Deſertion; which, according to *God's* Ordinance, diſſolves the Marriage.

Our Saviour ſpeaks of Divorces inſtituted by the *Mofaical* Law; but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce among the *Jews* was this, *Be expelled from me, and free for any Body eſe.* To give the Bill of Divorce, is from the *Hebrew* Root *נרץ*, which is to break, or cut off the Marriage. With this agree the ancient Canons, Councils, and Fathers of the Church.

Concil. Neocaſar. & Elib. forbid the retaining an adulterous Wife. *Concil. Eliber. Aurelian. & Arelatenſ.* give Liberty in ſuch Caſe to marry again. *Clemens's* Conſtitution, *Tertullian*, *St. Baſil* in his Canons, approved by a General Council, are for marrying again. *Concil. Venet.* If they marry in any other Caſe than Fornication, they are to be excommunicated, and not otherwiſe. *Concil. Wormat.* gives Liberty to the innocent Party to marry after Divorce. *Concil. Lateran.* gives leave for the innocent Party after a Year to marry again.

Concil. Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the firſt, he may remain with the ſecond.

Lactantius, *St. Hierom* and *Epiphanius*, are for Allowance of Marriage after Divorce. *Chryſoſtom*, *Hom.* 19. 1 *Cor.* 7. ſays, *That the Marriage is diſſolved by Adultery; and that the Husband, after he hath put her away, is no longer her Husband.*

Theophylact on the 16th of *St. Luke*, ſays, that *St. Luke* muſt be interpreted by *St. Matthew*. *St. Hilary* is for marrying again, as *Dr. Fulk* ſaith upon *St. Matthew* the 7th. The *Eastern* Biſhops, in the Council of *Florence*, are for marrying again: *Juſtin Martyr* ſpeaks of a Woman giving a Bill of Divorce to a diſſolute Husband, without finding any Fault with it.

St. Ambroſe ſays, a Man may marry again, if he puts away an adulterous Wife; *Theodoret* ſaid of a Wife who violated the Laws of Marriage; *Therefore our Lord requires the Bond or Tye of Marriage to be diſſolved.*

All the *Greek* Church to this Day allow it. *Erasmus Cajetan*, and other *Papiſts*: The Civil Law, and the Laws of the Emperor are clear for it: And the Conſtitutions of our own Church of *England*, in the Time of *H. 8. Ed. 6.* and *Queen Eliz.*

The Practice of the *English Church*, in the Stat. 1 Jac. c. 11. against second Marriages, Divorces are excepted; and in Canon 107. 'tis provided, they shall not marry again; but it is not said such Marriages are void, only the Caution is forfeited: *Neither doth the Canon speak of such Separations, wherein the Bond is broken, as 'tis by Fornication.*

Even the *Canon-Law* allows marrying again, in case a Woman seeks her Husband's Life, and in case of a Bond-Woman. *Gratian* says, in the Case of Adultery, lawful Marriages ought not to be deny'd. In the Case of an incurable Leprosy, it was the Advice of *St. Gregory* to *Austin* the Monk, That he that could not contain, should rather marry. *Bellarmino* owns, That the Bond of the Marriage of Infidels is dissolvable; but the Marriage of the Faithful, and of Infidels, is of the same nature: And *Justinian*, a Jesuit, confesses, That it is simply lawful for the innocent Party to marry again. And the *Roman Doctors* allow a Dissolution of the Bond of Marriage, if the Parties should, after Consummation, transfer themselves into a Friary or Nunnery.

^a The *Canons* which, in the Case of Adultery, prohibit marrying in the Life-time of the guilty Person, are contrary to two Acts of Parliament made 25 Hen. 8. and 3 & 4 Edw. 6. wherein no *Canons* are allow'd that be any way repugnant to the *Laws of God, or the Scripture, the King's Prerogative Royal, and the Statutes of this Land*: Thirty-two Persons were to review the *Canon-Law*, in which Review, drawn up by Archbishop *Cranmer*, the innocent Person is permitted to marry again, according to *Christ's Law and Concession*.

We have Examples of such Marriages in *H. 4. of France*, and *H. 8. of England*, Lord *Mountjoy*, Lord *Rich*, Bishop *Thornborough*, and divers others. And 'tis observable, That in the Case of the Marquis of *Northampton*, 5 Edw. 6. who had been divorced for his Lady's Adultery, and married another before any Act of Parliament made concerning it, an Act which passed afterwards (only two Spiritual and two Temporal Lords dissenting) declares, he had been *at liberty by the Laws of God to marry*, and did lawfully marry another: Where the Act manifestly supposes, that whatever had obtain'd for Law till that Time, was void, as being *contrary to God's Law*.

The most considerable Men of the Reformed Churches, both at Home and Abroad, are of this Opinion: *Grotius* quotes *Tertullian*, in whose Time it was lawful for the innocent Party to marry.

Lancelot. Instit. Jur. Can. acknowledges, that Divorce is a Dissolution of the Marriage.

Selden, who is not likely to contradict the Laws of this Kingdom, maintaineth, That Marriage after Divorce is to be allow'd; and, in that Particular *Dr. Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large: "Marriage, says he, cannot be dissolv'd by Men at their Pleasure; and for that reason, as 'tis consider'd simply and absolutely, 'tis rightly said to be indissolvable, because Marriage is not only a Civil, but a Divine Conjunction; and is also of that nature, that it cannot be dissolv'd without Detriment

" of either Party: Yet it is not so dissolvable, but it may be dissolv'd for a Cause which God approves as just; for the Indissolvability was not instituted for a Punishment, but for the Comfort of innocent Persons; and it admits an Exception, wherein God ceases to conjoin. By Adultery two are made not to remain one Flesh: Hence it is that a contagious Disease is not a Cause of dissolving Marriage. By Adultery the very Essence of the Contract is directly violated; but the Contract ceasing, the Bond depending on the Contract necessarily ceases. It is against all Reason, that all Matrimonial Duties should be for ever taken away, yet the Bond or Obligation to those Duties should continue. The Words of our Lord, *Mat. v. 32. and xix. 9.* have no Distinction or Limitation of the Putting away, but simply and absolutely approve of Putting away; therefore they approve of Putting away, not *Partial*, or to a particular Purpose, from Bed and Board, but *Total*.

None are against the Reform'd Divines, but *Dr. Howson*, *Mr. Bunny*, and *Dr. Prideaux*.

Dr. Howson was a profess'd Adversary to *Dr. Reynolds*, who was a great Maintainer of the Church of *England* against all the Points of Popery, and particularly in this.

Dr. Taylor, *Bishop Hall*, *Dr. Fulk* are for Second Marriages; no Authors against them but the Council of *Trent*, and those of the Church of *Rome*; whose Credit is only sav'd by those of our Church who agree with them.

Upon the Difference of Explication between *St. Ambrose*, *Origen*, and *St. Austin*, a new kind of Divorce has been thought of, *from Bed and Board*; but this Divorce, or *Name of a Divorce*, was unknown to the *Jews* and *Ancient Christians*.

I said so much before, at the first and second reading of this Bill, that I was in good Hopes to have had no further Occasion given me of answering any Objections against it now; but seeing divers new Arguments have been studied and framed against it since that Time, I shall now endeavour to satisfy and clear them all.

1. The first Argument against it is, That the Separation from Bed and Board doth not dissolve the Bond of Marriage. To which I must reply, as I did before, That this is a Distinction without a Difference, newly invented by the *Canonists* and *School-men*, and never heard of either in the *Old* or *New Testament*, nor in the Times of the ancient Fathers, who accounted the Separation from Bed and Board to be the Dissolution of the Bond itself.

2. That first Institution of Marriage, that they may be *one Flesh*, is by Adultery dissolv'd, when the Adulteress makes herself *one Flesh* with another Man, and thereby dissolves the first Bond of her Marriage.

3. The Objection, That if the Bond be dissolv'd, and afterwards, if the Man or Woman be reconcil'd, they must be married over again, is no necessary Consequence, no more than 'tis in a Person baptiz'd, who may break his Covenant, and renounce his Baptism, and yet upon true Repentance be receiv'd into God's Favour by virtue

of the firſt Covenant, without any new Baptiſm. Suppoſe a Witch, who, they ſay, makes a Compact with the Devil to renounce her Baptiſm, ſhould afterwards, by the Grace of God, ſeriouſly and truly repent herſelf of the Wickedneſs; I do not believe that any body would take upon him to baptize her again: And if a Prieſt ſhould renounce his Orders, and turn Turk, and yet afterwards repent him, and return into the Church, he need not be re-ordain'd a ſecond time. The Caſe will be the ſame in Marriage.

4. I ſaid heretofore, That the *Roman* Doctors allow'd this Diſſolution of the Bond when the Man and Wife, even after the Conſummation of Marriage, would transfer themſelves into a Friary or a Nunnery; but becauſe it hath been ſince doubted, that no Authority can be ſhewed for this Particular, I ſhall here ſhew it out of the old Conſtitutions of the Church of *England*.

“ And, in the Caſe of Religion, that is the true Underſtanding, That, to wit, either of them betaking themſelves to Religion before Carnal Knowledge, the Bond of Marriage be diſſolv'd: But if both enter into Religion, and make ſolemn Profeſſion, then ſuch Marriage is diſſolv'd, even as to the Bond.

5. It hath alſo been ſaid, That if the Bill paſs, it will paſs againſt the Church of *England*; which I confeſs, I do not underſtand; for the Church of *England* is within the Kingdom of *England*; and if the Laws of this Kingdom be for the Bill, and have declar'd it by the Aſſent of the King, Lords

and Commons, as in the Caſe of the Marquis of *Northampton* was heretofore declar'd, in the Time of King *Edward the Sixth*, That by the Laws of God the innocent Party was at liberty to marry again; certainly the *Spiritual Lords*, as well as the *Temporal and Commons*, are bound to admit it: And I know not why they ſhould be call'd the Church of *England*, that join with the Council of *Trent*, and plead ſo much to uphold it, rather than others that join with all the Reformed Churches, and plead againſt the Canon of the Church of *Rome*, which hath laid an Anathema upon us, if we do not agree with them.

As to the ſuppos'd Inconveniencies that will follow upon marrying again.

1. More Inconveniencies will follow if they be forbidden to marry again.

2. The Father would be in an Uncertainty of the Children, if they ſhould retain the Adulterers.

3. There would be danger of poisoning or killing one another, if no ſecond Marriage were allow'd.

4. Where the Parties ſhould conſent to new Marriages for their own Luſts, the Magiſtrates have Power to over-rule ſuch Practices.

5. If they be kept altogether by Divorce from Marrying, it would occaſion the innocent Party to ſin.

A little before the main Queſtion about paſſing the Duke's Bill, the Dutcheſs's Agents handed about this Paper, among ſuch as they thought to be her Friends.

* Prov. Will. Lyndewode, five Conſt. Ang. fol. 94. Ver. nullatenus ſeparentur.

T H E

CASE of MARY, Dutcheſs of *Norfolk*.

UPON the Marriage of the Dutcheſs with the now Duke of *Norfolk*, in the Year 1677, her Father, the late Earl of *Peterborough*, paid as Part of her Portion 10000*l.* and ſettled on that Marriage Lands of near 1000*l.* per Annum, the Remainder of which, on Failure of Iſſue, was limited to the now Duke and his Heirs for ever; and the Earl after his and his Lady's Death, ſecured to the Duke the Forfeiture of *Drayton*, worth 10000*l.* more; and the Duke receiv'd alſo, by Agreement, 1000*l.* per Annum for Twenty Years out of the Earl's Eſtate, beſides very rich Jewels, Plate, and other Things of great Value, which the Dutcheſs brought with her into the Duke's Family: And great Debts having been contracted for the Support of the Duke's Honour and his Service, while he cohabited with the Dutcheſs, ſhe hath, ſince his Separation from her, paid them out of her own Eſtate.

That by the evil and malicious Inſinuations of the Dutcheſs's Enemies, the Duke was prevail'd on to carry her, then a Proteſtant, into *France*,

and to put her into a Monastery (where ſhe could not be admitted without changing her Religion) and left her there, on great Aſſurances of ſending for her home in a ſhort time, and ſo parted with great Expreſſions of Kindneſs.

That a conſiderable Time after, by the Duke's Conſent, ſhe return'd into *England*, and lived retiredly at *Drayton* in *Northamptonſhire*; and at the Time of the Revolution ſhe again retired to *France*, where ſhe continued till ſhe heard of her Father's Imprisonment in the *Tower*, and then came back to *England*, and lived privately, till her Father obtain'd his Liberty, when ſhe came home to him.

That the 8th of *January*, 1691, the Duke was prevail'd on, by the Inſtigations of her Enemies, to exhibit a Bill in the *House of Peers*, to the ſame Effect with the Bill now depending, and divers Witneſſes were examin'd on both Sides; after which, and a long ſolemn Debate and due Conſideration had by their Lordſhips of the Witneſſes, and what was ſworn by them, the 17th of *February*,

bruary, they were pleased to reject the Bill without a second Reading.

Notwithstanding which, the Duke was again prevail'd on, the 22d of *December*, 1692, to exhibit a Second Bill in the House of Peers, to the same Effect with his First; which, after several Debates, was the 2d of *January* following again rejected.

Some time after this, and for accomodating all Differences between them, Proposals were made to the Dutchess, which, after long Agitation, on the 28th of *April*, 1694, were reduced into Writing, and executed by the Duke and Dutchess; the Preamble of which Articles is in the Words following: *Whereas diverse Controversies, Debates, Demands, and Suits of several natures have for some Time since been agitated, and continued, between the said Duke and the said Dutchess his Wife, &c. unto all which it is at last held sitting (it being conduible to their respective Quiets and Ease) to have an End put, and the like for the future prevented. It is therefore hereby, and by the Parties to these Presents, declar'd and agreed in manner following; Whereby the Dutchess convey'd to the Duke's Use the Manour of Castle-Rising, &c. And also the said Dutchess and her Trustees assign'd their Interest in a considerable Part of the Manour of Sheffield in Yorkshire to the Use of the said Duke; so that by these Articles, and that Deed executed thereupon, the Duke had his then desired Advantages.*

That after the Execution of these Articles, the Dutchess sent for one Mr. *Negus*, the Duke's principal Gentleman, and express'd her self very sensible of the Misfortune of the Duke and her self, and desir'd Mr. *Negus* to tell the Duke, that she would avoid all Company that should give him any Offence; and, that she would not so much as pay a Visit, but where he liked: Which Mr. *Negus* lately testified before the Lords, and that he acquainted the Duke with it; as also, that she had several times told him, If she died first, she would leave the Duke her Estate.

That notwithstanding the said Agreement, whereby the Duke and Dutchess agreed to live separately, yet without his signifying any Dissatisfaction to or with the Dutchess, and without any manner of Notice, or previous Proceeding in the common and ordinary Course of Justice, but by taking from her that Legal Trial in the Ecclesiastical Court, which by the Laws of this Realm she is entitl'd unto, he did, on the 16th Day of *February* last, exhibit in the House of Peers the Bill now depending, for dissolving the Duke's Marriage with the Dutchess, and for enabling him to marry again: Upon which the Proceedings were so very quick, two Foreigners (a *French* Footman, and a *Dutch* Cookmaid) lately brought from beyond Sea, being forthwith examin'd against her, charging her with Facts suppos'd to be committed many Years since, and long before the Date of the said Agreement, and on which the two former Bills were founded, that it was impossible for her to make her Defence, as she might have done if the Proceedings had been against her according to the known Laws of this Land.

The Dutchess thought her self under a Necessity of complying with all the Orders of the House of Peers; and accordingly, as well as she could, made her Defence, tho' less than a Week's Time was allow'd her for doing it; and upon examining the Evidence of the Duke's Witnesses,

many Contradictions appear'd, some whereof follow, as doth appear by the Depositions taken in Writing, and now remaining in the House of Peers.

For *Hausfeur* the Footman swears, the Dutchess was at the *Cock-pit*, when, and before he came to live with Sir *John Germaine*; and, that he continued there Fifteen Days after; and, that after the Dutchess left the *Cock-pit* she went to *Vaux-hall*.

Vaneffs the Cook-maid swears, *Hausfeur* came to Sir *John* when the Dutchess was at *Vaux-hall*.

Hausfeur swears, that the 8th of *Febr.* 92, he left Sir *John's* Service, when the Trial was between the Duke and Dutchess in Parliament, and after lived privately six or eight Weeks, till he and *Vaneffs* could get for *Holland*, and arrived there in the *Easter* following.

And yet in another Place he swore, he desir'd Leave to go; and afterwards, That he also went for *Holland* as soon as the Wind was fair.

But *note*, all the Evidence was closed and order'd to be summ'd up the Ninth of *February*; so that he needed not afterwards to have gone. And whereas he insinuates, That he and *Vaneffs* were secreted, and kept from being Witnesses:

Note, It doth no where appear, that either he or *Vaneffs* were ever thought on for Witnesses.

Hausfeur swears, He return'd again to Sir *John* in Summer 92, being often sent to by Sir *John*.

Whereas *Bayly*, another of the Duke's Witnesses, swears, he did not return again to Sir *John* in two Years after he went away, *Bayly* the Witness being all that Time, and three Years before, a Servant in the House.

Note also, That this very Summer 92, to wit, in *Easter-Term*, the Duke brought his Action against Sir *John*, which was tried *Michaelmas-Term* 92; at which Time it had been more likely, if Sir *John* had believ'd he could have done him any Harm, he should have kept him *Holland*, rather than have sent for him over, especially considering that this Fellow afterwards swears Sir *John* swore in a Rage this Fellow would betray him.

Hausfeur being ask'd, Who sent for *Vaneffs* over?

He answer'd, That after he had promis'd the Duke and Lord *Howard* to speak the Truth of what he knew, they desir'd him, if he met *Vaneffs*, to desire her to come over, and speak the Truth of what she knew.

And being ask'd, How long after he met *Vaneffs*? answer'd, About Twelve Months since.

And being ask'd, When was the first Time he spoke to her about coming over to speak the Truth? answer'd, 'Tis about a Year since.

And being ask'd, How long it was since they resolv'd to come over? answer'd, Twelve Months.

Vaneffs being ask'd, Whether she was not sent for from *Holland* to be a Witness? answer'd, She knew nothing of it till eight or nine Weeks ago.

Vaneffs swears, She was sent away on Account of the Trial.

Whereas *Peacock, Hawksworth* and *Knight*, three Servants of the Dutchess's, swore the Dutchess turn'd her away before the Trial, for keeping Company with *Dutch* Soldiers; and they do swear a new Cook-maid before the Trial.

Hausfeur swears, He had a Key of the Door going into the *Park*, and could come in when he would.

And

And yet owns he knew but two of the Servants, one whereof is long ſince dead.

