

noble Lord hath purchas'd, does not amount to more than 3000*l.* a Year, and that his personal Estate scarce exceeds 2000*l.* When we have shewn this, it must satisfy your Lordships, that the noble Earl hath been much more charitable than, according to his Circumstances, he could afford. There is another thing I beg leave to take notice of, to obviate an Objection I am apprehensive we shall hear of from the other Side; and that is, that these Charities were not given by the noble Lord out of his own Pocket, in regard there is a Sum of Money called Box-Money, which is laid out and distributed in private Charities by the Chancellor every Year. But to explain any Suggestion of this Kind, we shall shew that this Box-Money, though anciently used to be considerable, yet of late Years it hath not amounted to more than 172*l.* a Year: And as there have been always particular Objects of Charity recommended to this Bounty, so this Money hath been apply'd by his Lordship in the same manner it usually was apply'd by his Predecessors; and that no Part of this Money ever went in any of those several Charities, we have already given your Lordships an account of.

Mr. *Serj. Pengelly.* My Lords, we beg Leave, on the Behalf of the Managers, to offer to your Lordships Consideration, some Reasons why they ought not to be permitted, at this time, to go into the Evidence offered, after the Indulgence of many Days, and Defence made on the Articles, and the Evidence sumn'd up by the Counsel for the Lord impeach'd; and a Day is only given to hear the Lord himself, at his own Desire, to sum up or defend himself against the Charge against him; they ought not now to be allow'd to enter into a new Defence, or to give new Evidence. It is a new Method of Practice, after the Conclusion of the Counsel upon the whole Evidence, to say they have more Evidence to some of the Facts. My Lords, I don't know any thing of that Nature ever allowed, especially after the Examination closed, and an Adjournment for a Day or two. Besides, as to that Part of the new Evidence which the Counsel have opened, relating to the particular Estate and Circumstances of this Earl, how can the Managers be provided to give an Answer to it? There is nothing in the Articles leading thereto; they do not charge him with having a great and large Estate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this Case; the Charge of the Commons is confined to particular Sums received. If the Managers had gone into the Enquiry of any other Sum, at least without particular Notice to him, I believe it would have been objected against by the impeached Earl. Therefore to go into this sort of Evidence, where there is no Charge by the Commons, is putting the Commons to answer what is not in Question, which if they do, must lengthen out the Trial unnecessarily. If the Circumstances of his Estate be material, there must then be a further Time given to contradict their Proof, which possibly may be done as to his real Estate: But as to his personal Estate, how is it possible for any Man to give an Account of that? Doth not this lie in his own Knowledge entirely? No body can open his Chests or Cabinets at home: So that it is

impossible we should know any more of it than what serves his Purposes. Therefore, my Lords, we submit it, Whether they shall be permitted to go into this sort of Evidence? or, whether your Lordships will enter into any farther Examination?

Mr. *Lutwyche.* My Lords, we think it is of great Consequence to your Lordships, when an Evidence hath been so full, and with so great Patience heard to every particular Article; when that Evidence hath been summed up, and enforced by Counsel, and every particular of the Articles animadverted upon; we think there is no Precedent in any Court of Justice, where new Witnesses have, in such a Case, been permitted to be examined. Witnesses here have been produced; there hath been an Interruption of two or three Days for the noble Lord, at his own Desire, to make his Observations on the Evidence; to offer now to produce Witnesses that they had omitted to produce before, is perfectly new and unusual. I suppose they had these Witnesses in their Briefs, and, if they had thought fit, they might have called them. I know of no Instance of the like in any Court of Justice; if the Gentlemen of the other Side will tell us the Precedent, they may. I think it is of dangerous Consequence, not only in this Case, but in all other Proceedings in Courts of Justice. If your Lordships think fit to let them into one or two Witnesses, I do not know why your Lordships, with equal Reason, may not let them go over another Course of Evidence.

My Lords, as to the other Matter about this noble Lord's Estate, that is not a Matter insisted upon by any Evidence that we have given; and I submit it, Whether it is proper, or any way conducive in this Case, to any thing that is material for your Lordships Judgment in this Matter, for this Reason, because if it was material, it is impossible for us to know the Truth of it. We have no Right to examine this noble Lord upon Interrogatories as to his Estate, especially as to his personal Estate; a Man may in these Days have the Opportunity of being worth 100,000*l.* and People not know where it lies; as to his real Estate, it might be known if it was material, but we submit it, Whether it is incumbent upon us to enquire, at this time of Day, into the noble Lord's Estate?

It is impossible, in the Nature of the Thing, that your Lordships should have that satisfactory Account, or that we should have such Notice of it as is proper to make any Defence of it to us material; but we submit it, that it is not material at all; and therefore we hope your Lordships will keep to the Rule kept in all Cases in all other Courts of Justice, where People have made their full Defence, or else there would be no End of Things.

Mr. *Plummer.* My Lords, we did not lay to the Charge of this Earl, that he was possessed of a great Estate; we have only laid to his Charge what he hath unjustly possessed, we have only charged him with Matters of Fact, which we think we have made out; and therefore hope your Lordships will oblige him to answer to that, and to that only, and not to go to another Thing we have not charged.

Mr. *Serj. Probyn.* My Lords, we apprehend it is

is frequently practised, that where Counsel have omitted material Evidence, even after Summing up, the constant Indulgence of the Courts below lets them go into Evidence to supply that Omission.

We take it to be our own Fault. We had in our Instructions, and it is in your Lordships Breast, whether we shall not supply that Omission, we shall not run into a long Evidence, our Witnesses are but two or three.

Dr. *Sayer*. My Lords, I beg leave to think, that as we point out a particular Fact, distinct from any we have examined to before, there can be no Apprehension of any Danger at all; and if, as the Gentlemen have inform'd your Lordships, it is what is usual in Courts below, that such Omissions have been always permitted to be supply'd, your Lordships sure will act with equal Equity in this Case. What we undertake to prove is the Circumstance of his Estate; and though the Gentlemen of the House of Commons did not make it a Matter of Charge in their Articles, yet in his Answer the noble Earl takes Notice of it, and it will shew that the Earl had not his Heart so intent upon Gain, when it shall appear that his Fortune is so much less than the World might have imagined it to be, and when at the same Time we shew his Generosity, and that by means thereof his Estate was much lessen'd and check'd.