And alſo the Dutcheſs's Servants ſwear, they never heard any body had a Key; and, that if any Key had been, they muſt have known of it. They alſo prove the ſhutting up, bolting, and chaining the Door every Night, and opening it every Morning; and but one of the Servants remembers ever to have ſeen him at the Door, and then he rung the Bell, but came only to ſee a Country-woman of his, and to carry Letters to *Holland*, and brought Answer back to her, but was not admitted beyond the Paſſage.

Hauſeur and *Vanefs* ſwear, they ſaw the Dutcheſs and Sir *John* in Bed together at *Mill-bank*.

The Dutcheſs's Woman ſwore, ſhe has put the Dutcheſs to Bed, and taken her up every Night and Morning ſeveral Years, and never ſaw him in the Houſe. And two others ſwear, they were conſtantly in waiting Night and Morning, and poſitively deny any Knowledge of any ſuch Thing, and ſay, they never ſaw *Hauſeur* there; and that *Vanefs* was never admitted up Stairs, ſhe was ſo dirty a Creature, much leſs to dreſs or undreſs the Dutcheſs, as ſhe pretended often to have done.

Vanefs ſwears, She could not tell the Places ſhe has been at theſe Six Weeks laſt paſt. Whereas

Mr. *May*, and two other of the Duke's Servants, ſwear, ſhe has been fourteen Days in the Duke's own Houſe, with the full Liberty of the Houſe.

Vanefs being aſk'd, Whether ſhe ever told any body of the Occaſion of her going away? ſhe ſwore, Yes, ſhe told it to a great many in *Holland*, and not here.

Yet being afterwards aſk'd, Whether ſhe ever diſcovered that ſhe was ſent out of the Way? ſhe ſwore directly, No.

Theſe are ſome of the many plain Contradictions and Diſproofs of theſe Evidences, beſides the great Improbability in their own Nature, in ſeveral Things ſworn.

But it is alſo to be noted, that *Hauſeur* left Sir *John*'s Service in a Diſguſt; and ſo 'tis prov'd by *Bayly*, another of the Duke's Witneſſes, and that what *Hauſeur* ſwore could be nothing but Spight and Malice: Yea, 'tis prov'd on the Dutcheſs's Part, that he ſwore he would find a Way to be reveng'd of him, and that perhaps it might not be long fiſt: And Mr. *Strange*, Mrs. *Pitts*, and her two Maids, who could have depoſed very materially for the Dutcheſs, reſuſed to appear, tho' often ſummon'd, being Perſons not in the Dutcheſs's Intereſt or Power.

This *Hauſeur* has been out of Place ever ſince he left Sir *John*'s Service, *April* 96, and is ſo ſtill, as he ſwears, and ſo in conſequence likely to be neceſſitous.

Note alſo, that *Hauſeur* ſwears, Sir *John* gave him ſeven Guineas to pay the Charges of himſelf, *Vanefs*, and another, which were order'd to be kept private till they could be ſhipp'd off, and alſo for their Paſſage into *Holland*, which was in Time from the 8th of *February* 92, till *Eaſter*.

Which does not look like a Bribe for a Secret of this Nature, being hardly ſufficient to maintain three People, and pay their Lodgings, for two Months.

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Hauſeur would be thought a mighty Confiſident, ſo as to have a Key to the Dutcheſs's Houſe, to come in and go out when he pleas'd; and yet, as well acquainted as he pretended to be with the Houſe, and the Dutcheſs's Bed-chamber, he could not tell on what Floor it was, nor what Furniture it had, nor whether wainſcoted or hang'd: And when he was aſk'd which way the Windows of the Bed-chamber look'd? he trifled in that Queſtion, and concluded, he could ſee the Water, but was afraid to go near the Window, for fear of being diſcover'd; and yet had no Scruple of coming into the Houſe with his Key, at any time.

Theſe Things being obſerv'd, it muſt be conſider'd, that the Facts now in effect charged againſt the Dutcheſs are ſuggeſted to be done many Years ſince, and were debated and conſider'd before the Peers, before the Rejection of the two fiſt Bills, and long before the Agreement for putting an End to all Controverſies and Debates. Now 'tis very hard to put the Dutcheſs to account again for thoſe very Facts, conſidering that after eight or nine Years, many People are dead, others diſpers'd, and not in a little Time to be found out, and Circumſtances of Times and Places (which in the Nature of all theſe Caſes is almoſt all that is left to diſcover a Falſity) forgot.

The Dutcheſs is alſo under the unavoidable Neceſſity of proving a Negative againſt downright Swearing, and that without any Matter introductory; and alſo by two mean Servants, the one turn'd out of her Place for keeping company with Foot-Soldiers, and the other leaving his Place in diſguſt, becauſe he could not have the Play-Money.

Maſters are already too much in the Power of their Servants, and if they charge their Maſters with Adultery, Felony, and even Treason, it is not eaſily in the Power of the Maſter to defend himſelf againſt downright Swearing; Servants having thoſe Opportunities of the Knowledge of Times, and Places, and Company, which cannot be denied or avoided, and which others have not; whereupon they may frame and build falſe Evidence, and many times are of ill Principles and deſperate Fortunes, and of Tempers very revengeful; ſo that whoever turns away a Servant, he is in his Power for his Eſtate, Honour, and even Life itſelf; and therefore, for the Safety and Freedom of Families, in other Countries, they are not permitted to be Evidence againſt their Maſters, in any Matter criminal whatſoever.

Note alſo, that the Dutcheſs thinks ſhe, as an *Engliſh* Subject has, by *Magna Charta* the ſame Right to a Trial in the legal and ordinary Way of Juſtice, as the reſt of the King's Subjects, eſpecially conſidering that there never yet was in *England* one Preſident of a Bill exhibited in *Parliament* to diſſolve a Marriage at the fiſt Inſtance, without any previous Proceedings in the Eccleſiaſtical Courts, (which in theſe Caſes is the Law of the Land) and not above Five or Six Bills, in above 600 Years ever paſſ'd to diſſolve Marriages, or make Second Marriages good, even after there had been a Divorce in the Spiritual Courts, and thoſe Bills too in Caſes generally where the Huſbands were without any Recrimination.

No Impediment appears why the Duke ſhould not have endeavour'd a Divorce at Law before he had attempted a Bill to diſſolve the Marriage;

for any Application to the *Legislature* for Trial of Matters of private Right is improper, because there are proper Judicatures that give that Remedy the Law allows.

To ask any thing of the *Legislature*, in private Causes between Party and Party, beyond what the known Laws in force give, seems to be improper; because,

1. It is to make a Law in one Person's Case, which is not the Law in another's.

2. It is to retrospect Actions, and after the Fact, to augment or alter the Penalty. Our Laws are certain and known, that Persons may conform their Actions to them.

3. The Courts and Forms of Law are equally the Subjects Right with the Law, and the Application to the *Legislature* takes away all that Right of Form and Charging; whereas a Certainty in Time to answer, and Exceptions to Witnesses, and other legal Defences of the Fact cannot be denied the meanest Subject.

The Consequence that short and summary Ways of Proceedings may have on the Settlements of Estates and Families, may be very dangerous; and tho' the Duke of *Norfolk's* Bill passed the House of Peers, yet a great Number of the Peers, both Spiritual and Temporal, enter'd their Protest against its passing, and their Reasons for it.

It ought to be no Prejudice to the Dutchess, that the next Heir presumptive to the Duke doth not yet appear to be a Protestant, because when a Bill, which hath lately passed both Houses, is become a Law, it is not likely that noble Family will be without a Protestant at the Head of it.

If any of the Witnesses formerly examined on the Bill in 1699, be now again produced, it is humbly apprehended, that as the Validity of their Testimony they then gave, was totally overthrown by a greater Number of Witnesses, so it will be again, tho' under the Disadvantage of the great Distance of Time.

Martis 19 die Martii, 1699.

The Reading the Bill, for dissolving the Marriage of the Duke of *Norfolk*, the second Time, and hearing Council as well on the behalf of the Dutchess against the Bill, as on behalf of the Duke for the Bill, being the Order of the Day, before the Council was called in, to prevent the Inconvenience of People crowding into the House, the House made an Order,

That none but the Council, Solicitors, and Parties should be called in, and that the Witnesses should have Notice to attend without, ready to be called in, if the House should think fit.

It was also intimated, That if the Duke and Dutchess did think fit to come into the House, they should be accommodated with Chairs, that being a Respect shewed to the Nobility when they come into the House.

And then the Council, and Solicitors, and Parties of both Sides were called in: And first the Bill was read to them.

And then the Lady Dutchess's Petition was read.

The Council that appeared were,

Sir *Thomas Powys*,
Mr. *Dod*,
Dr. *Pinfold*, } for the Dutchess.

Mr. Serj. *Wright*,
Mr. *Northey*,
Mr. *Atwood*,
Dr. *Oldisb*, } for the Duke.

And Mr. *Speaker* then spake to this Effect:

Mr. *Speaker*. You are here, I see, Council on both Sides. The House have ordered, That my Lady Dutchess should be heard according to the Prayer of her Petition; and my Lord Duke had likewise an Order to be heard to make good his Bill. I think the Petitioner is to be heard first, to make good the Allegations of her Petition; and when the House have heard you both, as to that, they will consider whether they will proceed to hear the Allegations of the Bill made out.

Sir *Thomas Powys*. Mr. *Speaker*, with your Favour, Sir, I am of Council with the Petitioner, the Dutchess of *Norfolk*, against this Bill that is now before you; and I believe I may say with some Assurance, that this Bill, in the Manner it is now brought before you, is the first that ever was attempted in this Honourable House. It's, Sir, true, that several Years ago this Bill, or another of the same Nature, was attempted twice in the other House, and as often rejected; but 'tis as true, at last it does come from thence hither, but not without a Protestation there; and I humbly hope that you will take notice, that this is a Bill of Divorce in Parliament, in the first Instance, without a previous Prosecution to examine the Fact in any of the ordinary Courts that have Authority in these Matters.

It is a Bill not only to Divorce the Dutchess upon a very short Warning, who hath been a Wife twenty-three Years, but to render her infamous to all Posterity by Act of Parliament, which I account to be the greatest Misfortune possible to befall any Person; and at the same time it takes from her the legal Trial of the Fact wherof she is accused, and which she hath a Right to by the Laws of the Land, sure as much as the meanest Subject; and which we don't apprehend she has in any wise forfeited; nor is there any Reason assigned, why his Grace has not been pleased to proceed in the ordinary Course. I hope, Sir, you will take Notice also, that this is, in truth, nothing but a Suit between Party and Party. 'Tis merely a Cause Matrimonial between Husband and Wife, began originally in the House of Peers; and as hitherto the Beginning of Causes between Party and Party, in that House, hath been strongly opposed, so I hope it will be thought reasonable to do so always, because it deprives the Subject of that legal Defence due to him by the Law of the Land. If this was always complained of, when the Proceedings were in a Judicial Way, surely 'tis a great deal worse to begin there a private Cause between Party and Party in the Legislative Way. I can see no manner of Difference, with respect to the

the Loſs of thoſe great Advantages the Party is intitl'd to, only this ſeems rather to be the moſt againſt Reaſon.

Sir, this is a ſummary Proceeding with a witneſs. It began but the 16th of *February*, and but a Week's Time given to the Party accus'd of ſo high a Crime, and of ſo great Conſequence to the Party accus'd, to be heard to it; and tho' perhaps we may with Reaſon enough find Fault with the tedious Proceedings in ſome Courts, where Appeals and Writs of Error are juſtly due, as where Property is well fix'd, it muſt needs be reaſonable: I ſay, from various Cauſes, though Suits in the Ordinary Courts are very tedious; yet I am ſure a ſummary Way of Proceeding without due Warning, or any certain Way of making Defence by any known Rules, and without Oath, as here without Appeal, without any Poſſibility of retrieving the Matter again, with great Submiſſion; and if this muſt be for all that one has in the World, ſuch a ſummary Way is a very terrible Thing.

I would be glad any one would make it his own Caſe, and think with themſelves how they ſhould like it, if their Life, Eſtate, and all they had, were put upon ſuch a ſummary Way of Proceeding. 'Tis true, in ſome Kingdoms, where the Government is arbitrary, the Proceedings are ſummarily, and moſt commonly they go together; and if we were in a Place where the Judges were infallible, and there were no falſe Witneſſes, and Truth could be diſcovered at an inſtant, a ſummary Way would be beſt; but ſince Men are fallible, ſince there is Paſſion and Partiality in the World, ſince oftentimes there is notorious Detec-tions of Perjury, and ſeveral Things are difficult to be diſcover'd, and require a reaſonable Time for examining into Facts; from thence it is that there are ſettled Courſes for determining all Queſtions in *England* between Party and Party; and there are known Rules and good Methods for the Relieving againſt any ill Judgment that is given.

Whatever you may think of this particular Caſe of the Dutcheſs of *Norfolk*; the Example is of mighty Conſequence to all Parents, that perhaps make hard ſhift to give their Daughters conſiderable Portions, and may think they have married them well, and made Proviſion for them and their Children: I ſay it will be hard, if their Daughters ſhould be ſent home to them upon a Fortnight's Warning, and that Witneſſes ſhould be examined againſt them without their having Notice ſo much as of the Places of their Abode; and a Thing ſhould be determined before the Witneſſes can be well known: And it muſt be agreed to be of great Conſequence to all collateral Heirs, if Marriages are ſo eaſily and ſuddenly ſet aſide for want of Iſſue; which I find to be one of the Cauſes aſſign'd for this Bill, and that it might be in a ſummary Way, perhaps, before they can well hear of it. I am ſure, this is a Matter of too great Temptation to be put upon Men that may grow weary of their Wives, and deſire a better Fortune, or deſire Change, or may be moved by a thouſand Reaſons we can't think of, to revive old Quarrels, and think of Things long ſince paſſed, if you will ſee ſuch a Precedent of Divorcing in ſuch a ſummary Way.

This is ſure of infinite Concern to us in higher Matters. A Bill of Divorce of a Woman in Parliament, without a legal Trial, is juſt the ſame Thing as a Bill of Attainder againſt a Man for Treason; the one forfeits the Eſtate, corrupts the Blood, and takes away his Life, and the other does very little leſs: For I find, according to the Bill, 'tis to forfeit her Joynture, to defame her Perſon, corrupt her Reputation; and tho' it leave her Life, it is left with Infamy, which is worſe than Death; and in a Caſe of this high Moment, ſure you will be careful how you alter the Courſe of Trials. I beſeech you, Sir, will not the Reaſon be the ſame, that a Bill of Attainder may be brought againſt a Man, and that Witneſſes againſt him may be fetch'd from beyond Sea, which he had formerly diſcharg'd from his Service, and put the other Side to prove what is always very difficult, the Negative, to make his Defence, which muſt needs require a reaſonable Time for the making out of Circumſtances, and laying Evidence together? Where will be the Difference between proceeding againſt a Man for his Life without a Trial, and proceeding againſt a Woman for her Joynture, where her Name, Family, and Reputation is concern'd, and perhaps her Children, the Legitimacy of whom muſt come in queſtion; and in a Caſe, where the Perſon by no Behaviour of hers hath forfeited ſuch a Trial, nor the Perſon that proſecutes this Bill, can't ſhew, that he hath been obſtructed in his proceeding in the ordinary Way? I need not take notice of what every body knows, that we have a happy Conſtitution, if we can keep it; every Man can call his Wife his own, and his Eſtate his own, becauſe it can't be taken away, but by legal Trial; but if you will go into theſe extraordinary Reforts, when the Courts and the Law is open, without any previous Preparations for that Matter, by having a fair Examination, that the Party can't ſay there is a Surprize, I know not where it will end; and though in one Caſe it may be deſirable, that there ſhould be an extraordinary Relief: But will this go no further? Can any body ſay that?

That which we find in *Magna Charta* is not to be forgot, where there is ſo much Care in the ſeveral Inſtances of it for the preſerving of Property, and the Right of Trials, *Quod nullus deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittimus, niſi per legale judicium parium ſuorum vel per legem terræ.*

Why, in this Caſe the Eccleſiaſtical Law is *Lex Terræ*. And if that be to be taken away without any Reaſon, why may not the Law in any other Caſe?

We have, perhaps, in Time of great Emergency and publick Difficulties, had ſome extraordinary Laws ground'd on extraordinary Reaſons; but now we are in a Time of ſettled Peace, when there may be a juſt Determination according to the Law of the Land, I can't ſee any Reaſon for this Proceeding, no not in this particular Caſe.

I would, Sir, with your Favour, take Notice of thoſe few Inſtances of this kind, that have been in *England* by Act of Parliament, and in what manner they have proceeded.

There have not passed hardly six in six hundred Years; I think I may challenge them on the other Side to shew so great a Number, but those I have I shall quote: But they proceeded in another manner than this has done.

'Tis true, where Persons have had a fair Trial in a proper Court, and Witnesses have been examined, and Sentence final been pronounced, and where the Party as to the Fact hath been concluded according to the Law of the Land; when all this hath passed, some Instances there have been, that afterwards an Act of Parliament has passed to strengthen the Sentence, and to carry it farther than the Ecclesiastical Court will allow, even to the dissolving the Marriage, and enabling the innocent Person to marry again; but you will find all those Acts are founded and built upon the Sentence of those Courts, and recite those Sentences as a great Inducement to the passing of those Acts; and I crave Leave just to take Notice of those. The first we find, is that made in the Case of the Marquess of *Northampton*, which was in 5 E. 6. He was married to a Daughter of the Earl of *Essex*, and she eloped from him, and was prosecuted in the Ecclesiastical Courts, and there was Sentence against her of Divorce. The Marquess, from hence, took upon him to marry a Daughter of the Lord *Cobham*; and after four Years Marriage of her, he obtained an Act of Parliament to ratify the second Marriage; which Act recites a Settlement of Divorce in the Ecclesiastical Court.

This took its rise from Examination according to Law; and that Act of Parliament is grounded upon it, and recites it as a previous Matter necessary to induce that Act.

The next that follows was the famous Case of the Lord *Rofs*, afterwards Earl of *Rutland*, tho' there perhaps was as great a Notoriety of Fact as can be pretended in this Case, and he did not stand impeached of any immodest Behaviour, but even in that Case the Divorce by the Act, followed a Divorce in the Ecclesiastical Court, and that passed with such Difficulty, that it was four Years in hand; it began in Sixty-six, and was not passed till Seventy: I have a Copy of it, and it says, that forasmuch as *Manners*, commonly call'd *L. Rofs*.

And it proceeds thereupon to enable him to marry again; but this, Sir, could not be but by two Acts of Parliament, besides the Sentence in the Ecclesiastical Court; for he first got that Court to declare the Children illegitimate, and then in the Year (70) the Parliament passed this Act.

I know of no other, till we come to a Case that happened within our Memory; 'tis the Case of a Person of great Worth, and I hope it will give no Offence when I cite the Precedent.