I would take Notice of the other Matter, with regard to the Evidence of the Charity: It is only to explain and prevent a Mistake, lest it should be imagined that these several Instances of Charity were out of the Box-Money, or Fund for Charity in the Court of Chancery. But, I believe, we need not trouble your Lordships with this, for that the Noble Earl is so well satisfied with the Integrity and Honour of the learned Managers of the House of Commons, that he is under no apprehension to have that turn'd upon him. The principal Matter is relating to his Estate.

As we have in great Measure left it to the Earl himself to sum up the several Evidences, and have done but little ourselves, the Objection of the Evidence being closed and summed up is not so strong as in other Cases; we submit it, whether your Lordships will not indulge us so far as to produce a Witness or two to this Matter.

Mr. *Com. Serj.* My Lords, we do not ask this as a Matter of Right, but as a Matter of Indulgence. I own the Rule that the Gentlemen of the House of Commons have laid down is a general Rule for the Government of Evidence.

We can't controvert that, but I believe it will not be controverted on the other side, that such a piece of Indulgence was hardly ever denied, and we hope your Lordships will not deny it upon this Occasion.

Earl of *Macclesfield*. My Lords, I don't apprehend that this is a thing so very extraordinary, or so dangerous, as hath been represented. It would be extremely severe, if, in a Cause of so great Length, and so much Fatigue, I should have Witnesses ready to give your Lordships an Account of some Facts material for my Defence; and my Counsel happening not to call them, although they were attending, and there should be a certain Form that should exclude me from having the Benefit of their Evidence; I don't know what this is founded upon, I never heard of such a Form or Rule.

There is no Instance that where Counsel hath been summing up the Evidence, and, before the other Side have replied, an Omission hath been discovered, that that Omission hath not been allow'd to be supplied. And,

I appeal to my Lords the Judges, Whether they have ever known this piece of Indulgence denied upon any Trial whatsoever in the Courts below. My Lords, with great Submission, the Evidence is not yet finished; I am sorry I must yet give your Lordships the Trouble of observing a good many Things that have been hitherto omitted: This is a Matter the Counsel had Directions about, the Witnesses were attending, but they were omitted to be called for; I hope your Lordships will not, for such a Mistake, exclude me the Benefit of their Testimony: Had it been calling fresh Evidence to any Matter that hath been examined to before, there might possibly be some Grounds for an Objection of this kind; but I mean only to call one or two Witnesses to fresh Matter, that hath not been enquired into before. There hath yet been no Witness examined as to the Box-Money, or my real or personal Estate; and yet those two Things are material, and it may greatly turn to my Prejudice if I have not the Liberty of producing this Evidence in relation to them.

It hath been represented that I have an Estate vastly more considerable than in Truth I have; and this Matter of the Box-money, as I have been informed, gave Birth to a Report abroad, as if what I gave for Charity was out of that Fund.

As to this latter, I dare trust the Candour of these Gentlemen, that they do not believe it; and if they do not insist that what I gave was out of the Box-Money, it will be needless for me to prove that it was not. But as to the other Matter, I hope I shall not be precluded from having those Witnesses examined, because it was before omitted; wherefore I humbly beg your Lordships Directions thereupon, whether I shall be at Liberty to lay their Evidence before your Lordships or not.

Mr. *Onslow*. I would beg leave to set your Lordships right as to that of the Box-Money. The Noble Lord insinuates as if something of that had been mentioned by the Managers; nothing hath been mentioned of it, either by the Evidence or by the Managers.

Earl of *Macclesfield*. No, I beg leave to explain myself; I did not say the Managers had insisted upon it, but only said it is a Matter that I have heard without Doors; but I believe I may rely upon their Candour that they will not make it an Objection now, in Case they oppose my giving Evidence to the contrary.

Mr. *Lutwyche*. My Lords, I am a little surprized, why the Noble Lord mentions this of the Box-Money, when not one single Word hath been said of it, either by the Evidence or by the Managers: Why then should this Noble Lord himself mention it? And why should he call Evidence to a Thing that hath no manner of relation to any Thing that hath been said? If his Lordship will please to give us leave to reply; if we then say any Thing of it, he may then give an Answer to it; but it is improper now to be giving an Answer to an Objection that was never made, and to which the Evidence hath not said one Word.

Lord Steward. If the Noble Lord thinks this a Point to be insisted on, it is then necessary for all to withdraw.

Order'd to withdraw, which was done; and being afterwards called in again,

Lord Chief Justice King. Mr. Serj. Probyn, it is the Opinion of their Lordships, that the Evidence offered by the Earl of *Macclesfield*, with respect to the further Account of his Charity, be not now admitted; and they are likewise further of Opinion, that the Earl of *Macclesfield* be not now permitted to give Evidence of the Value of his Estate, either real or personal.

Earl of Macclesfield. My Lords, your Lordships were pleas'd to indulge me to this Day to lay before your Lordships what I had to say in my Defence, against the Charge brought against me by the Commons, and against the Proof supporting that Charge, which your Lordships with so much Patience heard. From the Time your Lordships were pleas'd to allow me this liberty till now, I have applied myself with the utmost Diligence to prepare my self for my Defence.

To this End it hath been necessary to look over the Notes, taken of the Evidence given on both sides, and likewise of what was said by those Gentlemen who are Managers for the House of Commons. I find it very necessary to lay before your Lordships many Observations on the Evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up so much Time, and there being such a Distance between the Evidence given on the one side and the other, I have been employ'd wholly from the last Time till now in the Consideration of it; and I can say with Truth, I have not slept five Hours these two Nights, and yet I have not been able to get through it, and I am not now prepared to lay before your Lordships what I have humbly to offer for my Defence; there are many Things exceeding material to be submitted, and I beg therefore, that your Lordships will indulge me a farther Time, so that I may be able to do it in such a manner, as may set the Evidence and Observations upon it in such a light as your Lordships may pass a proper Judgment. I don't do this out of Delay; I believe your Lordships will easily imagine I should be glad to have this matter over, whatsoever the Event may be, for I am quite spent, and my Strength and Spirits wasted with the Fatigue I have already undergone. My Lords, I have been so far from any Delay in the Course of this Prosecution, that when I put in my Answer, as your Lordships were informed by one of the Gentlemen of my Counsel, tho' it was not finish'd till between three and four a-Clock in the Morning, yet I chose to get it ingross'd, and put in the same Day, rather than there should be the least Appearance of any Delay on my Part; and I do not know whether by endeavouring so very much to dispatch this Work, I have not rendered myself unfit and unable to go on with it: Human Nature can hardly bear what I have gone through.

At my Years, if I should undertake to do it by To-morrow, I am afraid I should sink under the Weight of such a Task, and not be able to come before your Lordships prepared as I ought to be; therefore I hope your Lordships will be pleas'd to allow me till the Day after; the Fatigue

I have already undergone has been very great, and I hope your Lordships will allow me such a Time as you will think competent; the Work I have to do will take up a great many Hours; there hath been Variety of Evidence, I hope your Lordships will indulge me till *Wednesday*; it is of very great moment to me, and I am sure I should be unwilling to mispend your Lordships Time, and delay this Matter unnecessarily: It really gives me the greatest Uneasiness to find myself in that Condition, that I cannot think of being able to do it sooner; I was before afraid that I should not be able to do it by this Day, but yet resolv'd to do all that was possible for me, and therefore declin'd asking then for any longer Time.

I hope your Lordships will indulge me; if your Lordships knew the Fatigue I have undergone, and the Effect it hath had upon my Health, I am sure in Humanity you would make no Difficulty of granting me farther Time to prepare myself in a proper manner, in a Case that is of so great moment to me; and I hope the Gentlemen of the House of Commons will not be against it; if they should overpreis this matter, I don't know but the Fatigue of it may bear so hard upon my life, as to save your Lordships the Trouble of passing any Judgment upon this Occasion.

Mr. Serj. Pengelly. My Lords, we don't apprehend the Lord properly applies to us in this Instance.

All Parties were directed to withdraw, which they did.

The House adjourn'd till Wednesday Morning Ten a-Clock, the 19th of May, 1725.

Wednesday, May 19, 1725.

The Ninth Day.

THE Lords being seated in their House, the Serjeant at Arms made the two usual Proclamations, as on the former Days.

L. Ch. Just. King. Mr. Serjeant Probyn, if you please to proceed.

E. of Macclesfield. My Lords, I am first to return my most humble Thanks to your Lordships, for the Time you have been pleas'd to indulge me with, for recollecting my Thoughts, and looking over the Evidence that has been offered on either side, during the Course of this tedious Proceeding; that I might be able to put those Observations I have made upon it in such a light, as became one who was to speak in a Case of so great Importance, at your Lordships Bar.

My Lords, I have been under some Misfortunes in this Prosecution; your Lordships must, no Doubt, have observed the Disappointments I have met with, in Questions I asked of some Persons, who appeared as Witnesses in the Course of this Trial, which it was impossible I could have had any Inducement to propose, but from my own Knowledge of the Answers that should have been returned. My Counsel, thro' the great Hurry that usually attends Proceedings of this Nature, happened

happened not to be instructed in some Particulars, that were extremely proper to have been laid before your Lordships upon this Occasion: Besides that, the Variety of the Facts, continued to be given in Evidence from one Day to another, has in this particular Case been carried on to such an unusual length, that they have not been able in the end to make themselves so perfect Masters of the Evidence, as the Importance of the Case required.

I should trouble your Lordships with an Apology for my own Inability to supply this at present, both from the extreme Fatigue I have undergone during the whole Course of this Prosecution, and because that my last Illness has broke my Memory to a great Degree. But whatever Difficulties I have laboured under, when I consider your Lordships are my Judges, I cannot doubt but your Candour and Goodness will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to say before you; and therefore, rather than ask any more Time of your Lordships for preparing myself, I will endeavour to go on now as well as I can.

My Lords, the Charge brought against me is very heavy, as laid in the Articles, and highly exaggerated by the Gentlemen that are appointed Managers by the House of Commons.

That which I think is charged as the Foundation of the whole, is,

My entertaining wicked and corrupt Purposes, to raise and procure to myself excessive and exorbitant Gain and Profit.

This it is that hath made me extorsively and illegally take Money, upon the Admittance of Matters, and Disposal of other Offices.

And the being set upon the Gain arising from the Masters Places, with the Desire to advance it, or keep it up, is represented to be the Source of all the rest of the Things complain'd of, which seem to me to be charged only as Contrivances for that Purpose.

This is such Corruption of Heart, and carries with it such a Malignity, that it makes every Action and every Omission criminal: Every rash Word, every Neglect or Imprudence, nay Things perfectly innocent in their own Nature, or perhaps commendable, are so infected by it, as to deserve the severest Censure and Punishment.

Whether I wait in Expectation of the Application of the Suitors, with Respect to *Dormer's* Debt, or of myself endeavour to get it made good, or even pay my own Money towards it, it is all one, so wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Trust in me reposed, contrary to the Duty of my Office, is made the Aggravation of almost every Article.

I shall endeavour to shew your Lordships, that the several things charged upon me are either not true, or not criminal; or if your Lordships shall judge otherwise of them than I do, yet that they were the Effects, not of Wickedness, but of Mistake; and if I have ever done any thing for the Service of my Country, of the Constitution, of his Majesty, and of the Royal Family, and the present Establishment, and for the Administration of publick Justice, it might not be unsuitable to

the unparalleled Goodness of this Reign, for your Lordships to have Compassion upon the Errors, Mistakes, and Weaknesses of the faithful, steady Servant of a Prince, whose Mercy has been so often extended, in so great a Degree, to the highest Crimes of his bitter Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of something that has been said with Relation to the Answer which I have put in to these Articles of Impeachment, as containing a Plea of a Pardon at the same Time that I insist upon my Innocence; and its not being a full Answer to all the particular Charges in the Articles. As to the first, my insisting on his Majesty's most gracious, general, and free Pardon for all things before the twenty-fourth of July, 1721,

My Lords, I hope, and am myself of Opinion, that I have not done any thing that is criminal, or needs a Pardon;

But when so many Gentlemen of Learning and great Parts, undertake to make out, that That is a Crime which I thought and still think not so; should I opiniatre to that Degree, and be so confident that your Lordships will be of my Opinion, as to refuse the Benefit of a Pardon, which his Majesty has so graciously granted to all his Subjects?