It was the Case of Mr. *Luknor*, who had been grossly abused by his Wife, by Elopement and open Adultery; but the Act he obtained went no farther than to disable the Children born while she lived in open Adultery; and that Act recites a Sentence of Divorce: I have a Copy of it, and I crave leave I may read a few Lines of it; it recites that Mr. *Luknor's* Wife had eloped from her Husband.

There was indeed a famous Case not long ago, of a Lady that was taken away by Force, and pretended to be married, and an Act of Parlia-

ment came afterwards to declare that Marriage null and void; but even there was a Proceeding at Law with a witness. The Person that had been concerned, was actually indicted and executed; it was not there to make a Divorce, and so it had been a vain Thing to have gone into the Spiritual Court, where there was no Marriage, for it was only a Law after the Fact declaratory by way of Caution, to give the more Satisfaction that That Marriage was null and void.

Sir, the last I know of (and it may be proper for you to observe how quick these People come after it) was that of a noble Earl, that did obtain last Parliament, an Act for divorcing him and his Lady: It is the Case of the Earl of *Macclesfield*; but in that Case it will be proper to take Notice to you, that there were previous Proceedings in the Ecclesiastical Court; there was a Libel exhibited against her, a Charge upon her, and Witnesses examined, and she had a fair Opportunity of making her Defence; there was a regular and a long Proceeding against her, and a Prosecution of her, in order to a Sentence of Excommunication; and then there came the Earl's Petition into the House of Peers, setting forth, that there had been such a Proceeding as this, and that she stood in Contempt, having been prosecuted as far as that Court could go: After an Examination of Witnesses, in all the Cases I have heard of a Divorce by Act of Parliament, there have been Proceedings in the Ecclesiastical Court; this was the Way of former Time, but now we are beginning where the Matter ought to end.

And now the first Application is to that Place, wherein all these Instances (as I think it ought to be) was the last Resort. 'Tis true, this Method may not please the Duke, for we know his Grace is in haste for cutting the Knot asunder at once, by the Legislative Power; but I hope, upon these Precedents, you will think it more reasonable it should be at first untied, or at least loosened by a judicial Proceeding. If you will, I do not see how in Justice the Parliament can deny the like Remedy the next Sessions to any other that may be in the like Case; it may be in worse, for here is no Pretence of any spurious Issue. Can the Parliament of *England*, whence we take our Measures of Justice, deny the like Remedy in Justice to any others that are in the like Case? What is it that guards you from an infinite Application of this Nature, but requiring Persons to take the ordinary Course first, and to come round about to the Parliament, as the last Remedy, to carry the Sentence perhaps farther than the Ecclesiastical Court can do: But if Persons can come up directly hither, I am apt to think your *Lobby* will be crowded with Petitioners of this Nature the next Sessions, though the Sessions now are long and frequent, this single Business may be so great as to obstruct all other Business; I am sure a Committee for Adultery would have a full Employment.

Let it be consider'd how strange it would be, if some poor Man upon this Precedent, shall come and make Application, and tell you he stands in Need of such a Bill from the Condition of his Family; that his Wife plunders his House, sells his Goods, and lives in Adultery, and prays this Matter may be examined in a

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ſummary Way, becauſe he is not able to go through the coſtly Courſe of Eccleſiaſtical Courts, and be favoured with a Divorce; would not this poor Man's Caſe ſeem to have the like Juſtice, or poſſibly more; and yet if ſuch a mean Man ſhould come with ſuch a Petition, perhaps it would look ſtrange; but yet in Juſtice there is no Reſpect of Perſons; the Law in *England* is, *unum pondus & una menſura*; and if this ſhould be done in the Caſe of a great and rich Man, and not for a poor Man, they may ſay what has been ſaid by ſome, *That our Laws are like the Spider's Web, which only hold the leſſer Inſects.*

Shall thoſe that expect the beſt Fortunes and greateſt Advantage by Marriage, not undergo the bad Fortune of Marriage too? I am ſure if this be ſo, it's a Privilege of *Peerage*, never thought on before.

You may ſee, Sir, by this Bill, how Precedents grow upon you; at firſt in the Caſe of the Marquels of *Northampton*, it was hard to get an Act after a Divorce: So it was in the Caſe of my Lord *Reſs*; the laſt Sefſions in the Caſe of the Earl of *Maccleſfield*; it went farther there, becauſe there had been a previous Proceeding in the Eccleſiaſtical Court, and his Lady had obſtructed that Sentence, that Act paſſed before Sentence; but now we are come to have it done without ſo much as a Trial to get a Divorce in the Eccleſiaſtical Courts; to have all paſſed at once in a ſummary Way, it will be but to petition the *Parliament*, and all ſhall be determined without a Poſſibility of being re-heard.

I know nothing can be ſaid on the other Side with good Reaſon (unleſs that which I heard in another Place) why they ſhould not go to the Eccleſiaſtical Court, which is that thoſe Courts cannot divorce a *Vinculo* Matrimony; therefore it would have been a vain Thing: This may be a good Reaſon for them to come to you afterwards, but 'tis no Reaſon for them to come here at firſt, unleſs they would ſay at the ſame time, that every Thing ought to be begun in *Parliament*, becauſe 'tis poſſible every Thing may be brought to the Houſe of *Peers* at laſt: Will they ſay that all Ejectments ought to be begun originally in the Houſe of *Peers*, becauſe after the Parties have been at great Charge and Trouble in the Courts below, they may be brought thither by Writ of Error at the laſt. This would have been a good Expedient, in a Cauſe lately where a Deed was tried over and over, if the Perſons concerned in ſo many Verdicts, had once thought of having begun in *Parliament* to have had it ſettled, whether it was a juſt Deed or no; if this be the Rule, it would be well it were known, and made to be the Law of the Kingdom; for that Law will be always reckoned hard which is made in one Caſe, if it may not be had in another; the Law of *England* does go throughout, and if it be Law for one, 'tis for another. I have but one Thing more to lay before you, and that ſeems worthy of your Conſideration, beſides all that I have ſaid.

You obſerve the Bill is general without Reſtraint, of Time and Place, or Deſcription, or Circumſtances relating to the Fact: Now, Sir, I muſt take leave to acquaint you, that ſo long ago as *April* 1694, his Grace the Duke, who complains of this Matter, as if ſome Miſfortune

had befallen him, having made former Complaints and Attempts for obtaining what he now deſires, did at laſt in *April* 1694, not ſuddenly, but by Advice of Council, with his Friends about him, after a long Time of Agitation, come to Articles with his Wife the Dutcheſs; of which I crave leave only to read the *Preamble*.

The Articles are between his Grace the Duke of *Norfolk* and the Earl of *Peterborough*, and recites—

* It is therefore determin'd by the Parties, and agreed as followeth; and thereupon the Articles proceed to ſettle every Thing between the Duke and Dutcheſs to his own Satisfaction, and according to his own Deſire: His Grace hath reap'd the Benefit of thoſe Articles, by having received a great Sum of Money; and the Dutcheſs parted with her Intereſt in that Great and Noble Manour of *Sheffield*; his Grace hath had all that he on his Part was to have, and hath executed abundance of Deeds, purſuant to his Agreement. Now if, after all this, there be a Proſpect of farther Advantage by another Marriage, that will not move you to give him a Liberty for a Departure from ſo ſolemn an Agreement, in what a Condition are People that have purchas'd their Peace as the Dutcheſs has, if they may have Liberty to go back beyond this, for the Bill has no ſtint; ſurely all Reconciliation between Men and their Wives, and all Acts towards them, and all Acts of Kindneſs, are to be favour'd; and Matters of a Divorce are of an odious Nature, and not to be encourag'd after ſuch Compoſure of Differences, and Reconciliation. We have Inſtances of ſome that have taken their Wives again, and lived comfortably afterwards; ſurely it ſhall not be in their Power to go back and ſay, *Pray let us be divorced*; 'tis contrary to the Uſe of all Acts of Pardon. What is the End of all Acts of *Parliament* of General Pardon, and all Statutes of Limitation, but to eaſe People in ſuch a Caſe? For 'tis impoſſible that any Perſon can be able to defend their Actions nine or ten Years ago; they can't keep their Witneſſes alive, and therefore the Law hath often limited a Time, beyond which Perſons ſhall not go back: And this, we think, the Duke hath done by Articles, and ſurely they are concluſive both before God and Man.

I ſhall ſay no more, but that I don't apprehend the Nation will be in any great Danger, if the Duke do, betwixt this and the next Sefſion, proceed in the ordinary Courſe, and prepare Matters againſt another Sefſion; I am ſure 'tis of great Conſequence: No Man can deny but we have a good Conſtitution; but if it is in the Caſe of a particular Perſon to be broken, ſuch a Breach in this Conſtitution may not be very eaſily recover'd.

I hope this Cauſe, that is precipitated here out of Time, and before thoſe Preparations were made that have been in all other Caſes, ſhall be remitted to its proper Place, where her Grace will give the Duke a meeting, if they be not before that Time reconcil'd.

Mr. *Dodd*. Mr. Speaker, I deſire the Favour of a Word of the ſame Side. Theſe Bills are not common; I think there are not above three Inſtances to be found in the Records of this Kingdom.

* *Vide* her printed Caſe *at infra*.

This Bill is to dissolve a Marriage after Twenty-three Years Continuance, and that not upon so many Days Notice as there have been Years of the Marriage, for to serve the particular Purposes of one Person: 'Tis a Law after the supposed Fact committed; the Law should go first, and the Fact follow; it is not a General Law for all the People of *England*; as such, it would have another Consideration: There is no Occasion for a particular Law, 'tis a Bill from the Lords, and in a little time, for what I know, the Lords will prescribe to it. There is not one of these Bills for a Commoner, unless in my Lord *Rofs's* Case, who was of a Noble Family.

'Tis not pretended by this Bill, that the Dutchess hath had any spurious Issue, though that was the Circumstances of one of the Bills that did pass, and that was a material Circumstance in the Case; and that is not alledged here. These Bills are not to be made use of, but upon extraordinary Occasion, and the utmost Extremity, and till then I hope such Bills shall not be made use of, and we think the Proceeding upon this Bill, in this Case, will appear much harder; for 'tis the first Instance of this Nature, when there has been no Proceeding in any Court whatsoever, to convict the Dutchess of this Offence, no Citation all this while in the Ecclesiastical Courts, where the Dutchess might have an Opportunity to make her Defence.

If those Courts have Jurisdiction in any one Thing, 'tis in Case of Matrimony: If this was brought into those Courts, the Dutchess would be allowed to make her Defence, not only by way of Recrimination, but Examination of Witnesses; a Commission might be had to examine Witnesses beyond Sea, if she had any Witnesses there, or in the Country; she might appeal to a Superior Court, and thence to the Delegates: These are all proper Defences that the Law allows, that there may be no Surprize upon the Party; and if injured, he may be righted in another Place: These Proceedings, we think are necessary to go before a Bill of this Nature, for then the Fact would be plain; and if the Dutchess had been convicted in this manner, as to the Fact, we must not have opened our Mouths against it.

By the same Reason that a Bill is brought to dissolve this Marriage, in a little time you may have a Bill to marry People: Be it enacted for such and such Reasons, such Persons shall be married. This would be a much readier Way in Case of Contracts, than any Proceedings in the Ecclesiastical Courts. And though they may say the Law of *England* takes notice of Contracts of Matrimony, as well as any other Acts, that is no Answer; for the Fact is, whether there is any Contract of Matrimony, or no; and so 'tis here, whether my Lady is guilty of the Crimes charged here in the Bill; and for this she ought to have a proper Trial, and ought to be called to an Account in the ordinary Methods of the Law; and then it might be proper to carry the Sentence farther than those Courts can. I hope you will be very tender of making a new Precedent; and I do not know of any Bill before this, to convict a Woman of a supposed Crime; then this is the first Bill of this Nature, and you will consider, whether you will make a Precedent of it or no. Though this be-

fore you is the Case of a great and honourable Person, yet your Justice will be the same, if it should happen that any other Man in the Kingdom should be in the same Circumstances, and willing to slip over all Trials, whereby the Person accused might have an Opportunity of making her just Defence, as is the Case of this noble Lady, who is hurried on after twenty-three Years Marriage to a Determination in as many Days in this extraordinary manner.

I hope therefore you will not proceed in a Bill of this extraordinary Nature, of which there is not one Instance to be given, where you have begun to examine a supposed Crime, but you have always left it to the Determination of the Law in the ordinary Course; and we think it ought rather to be so in this Case, because 'tis not pretended by the Bill, that there is any Stop put to their Proceedings there; there is no Absence of Witnesses, no Incapacity, but his Grace may proceed there to convict this Lady of the Crime he supposes her guilty of, and she will there have her just Defence; and till then there is no Crime for you to judge upon, and I hope you will think fit to reject this Bill.

Dr. Pinfold. Mr. Speaker, I desire to speak a few Words as to the Ecclesiastical Law, which is a Part of the Law of *England* as much as any other, for our Law does not receive *Majus & Minus*; and the Ecclesiastical Courts have been settled for several Ages, and are governed by such Rules which every Subject has a Right to. Sir, this Bill is to dissolve the Bond of Marriage, and to give Leave to marry again; and I crave Leave to shew the House what our Ecclesiastical Constitutions are in that Case, and how tender they have been in that Point, and how those Constitutions are grounded upon the Canons and Decrees of Councils.

The Cases where the Bond of Marriage is to be dissolv'd are but few, and they arise before Marriage; 'tis in the Case of the Precontract, or Nonage, or Consanguinity, and there the Bond is broken by the Sentence of the Judge, and the Person hath liberty to marry again; but for what comes afterwards, whether it be the Case of Adultery, or any thing else, the Law Ecclesiastical, which, as I said before, is part of the Law of *England*, hath been very careful not to dissolve the Marriage.

The 48th Canon says, If any Layman shall put away his Wife, and marry another, he shall be excommunicated: That was the Sense of those early Days; and sure they did not think it an indifferent Matter, because they punished it with so heavy a Punishment. So 'twas in the Council of *Arles*, 314, and there it was decreed, That if a Man took his Wife in Adultery, he should be forbidden to marry. There what was to be done? Counsel should be given him not to marry while she lived, tho' she was an Adulteress.

And in the Council 402, the *Nicopolitan* Evangelical, Apostolical Council, it was decreed, That if a Man was divorced from his Wife, or a Wife from her Husband, there they were not to marry, but should remain unmarried, or be reconciled.

And in the *African* Council, Canon 102, there it was provided, That they who were divorced,

whether

whether 'twas a Husband from his Wife, or a Wife from her Husband, they ſhould remain unmarried. This was the Senſe of the ancient Canons and Councils, and this is received into our Eccleſiaſtical Conſtitution. In the 15th Year of the Reign of Queen *Elizabeth*, in the Chapter of *Divorces*, 'tis ſaid, That upon a Sentence of Divorce there muſt be an Admonition, and a Prohibition, that the Party ſhall not marry again.

And in the Year 1602, in the Beginning of King *James's* Reign, there was a farther Proviſion made to keep them from being married again; and that was this, That they ſhould give Bond and Security that they ſhould not marry again; this is certainly our Eccleſiaſtical Conſtitution, and grounded on the Senſe of the ancient Canons.

Now it remains to ſhew ſome Advantage this would have had: If ſhe had had the Trial, which of common Right is due to the meaneſt Subject, ſhe would have had the Advantage of Challenges, which ſhe can't have here; for here the Evidence muſt drop from the Witneſſes Mouths, who are Foreigners, and have been long abſent; there they muſt give an Account of themſelves, which here hath not been done by any body. The Lady might have given her Exceptions to thoſe Witneſſes, and had a Commiſſion into *Holland*, to have examined how theſe Witneſſes behaved themſelves, and whether theſe Perſons were to be believed and credited: Here ſhe would likewiſe have Liberty to give an Account how this Deſign began. I do now ſpeak with reſpect to the Duke, but I do ſay it does ſeem to have begun a Year and a half ago. She would likewiſe have had the Advantage of a thorough Reconciliation: And here are ſome Deeds in (94) between the Duke and the Dutcheſs, which I hope, if the Houſe will take an Account of, will have its due Effect; ſhe would likewiſe have had the Advantage of an Appeal, the common Right of the Subject, and grounded upon good Reason; and in caſe there had been a Neglect in the firſt Inſtances, the Party may be righted in another Place.

By this Bill ſhe is debarr'd of the Advantage of Recrimination, to which ſhe hath a Right, for the Text Law is—

And the Text Law, *De Divortiis*, were the Charge moſt true, which we do not admit; yet if ſhe can prove the ſame Thing againſt her Husband, the Fault of one muſt be ſet againſt the Fault of another, and he can't have the Advantage of his Prayer.

I ſhall repeat only one Thing more, and that is the Caſe quoted already of the Earl of *Maccleſfield*, but in that Caſe the Lady withdrew herſelf five or ſix Days before Sentence; yet there the Lord *Maccleſfield* had all her Defences, and even her Recrimination, and had a Time to prove it; there was Publication, and a Day ſet down for Sentence; but ſhe ſpun out the Time till the Parliament was ready to riſe, and then my Lord's Friends adviſed him to begin in Parliament; and when the Lords were acquainted of my Lady *Maccleſfield's* ſtanding in Contempt of the Court, and ſhe was proſecuted ſo far, that ſhe was almoſt ready to go to Priſon for her Contempt, then the Houſe of Lords did think fit to receive my Lord *Maccleſfield's* Bill, and not

before; but before my Lord *Maccleſfield* brought his Bill in Parliament, there was nothing remain'd to be done in the Eccleſiaſtical Courts but Sentence: And I hope for all theſe Reaſons, you will not proceed upon this Bill.

Mr. Serj. *Wright*. Mr. *Speaker*, I am of Council for the Duke of *Norfolk*, who is your Suppliant for this Bill, for Redreſs againſt the higheſt Injury that can be offered; the Rights of his Marriage-Bed have been invaded, and he comes for that Relief here, which no other Court can afford him; for the learned Doctor on the other Side, tells you plainly, from the Canon Law, that there can be no Divorce *a Vinculo Matrimonii* in their Courts: Now to ſend us to a Court for Relief, that they tell us before-hand can give us none, is in Effect to tell us we ſhall have none at all.

The Bill is founded upon the Suggellions contained in the firſt three or four Lines of the Bill, that the Dutcheſs of *Norfolk* hath, for divers Years lived in Separation from the Duke her Husband, and hath had unlawful Familiarity, and adulterous Converſation with Sir *John Germaine*, and is guilty of Adultery on her Part, and hath broken the Bond of Matrimony: Theſe are the Reaſons for which the Duke deſires this Bill may paſs; 'tis for the adulterous Converſation of the Dutcheſs, not for one ſingle Act, but a continual Series of the like Acts for many Years; for we ſhall not give only one ſingle Act or Inſtance in Evidence, but prove this Converſation for ſeveral Years, beginning in Eighty-ſeven, and carried on to the latter End of Ninety-five.

It hath been objected, that this is the firſt Inſtance of a Divorce, the firſt Bill of this Kind, where there has been no Proceedings in the Spiritual Court: That 'tis the firſt Bill of this Kind we deny; but that there have been no Proceedings in the Spiritual Court, we own; for the Earl of *Maccleſfield's* was the ſame, to all Intents and Purpoſes, as this is; for though 'tis true, they had been in the Spiritual Court, yet 'tis as true, they came here into Parliament before any Sentence in the Spiritual Court: Now to what Purpoſe is it to go into the Spiritual Court, and not to ſtay for the Determination of that Court, if the Judgment of that Court is to have any Weight in the Caſe of the Earl of *Maccleſfield*? 'Tis true, they had been there and examined Witneſſes on one Side, with all Pre-ſentation, yet would they not ſtay for a Sentence there, but quitted their own Proceedings, and came to the Parliament. Now I do take it, that they had better never been there, than to have come away before Sentence; for when they were in the Spiritual Court, and were proceeding there, to leave that Court, ſhewed rather a Miſtruſt of their own Caſe. But it was no Objection in that Caſe, that it was taking it away from the Jurisdiction of the Spiritual Court. We don't come to you for any Thing the Spiritual Court can grant us; for that Court goes no farther, if the Fact be proved, than to make a Separation *à menſâ & thoro*, but the Bonds of Marriage is to be continued ſtill: Now with Submission, this is to puniſh the Innocent inſtead of the Guilty: What would the Dutcheſs deſire more, than to be ſeparated from the Bed and Board of her Husband, and be left free to accompany

company Sir *John Germaine*; but we go further, for we come to the Parliament to dissolve this Marriage for that, which is allowed by several learned Writers to be a justifiable Reason for so doing, for Adultery committed by the Wife; 'tis expressly, that a Man shall not put away his Wife, except in case of Fornication; this Text plainly allows, that in case of Fornication, a Man might put away his Wife; but the Popish Canons the Doctor has named, have put a Construction upon it: Say they, You shall put her away; but how? She shall be removed from your Bed and Table, but you shall not marry another. Then they say, there is no Precedent of a Bill of this kind, but there hath been a previous Prosecution in the Spiritual Courts. I agree the Marquis of *Northampton's* Case, that That Act does recite the Proceedings in the Spiritual Court: But that Case is stronger than this, for there the Marquis of *Northampton* had married even in the Teeth of their Canon Law, and comes afterwards an Act of Parliament to make this Marriage good, and there the Divorce was no Ingredient upon the passing of the Bill: But the Parliament enacted the Marriage to be lawful. In my Lord *Rofs's* Case, there is no mention of any Divorce.

I appeal to the Journals of your own Houses for that; but notwithstanding the Divorce, the whole Matter was examined over again, Witnesses were examined both in the House of Lords, and here upon the first Bill which was brought, which was to illegitimate and bastardize the Children; and the Witnesses proved, that my Lord *Rofs* and his Lady had not lain together for a long time, and that she had kept Company with others; so that the Parliament did not found the Bill upon what had been done upon the Divorce.

I appeal to your own Memory, that in the Earl of *Macclesfield's* Case, there was no Use at all on that Side; the Bill was brought, that there had been Proceedings in the Spiritual Court, nor is there any such Thing recited in the Bill, but only an express downright Charge of Adultery; nor was it proper for them to have mentioned any Proceedings in the Spiritual Court, since they waved that Prosecution; but we on the other side insisted on it, as a Reason why the Parliament should not proceed in it, it being to take upon them an original Jurisdiction; but we were then answered by a learned Gentleman against this Bill, that it was in vain to go there, for they could not give the Remedy that might reasonably be expected. I beg the Favour to mention a Case or two, where Divorces have been in Parliament, and there have been no Proceedings in the Spiritual Court; one of them was the Case of Mrs. *Knight*, who was married *infra annos Nubiles* to Mr. *Goodwin*. Every one knows, that a Marriage *infra annos Nubiles*, is a good Marriage; and if the Woman be above nine Years old, she shall be endowed; and yet notwithstanding, for some irregular Proceedings without going into the Spiritual Court, they came into Parliament; a Bill was passed, by which this Marriage was dissolv'd, and I think 'tis expressly enacted,

That she shall not marry till such an Age. This goes farther; for here I am sure the Doctor would have explained; and told you, if there had

been Reason to dissolve the Marriage, they could have done as great a Feat in the Spiritual Court; that they could have examined Witnesses upon Oath, and could have told you whether there was proper Evidence; yet the Parliament, without any regard to what they could do, would assert their own Jurisdiction.

The Case of Mr. *Wharton* was mentioned on the other Side; and therefore I need not say any thing to it: There was nothing of Divorce, nor needed any.

They say this Bill begins where it is proper for Matters of this Nature to end; and that after we have taken a Turn into the Spiritual Court, and travelled three or four Years there, then it will be fit for the Judgment of Parliament. I would know if they had been seven Years in that Court (and perhaps if they come there, we shall not get out sooner;) to what Use the Examination of that Court would be. This House, I presume, would not let those Depositions be read here, especially if the Witnesses to their Facts were living.

They say this is a very summary Way of proceeding; it may be too quick for the Dutches; but you may be pleased to consider, that there was a Bill brought into the other House some Years ago and rejected; upon what Terms, that will rest upon us to shew you by and by.

But the Matter was, the Witnesses that proved the Fact, was sent out of the Way by the Dutches and Sir *John Germaine*, when Things were under an Examination; and we hope a Matter of this Nature, never shall be baffled by keeping the Evidence out of the Way.

We told them long ago, who the Witnesses were; they were the Dutches's Servants, such as they thought fit to entrust.

They say this Bill deprives the Dutches of her Trial; I hope no body thinks the Parliament will pass a Bill, without due Examination of Witnesses, and legal Proof of the Fact; if so, what matter is it, whether the Proof be made before the Parliament, or some inferior Court; if the Dutches be guilty of this Crime, we come here for a Relief, which the Spiritual Court, the Doctors tell you, can't give us; since the Dutches hath broke the Bond of Matrimony, we come to you to Dissolve that Marriage, and I hope we shall have it.

The Doctor hath insisted on one Thing, that I think is very extraordinary: He tells you, by the Rules of their Law, if the Woman can recriminate, and prove her Husband guilty, in such a Case, they must set the Fault of one against the Fault of the other.

I wish the Doctor could have told you the Offence had been equal, that the Injury to Families had been equal; a Man by his Folly of this kind brings no spurious Issue to inherit the Lands of his Wife, but a Woman deprives her Husband of any legitimate Issue; for when she converses in this Manner with another Man, the Issue may be equally look'd upon to be that Man's,

Man's, if not more, and his Lady hath kept this Conversation ever ſince the Year Sixteen Hundred Eighty-Seven, and left the Duke.

One Thing is farther objected, and they inſiſt upon certain Articles of Agreement in Ninety-Four, and they read to you the Preamble of them: Why, Sir, the Articles, if they come to be read through, I am ſure it won't amount to what they pretend; it does not amount to this, that the Dutcheſs might uſe her Body as ſhe pleaſed; there is no Agreement, that ſhe ſhould live after her own Pleaſure. Indeed, ſhe was to have the uſe of her Houſhold Goods, and Servants, and live where ſhe pleaſed, but that will not juſtify her in her Way of Living.

Then to tell you, theſe are Matters of long ſtanding; they are ſo, and of a long continuance; for, if my Inſtructions prove true, we ſhall prove this Scene of Adultery for matter of eight Years ſucceſſively, and that by Servants that were privy to the Intrigues, who were ſent away to *Holland*; but no ſooner was the Bill baffled, but the Man was ſent for again, and the ſame Converſation continued that was between the Dutcheſs and Sir *John Germaine* before he left *England*.

The ſame was continued after he came back to his Service in (1691); only they were ſomething more cautious, and People were not admitted ſo familiarly to ſee them in Bed together in (1692); and ſo it continued till 1695.

They mentioned the Statute of Limitations, which was to put an End to frivolous and vexatious Actions: How they can apply it to this Caſe, I can't ſee; becauſe a Man ſhall not bring frivolous and vexatious Actions after a long diſtance of Time, therefore a Man ſhall not complain when he hath received the greateſt Injury that can be done to Mankind.

Sir, They are kind to us again, in recommending it to the Duke to go into the Spiritual Court till the next Sessions: But we think we are in proper Method here, for that Relief which the Spiritual Court cannot grant; and ſince we have ſo good Reaſon to come here, if we prove the Fact, I hope this high Court will not ſend away a Complaint of this Nature, without ſuch Relief as ſuitable.

Mr. *Northey*. Sir, I am of the ſame Side: I would beg leave to ſay this: As to what the Council have ſaid in relation to the Evidence, that there were three Witneſſes examined upon Oath, in the Houſe of Peers, before the Bill did paſs there; and I believe they are aware of that, and that when you hear our Witneſſes, there will be no Answer to be given on their Side; and indeed the Witneſſes they brought, were ſo far from contradicting our Witneſſes, that they did really confirm them. But that is not the Caſe now, what our Evidence is, or whether it be fit for you to believe them, that will be when you have heard them; and for the Matter of the Time, that you can't take notice of neither, till you hear our Evidence. But this I may ſay, we ſhall

bring a Man that will ſpeak to within four or five Years.

But the Matter they apply themſelves to, which is material, is, Whether it is proper for you to proceed on this Bill, that is, to give ſuch a Relief as we deſire, by diſſolving this Marriage? And in the next Place, Whether this be a proper Time to aſk this Favour?

For the firſt, the learned Doctor tells you 'tis not proper at any time to do it, for he would have the Canon Law govern here, as it does in their Courts. But the Council on the other Side have cited you ſeveral Precedents where it hath been done. In the Caſe of the Marquis of *Northampton*, the ſecond Marriage was contrary to the Canon Law, and yet that Marriage was confirmed according to God's Law. And this Bill is to relieve againſt the Canon Law.

Now, whether we are here in a proper Time; Sir *Thomas Powys* has ſaid a great many Things, which may be proper to many other Purpoſes. One Argument was, becauſe the Witneſſes can't be upon Oath; but that we know will not prevail in this Place. In the next Place they except, becauſe this Proceeding is in a ſummary Way. I would know of them, whether there is not the ſame Objection to all Proceedings before a Jury, that they have no Notice what Witneſſes will be produced?

Then in the next Place they bring a great Argument for the Recital of ſome of theſe Bills, That there have been a Sentence in the Eccleſiaſtical Courts. Now, 'tis true, they have been ſo in ſome of thoſe Caſes: But I beg leave to obſerve, That in the Caſe of the Marquis of *Northampton*, the Bill was not to confirm the Sentence, or to enable them to marry, but to deliver them out of the Hands of the Eccleſiaſtical Courts, who ſaid it was not lawful in that Caſe to marry, for they were married before.

I beg leave to ſay, That in the Caſe of my Lord *Maccleſfield*, there was no Notice in the Bill that came down to you of any Proceedings in the Eccleſiaſtical Courts: And I take this to be the Reaſon, becauſe there was no Sentence, though where there was a Sentence, they had good Reaſon to take notice of it. And I think there is as much Certainty, and as good Ground to proceed on this Bill, as in the other Caſe, for the Witneſſes have been already examined in the Houſe of Lords. In the Caſe of my Lord *Rofs*, there was no Regard to the Determination of the Eccleſiaſtical Courts, as a Guide to the Parliament; and it was looked upon as of no Conſequence, for the Witneſſes were examined again.

'Tis true, when we came before you without ſuch a Proceeding, we came under this Diſadvantage, you will be ſure to expect a plainer and fuller Proof; but for that we will undertake to make the Fact ſo plain, that they can't give the leaſt Pretence to answer to it.

We are here asking that we can't have any where else: Their great Design is Delay, and that we have learnt from the Civilian, who tells you, their Methods are very grave and deliberate, and, that they may have a Commission to examine Witnesses beyond Sea; and that is to enquire how their own Servants have liv'd beyond Sea.

As to what Sir *Thomas Powys* would have, that is, that we should go into the Spiritual Court, and apply our selves here again next Sessions, I do not think the Legislature will send us back to ask that in the Spiritual Court which both have submitted to: For after the Duke had miscarried in the Relief he sought by another Bill, by the Dutchess's sending the Witnesses out of the way; why truly, after that, to prevent any Prosecution in the Spiritual Court, the Dutchess submitted to a Separation by Articles, and that was all the Duke could have pretended to by the Ecclesiastical Law: We follow her upon that, and come to enforce that Separation. And, to make it effectual, and for that which we humbly hope will be thought but Justice to the Duke, that is, to be deliver'd from this Wife, and to have Liberty to marry again; we think there is no Occasion for Delay, and that no body can be hurt by a Precedent that carries Relief in this nature, and deliver us from a Law, which in the Days of Popery was put upon us: Upon the whole Matter, I hope you will think that we are here very properly for Relief, and that we shall have the Favour to call our Witnesses.

Dr. Oldisb. Sir, the great Objection against the passing of this Bill was, because Witnesses had not been examin'd in the proper Court. 'Tis very true, generally speaking, in Cases it ought to be so; but here is a very great Exception to that Rule, and which, I think, can't admit of an Answer, and that is, the Notoriety of the Fact; and in that Case they begin with Execution. And if that be so, I think there never was a clearer Demonstration in the World; for when formerly the Dutchess came to give in her Answer in the House of Lords, to the Charge against her, she did declare, That in the Year 83, or thereabouts, she went out of *England*, and tarried Three Years, and return'd about the Time of the Revolution. And it does plainly appear there, beyond all question, that she was at *Lambeth*, and went under the Name of the Lady *Beckman*, and was attended by one *Keemer*, who went then by the Name of *Goodman*. Besides this, there are Witnesses that speak to particular Facts. Now, I say, here is that which amounts to Demonstration; and where there is a Notoriety of Fact, that is an Exception out of the General Rule, and 'tis proper to begin with Execution.

There is an Exception to the General Councils and Canons that have been mention'd, That there shall not be a Divorce *à Vinculo*. Sir, I say, it was an Ecclesiastical Constitution, which was against the Law of God; and 'tis demonstrably so; for where our Saviour says, That a Man shall not put away his Wife, except in case of Fornication; it is plain, that in case of Fornication he may.

There is another Thing insisted on, and that is, That there was a Reconciliation between the Duke and his Dutchess. 'Tis true, a Reconci-

liation should drown all Things before that Time; but when the Law takes notice in case of a Relapse, that does *recrudescere*, it rubs upon the old Sore, and then that which was before laid asleep is brought again upon the Stage, and will return with greater Vengeance. And we have plain Proof of her living in the same manner since, as before.

But they would insinuate to you, That in case there was a Trial in the Ecclesiastical Court, there might be a Recrimination; but there must be a Compensation, which can't be thought in this Case; for, I think, in this Case, under Favour, there is no Comparison. I don't think they are *Paria*, for 'tis impossible for the Husband to do that Injury as the Wife may; for she may bring a Bastard into the Family, and then the Estate does not go according to the Law of God and Nature, for every body desires his own Blood should succeed him.

Sir Tho. Powys. Sir, I shall say but very little. But Three or Four Things have been mention'd on the other Side, which they offer as if they conceiv'd them to have great Weight, and yet they seem to me as very capable of being answer'd; and I crave your Favour to do it.

They have gone much upon the Proofs that they are ready to make, and, I think, not very properly, because we speak against their Proceeding upon this Bill; but I am sure it turns upon them: For, according to their own shewing, they are very well prepar'd to proceed in a regular Course, for they have their Witnesses ready, and nothing does obstruct them.

Mr. Serj. Wright mention'd a Thing which, I must confess, I was surpriz'd in; for when I told him, he could not find any Precedent of such a Bill as this, without a previous Proceeding in the Spiritual Court; *Mr. Serj. Wright* said, It was quite otherwise; and, to shew you it was so, he cited two Cases where there was no Marriage. Now I always understood, a Divorce must be in any Case where there was a Marriage, for the Case of *Mr. Knight's*, that was very lately: That was the Case of an Infant, who they pretended to have married *infra annos nubilis*; and therefore, says he, the declaring of that Marriage to be null and void by Act of Parliament, was a Divorce. The other was the Case of *Mrs. Wharton*, which was no Marriage neither, for Marriage must be by Consent, and that was a Force: And that he fancies to be a Case, where there was a Divorce too, without proceeding in the Spiritual Court; and yet, of his own shewing, it was no Marriage.

Another Thing I am much more surpriz'd at, we insisted, that they would not shew an Act for making a Divorce without giving the Party an Opportunity to make a Defence; and the Doctor says, in Common Cases it ought so to be so: And they cited the Earl of *Macclesfield* we first mention'd, and the Doctor told you the Progress it had, and that there was a full and regular Proceeding, of great length of Time; and, that my Lady *Macclesfield* had all her Witnesses examin'd, and my Lord prosecuted her to an Excommunication, which is in effect a Sentence, for it is in our Law as in Cases of Outlawry. This he calls a Precedent wherein they proceeded to get an Act of Parliament, without a previous Proceeding in the Spiritual Court.

He tells you in the next place, That notwithstanding the Divorce in the Caſe of my Lord *Rofs*, the Parliament did examine Witneſſes; 'tis true, they did, for I don't think they will ſo entirely pin their Faith upon thoſe Proceedings, as to have no other Satisfaction. But will he therefore ſay they took no Notice of it, when 'tis the Foundation and Ground of the Bill?

He tells you in the next place, That the Crime does not ſeem equal between the one and the other; and ſo, in ſome ſort, they ridicule the Doctor's Notion of Recrimination. But I apprehend the Doctor is right in it; for it would be hard if a Man ſhould marry a young Woman, and give her an ill Example in his own Family, (I do not ſay 'tis this Caſe) and bring her acquainted with looſe and ill Company, and by his Example or Provocation lead her into the ſame Offence; would that Man deſerve to be rewarded with a new Wife, and another Portion, becauſe his firſt Wife had only followed his Example?

They ſay, the Offence is not equal, becauſe the Man brings no Children into the Family.

I doubt it happens oftentimes to them that go abroad, that they bring home that to their Wives which ſticks longer by them than their Children.

Then to come and ſay, The Articles can't be of any Uſe to us at all; and to imagine that we uſe the Articles ſo, that the Dutcheſs might be at perfect liberty to live in Adultery; I wonder how that Conceit hath followed him hither, when we told him we had not ſuch a Thought as to live in Adultery, but they do direct her to live ſeparate; and ſo we uſed them, as an Answer to that Part. We uſed them likewise as an Act of total Oblivion and Remiſſion of any Thing beyond that Time; and, I hope, to ſuch Purpoſes they ſhall be thought ſacred.