When little Imprudences, and so many Omissions, and even idle Words, loose Talk, and unguarded Expressions, are laid to my Charge as Crimes, and made the subject Matter of an Impeachment; and some of them charged without mention of any Time, or the Name of the Cause in which it is pretended they were spoke, or any other Circumstances by which I might be enabled, either myself to recollect or to make Enquiry of others, in order to prepare for my Defence; it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expose the Absurdity of pleading Innocence and a Pardon to the same Offence; what is more consistent than to say, I ought not to be punished, because the Fact charged is no Offence, or if it be one it is pardoned? But had the Gentleman who made it, been pleased to have read the last Act of Grace carefully through, he would have found that it expressly provides, that the Pardon shall support the Plea of Innocence, and upon *Not guilty* pleaded, the Act may be given in Evidence to prove the Person not guilty. And, in the Notion of our Law, it wipes away whatever Guilt there was, and leaves the Person innocent, that is, as a very great Lawyer and a very wise Man expresses it, *it takes away not only poenam but reatum, the Guilt as well as the Punishment.*

As to the Reflexion made upon my Answer in another respect, as if it were not full and direct, and that in Chancery, the Court where I had presided, it would be held an insufficient Answer; Probably it might be so; but that is, because that a Plaintiff there has a Right to require a Discovery of all such Facts as are material for his Advantage, upon the Oath of the Detendant. And therefore the Answer is not only the Party's own Defence, but it is to supply the Plaintiff with Evidence, who therefore may except to it as insufficient, so far as it is short of answering to, and gi-

ving an Account of all, of every minute Circumstance that he charges.

But do they imagine that to be the Case in a criminal Prosecution? or that the Defendant there is obliged to furnish Evidence, or to confess any thing that may tend to affect or charge himself? No, my Lords; the Answer there is only for the Defence of the Person accused: And Not guilty is a full Answer.

And my Lords, I insist upon it, I have given a full Answer to all the Articles at the end of my Answer, where I have pleaded the general Issue, and in express Words said, That *I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged against me*; which is of itself a direct and full Answer, without more.

And tho' I have set forth other Facts, it is only where I have thought some things might be farther explained. But there is no need to make any Proof of a Word in my Answer, if the Charge in the Articles is not supported by the Evidence given against me.

And I still hope your Lordships will be of Opinion, that tho' some of the Matters mentioned in the Articles are proved, and indeed some are expressly admitted by me, and others never disputed; yet that none of them is admitted or proved in *such manner as it is charged in the Articles*.

Having said thus much, I proceed to consider what has been offered in *Proof* against me.

My Lords, the Preamble of the Articles is intended for an Aggravation of my Crimes, by shewing what Oath I had taken, which I had violated; and what Favours I had received from his Majesty, and was not satisfied with them.

As to the last, give me leave to say, that I can never express the Sense of my Heart for his Majesty's Favours and Bounties, and that it ought to be a high Aggravation, if I have abused them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodness has exceeded, not only my poor Services, but even my Desires and Wishes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty shall never abate.

As to the Violation of my Oath, no such Crime is made out against me.

The Oath of Office taken by the Chancellor when he enters upon that Office, has no relation to what is laid to my Charge: I have set it forth *verbatim* in my Answer, and no Argument has been attempted to be drawn from it.

But it was said the other Day, that I had taken an Oath upon the Statute of the twelfth of *Richard II.* which I had *forgot, both in my Answer and in my Conduct*.

As to my Answer, I beg leave to observe, that the Answer is suited to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath supposed to be taken on the third of *November* at all mentioned.

The Words of the Preamble, which is the only Part of the Articles that mentions my taking any Oath, are these:

“ And whereas *Thomas Earl of Macclesfield*, in
“ or about the Month of *May*, in the Year of

“ our Lord 1718, by the Grace and Favour of his
“ Most Excellent Majesty, was constituted and
“ appointed Lord Chancellor of *Great Britain*,
“ and did *thereupon take the usual Oath* for the due
“ Execution of that High Office, whereby he did
“ swear well and truly to serve our Sovereign
“ Lord the King and his People, poor and rich,
“ after the Laws and Usages of the Realm, and
“ *such other Oaths as have been accustomed*; and the
“ said Earl continued in this great Office,” &c.

Where the *other Oaths accustomed*, as well as that particularly *described*, are confined to what I did *thereupon take*, that is, *upon my being made Chancellor in May 1718*. At least to my poor Understanding it appeared so. Nor did I at all imagine, that it referred to what was done the third of *November* after, which was but the same as had been done the third of *November* before.

And accordingly my Answer is confined to the *same Time* that I was sworn Lord Chancellor before his Majesty in Council, the fourteenth of *May 1718*, when I took the Oath of Office set forth in the Answer; and at the same time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of *Richard II.* at *that Time*.

The Words of the Answer are,

“ That in the beginning of *May*, in the Year
“ 1718, he the said Earl was, by his Majesty's
“ great Grace and Favour, appointed Lord Chan-
“ cellor of *Great Britain*, and was sworn before
“ his Majesty in Council the fourteenth Day of
“ that Month; when the following Oath, be-
“ ing the usual Oath of Lord Chancellor, was
“ administered to him, *viz.* you shall swear, &c.
“ And the said Earl, *at the same Time*, took the
“ Oath of Allegiance and Supremacy, but no
“ Oath of Office besides that above set forth.

My Answer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulness, but to its not being charged. It is not charged, and therefore not answered to.

But it is now insisted upon, and great Stress laid upon it, that at the naming of Sheriffs, which is done in the Exchequer upon the third of *November* every Year, I took an Oath upon the Statute of 12 *Richard II.* which extends to the Disposal of the Office of Masters in Chancery.

To judge of the Truth of this new Charge, your Lordships will be pleased to consider what it is that is yearly done the third of *November*, upon that Occasion of naming of Sheriffs.

The Managers were not pleased to open what passes every Year upon the Nomination of Sheriffs, which had been proper before they called the Witness to prove it; if they had, it might have saved me the Trouble of asking any Questions.

But the Examination, and the Testimony of a Witness that spoke indistinctly and low, tended, as I thought, to have the Statute entered in the old Book of the Exchequer in obsolete *French*, and so ill read as hardly to be understood, to pass for the Form of an Oath then administer'd

administer'd upon the Statute which had been just before read in *English* to your Lordships at the Table; and so it might be taken to be an Oath conceived in the Words of the Statute, extending to all Nominations of Officers, and to all Times, and not confined to that Occasion.

I did therefore ask some Questions, not to quibble away an Oath, as one of the Managers was pleas'd to express it, but to have the Matter laid before your Lordships in its true Light, and which came out to be thus.

The Lords of the Privy-Council and the Judges, being assembled for naming Sheriffs for the following Year, at the Time and Place appointed for that Purpose, the Act of Parliament of 12 *Richard II.* is read, directing several Persons to be sworn, concerning their naming of Sheriffs, and of some other Officers specify'd in the Act, and with general Words extending to more; then an Officer gives a Bible to every one of the Privy-Counsellors and Judges present, who all, one after another, kiss it; but nothing is said to them by the Officer or any one else, nor are any Words spoken by them.

I know it has been much doubted how this could be called Swearing, or taking an Oath.

But that is not at all what I insist upon.

There being something sacred in the Ceremony, I agree the Action should be consider'd as a solemn Undertaking in Nature of an Oath, to observe that Statute in the Business we were then entering upon; and so it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And accordingly this is repeated every Year upon the like Occasion, though the Persons are the same, and has been so by me for seven Years together, before I was Chancellor, and for as many since.

But to extend this farther than that Occasion, is, I humbly insist upon it, going beyond what the Action then done imports.

The Statute plainly relates to Nominations or Elections, where Numbers of Persons are called together to name Officers; the very reading the Statute shews it, and when I come to speak of the Construction of that Act of Parliament, it will be yet more plain.

And when it provides, "That the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, Chamberlain of the King, Clerk of the Rolls, Justices of the one Bench and of the other, Barons of the Exchequer, and all others, *who shall be called* to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King shall be firmly sworn, &c." I take it to mean that they shall be sworn when they are so called together, and met. And the Practice is accordingly.

There are some old Statutes that say, that the Chancellor with the Council shall appoint Justices of the Peace, the Treasurer with some others shall name Customers, &c. But the Usage at this Time is, (and it has been so for some Hundreds of Years) that the naming of Justices of the Peace, is in Fact in the Chancellor only; of Customers and Comptrollers, in the Treasurer; and many of the Persons named in the Statute

meddle not with naming any of the Officers comprized within either the particular or general Words.

If therefore, my Lords, the Bishops were desired to draw up a Form of an Oath to be taken upon this Statute by all the Persons attending on the third of *November* for the Naming of Sheriffs, I presume they would confine the Oath to the particular Occasion.

I submit to their Consideration, whether they would draw it up so, that every one present should swear that he would observe this Statute, or not go contrary to this Statute, in the Nomination of Officers which he has not any Right or Power to name, nor is ever called to name: Whether they would frame such an Oath, whereby the Judges should swear that they would not name Justices of the Peace, Escheators, Customers, or Comptrollers, for Gift or Brocage, Favour or Affection, when they cannot name them at all, either by Provision of Law or by Usage.

I apprehend this would be an improper, if not a vain Oath.

And a constructive taking of an Oath, which is all that can be insisted upon here, ought not to be carried farther than would be proper to express in Words at length.

And therefore, as all the Persons assisting there certainly take the same Oath, and many of them have nothing to do with the Choice, or naming of any of the other Officers in the Act besides Sheriffs; and as this Action yearly repeated on this particular Occasion, shews it to be intended to relate only to Sheriffs; I have always thought that it went no farther than to oblige me; that in the Affair, which we were then entering upon, I should act according to that Statute.

And I am persuaded, that in this Case, I have the universal Concurrence of the Judgments of others. For I do not believe that ever any Person that assisted on that Occasion, had the least Apprehension of his then taking an Oath, which related to any thing but that particular Occasion.

But if they all did take an Oath so extensive as to reach to the Disposal of all other Employments, (which is the Sense wherein I believe the Managers would have the Words of the Act to be understood,) God knows in what Guilt many of them have involved themselves.

It is a Part of the Statute, and Part of that to which the Persons called to name Officers are directed to be sworn, *That none who sues by himself, or by any other, in private, or openly, to be in any manner of Office, shall be put into the same Office, or any other.*

Will these Gentlemen urge that every Lord Treasurer, Lord Commissioner of the Treasury, or other Lords in great Employments, that give Places, or name Persons for Places to the King, and have once attended at the naming of Sheriffs, have been guilty of a Violation of this Oath, in every Instance, where they have named any Person to any Office, who, by himself, or his Friends, ever asked for the Place given, or for any other?

I can-

I cannot imagine that they will attempt to carry it so far. But if they do, I will yet presume, that your Lordships will not, by such a new Construction, condemn so many Persons that are innocent, or thought themselves so.

Hence I think myself not to have taken any Oath upon the Statute of 12 Ric. II. which any way extends to Masters in Chancery; and I hope your Lordships will think so too.

What is the particular Meaning of this Act, and what Arguments may be drawn from the Provision therein, I shall not trouble your Lordships with at present, but shall reserve the Consideration of it for another Place: But as to the Charge of violating an Oath founded upon it, let the Observations I have made, from the Frame of the Act and the Nature of the Action at present suffice.

The subject matter of the first Articles, as they stand in Order, and which I believe has given rise to this Prosecution, is the taking Money for the Places of Masters in Chancery; long practised without Blame, though made my great Crime.