Now I beſeech you, Sir, on the whole Matter, have they on the other Side ſaid one Thing but what does totally tend to bring all Caſes of Adultery immediately before you? Have they diſtinguiſh'd this Caſe from the Caſe of any other Perſon? And then, if they have not, I do not ſee from henceforward, that any but Fools will go to the Eccleſiaſtical Courts for Relief: For, ſays the Serjeant, they cannot give them a final Relief, and enable any Perſon to marry again, and therefore let no body think to go there again; but here is a Relief to be had worth a Man's having. But, I hope, we ſhall have the Benefit of the Law, as it is, till you think fit to alter it, and then you will erect ſome Judicature, where People may have their Trial. Now therefore the Argument goes too far, or it argues nothing at all, becauſe, if there be any thing in it, it goes to take away the Proceedings of thoſe Courts totally.

But tho' thoſe Courts cannot do all that theſe Gentlemen deſire, they can do what is very proper to be done; they can examine Witneſſes, and pronounce Sentence, and give the Party a full Opportunity of knowing the Accuſation and Accuſers; and then the Caſes we have mentioned have had the Aid of an Act of Parliament.

Sir, we have ſpent a great deal of your Time already; I hope, ſince you ſee what Uſe they make of the laſt Precedent of my Lord *Macleſ-*

field, where he did proceed to an Excommunication. Now from thence they argue, that you ſhould proceed Originally in this Caſe. When is the Time to make a Stand, but in the firſt Caſe? And then no Man can complain of any Injury. If you grant this to my Lord, I think in Juſtice you cannot deny it to any other that ſtands in need of it. I believe there never was the like before, and therefore, I hope, you will put a Stop to it here.

Mr. *Dodd*. The Gentlemen on the other Side have told you, that our Saviour hath ſaid, *That no Man ſhould put away his Wife, except for Fornication.* 'Tis true, the Text is ſo, but he cannot ſhew you any Text wherein our Saviour ſays, That the Man may marry again, tho' he might put his Wife away. Another Thing was ſaid, as to the Proceeding in the Eccleſiaſtical Courts: Dr. *Oldiſh* ſays, There is to be nothing but Execution where there is a Notoriety of Fact; and here the Fact is notorious, and therefore you may come up to order Execution; but that is a ſtrange Doctrine to our *Engliſh* Conſtitution. Would they hang one firſt, and try him afterwards? That would make Work. Let the Fact be never ſo notorious, yet 'tis the Right of all the People of *England* to have a legal Trial; and, I hope, you will not interpoſe till there hath been a regular Trial in another Place.

Then Sir *Thomas Powys* offer'd to produce the Articles, but they were not admitted.

Lunæ 25 Die Martii, 1700.

The Houſe reſolv'd themſelves into a Committee of the whole Houſe, to conſider of the Duke of Norfolk's Bill.

Sir Rowland Gwynne took the Chair of the Committee of the whole Houſe.

And the Council and Sollicitors were call'd in, and the Bill read to them; and then Mr. Northey, of Council with the Duke, open'd the Evidence thus:

Mr. *Northey*. I Am of Council for the Duke of *Norfolk*. I ſhall not trouble you now (becauſe I think it not fit) to ſay any thing for the Bill, for that you have approved of by Commitment of the Bill, and declar'd it to be a reaſonable and juſt Relief againſt the Dutcheſs, for the Adultery charg'd in the Bill. I ſhall not ſpend any of your Time in aggravating the Crime of Adultery.

But that which is incumbent on his Grace's Council now, is to lay before you the Proofs of the Fact ſuggeſted in the Bill; and the Facts to be prov'd are the Introduction of the Bill, That the Dutcheſs has liv'd, for divers Years, in Separation from the Duke, and had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*; and for that Fact we will call our Witneſſes.

And our Evidence will make this out to you, as plain as 'tis poſſible to expect a Matter of this Nature to be prov'd.

However, I think they have manag'd Things in that manner, as we ſhall be able to give as plain a Proof of theſe Facts as might be expected of thoſe Acts which are in their own Nature moſt publick. However, in the Nature of the Thing, there were but a few Perſons to be entrusted with it, and thoſe were generally Servants, who

had Attendance on the Dutchess's Person. We shall produce you Servants both of the Dutchess and Sir *John Germaine*; and, I hope, it cannot be an Objection, that they are Servants; for to object to them for that Reason, is to say, You shall prove the Fact, but you shall have no Witnesses; for these are Facts that cannot be prov'd but by such as were concerned with the Dutchess.

For our Evidence, it will fall out to be this: The Duke and Dutchess were married in the Year 1677, and they liv'd together till about the Year 1685: And then the Duke having some Account of her Conversation of this Nature, they did part, and afterwards she came to live openly with Sir *John Germaine*; for, in *May*, 1689, the Witnesses will give you an Account, that for two Months together she lodg'd with Sir *John Germaine* at the *Cock-pit*; and they liv'd there as Man and Wife, as the Witnesses phrase it. During the Time they liv'd there, there was a near Relation of Sir *John Germaine's*, Mr. *Daniel Germaine* his Brother, and Mrs. *Briane* his Sister, did frequently come to the House; and two of the Witnesses were frequently in the Room while they were a-bed together.

After two Months time, the Dutchess thought fit to be a little more private, and it was given out she was gone to *France*, but in truth she remov'd to *Vaux-hall*, to a House that was taken by Sir *John Germaine's* Brother, and went by the Name of my Lady *Beckman*; and she liv'd there two Years successively; and Sir *John Germaine* came there frequently, once or twice in a Week, and lay there a-Nights during that Time. We have two Witnesses that did attend the Dutchess, as well as at the *Cock-pit*; one of them is *Ellena Vanesse*, who was hired by Sir *John Germaine's* Sister, and liv'd with the Dutchess at the *Cock-pit* two Months. We have a second Witness, one *Hofier*, who was with Sir *John Germaine* at the *Cock-pit* fifteen Days before the Dutchess went to *Vaux-hall*; and afterwards he went to *Vaux-hall* when she removed there, and staid with her all the two Years.

These are both Foreigners, and *Dutch* People, and it was reasonable enough to expect foreign Witnesses, when an *English* Dutchess had a foreign Gallant: They are such as he thought fit to entrust about her.

After she had liv'd two Years at *Vaux-hall* (this brings her to the Year 1691) she removed home again to her House at *Mill-Bank*, and there Sir *John* and she were frequently together, and have been seen a-bed together.

This brings us to the Time when the Duke, having an Account that she had this Conversation with Sir *John Germaine*, brought a Bill into the House of Peers for a Divorce; but it happen'd that the Dutchess and Sir *John Germaine*, to avoid the Condemnation, kept the Witnesses out of the Way, and afterwards caused them to be sent into *Holland*.

The Woman staid abroad till about three Months ago, but the Man return'd before into Sir *John Germaine's* Service; and he will give you an Account of what Observations he made there, for the Familiarity continued between them then. He was admitted into the Room where they us'd to be, and he will give you an Account how he hath seen them frequently together; and he brings it down to within the Year 1695.

We have another Witness, one *William Bayly*, who likewise was a Servant to Sir *John Germaine*, and came into his Place when *Hofier* went beyond Sea. He is an unwilling Witness, because he hath been preferred by Sir *John Germaine*; but when he was upon his Oath in the other House, he did give an Account, That while he continued in Sir *John Germaine's* Service, notwithstanding this publick Reproach in 1695 and 1696, she frequently came to Sir *John Germaine's* House, with one *Keemer*, whom she had great Confidence in, and one *Susannah Barrington*, I think, yet in the Dutchess's Service. And this Mr. *Bayly* will give you an Account, that his Master was often from home; and when he was so, he us'd to carry his Linnen to this *Keemer*, who was the Dutchess's Servant, or this *Keemer* would come to him for it: And this will bring it down to 1696. There are several Witnesses to confirm this; but we think, with Submission, after the Dutchess had been so accused in the House of Lords of such a Familiarity, any Evidence of a Conversation between them afterwards, is as much as a Thousand Witnesses; for no Woman that valued her Reputation, having been accus'd as she was, would have had any Conversation with Sir *John Germaine* afterwards. But we don't want Circumstances to support the Evidence of Fact; we have as plain Evidence in this Case, as can be expected in a Case of this Nature. We will spend no more of your Time, but beg Leave to call our Witnesses.

Mr. *Atwood*. Sir *Rowland Gwynne*, please to favour me with a few Words on the same Side; I shall not mis-spense the Time of the Committee in repeating any thing said by Mr. *Nortley*; I shall only observe, that the Witnesses, *Hofier* and *Vaness*, say, That *Susannah Barrington* was privy to this adulterous Conversation: And this *Susannah Barrington* has withdrawn her self since the Bill was depending in the House of Lords.

'Tis further prov'd, That Mr. *David Germaine* and Mr. *Briane's* Wife were in *England* lately, and that these were privy to the same Conversation.

Then the Witnesses were call'd in one by one, and Interpreters allow'd.

The Witnesses that were examined before the Committee of the Commons were *Ellena Vanesse*, *Nicholas Hofier*, *William Bayly*, and *Ann Read*.

But all, except *Ann Read*, were examined in the House of Lords, and their Evidence there being at large set forth, the Reader is referred to the same. The Evidence of *Ann Read* is as follows:

Ann Read being ask'd, Whether she had ever seen the Dutchess go to Sir *John Germaine's* House, and when? says, That about *April* 1692, (which was soon after the Duke's Bill had been rejected in the House of Lords) she saw the Dutchess of *Norfolk* go in a Chair to Sir *John's* House; that the Door was immediately opened upon her Chair's being set down, and she went into the House with her Mask off.

She being ask'd, Whether she had seen Sir *John* come to the Dutchess's House, and when? says, She, within a Twelve-month last past, or thereabouts, followed him to the Dutchess's House, about Three of the Clock in the Afternoon, and, that she did not see him come out.

After

After the Witneſſes were examined on the Part of the Duke of *Norfolk* for the Bill, Sir *Thomas Powys* of Council with the Dutcheſs of *Norfolk*, being call'd upon to make Defence, ſpake to this Effect :

Sir *Thomas Powys*. I am at a Loſs, Sir, and under ſome kind of a Surprize, becauſe, as far as I apprehend, you call upon us to make our Defence. I hope, in a Caſe of ſuch Moment as this is (and it may be there cannot be greater) and ſince you are pleas'd to take this Caſe out of the uſual Way of Trials, and to try it in the firſt Inſtance, you will be pleas'd, that we ſhould be fairly and regularly heard. And ſince it was not allow'd us, upon our being heard againſt the Bill, that we ſhould have a Time to make our Defence; now we have heard what the Witneſſes ſwear, we ſhall deſire but a ſhort Time, no more than what is abſolutely neceſſary, to make our Defence. This hath ſpent us ſix Hours already; and I am ſure the Witneſſes that have been examin'd have given ſuch Variety of Answers, that it doth afford a great deal to be ſaid to it. We have likewiſe a good many Witneſſes to be examin'd, but I am far from propoſing any thing to delay it. We had a Week's Time allow'd us in the Houſe of Lords, but that is no Rule for you, and we don't expect it here: But, even while we are at this Bar, a Perſon from a very worthy Member gives us Intelligence, upon ſight of this Cook-maid, of a Matter that will defame her; and he will be ready to make it out, that ſhe was turn'd away for being a common Thief in *Holland*; and therefore, Sir, you ſee how Time is neceſſary in point of Accidents that do happen; and I cannot make our Defence now.

Thereupon the Council withdrew; and the Committee having conſider'd of the Deſire of the Council for the Dutcheſs to have Time allow'd them to make their Defence, were of Opinion, That the Council ſhould proceed then to make their Defence; and Candles were ordered to be brought in.

And the Council being call'd in again, Sir *Rowland Gwynne* being in the Chair of the Committee, acquainted them with the Determination of the Committee.

Then Sir *Thomas Powys* obſerv'd upon the Evidence that had been given, and inſiſted, that the Evidence given before the Committee of Commons did differ from the Evidence given by them upon Oath in the Houſe of Lords; and offered to produce the Examination of the ſaid Witneſſes upon Oath in the Houſe of Lords. And an Objection being made, That ſuch Examination ought not to be read in that Caſe, as Evidence before this Committee; the Council withdrew, and the Committee conſider'd of the ſaid Objection, and were of Opinion, that the ſaid Depoſitions ſhould not be read.

And the Council being call'd in again, were acquainted with it, and that if they had any Witneſſes, *viva voce*, to encounter their Evidence, they might produce them.

Sir *Thomas Powys*. Sir, by this Reſolution my Client is deprived of that Defence I thought I could have made for her; but I ſubmit to the Pleaſure of the Committee.

Mr. *Atwood*. The Examinations in the Houſe of Lords were ſo lately, that 'tis an eaſy thing for the Sollicitors, who were by, to give an Account of a Contrariety in the Evidence, if there were any.

A Member. Whether you have any other Evidence to offer, but as to this Point?

Sir *Tho. Powys*. All our Evidence would tend to contradict theſe Witneſſes; and if the reading of thoſe Depoſitions won't be allow'd, we muſt abide your Pleaſure, and ſubmit it to you.

Mr. *Dodd*. We muſt ſubmit it to you; our Witneſſes were in Concurrence with that ſort of Evidence.

Sir *Rowland Gwynne*. There are ſeveral Perſons named, who are Perſons of Credit, and good Reputation, Mr. *Briane* and his Lady, Mr. *Daniel Germaine* and his Siſter; theſe would be Witneſſes of Credit, againſt thoſe that are, you ſay, not of Credit.

Council. We have ſummon'd them, and Mrs. *Pitts*, and done all that we could on our Side to get them here; and I hope you won't prejudge our Caſe, to ſay they are in our Intereſt; that is to determine the Queſtion. We have likewiſe ſummon'd Mrs. *Pitts* and her two Maids; and whether they will appear, or not, that we cannot tell; but this we are ready to make out to you.

Mr. *Atwood*. *Suſannah Barrington*, the Dutcheſs's Woman, privy to the whole Converſation, is prov'd to have been with her ſince the Bill was brought into the Houſe of Lords.

A Member. Whether he has one living Witneſs to produce, that he can make good his Defence by?

Sir *Tho. Powys*. Sir, if you expect an Answer by me, I am aſſur'd that we have Witneſſes; but if I cannot bring thoſe People againſt themſelves, if I cannot bring *Nichola* againſt *Nichola*, I deſpair of doing any good, if I bring a thouſand other Witneſſes againſt him: And therefore I pray this Favour of you, That ſince 'tis your Pleaſure that this Evidence be not allow'd, you will not make a bad Conſtruction of it, that I do not proceed to make a Defence to this Bill; for I cannot truly do it, unleſs I had ſome other Inſtructions from my Client, but ſhall defeat her Expectation to proceed upon the other Part of the Caſe, ſince what we built upon with good Authority, as we thought, is not thought fit to be admitted.

Sir *Rowland Gwynne*. Sir, you are at liberty to go on, if you have any thing more to ſay, than that you cannot proceed without further Directions from your Client.

A Member. Whether they have any thing to offer in the Defence of the Dutcheſs, upon the Crime ſhe is charg'd with; for, I believe, 'tis a new Thing for the Council, when their Client is charg'd with a Crime, to ſay, They cannot defend her unleſs they go and aſk, whether they ſhall defend her, or no? If they have any thing to ſay in her Defence, we ſhall be ready to hear it.

Sir *Rowland Gwynne*. Sir *Thomas Powys*, have you any thing more to ſay?

Sir *Tho. Powys*. I cannot but repeat what I have already ſaid, That I would be glad to make the beſt Defence this Caſe may bear; and I may ſay, I have defended it twice with very good
Success,

Success, and this is a third Time; and I would make the best Defence this Case would bear now. And I must own to you, that the Course of our Evidence, we did propose to our selves, is so far broke, by the first Determination you were pleased to make, that I cannot venture upon the rest of the Defence, if so be your Pleasure be not to admit of this Matter.

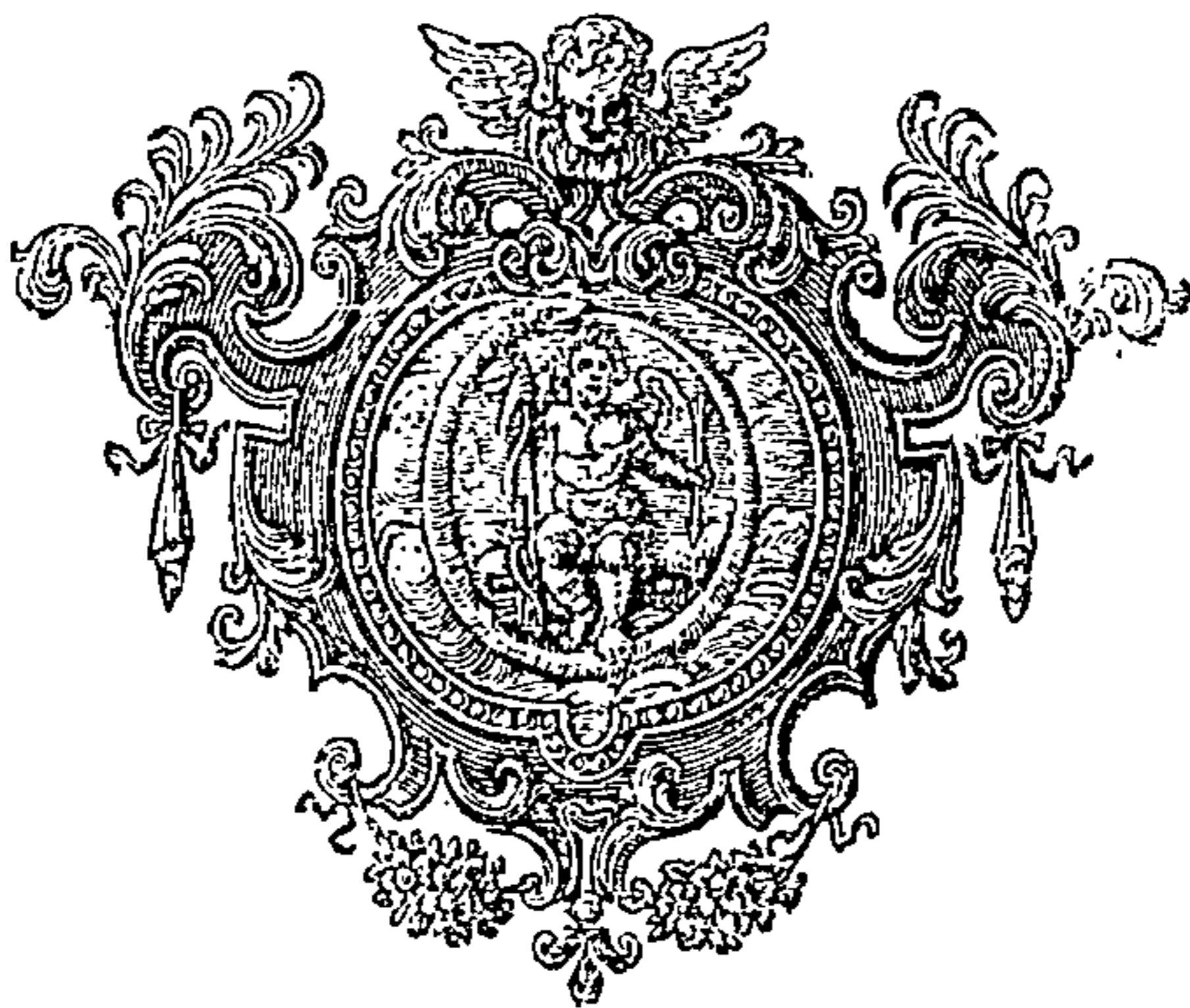
Sir *Rowland Gwynne*. You may, by any Solicitors or Agents, that were present when these Witnesses were examin'd in the House of Lords, prove what they swore there.