What has been urged from the Nature of the Office, the Oath which the Masters take, and the Commissions granted to them, together with the Master of the Rolls and the Judges to hear Causes in the Absence of the Chancellor, will not have any Weight in the Question, whether it be criminal to take Money on admitting them.

I beg leave to say, that the Office anciently was quite different from what it is now, so that it is in a manner forgot what it originally was. One Branch of their Office anciently, and then reckoned of Importance, was the framing Writs, which are now made out by the Curfitors; and that which is their greatest Business now, there appear no Footsteps of being done by them, or any others anciently.

Their Business now is chiefly preparatory to the Determination of the Court of Chancery upon References made to them by the Court, in order to their stating Things to the Satisfaction of the Parties; or reducing the Dispute to some few Heads, in which they differ, for the easier Determination of the Court.

And that which they are most generally employed in thus, is matter of Accompts.

Very frequently the Parties, after having had the Items examined and proved, agree before the Master the whole Accompt, and almost always the greatest part of it. And if the Parties are dissatisfied, they are at Liberty, by Objections in Writing which are called Exceptions, to state to the Court the distinct Items which they dispute, by which means the Court is eased of the Consideration of all the rest of the Items of the Accompt. And the Master makes no judicial Determination; but when he makes his Report has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinced the

Parties as far as he could, and then stated the whole Accompt so as he thinks is right; which at last has its Force, not from him but from the Court, which confirms it if not disputed, or examines the disputed Points if desired.

Upon References to them whether Answers are sufficient, they are to compare the Words of the Answer with the Words of the Bill, and state whether they find them full: And if the Parties do not acquiesce in the Master's Opinion, the Court takes the Trouble to make the Comparison.

They are likewise Cashiers, not of the Court but of the Suitors, and always at their Prayer.

And the Parties have this Advantage in having the Masters for their Cashiers, that they have a ready Method to compel Payment by Order of the Court, and a Commitment of the Person or Sequestration, (that is seising all their Estates and Effects,) or both, upon such Order, in a short and cheap way; whereas against other Cashiers they must be put to the Charge and Delay of a tedious Suit, if the Money be not paid.

And other Officers, whose Places are allowed to be sold, do the same Things, make Reports to state Facts on References, are Cashiers of the Money brought in, and tax Costs, which is another thing the Masters do.

As to the Oath; it is the old Oath, before the Office was so greatly changed; what Advice to be given to the King it refers to, will be hard I believe to explain, and has not been attempted; but if the Writs requiring their Attendance here were looked into, possibly it may be thought, that anciently they attended your Lordships in a manner different from what they now do, and have done from before the Time of our Memory.

And as to the Commission to hear Causes in Absence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Office of Clerk of Assize, (expressly allowed in the Statute of *Edw. VI.* to be disposed for Money) that the Clerk of Assize is constantly joined with the Judges in the Commissions of *Over and Terminer* and Goal Delivery, for the Trial of Criminals, even for capital Crimes.

To proceed therefore to the Points of the Charge.

It is founded singly, upon the *taking Money* for admitting the Masters into the Office; and the *Manner* of taking it extorsively, without reference to any want of *Quality* in the Party admitted; and therefore it is criminal, unless the taking of Money in all such Cases criminal, or that the Manner of taking or extorting it in these Cases make it so.

Therefore I will first speak to the general Question, whether taking Money upon Occasion of putting in a Master, is in all Cases criminal in itself, or by the Common Law, or made so by any Statute which subjects it to any Judgment or Punishment,

ment, which can be prayed in this Prosecution ; as I have expressed it in my Answer.

And that which I humbly insist upon as to the first, that is, whether it can be said to be wicked or criminal in itself, or from the Reason and Nature of the Thing, is this :

An Office may be considered in two Respects ; First, with Respect to the Duty ; that is, the Concern of the Publick ; that the Person be duly qualified to discharge his Office well. Secondly, with Respect to the Profit and Advantage ; and that is merely private, and concerns the Officer only. And whilst he discharges his Duty well, without Extortion, or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or less. As in those Offices, which are very numerous and of great Consequence, that may be executed by Deputy ; provided the Deputy behave himself well, the Publick has never concerned itself what his Salary or Allowance from his Principal is, whether it be greater or less.

And as the Person who is put into a very beneficial Office, such as one of these, for his Life, has not any antecedent Right to the Office, and therefore not to the Profits arising thereby ; and he that prefers him is not bound to give it him ; therefore when he puts him into it, he in effect grants him all the Profits of the Office for his Life : And if the Officer make him a Present for it, either unexpected, by way of Thanks after he is put in, or expected, which he had told him of before, or give it at the Time, or before that he is admitted ; I see not any Immorality either in the Giver or Taker. It is Money given for Profits to be received during Life.

The Publick is concerned only in the Goodness of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in ; whether Friendship, Acquaintance, Relation, Importance, great Recommendation, or a Present.

I agree, that a Person taking a Present and putting in an unfit Person, when he knew him to be so, or had just Ground to believe him so, is criminal : Not because he has taken a Present, but because he has prejudiced the Publick knowingly : It may be an Aggravation, that he had taken Money ; but the Crime is, the Wrong done to the Publick in the Person advanced. It had been the same Crime, had he done it for the sake of Kindred, or Friendship, or for Recommendation, or any other Reason.

But if a Person very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Post, and so I who placed him, have well discharged my Duty to the Publick ; is it material how well I loved him, how nearly he is related, who it was that persuaded me to prefer him, or what he gave me on that Account, whether before, or after he was put in ? Will any of these Circumstances make me criminal in an Action by which I served the Publick well ? If the Publick have all the Benefit it can have, where is the Immorality ? where is the Crime, if I have an Advantage too ? especially if Usage has in some sort annexed that Advantage to my Office, which is taken from his ?

Obj. I know it may be objected with great Appearance of Reason, that this Practice is dangerous,

it leads to Inconveniencies, it is a Temptation to him that disposes of Places to make ill Officers, and a Temptation to the Officers to extort Money and abuse the Subjects, in order to get up their Money again.

Ans. But is it therefore a Crime, where the Temptation is resisted, and a very good Officer is put in, and he behaves himself perfectly well ?