Mr. *Dodd*. We apprehend you have already determin'd the Matter, and we cannot now meddle with it; but if I apprehend it aright from the Chair, 'tis your Opinion, that we may produce the Solicitors and Agents, to give an Ac-

count of what was sworn in the House of Lords. Now we are under this Disability by your Determination, That we, relying upon what you have determined against us, are not prepar'd with our Solicitors, or others, to give Evidence of that Matter, but, in a little Time, they will be able to give you an Account of what was then sworn.

Mr. *Atwood*. It seems they want to be taught their Lesson.

And then the Council withdrew, and the Committee proceeded upon the Bill, Clause by Clause, and went thro' it, and order'd the same to be reported; which was done accordingly; upon which the Bill pass'd.





CLXIX. *The Trial of Captain WILLIAM KIDD, at the Old-Baily, for Murder and Piracy upon the High-Seas ; and of Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins, for Piracy, May 8th and 9th, 1701, 13 Will III.*



H E King's Commission for holding the Court being first read, they proceeded to call the Gentlemen summoned upon the Grand-Jury, and the Persons sworn were the Seventeen following, viz.

- | | | |
|--|---|---|
| <p><i>Willam Broughton,
Thomas Hanwell,
Daniel Borwell,
Humphry Bellamy,
Nath. Rolston, Sen.
Joshua Bolton,
Benjamin Pike,
Joseph Marlow,
Benjamin Travis,</i></p> | } | <p><i>Stephen Thompson,
Thomas Cooper,
Robert Gorver,
Robert Clement,
Thomas Sesson,
William Goodwin,
Robert Callow,
Thomas Hæws.</i></p> |
|--|---|---|

Cl. of Arr. Gentlemen of the Grand-Jury, stand together, and hear the Charge.

The King's Majesty commands all Justices of the High Court of Admiralty, that have any Authority to take any Inquisitions, Recognizances, Examinations, or Informations of Offences committed within the Jurisdiction of the Admiralty of England, to deliver the Records of the same into this Court, &c. And all others are commanded to keep Silence, upon Pain of Imprisonment.

Then Dr. Oxenden gave the Charge to the Grand-Jury, explaining the Nature of the Commission, and the Crimes enquirable by Vertue of it by the Grand-Jury.

Then the Grand-Jury withdrew, and after some Time returned into Court, and found the Bill of Indictment against Captain Kidd for Murder, and another against him and Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins, for Piracy. Then Proclamation (as usual) being made, the aforesaid Prisoners were brought to the Bar, and Arraigned.

Cl. of Arr. William Kidd, hold up thy Hand,
Kidd. May it please your Lordships, I desire you to permit me to have Council.

*Mr. * Recorder.* What would you have Council for ?

Kidd. My Lord, I have some Matter of Law relating to the Indictment, and I desire I may have Council to speak to it.

Dr. Oxenden. What Matter of Law can you have ?

Cl. of Arr. How does he know what it is he is charged with ? I have not told him.

Mr. Recorder. You must let the Court know what those Matters of Law are, before you can have Council assigned you.

Kidd. They be Matters of Law, my Lord.

Mr. Recorder. Mr. Kidd, do you know what you mean by Matters of Law ?

Kidd. I know what I mean ; I desire to put off my Trial as long as I can, till I can get my Evidence ready.

Mr. Recorder. Mr. Kidd, you had best mention the Matter of Law you would insist on.

Dr. Oxenden. It cannot be Matter of Law, to put off your Trial, but Matter of Fact.

Kidd. I desire your Lordship's Favour ; I desire Dr. Oldish and Mr. Lemmon may be heard as to my Case.

Cl. of Arr. What can he have Council for, before he has pleaded ?

Mr. Recorder. Mr. Kidd, the Court tells you, you shall be heard what you have to say when you have pleaded to your Indictment. If you plead to it, if you will, you may assign Matter of Law, if you have any ; but then you must let the Court know what you would insist on.

Kidd. I beg your Lordship's Patience till I can procure my Papers. I had a Couple of French Passes, which I must make use of in order to my Justification.

Mr. Recorder. That is not Matter of Law. You have had long Notice of your Trial, and might have prepared for it. How long have you had Notice of your Trial ?

Kidd. A matter of a Fortnight.

Dr. Oxenden. Can you tell the Names of any Persons that you would make use of in your Defence ?

Kidd. I sent for them, but I could not have them.

Dr. Oxenden. Where were they then ?

Kidd. I brought them to my Lord Bellamont in New-England.

* Sir Salathiel Lovell.

Mr. Recorder. What were their Names? You cannot tell without Book. Mr. Kidd, the Court see no Reason to put off your Trial, therefore you must plead.

Cl. of Arr. *W. Kidd*, hold up thy Hand.

Kidd. I beg your Lordships I may have Council admitted, and that my Trial may be put off; I am not really prepared for it.

Mr. Recorder. Nor never will, if you could help it.

Dr. Oxenden. Mr. Kidd, you have had reasonable Notice, and you knew you must be tried, and therefore you cannot plead you are not ready.

Kidd. If your Lordships permit those Papers to be read, they will justify me. I desire my Council may be heard.

Mr. Coniers. We admit of no Council for him.

Mr. Recorder. There is no Issue joined; and therefore there can be no Council assigned. Mr. Kidd, you must plead.

Kidd. I cannot plead till I have those Papers that I insisted upon.

Mr. Lemmon. He ought to have his Papers delivered to him, because they are very material for his Defence. He has endeavoured to have them, but could not get them.

Mr. Coniers. You are not to appear for any one till he pleads, and that the Court assigns you for his Council.

Mr. Recorder. They would only put off the Trial.

Mr. Coniers. He must plead to the Indictment.

Cl. of Arr. Make Silence.

Kidd. My Papers were all seized, and I cannot make my Defence without them. I desire my Trial may be put off till I can have them.

Mr. Recorder. The Court is of Opinion, they ought not to stay for all your Evidence; it may be they will never come. You must plead, and then if you can satisfy the Court, that there is a Reason to put off your Trial, you may.

Kidd. My Lord, I have Business in Law, and I desire Council.

Mr. Recorder. Mr. Kidd, the Course of Courts is, when you have pleaded, the Matter of Trial is next: If you can then shew there is Cause to put off the Trial, you may; but now the Matter is to plead.

Kidd. It is a hard Case when all these Things shall be kept from me, and I be forced to plead.

Mr. Recorder. If he will not plead, there must be Judgment.

Kidd. My Lord, would you have me plead, and not have my Vindication by me?

Cl. of Arr. Will you plead to the Indictment?

Kidd. I would beg that I may have my Papers for my Vindication.

Cl. of Arr. *Nicholas Churchill*, hold up thy Hand.

Churchill. My Lord, I desire I may have the Benefit of the Proclamation; I came in upon the King's Proclamation.

Mr. Recorder. If you do not plead, the Court must pass Judgment upon you. You can have no Benefit in what you say, till you have pleaded. If you were indicted for Felony, and you will not plead, the Law takes it in Nature of a Confession, and Judgment must pass, as if you were proved guilty.

Cl. of Arr. *Nicholas Churchill*, hold up thy Hand.

James Howe, hold up thy Hand. *Robert Lamley*, hold up thy Hand. (*Which they did*.)

Mr. Recorder. *W. Kidd* has not held up his Hand.

Cl. of Arr. He does hold up his Hand. *William Jenkins*, hold up thy Hand. *Gabriel Loff*, hold up thy Hand. *Hugh Parrot*, hold up thy Hand. *Richard Barlicorn*, hold up thy Hand. *Abel Owens*, hold up thy Hand.

Owens. I came in upon the King's Proclamation, and entered my self into the King's Service.

Mr. Recorder. You must plead first, and then, if there be Occasion, you will have the Benefit of it. (*Then he held up his Hand*.)

Cl. of Arr. *Darby Mullins*, hold up thy Hand.

Mullins. May it please your Lordships, I came in voluntarily on the King's Proclamation.

Mr. Recorder. This is the same Case with *Owens*, you must speak to that afterwards.

Cl. of Arr. *W. Kidd*, you stand indicted by the Name of *William Kidd*, &c Art thou guilty or not guilty?

Kidd. I cannot plead to this Indictment, till my *French Passes* are deliver'd to me.

Cl. of Arr. Are you guilty or not guilty?

Kidd. My Lord, I insist upon my *French Papers*; pray let me have them.

Mr. Recorder. That must not be now, till you have put your self upon your Trial.

Kidd. That must justify me.

Mr. Recorder. You may plead it then, if the Court see Cause.

Kidd. My Justification depends on them.

Mr. Recorder. Mr. Kidd, I must tell you, if you will not plead, you must have Judgment against you, as standing mute.

Kidd. I cannot plead till I have these Papers; and I have not my Witnesses here.

Mr. Recorder. You do not know your own Interest; if you will not plead, you must have Judgment against you.

Kidd. If I plead, I shall be accessory to my own Death, till I have Persons to plead for me.

Mr. Recorder. You are accessory to your own Death, if you do not plead. We cannot enter into the Evidence, unless you plead.

Cl. of Arr. Are you guilty or not guilty?

Mr. Recorder. He does not understand the Law; you must read the Statute to him.

Cl. of Arr. Mr. Kidd, are you guilty of this Piracy, or not guilty?

Kidd. If you will give me a little Time to find my Papers, I will plead.

Cl. of Arr. There is no Reason to give you Time; will you plead or not?

Mr. Coniers. Be pleased to acquaint him with the Danger he stands in by not pleading. Whatever he says, nothing can avail him till he pleads.

Mr. Recorder. He has been told so, but does not believe us.

Mr. Coniers. If there be any Reason to put off his Trial, it must be made appear after Issue is joined.

Mr. Recorder. If you say guilty, there is an end of it; but if you say not guilty, the Court can examine into the Fact.

Officer. He says he will plead.

Cl. of Arr. *W. Kidd*, art thou guilty or not guilty?

Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.
(*And so of all the rest.*)

Kidd. My Lord, I beg I may have my Trial put off for three or four Days, till I have got my Papers.

Mr. Recorder. The Judges will be here by and by, and you may move the Court then; we are only to prepare for your Trial: We do not deny your Motion; but when the Court is full, they will consider of the Reasons you have to offer.

Then William Kidd was tried upon the Indictment for Murder.

Cl. of Arr. W. Kidd, Hold up thy Hand: Thou standest indicted by the Name of *William Kidd*, late of *London*, Mariner, &c.

The first Indictment for MURDER.

THE Jurors for our Sovereign Lord the King, do, upon their Oath, present, That *William Kidd*, late of *London*, Mariner, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, the Thirtieth Day of October, in the Ninth Year of the Reign of our Sovereign Lord, *William the Third*, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, near the Coast of *Malabar*, in the East-Indies, and within the Jurisdiction of the Admiralty of *England*, in a certain Ship, called the *Adventure-Galley* (whereof the said *William Kidd* then was Commander) then and there being, feloniously, voluntarily, and of his Malice afore-thought, then and there did make an Assault, in and upon one *William Moore*, in the Peace of God, and of our said Sovereign Lord the King, to wit, then and there being, and to the Ship afore-said, call'd the *Adventure-Galley*, then and there belonging; and that the afore-said *William Kidd*, with a certain Wooden Bucket, bound with Iron Hoops, of the Value of Eight-pence, which he the said *William Kidd* then and there had and held in his right Hand, did violently, feloniously, voluntarily, and of his Malice afore-thought, beat and strike the afore-said *William Moore*, in and upon the right Part of the Head of him the said *William Moore*, a little above the right Ear of the said *William Moore*, then and there upon the High Sea, in the Ship afore-said, and within the Jurisdiction of the Admiralty of *England* afore-said, giving the said *William Moore*, then and there with the Bucket afore-said, in and upon the afore-said right Part of the Head of him the said *William Moore*, a little above the right Ear of the said *William Moore*, one mortal Bruise; of which mortal Bruise the afore-said *William Moore*, from the said Thirtieth Day of October, in the Ninth Year afore-said, until the One and Thirtieth Day of the said Month of October, in the Year afore-said, upon the High Sea afore-said, in the Ship afore-said, and within the Jurisdiction of the Admiralty of *England* afore-said, did languish, and languishing did live; upon which One and Thirtieth Day of October, in the Ninth Year afore-said, the afore-said *William Moore* upon the High Sea afore-said, near the afore-said Coast of *Malabar*, in the East-Indies afore-said, in the Ship afore-said, called the *Adventure-Galley*, and within the Jurisdiction of the Admiralty of *England* afore-said, did die; and so the Jurors afore-said, upon their Oath afore-said, do say, That the afore-said *William*

Kidd, feloniously, voluntarily, and of his Malice afore-thought, did kill and murder the afore-said *William Moore*, upon the High Sea afore-said, and within the Jurisdiction of the Admiralty of *England* afore-said, in manner and form afore-said, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *William Kidd*, art thou guilty of this Murder, whereof thou standest indicted, or not guilty?

Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. *Nicholas Churchill*, *James Howe*, *Robert Lamley*, *William Jenkins*, *Gabriel Loff*, *Hugh Parrot*, *Richard Barlicorn*, *Abel Owens*, *Darby Mullins*, hold up your Hands. You the Prisoners at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of your several Lives and Deaths. If therefore you, or any of you, will challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Kidd. My Lord, I desire Council may be assigned me.

Mr. Recorder. *Capt. Kidd*, I told you it would be your Time, when the Jury was called, to offer what you had to offer; therefore, if you have any Thing now to say to the Court, you had best say it.

Kidd. I beg I may have Council, *Dr. Oldish*, and *Mr. Lemmon*, that they may be heard on my behalf.

Mr. J. Powel. If he desires it, you may be Council for him, provided there be any Matter of Law that he has to plead; otherwise he must be tried.

Dr. Oldish. My Lord, he moves that his Trial for Piracy may be put off for several Reasons; one is, there is one *Davis*, that is a necessary Witness for him; he was taken a Passenger into the Ship, and therefore could not be concerned in any Piracy: Now this *Davis* stands indicted, so that he is deprived of this Person, who is a necessary Witness for him in this Case.

Mr. Coniers. He is not indicted yet; he may call him if he thinks fit.

Mr. J. Powel. If he be indicted, yet he may be a Witness.

Dr. Oldish. My Lord, we desire he may be here.

Mr. J. Powel. Where is he?

Cl. of Arr. He is in *Newgate*.

Mr. J. Powel. Let him be sent for.

Dr. Oldish. My Lord, it is very fit his Trial should be delay'd for some time, because he wants some Papers very necessary for his Defence. It's very true, he is charged with Piracies in several Ships; but they had *French Passes* when the Seizure was made. Now if there were *French Passes*, it was a lawful Seizure.

Mr. J. Powel. Have you those Passes?

Kidd. They were taken from me by my Lord *Bellamont*; and these Passes would be my Defence.

Dr. Oxenden. Had you any other Passes when you took the *Armenian Ship*?

Dr. Oldish. If those Ships that he took had *French Passes*, there was just Cause of Seizure, and it will excuse him from Piracy.

Kidd. The Passes were seized by my Lord *Bellamont*, that we will prove as clear as the Day.

Mr. Lemmon. My Lord, I desire one Word as to this Circumstance; he was doing his King and Country Service, instead of being a Pirate: For in this very Ship there was a *French Pass*, and it was shewn to *Mr. Davis*, and carried to my Lord *Bellamont*, and he made a Seizure of it. And there was a Letter writ to testify it, which was produced before the Parliament; and that Letter has been transmitted from Hand to Hand, so that we cannot at present come by it. There are several other Papers and Letters that we cannot get; and therefore we desire the Trial may be put off till we can procure them.

L. C. B. Ward. Where are they?

Mr. Lemmon. We cannot yet tell whether they are in the Admiralty-Office, or whether *Mr. Jodrell* hath them.

Mr. J. Powel. Let us see on what you go. You talk of *French Passes*; you should have been prepared to make Affidavit of it. What Ship was that which had the *French Passes*?

Mr. Lemmon. The same we were in, the same he is indicted for.

Mr. J. Powel. Make out this, *Mr. Lemmon*?

Mr. Lemmon. My Lord, we desire *Mr. Davis* may be sent; for he will prove it.

L. C. B. Ward. Send for *Edward Davis*.

Mr. Fell. My Lord, will you have him brought into Court?

L. C. B. Ward. Yes.

Mr. Soll. Gen. They have had a Fortnight's Notice to prepare for the Trial.

Dr. Oldish. We petitioned for Money, and the Court ordered fifty Pounds; but the Person that received it went away, and we had none till last Night.

Dr. Oxenden. I ordered that the Money might be paid into his own Hands, that he might be sure to have it.

Mr. Crawley, Register, declar'd, That he paid the Fifty Pounds into his own Hands on *Tuesday Morning*.

L. C. B. Ward. You ought to make it out, that there is a reasonable Cause to put off the Trial, or else it cannot be allowed.

Mr. Lemmon. My Lord, we will be ready *To-morrow Morning*.

L. C. B. Ward. They ought to have had due Notice; what Notice have they had?

Mr. Soll. Gen. A Fortnight's Notice, this Day Fortnight.

Dr. Oldish. My Lord, he should have had his Money delivered to him.

Kidd. I had no Money nor Friends to prepare for my Trial till last Night.

L. C. B. Ward. Why did you not signify so much to the King's Officers?

Mr. Soll. Gen. My Lord, this we will do; Let *Davis* be brought into Court; and if that be a just Excuse, we are contented. In the mean time, let him be tried for the Murder, wherein there is no Pretence of want of Witnesses or Papers.

Officer. *Davis* is here, my Lord.

Cl. of Arr. Set all aside but *Capt. Kidd*. *William Kidd*, You are now to be tried on the Bill of Murder; the Jury is going to be sworn; if you have any Cause of Exception, you may speak to them as they come to the Book.

Will. Kidd. I shall challenge none; I know nothing to the contrary but they are honest Men.

The JURY sworn, were,

<i>Nathaniel Long,</i>	}	<i>Henry Sherbrook,</i>
<i>Jo. Ewers,</i>		<i>Henry Dry,</i>
<i>Jo. Child,</i>		<i>Richard Greenaway,</i>
<i>Ed. Reeves,</i>		<i>Jo. Sherbrook,</i>
<i>Tho. Clark,</i>		<i>Tho. Enms,</i>
<i>Nath. Green,</i>		<i>Rog. Mott.</i>

After Proclamation made (as usual) the Court proceeded to the Trial, as follows:

Cl. of Arr. W. Kidd, hold up thy Hand. (*Which he did.*) You Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *William Kidd, &c.* as before in the Indictment. Upon this Indictment he has been arraigned, and thereunto has pleaded *Not Guilty*, and for his Trial has put himself on God and his Country, which Country you are. Your Charge is to enquire, Whether he be guilty of the Murder whereof he stands indicted, in Manner and Form as he stands indicted, or *Not Guilty, &c.*

Mr. Knap. My Lord, and you Gentlemen of the Jury.

This is an Indictment of Murder. The Indictment sets forth, *That William Kidd, on the 30th of October, on the high Sea, on the Coast of Malabar, did assault one William Moore, on board a Ship called the Adventure, whereof William Kidd was Captain, struck him with a wooden Bucket, hooped with Iron, on the Side of the Head, near the right Ear, and that of this Bruise he died the next Day, and so that he has murdered the same Person.* To this Indictment he pleaded *Not Guilty*: If we prove him Guilty, you must find him so.

Mr. Soll. Gen. My Lord, and Gentlemen of the Jury, we will prove this as particularly as can be, that *William Kidd* was Captain of the Ship, and that *William Moore* was under him in the Ship, and that without any Provocation he gave him this Blow whereof he died.

Mr. Coniers. My Lord, it will appear to be a most barbarous Fact, to murder a Man in this manner; for the Man gave him no manner of Provocation. This *William Moore* was a Gunner in the Ship, and this *William Kidd* abuses him, and calls him *Lousy Dog*; and, upon a civil Answer, he takes this Bucket and knocks him on the Head, whereof he died the next Day. Call *Joseph Palmer*, and *Robert Bradinham*. (*Who appear'd, and were sworn.*) *Joseph Palmer*, give my Lord and the Jury an Account of what you saw done by *William Kidd*, on the Coast of *Malabar*, as to *William Moore* his Gunner.

Joseph Palmer. About a Fortnight before this Accident fell out, *Capt. Kidd* met with a Ship on that Coast, that was called the *Loyal Captain*. And about a Fortnight after this, the Gunner was grinding a Chissel aboard the *Adventure*, on the high Sea near the Coast of *Malabar*, in the *East-Indies*.

Mr. Coniers. What was the Gunner's Name?

Joseph Palmer. *William Moore*: And *Capt. Kidd* came and walked on the Deck, and walks by this *Moore*; and when he came to him, says, *Which way could you have put me in a Way to take this Ship, and been clear?* Sir, says *William Moore*, *I never spoke such a Word, nor ever thought such a Thing.* Upon which *Capt. Kidd* called him a *Lousy Dog*. And says *William Moore*, *If I am a Lousy Dog, you have made me so; you have brought me to Ruin, and many more.*

more. Upon his saying this, says Captain *Kidd*, *Have I ruin'd you, ye Dog?* and took a Bucket bound with Iron Hoops, and struck him on the right Side of the Head, of which he died the next Day.

Mr. *Cowper*. What was the Gunner doing at that Time that he gave him the Blow?

Joseph Palmer. He was grinding a Chissel at the Time that he struck him.

Mr. *Cowper*. Did he give him the Blow immediately after he gave him that Answer?

Joseph Palmer. He walk'd two or three times backward and forward upon the Deck before he struck the Blow.

Mr. *J. Turton*. What did Captain *Kidd* say first?

Joseph Palmer. Which way could you have put me in a Way of taking this Ship, and been clear? Says the Gunner, *I never said so, nor thought any such Thing.*

Mr. *Cowper*. Hark you, Friend, explain that Matter.

Mr. *Baron Hatfell*. What was the Occasion of those Words;

Palmer. It was concerning this Ship.

L. C. B. *Ward*. What Ship was it? Name the Ship.

Palmer. It was the *Loyal Captain*. Captain *Kidd* said to *William Moore*, Which way could you have put me in the Way to have taken this Ship, and been clear? Says *William Moore*, *I never said such a Thing, nor thought it.* Upon that he call'd him *Lousy Dog*.

L. C. B. *Ward*. Was that Ship taken?

Palmer. No, she was gone.

Mr. *Coniers*. You say he call'd him *Lousy Dog*?

Palmer. Yes.

Mr. *Coniers*. What did *William Moore* say to him then?

Palmer. He said, *If I am a Lousy Dog, you have brought me to it; you have ruin'd me and many more.* Upon this, says Captain *Kidd*, *Have I brought you to Ruin, you Dog?* Repeating it two or three times over, and took a turn or two upon the Deck, and then takes up the Bucket, and strikes him on the Head.

Mr. *Cowper*. You say he made a turn or two on the Deck, and then struck him.

Palmer. Yes.

Mr. *Coniers*. Tell my Lord what pass'd next after the Blow.

Palmer. He was let down the Gun-room, and the Gunner said, *Farewel, farewel, Captain Kidd has given me my last.* And Captain *Kidd* stood on the Deck, and said, *You're a Villain.*

Mr. *Cowper*. How near was Captain *Kidd* to him when he said he had given him his last?

Palmer. He was near him.

Mr. *Cowper*. Was he within hearing of what *Moore* said?

Palmer. Yes, he was within seven or eight Foot.

Mr. *Sol. Gen.* Did you apprehend that he died of that Blow?

Palmer. He was in perfect Health before that.

Mr. *Sol. Gen.* What did the Surgeon think of it?

Palmer. The Surgeon is here.

Mr. *Sol. Gen.* Did you see him afterwards?

Palmer. No, I did not see him after till he was dead.

Mr. *Cowper*. How did the Wound appear when you saw him?

Palmer. After he was dead, the Surgeon was call'd to open his Head, and Captain *Kidd* said, *You are damn'd busy without Orders.*

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Mr. *Cowper*. Tho' we ask you Questions, you must turn your Face there, towards the Jury. Give the Jury an Account of what you saw.

Palmer. I felt on his Head, and I felt something give way, and about the Wound there was a Bruise.

Mr. *Cowper*. You say you saw him when he was carried off, after the Blow; How did his Head appear then? Was he bloody?

Palmer. There was not much Blood came from him.

L. C. B. *Ward*. Was you by when these Words were spoken?

Palmer. Yes, my Lord.

L. C. B. *Ward*. Did you see the Prisoner give the Blow with the Bucket upon those Words?

Palmer. Yes, my Lord.

L. C. B. *Ward*. How long was it before he went down the Deck?

Palmer. Presently.

L. C. B. *Ward*. Did he complain of the Wound?

Palmer. He said, *Farewel, farewel, Captain Kidd has given me my last.*

L. C. B. *Ward*. Was this *Moore* in a good Condition of Health before this Blow was given him?

Palmer. Yes, my Lord.

L. C. B. *Ward*. And afterwards he complain'd?

Palmer. Yes, my Lord.

L. C. B. *Ward*. When he was dead, what Marks were on his Head?

Palmer. On the right Side of his Head, on this Place (*pointing to his own Head*) it was bruis'd a considerable breadth; and in one Place I could feel the Skull give way.

Mr. *Cowper*. How long after the Blow did he die?

Palmer. The next Day following.

Mr. *Cowper*. And you say you saw him dead then?

Palmer. Yes, Sir.

L. C. B. *Ward*. Captain *Kidd*, if you will ask him any Questions, you may.

Kidd. My Lord, I would ask this Man what this *Moore* was doing when this thing happen'd?

L. C. B. *Ward*. Mr *Palmer*, you hear what he says; What was *Moore* doing?

Palmer. He was grinding a Chissel.

Kidd. What was the Occasion that I struck him?

Palmer. The Words that I told you before.

Kidd. Was there no other Ship?

Palmer. Yes.

Kidd. What was that Ship?

Palmer. A *Dutch* Ship.

Kidd. What were you doing with the Ship?

Palmer. She was becalm'd.

Kidd. This Ship was a League from us, and some of the Men would have taken her, and I would not consent to it; and this *Moore* said I always hinder'd them making their Fortunes: Was not that the Reason I struck him? Was there a Mutiny on board?

Palmer. No; you chased this *Dutchman*, and in the way took a *Malabar* Boat, and chased this Ship all the whole Night; and they shew'd their Colours, and you put up your Colours.

Kidd. This is nothing to the Point: Was there no Mutiny aboard?

Palmer. There was no Mutiny, all was quiet.

Kidd. Was there not a Mutiny, because they would go and take that *Dutchman*?

Palmer. No, none at all.

Mr. *Coniers*. Call *Robert Bradinbam*.

Jury. What was the Cause that he struck him?

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Palmer.

Palmer. A Fortnight before this was done, we met with this *Loyal Captain*, of which *Capt. Hoar* was Commander, and he came on board *Captain Kidd's* Ship, and *Captain Kidd* went on board his, and then *Captain Kidd* let this Ship go. About a Fortnight after this, the Gunner was grinding his Chissel on the Deck, and *Captain Kidd* said to him, *Which way could you have put me in a Way to take this Ship, and been clear?* To which he reply'd, *I never said such a Thing, nor thought of such a Thing.* Whereupon *Captain Kidd* call'd the Gunner *Lousy Dog*; and, says *Moore*, *If I am a Lousy Dog, you have made me so; you have brought me to Ruin, and a great many more.* And says *Captain Kidd*, *Have I brought you to Ruin, you Dog?* and after struck him with the Bucket. These were all the Words that pass'd.

Mr. J. Powel. Was *Captain Kidd* aboard that Ship?

Palmer. Yes, and *Captain Hoar* was aboard him.

Mr. J. Powel. Was there any body nigh at that Time?

Palmer. Yes; there were eight or nine Men, that had Musquets and other Arms, and they were for taking the Ship, and *Captain Kidd* was against it, and so it was not done.

Kidd. My Lord, I was in the Cabin, and heard a Noise, and came out; and *William Moore* said, *You ruin us, because you will not consent to take Captain Hoar's Ship.* Says a *Dutchman*, *I will put Captain Kidd in a Way to take this Ship, and come off fairly.*

L. C. B. Ward. You may ask him any Questions you have a mind to, but you must reserve what you have to say for your self till you come to make your Defence.

Mr. Sell. Gen. *Mr. Palmer*, do you know of any other Provocation to strike him besides those Words?

Palmer. I know of no other Provocation.

Mr. Coniers. Set up *Robert Bradinbam*. (*Who appear'd.*) *Mr. Bradinbam*, in what Office was you in the Ship?

Bradinbam. I was Surgeon of the Ship.

Mr. Coniers. Of what Ship?

Bradinbam. The *Adventure Galley*, whereof *Captain Kidd* was Master.

Mr. Coniers. Was you there when the Blow was given?

Bradinbam. No.

Mr. Coniers. Was you sent for when *Captain Kidd* had given the Gunner the Wound upon the Head?

Bradinbam. I was sent for to his Assistance after he was wounded, and I came to him, and ask'd him how he did? he said, *He was a dead Man, Captain Kidd had given him his last Blow.* And I was by the Gun-room, and *Captain Kidd* was walking there, and I heard *Moore* say, *Farewel, farewell, Captain Kidd has given me my last Blow;* and *Captain Kidd*, when he heard it, said, *Damn him, he is a Villain.*

Mr. Coniers. Did you hear him say so?

Bradinbam. I did hear it.

Mr. Cowper. Was it in a way of Answer to what he said?

Bradinbam. Yes.

Mr. Cowper. How long did he live after the Blow?

Bradinbam. He died the next Day. The Wound was but small, the Skull was fractur'd.

Mr. Cowper. Do you believe he died of the Wound?

Bradinbam. Yes.

Mr. Cowper. Had you any Discourse with *Captain Kidd* after this about this Man's Death.

Bradinbam. Some Time after this about two Months, by the Coast of *Malabar*, *Captain Kidd* said, *I do not care so much for the Death of my Gunner as for other Passages of my Voyage; for I have good Friends in England, that will bring me off for that.*

L. C. B. Ward. *Mr. Kidd*, will you ask him any Questions?

Kidd. I ask him, Whether he knew of any Difference between this Gunner and me before this happen'd?

Bradinbam. I knew of no Difference between them at all.

Mr. Sell. Gen. *Mr. Kidd*, Have you any Thing more to ask him?

Kidd. No.

Mr. Coniers. Then we have done for the King.

L. C. B. Ward. Then you may make your Defence. You are charg'd with Murder, and you have heard the Evidence that has been given, What have you to say for your self?

Kidd. I have Evidence to prove it is no such thing, if they may be admitted to come hither. My Lord, I will tell you what the Case was: I was coming up within a League of the *Dutchman*, and some of my Men were making a Mutiny about taking her, and my Gunner told the People he could put the Captain in a Way to take the Ship, and be safe. Says I, *How will you do that?* The Gunner answer'd, *We will get the Captain and Men aboard.* And what then? *We will go aboard the Ship, and plunder her, and we will have it under their Hands that we did not take her.* Says I, *this is Judas like, I dare not do such a Thing.* Says he, *We may do it, we are Beggars already.* Why, says I, *may we take this Ship because we are Poor?* Upon that a Mutiny arose: So I took up a Bucket, and just throw'd it at him, and said, *You are a Rogue to make such a Motion.* This I can prove, my Lord.

L. C. B. Ward. Call your Evidence.

Mr. Cowper. *Mr. Palmer*, was there any Mutiny in the Ship when this Man was killed?

Palmer. There was none.

L. C. B. Ward. *Captain Kidd*, call what Evidence you will.

Kidd. They are Prisoners; I desire they may be call'd up.

L. C. B. Ward. Whatever other Crimes they may be guilty of, they may be Witnesses for him in this Case.

Mr. Baron. Hatsell. *Mr. Palmer*, did he throw the Bucket at him, or strike him with it?

Palmer. He held it by the Strap in his Hand.

Kidd. Call *Abel Owens*. (*Who appear'd.*) Can you tell which Way this Bucket was thrown?

Mr. J. Powel. What was the Provocation of throwing this Bucket?

Owens. I was in the Cook-room, and hearing some Difference on the Deck, I came out, and the Gunner was grinding a Chissel on the Grindstone, and the Captain and he had some Words, and the Gunner said to the Captain, *You have brought us to Ruin, and we are Desolate.* And, says he, *Have I brought you to Ruin? I have not brought you to Ruin, I have not done an ill Thing to ruin you; you are a saw-cy Fellow to give me these Words.* And then he took up the Bucket, and did give him the Blow.

Kidd. Was there not a Mutiny among the Men?

Owens. Yes, and the bigger part was for taking the

the Ship; and the Captain said, *You that will take the Dutch-man, you are the strongest, you may do what you please; if you will take her, you may take her; but if you go from aboard, you shall never come aboard again.*

L. C. B. *Ward.* When was this Mutiny you speak off?

Abel Owens. When we were at Sea.

L. C. B. *Ward.* How long was it before this Man's Death?

Owens. About a Month.

Mr. J. *Powel.* At this Time when the Blow was given, did *Moore* the Gunner endeavour to make any Mutiny?

Owens. No.

Mr. J. *Powel.* Was there any Mutiny then?

Owens. None at all.

Kidd. Did not he say, He could put me in a Way to take the *Dutchman*, and be clear?

Owens. I know there were several of them would have done it, but you would not give Consent to it.

Kidd. No, but this was the Reason I threw the Bucket at him.

L. C. B. *Ward.* Captain *Kidd*, he tells you this was a Month before you struck him.

Jury. My Lord, we desire he may be asked, Whether he did throw the Bucket, or strike him with it?

L. C. B. *Ward.* Answer the Jury to that Question.

Owens. He took it with the Strap, and struck him with it.

Kidd. Did not I throw it at him?

Owens. No, I was near you when you did it.

Mr. *Coniers.* Did you see the Stroke given?

Owens. I did see the Stroke given.

L. C. B. *Ward.* Captain *Kidd*, Will you call any more?

Kidd. Yes, my Lord. Call *Richard Barlicorn.*

Mr. J. *Powel.* What Questions would you have him ask'd?

Kidd. R. *Barlicorn*, what was the Reason that Blow was given to the Gunner?

Barlicorn. At first when you met with the Ship, there was a Mutiny, and Two or Three of the *Dutchmen* came aboard; and some said, she was a rich Vessel, and they would take her: And the Captain said, *No, I will not take her.* And there was a Mutiny in the Ship, and the Men said, *If you will not, we will.* And he said, *If you have a mind, you may; but they that will not, come along with me.*

Kidd. Do you think *William Moore* was one of those that was for taking her.

Barlicorn. Yes.

L. C. B. *Ward.* How long was that before *Moore* died, do you know?

Barlicorn. No, I did not keep a Journal.

L. C. B. *Ward.* Was it after *Moore* died.

Barlicorn. No Sir, it was before *Moore* died.

Mr. *Coniers.* How long before?

Barlicorn. I believe it was about a Month or Three Weeks, I cannot tell which.

L. C. B. *Ward.* You say there was a Mutiny in the Ship, what was the Mutiny about?

Barlicorn. About taking the Ship.

L. C. B. *Ward.* What was the Ship's Name?

Barlicorn. The *Loyal Captain.* And the Captain said, *If they take the Ship, they should never come aboard again.*

L. C. B. *Ward.* Was you by when *Moore* received this Blow?

Barlicorn. No, I was not by then.

Kidd. Do you know of any Quarrel between this *Moore* and I before that Accident?

Barlicorn. No, I did not.

Mr. J. *Powel.* Was there any Mutiny in the Ship when this *Moore* died?

Barlicorn. They were talking of it.

Kidd. Was there not a *Dutchman* close by us, when this Blow was given?

Barlicorn. Yes, Sir.

Kidd. He was going to make another Mutiny, and I prevented him.

Mr. J. *Powel.* Did *Moore* endeavour to make any Mutiny at that Time?

Barlicorn. The Ship was gone at that Time.

Mr. J. *Powel.* How long had she been gone?

Barlicorn. About a Week.

Mr. Bar. *Hatsell.* Was there any Mutiny about the *Dutch Ship* you saw?

Barlicorn. The *Dutch Ship*? Not that I know of; but there was a Mutiny aboard the *Loyal Captain.*

Kidd. Do you not know of another Mutiny?

Mr. Bar. *Hatsell.* Do you know of any other Mutiny?

Barlicorn. No.

Kidd. At that very time they were going to make a Mutiny?

L. C. B. *Ward.* Will you ask him any more Questions?

Kidd. What Discourse had I with *Moore* at that Time?

Barlicorn. I was aboard our Ship, but did not see the Blow given.

Kidd. They were saying they would take her, and he said, he could put me in a Way to take her, without coming to any harm.