The Point of the Charge now under Consideration rests singly on this, that I took Money for admitting Mr. *Francis Elde* (for instance) ; and tho' taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not alleged to be an ill Man or any way unfit, and is really an excellent Master ?

This Argument concludes, only that the allowing it to be generally practised is inconvenient, and may in the Deliberations of the Legislature be properly used to prove it fit to be restrained by a Law : But is not of force, in a Court of Justice, to prove it to be a Crime in every instance, because it may occasion a Crime in some.

Farther, as to the Matter of Temptation to put in one unfit :

The Liberty of preferring Relations to Offices is a Temptation to put in Persons unfit ; and, without doubt, has often prevailed. Supposing therefore it might be proper matter of Deliberation in the Legislature, how far a Restraint should be put upon it ; yet, in the mean time, is advancing a Relation to an Office, which he is fit for, a Crime, because in other Instances it has occasioned a Crime, or may do so, or is a Temptation to it ? And would it be a sufficient Charge of a high Crime against me, to say that I *illegally* and *corruptly* put into such an Office *A. B.* my Son or my Brother ? I apprehend not.

Till a Restraint is laid, the Thing may be innocently done.

If a Restraint be laid, the Law will operate upon it, so far as the Restraint extends ; but farther than that, and the Consequences declared to ensue thereupon, it will remain as before.

Considering this therefore in itself, and upon the Reason of the Thing, where is the Force of the Argument ? You took 5000*l.* for putting in Mr. *Elde* or Mr. *Thurston*, a very fit Person and an excellent Master, and therefore you are criminal, because some body else at another Time may put in another Master not fit, upon his giving a Present.

If this then be not criminal in itself, how do they prove it to be so by the Common Law ?

The only Case they have instanced as any Authority for that Purpose, is that of *Stockwith* and *North* in *Moor's* Reports.

But here give me leave to say, that it was proper and just for the learned Managers to produce, in making out their Charge, all their Arguments on this Head of the Illegality of this Practice, that there might be a proper Opportunity of weighing them, and giving them a satisfactory Answer (if it could be done) at this Time of my Defence, and I presume they have done so. But if they should think fit to reserve any fresh Argument for their Reply, which we shall apprehend may want an Answer, your Lordships will, in that Case, give me leave to insist upon a Right of taking proper Notice of it afterwards, and not let them reap any

Benefit by lying by, in such an unprecedented manner, and expecting your Lordships Judgment, without hearing the other Side upon it.

The only Case, I say, which they have instanced in, is the Case of *Stockwith* and *North* in *Moor's* Reports 781. I have looked upon the Case as it is in that Book, and it appears to be thus :

“ *North* was fined in the Star-Chamber, for that he, being Sheriff of *Nottingham* in the 43d Year of Queen *Elizabeth*, took Money for the Goaler-ship and Bailiwick for that Year ; he gave them first to his Servants, who sold them, but he himself received the Money. And this was adjudged to be letting to Farm of his County, contrary to the Statute of 4 *Hen. IV. cap. 5.* Yet there note, that the Statute itself gives a Penalty certain and pecuniary, and is *malum prohibitum, non in se.* But the Court took it, that in as much as Corruption follows upon the Covetousness of Officers, and they are forced thereto by the Prices which they give for Things which ought not to be sold ; that this putting to Farm and selling of Offices, is *malum in se, and finable*”.

It appears here, that this was a Prosecution upon the Statute of 4 *Hen. IV.* for the Point adjudged was, that this was contrary to that Statute, and therefore whether what was done, was against the Common Law, or *malum in se,* or not, was not at all in Judgment before the Court.

And the mention of that is introduced as spoke to remove a Doubt, how *North* came to be fined, when a particular Penalty is (as it is there said) given by the Act of Parliament.

But that is a gross Mistake in the Reporter ; the Act of Parliament is very short, I desire it may be read.

It was read, as follows :

“ *Stat. 4. Hen. IV. cap. 5.* Every Sheriff shall abide in proper Person in his Bailiwick for the Time that he shall be such Officer, and that he shall not let the Bailiwick to farm to any Man, for the Time he occupieth such Office ; and that the said Sheriff be sworn from time to time to do the same in especial, amongst other Articles comprized in the Oath of Sheriff.”

Your Lordships observe, that there is in this Act only a *prohibitory Clause* against the disposal of such Bailiwick, but no pecuniary or other particular Penalty of any kind, inflicted by that Statute : So that it could not be a question whether a Fine was proper, as that Reporter supposes.

The Exactness of the Report therefore is not to be rely'd upon, and what other Mistakes may be in it, I know not. Indeed it is a posthumous Work, uncorrect Notes taken for his own use, and not intended to be published.

But however, taking it for Truth, that some of the Judges did speak to the effect in that Report : It is a common Observation, that when Judges are proceeding in the Case of a plain and express Law, Words used by them that tend to discountenance and farther expose the Crime then censured, are of no great Authority.

The very same thing is done in Lord Chief Justice *Coke's* 12th Report, with respect to turning arable Land into Pasture ; against which there was then an Act of Parliament in being ; and farther to discountenance it, it is there said to be *malum in se.*

And in many Places, Usury is said to be *malum in se,* and with greater Colour ; and yet I believe a Prosecution for it, would scarce be thought maintainable, farther than the Act of Parliament will justify it.

But as to this particular Matter of a Sheriff letting his Bailiwick to farm, before it was specially restrained by Acts of Parliament for that Purpose, there are many Footsteps of its being an ancient and allowed Practice.

The *Stat. de attainetis, Rast. Sheriffs 5.* containing several Provisions about Sheriffs, directs, that that Statute shall extend as well to those which were Sheriffs and other Ministers, that let to lease their Bailiwicks as to Sheriffs and other Ministers which hold their Bailiwicks themselves.”

Where the Sheriffs holding their Bailiwicks themselves, or letting them to Lease, which is letting them to Farm, is spoken of as perfectly indifferent.