L. C. B. *Ward.* What occasion could those Words be of a Mutiny?

Barlicorn. There were many of the Men would have gone with Arms, and taken that Ship without the Captain's Consent.

L. C. B. *Ward.* At that Time when this *Moore* was killed, was there any Mutiny?

Barlicorn. No.

L. C. B. *Ward.* When was it that *Moore* said, they might have taken this Ship?

Barlicorn. At the same Time when the Ship was in Company with us.

L. C. B. *Ward.* That was a Week or Fortnight before?

Barlicorn. No, Sir, the *Loyal Captain* was within sight of us.

Mr. Bar. *Hatsell.* What, when *Moore* was killed?

Barlicorn. No, not then. *William Moore* lay sick a great while before this Blow was given; and the Doctor said, when he visited him, This Blow was not the Cause of his Death.

L. C. B. *Ward.* Then they must be confronted. Do you hear, *Bradinbam*, what he says? He says you said, That Blow was not the Cause of his Death. Did you ever say so?

Bradinbam. My Lord, I never said so.

L. C. B. *Ward.* Did you see that young Man there?

Bradinbam. Yes, he was aboard the Ship.

L. C. B. *Ward.* Was *Moore* sick before that Blow?

Bradinbam.

Bradinbam. He was not sick at all before.

Barlicorn. He was sick sometime before, and this Blow did but just touch him; and the Doctor said, he did not die on the Occasion of this Blow.

Mr. J. Gold. Did you ever say so, *Mr. Bradinbam*?

Bradinbam. No, my Lord.

Mr. Sol. Gen. You say he did but just touch him; Were you present when the Blow was given?

Barlicorn. No, but I saw him after he was dead, and I was by when the Doctor said, he did not die of that Blow.

Mr. Cowper. What did he die of?

Barlicorn. I cannot tell, he had been sick before, we had many sick Men aboard.

Mr. Sol. Gen. How long did he lie after this Blow, before he died?

Barlicorn. I cannot tell justly how long it was.

L. C. B. Ward. How long do you think? You took notice of the Blow, how long did he live after that?

Barlicorn. I believe about a Week.

L. C. B. Ward. And the two Witnesses swore he died the next Day.

Barlicorn. I cannot tell justly how long he lived afterwards.

Jury. We desire to know whether he knew what was the Occasion of this Blow?

Barlicorn. All the Reason I can give is, because it was thought he was going to breed a Mutiny in the Vessel.

L. C. B. Ward. Did you hear of that by any body?

Kidd. Was *Bradinbam* in the Mutiny? Declare that.

L. C. B. Ward. *Mr. Kidd*, why do you ask that Question?

Kidd. I ask him whether *Bradinbam* was not in any Mutiny in the Ship.

L. C. B. Ward. Why do you ask that?

Barlicorn. If any Thing was to be, he was as forward as any one.

L. C. B. Ward. You say he was as forward as any; but it does not appear any one made a Mutiny at this time.

Barlicorn. I do not know, Sir.

L. C. B. Ward. Have you any more to call?

Kidd. My Lord, here is another Witness,

L. C. B. Ward. What is your Name?

Hugh Parrot. *Hugh Parrot.*

L. C. B. Ward. *Mr. Kidd*, what do you ask him?

Kidd. I ask you whether *Bradinbam* was in a Mutiny in my Ship.

Hugh Parrot. I cannot say whether he was or no.

L. C. B. Ward. *Captain Kidd*, you are tried for the Death of this *Moore*; now why do you ask this Question? What do you infer from hence? You will not infer, that if he was a Mutineer, it was lawful for you to kill *Moore*.

Kidd. Do you know the Reason why I struck *Moore*?

Hugh Parrot. Yes, because you did not take the *Loyal Captain*, whereof *Captain Hoar* was Commander.

L. C. B. Ward. Was that the Reason he struck *Moore*, because the Ship was not taken?

Hugh Parrot. I Shall tell you how it happen'd, according to the best of my Knowledge. My Commander fortun'd to come up with this *Captain Hoar's* Ship, and some were for taking her, and

some not; and afterwards there was a little sort of Mutiny, and some rose in Arms, the greatest Part, and they said they would take this Ship, and the Commander was not for it; and so they resolv'd to go away in the Boat, and take her. *Captain Kidd* said, *If you desert my Ship, you shall never come aboard again, and I will force you into Bombay, and I will carry you before some of the Council there:* Infomuch as my Commander stilled them again, and they remained on Board. And about a Fortnight afterward there pass'd some Words between this *William Moore* and my Commander; and then says he, *Captain, I could have put you in a Way to have taken this Ship, and been never the worse for it.* He says, *Would you have me take this Ship? I cannot answer it, they are our Friends;* and my Commander was in a Passion; and with that I went off the Deck, and I understood afterwards the Blow was given, but how I cannot tell.

Mr. J. Powel. *Captain Kidd*, have you any more to ask him, or have you any more Witnesses to call?

Kidd. I could call all of them to testify the same thing, but I will not trouble you to call any more.

L. C. B. Ward. Have you any more to say for your self?

Kidd. I have no more to say, but I had all the Provocation in the World given me; I had no design to kill him, I had no Malice or Spleen against him.

L. C. B. Ward. That must be left to the Jury to consider the Evidence that has been given; you make out no such matter.

Jury-man. My Lord, I desire the Petitioner may give an Account, whether he did do any Thing in order to his Cure.

L. C. B. Ward. He is to be tried according to Law; the King's Evidence hath been heard, and he has the Liberty to produce what Evidence he can for himself; Will you put him to produce more Evidence than he can? If he has any more to say, it will be his Interest to say what he can; the Court is willing to hear him as long as he hath any Thing to offer for himself, either upon that Account or any Thing else.

Kidd. It was not designedly done, but in my Passion, for which I am heartily sorry.

L. C. B. Ward. Gentlemen of the Jury, the Prisoner at the Bar, *William Kidd*, is Indicted for the Murder of *William Moore*, and whether he be guilty of this Murder, or not guilty, it is your part to determine on the Evidence that has been given. The Fact charged against him is this, That the Prisoner at the Bar, *William Kidd*, being the Commander of the Ship, called the *Adventure-Galley*, and the deceased *William Moore* the Gunner in that Ship; That upon the High Sea, near the Coast of *Malabar*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, in *October*, in the Ninth Year of his Majesty's Reign, 1697, the Prisoner, *William Kidd*, out of his Malice fore-thought, did strike the Deceased, *William Moore*, with a Bucket hooped with Iron, on the right Side of the Head, and that that Blow was the Occasion of the Death of the said *William Moore*; that this was done on the 30th of *October*, and that his Death ensued on the 31st of *October*, being the next Day. This is the Fact charged upon him.

Now

Now you have heard the Evidence that has been given on the King's Part, and you will weigh it well. You hear the first Witness that has been produc'd on behalf of the King, is *Joseph Palmer*. He tells you he was present on board this Ship, at the Time when the Blow was given: And he says, there had been some Discourse between the Prisoner *William Kidd*, and the Deceased *Moore*, concerning taking a Ship, that was called the *Loyal Captain*, and that Captain *Kidd* said to him, *How could you have put me in a Way to take that Ship, and be clear? No*, says *Moore*, *I said no such Thing*. The Reply Captain *Kidd* made to him was, *He was a Lousy Rogue*. The Answer of the Deceased was this, *If I am so, you have made me so; you have ruined me and a great many others*. With that, says Captain *Kidd*, *Have I ruined you, you Dog?* And up he took a Bucket hoop'd with Iron, and gave him a Blow on the right Side of his Head. And thereupon he complained and said, *You have given me my last Blow*. And then *Moore* went down below Deck, and he saw him no more till the next Day, and then he was dead; and he felt upon his Head, and perceived a Bruise in one Part of it, as broad as a Shilling, and he felt the Skull was broke; and he does take on him to say, that he believes that Blow was the Occasion of his Death. Being ask'd, Whether he knew in what State of Health he was before? he says, He was in a healthy Condition; he was grinding a Chissel at that Time when the Blow was given; and that Blow he believes was the Occasion of his Death. And being asked, Whether he heard any other Words, or saw or knew any Thing that could be any Cause of Provocation? he says, He knew no more than the Reply of the Party deceased; *If I am a lousy Dog, you have made me so, and have been my Ruin*: And then having taken two or three Turns upon the Deck, he gave him the Blow; and then *Moore* went down the Deck, and used these Words, *You have given me my last Blow*, or to that Effect.

Gentlemen, You have heard the Surgeon also, *Robert Bradinbam*; and he tells you, He did not see the Blow given, but he was sent for after, and the Deceased said, *Captain Kidd had given him his last Blow*: And thereupon he did examine him as a Surgeon, and does believe that Blow on the Head was the Occasion of his Death; and he did observe it as well as he could.

Juryman. My Lord, I think *Bradinbam* said, He was not then by when the Prisoner gave the Blow.

L. B. C. Ward. I did not say he was: He says He was sent for after the Blow; and when he came, the Deceased said, he gave it him, and what would be the Consequence.

Now these two being cross-examined by the Prisoner, *William Kidd*, whether they did not know of some Mutiny in the Ship, that might be the Occasion of his giving this Blow; they have told both their Stories, of what Discourse there was of taking this Ship, the *Loyal Captain*, and of what Design there was upon the *Dutch Ship* after. Now the first of these was a Fortnight before this happen'd, and the other a Week; so that there was then no Occasion of Mutiny, nor do they know of any Mutiny at that Time.

Now, Gentlemen, he has produced for him-

self three Witnesses. The first that he calls is *Abel Owens*; and this Witness has not in his Testimony made for the Prisoner, but in effect confirmed what the other Witnesses for the King said: For he tells you he was by when the Blow was given, and gives you an Account how this Thing was; That there was some Discourse between them, much what to the Effect aforesaid; both as to what Capt. *Kidd* said to *Moore*, and what *Moore* replied; and that Capt. *Kidd* should say to *Moore*, *You are a saucy Fellow*, or to that Purpose; and *Moore* said, *You have ruined me, and a great many others*; and with that the Prisoner took up the Bucket, and struck him with it. And he being asked, If there were any Provocation or Occasion why this Blow was given, and whether there was any Mutiny at that Time, as he pretended? he says, He knew of none, only he speaks of one about a Month before.

They have call'd two other Witnesses; one is *Richard Barlicorn*; he is the Prisoner's Servant; and though he be his Servant, yet the Law allows him to be a Witness for him, and the Credit of his Testimony is left to you. Now what has he said? He has told you something different Stories. He thinks there was a Mutiny in the Ship. And being ask'd about what Time? he thinks it was about a Month or three Weeks before; and, upon further Examination, saith, there was no Mutiny when *Moore* was killed. He is willing to say what he can for his Master, and believes Mr. *Kidd* did not design to do any Harm to that Man; for he heard the Surgeon say, that Blow was not the Occasion of his Death. Now, in Contradiction to that, *Bradinbam*, the Surgeon, says, he never did say so, but believes that this Blow was the Occasion of his Death. You have heard what Objections the young Man's Testimony is liable to, and you will consider his whole Evidence.

The last Witness the Prisoner has called, is *Hugh Parrot*. He says, there was something of these Words, and that the Deceased did say, he could have put the Captain in a Way to have taken the Ship; and hereupon Words arose, and the Captain was in a Passion; and that then he went away, and understood afterwards the Blow was given, but how he could not tell.

Now, Gentlemen, this being the Matter of Fact, the Prisoner is indicted upon it for Murder. Now to make the killing of a Man to be Murder, there must be Malice prepense, either express or implied: The Law implies Malice, when one Man, without any reasonable Cause or Provocation, kills another. You have had this Fact opened to you. What Mutiny or Discourse might be a Fortnight or Month before, will not be any Reason or Cause for so long Continuance of a Passion. But what did arise at that Time, the Witnesses tell you. The first Witness tells you, the first Words that were spoken, were by Mr. *Kidd*; and upon his Answer, Mr. *Kidd* calls him *Lousy Dog*. The Reply was, *If I am so, you have made me so; you have ruined me, and a great many more*. Now, Gentlemen, I leave it to you to consider whether that could be a reasonable Occasion or Provocation for him to take a Bucket, and knock him on the Head and kill him. You have heard the Witnesses have made it out that he was a healthy Man, and they are of Opinion that the Blow was the Occasion of his Death. Now for the Prisoner,

or

on such a Saying, and without any other Provocation, to take a Bucket and knock the Deceased on the Head, and kill him, must be esteem'd an unjustifiable Act: For, as I said, if one Man kill another without Provocation, or reasonable Cause, the Law presumes and implies Malice; and then such killing will be Murder, in the Sense of the Law, as being done out of Malice prepense. If there be a sudden falling out, and fighting, and one is killed in heat of Blood, then our Law calls it Manslaughter: But in such a Case as this, that happens on slight Words, the Prisoner called the Deceased a *Lousy Dog*; and the Deceased said, *If I be so, you have made me so*; Can this be a reasonable Cause to kill him? And if you believe them to be no reasonable Cause of Provocation, and that this Blow was given by the Prisoner, and was the Occasion of *Moore's* Death, as the Witnesses alledge, I cannot see what Distinction can be made, but that the Prisoner is guilty of Murder. Indeed, if there had been a Mutiny at that Time, and he had struck him at the Time of the Mutiny, there might have been a reasonable Cause for him to plead in his Defence, and it ought to have been taken into Consideration; but it appears, that what Mutiny there was, was a Fortnight at least before: Therefore, Gentlemen, I must leave it to you: If you believe the King's Witnesses, and one of the Prisoner's own, that this Blow was given by the Prisoner in manner aforesaid, and are satisfied that it was done without reasonable Cause or Provocation, then he will be guilty of Murder: And if you do believe

him guilty of Murder, upon this Evidence, you must find him so: If not, you must acquit him.

Kidd. My Lord, I have Witnesses to produce for my Reputation.

L. C. B. Ward. Mr. *Kidd*, we gave you Time to make your Defence? Why did not you produce them? You were asked more than once, if you had any more to say; and you said, you would call no more Witnesses.

Kidd. I can prove what Service I have done for the King.

L. C. B. Ward. You should have spoken sooner: But what would that help in this Case of Murder? You said you had no more to say before I began.

Then an Officer was sworn to keep the Jury; and about an Hour after the Jury returned, and gave in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names.
Nath. Long.

Nath. Long. Here, &c.

Cl. of Arr. Are you all agreed of your Verdict?

Ommes. Yes.

Cl. of Arr. Who shall say for you?

Ommes. Foreman.

Cl. of Arr. *William Kidd*, hold up thy Hand. (*Which he did.*) Look upon the Prisoner. Is he guilty of the Murder whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper.



The



The Trial of *William Kidd, Nicholas Churchill, James Howe, Robert Lamley, William Fenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins*, for Piracy and Robbery, on a Ship called the *Quedagh Merchant*.

THE Jurors for our Sovereign Lord the King, do, upon their Oath, present, That William Kidd, late of London, Mariner; Nicholas Churchill, late of London, Mariner; James Howe, late of London, Mariner; Robert Lamley, late of London, Mariner; William Jenkins, late of London, Mariner; Gabriel Loffe, late of London, Mariner; Hugh Parrot, late of London, Mariner; Richard Barlicorn, late of London, Mariner; Abel Owens, late of London, Mariner; and Darby Mullins, late of London, Mariner; The 30th Day of January, in the Ninth Year of the Reign of our Sovereign Lord, William the Third, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place distant about ten Leagues from Cutsheen, in the East-Indies, and within the Jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break, and enter a certain Merchant Ship, called the *Quedagh Merchant*, then being a Ship of certain Persons (to the Jurors aforesaid unknown); and then and there piratically and feloniously, did make an Assault in and upon certain Mariners (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, piratically and feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about ten Leagues from Cutsheen aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, piratically and feloniously, did steal, take, and carry away the said Merchant Ship, called the *Quedagh Merchant*, and the Apparel and Tackle of the same Ship, of the Value of 400 l. of lawful Money of England; seventy Chests of Opium, of the Value of 1400 l. of lawful Money of England; two Hundred and fifty Bags of Sugar, of the Value of 100 l. of lawful Money of England; twenty Bales of raw Silk, of the Value of 400 l. of lawful Money of England; an hundred Bales of Callicoes, of the Value of 200 l. of lawful Money of England; two hundred Bales of Muslins, of the Value of 1000 l. of lawful Money of England; and three Bales of Romels, of the Value of 30 l. of lawful Money of England; the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there, upon the High Sea aforesaid, in the aforesaid Place, distant about ten Leagues from Cutsheen aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Mariners in the same Ship, from the said Mariners of the said Ship, and from their Custody and Possession, then and there, upon the High Sea aforesaid, in the Place aforesaid, distant about ten Leagues from Cutsheen aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

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Cl. of Arr. SET William Kidd, Nicholas Churchill, &c. to the Bar. (And so of the rest.) Will. Kidd, hold up thy Hand. (Which he did, and so the rest.)

You the Prisoners at the Bar, those Men that you shall hear call'd, and that personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths. If therefore you, or any of you, will challenge any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

And there being no Challenges, the Twelve that were sworn on the Jury were as follow :

John Cooper,	}	P. Walker,
Jo. Hall,		William Hunt,
Jo. James,		John Micklethwait,
Peter Parker,		Richard Chiswell,
Caleb Hook,		Abraham Hickman,
R. Rider,		George Grove.

Cl. of Arr. Cryer. Count these: John Cooper. Cryer. One, &c. Twelve good Men and true, stand together, and hear your Evidence.

Then the usual Proclamation for Information was made; and the Prisoners being bid to hold up their Hands, the Clerk of Arraignments charg'd the Jury with them thus :

Cl. of Arr. You of the Jury, look upon the Prisoners, and hearken to their Cause. They stand indicted by the Names of *William Kidd*, &c. (as before in the Indictment.) Upon this Indictment they have been Arraign'd, and thereunto have severally pleaded, *Not Guilty*; and for their Trial put themselves on God and their Country, which Country you are. Your Charge is, to enquire whether they be guilty of the Piracy and Robbery whereof they stand indicted in Manner and Form as they stand indicted, or not guilty, &c.

Nic. Churchill. My Lord, I beg your Opinion, whether I may not plead the King's Pardon?

L. C. B. Ward. Let us see your Pretences: You shall have all legal Defences and Advantages allow'd to you.

Nic. Churchill. I came in upon his Majesty's Proclamation.

L. C. B. Ward. Have you the King's Proclamation? If you have, let us see it.

Churchill. We had Notice of it at *Guiana*, and we deliver'd up our selves to Col. *Bass*, Governor of *East-Fersey*, and I have it under his Hand. I beg your Lordship would appoint me Council to plead my Case.

The Paper was shewn, and read.

Mr. Crawley. I know not when it was.

Churchill. I had Notice of it at *Guiana*: I have been two Years in Custody.

Q 9

L. C. B. Ward.