Nor is the Expression supposed to be used in *Moor,* pretended to be built on any precedent Authority or Fact, but is barely the Reasoning of whoever he was that used it, from the Temptation to which Officers that pay Money are exposed ; and how just it is, I submit upon what I have laid before your Lordships on that Subject. Tho' the Danger from that Temptation is much greater in the Case of Bailiffs and Sheriffs that have only ignorant People to deal with in remote Parts in the Country, where it is difficult and chargeable to obtain Redress, than in the Case of Masters in Chancery, that act under the View almost of a Court of Justice, and where Persons wronged have an easy Opportunity every Day to obtain Redress.

So that this loose Expression mentioned by *Moor,* (coupled too with a gross Mistake) not at all to the Point of Judgment, is of very little force to prove the Case to which it is applied to be against the Common Law, and of less to prove the present Case to be so.

What then is there farther offered ? Do they shew that by the Common Custom of *England,* which is properly the Common Law of *England,* the taking Money for Offices has been, from Time to Time, punished, or condemned as criminal ?

No ; it is admitted on the one hand, that there is not one Instance of its having been punished or condemned as criminal, at the Common Law :

And on the other hand, it is notorious, that in fact the greatest Offices have anciently been sold even by the Kings ; and that not in a clandestine manner, but so that the Price, and what it was paid for, have been entered upon Record.

The Instances have some of them been mentioned.

Richard the Son of *Alured,* in the 5th of King *Stephen,* was to pay fifteen Marks that he might sit with *Ralph Basset* for the Pleas of the King, which *Ralph Basset* was then Juslicier.

And *Walter de Grey,* in the seventh of King *John,* gave the King 5000 Marks to have the King's Chancery for his Life, and the Bishop of *Norwich* engages for the Payment.

I have the Copies of both the Records here in my Hand, if there be any doubt of them.

Nor are our Histories quite silent. In *Hollinshed*, in the fifth Year of *Richard I.* (who was one of the intermediate Kings between the two Kings I have named) it appears what was done, almost with the Sanction of Parliament, certainly with their Notice, and not with their Dislike.

“ The King (says the Historian) called a Parliament at *Nottingham*, and the first day of their Session *Gerard de Camville* was discharged of the Office of Sheriff of *Lincoln*, and dispossessed both of the Castle and County. And so was likewise *Hugh Bardolf* of the County and Castle of *York*, and of the Castle of *Scarborough*, and of the Custody and Keeping of the County of *Westmoreland*. The which Offices (as he goes on) being now in the King’s Hands, he set them on Sale to him which would give most. Hereof it came to pass, that where the Lord Chancellor offered to give fifteen hundred Marks beforehand for the Counties of *York*, *Lincoln* and *Northampton*, and one hundred Marks of increase of Rent for every of the same Counties; *Geffery* Archbishop of *York* offered to the King three thousand Marks beforehand only for the County of *York*, and one thousand Marks yearly of increase, and so had the same committed to his Regiment.

And in the Case of *Magdalen College*, in the fifteenth of King *James I.* reported in *1 Roll’s Reports* 157, *Sir Henry Hobart* then Attorney General, and soon after Lord Chief Justice of the Common Pleas, argues from it, as a Principle not to be contested, That if any one procure an Office to himself for 1000 *l.* of the Gift of the King, the Office is not lost by the Statute of 5 & 6 *Ed. VI.* which shews the think not wicked, not *malum in se*, or against the Common Law, for the Prerogative cannot extend to what is so.

My Lords,

Whoever makes the Grant, or receives the Money, the King or a Subject, the Temptation under which the Officer who paid it lies, to reimburse himself, is the same. And if the Strength of that Temptation make the thing criminal, it will make it so in all Instances.

It has been taken notice of by those Gentlemen who are of Counsel for me, that the Proviso in the very Statute of 5 & 6 *Ed. VI.* prove, that this is not against the common Law, or criminal in itself, at the same time that it puts a particular Restraint upon the Practice of buying and selling Offices, or Deputations to Offices.

Give me leave to add some Observations upon the Proviso in that Statute.

Sect. IV. contains a Proviso, that this Act shall not extend to any Office whereof any Person is seized of any Estate of Inheritance.

Suppose a Man that has an Office of Inheritance takes Money from a Person whom he appoints as his Deputy;

Is not that Deputy as liable to be tempted to reimburse himself by Extortion or Corruption, is if his Principal had but an Estate for Life?

Can a Deputy’s Behaviour turn upon the Title of his Principal? So that 1000 *l.* (for instance) paid by him, will certainly make him corrupt, if his Principal holds his Office for Life, but will not make him guilty of the least Misbehaviour, if

his Principal have the Inheritance of the Office?

This Proviso is therefore plainly founded only upon the Regard the Law-makers had to the *Property* and *Interest* of such Owner of an Office, which they would not prejudice, and therefore he is left at full Liberty to sell the Office itself, or a Deputation to it.

But if to take Money from a Person who is to have or execute an Office, were unlawful by the Common Law, or wicked in itself; it is impossible that the Owner of the Office could have a *Right to that wicked or unlawful Gain*; nor could the Law-makers have any regard to it.

And since here they are careful not to take it from him, they allow it. They in effect make a formal *Declaration* that it is *lawful*, and that the Provision made by that Act is not so necessary, as that it should in any degree interfere with his private Property in that Instance.

Farther,

Sect. III. makes void all Agreements, Bonds and Promises for Money, for any Office or Deputation. But Sect. VI. provides, that the Act shall not extend to Agreements, Bonds, &c. made or concluded before the first of *March* then next.

This supposes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpose, which the Courts of Justice were to compel the Performance of.

Does it condemn them as criminal in themselves, by reason of the Danger?

No: on the contrary it does not esteem the Danger so great, as that to avoid it the Property arising upon these Contracts should be taken away, or at all impeached: but leaves a Remedy in a Court of Justice to enforce the Performance of a Contract, which must necessarily cause a publick mischief, if that were true that it is unlawful in itself, and that its Unlawfulness arises from the Mischiefs consequent upon paying Money on that Occasion.

Had the makers of that Law been of the Opinion which these Gentlemen seem to be of, and thought such Traffick a Wickedness, it had been impossible for them not to have put a Stop to it, and absolutely disannulled all Securities and Cautions for the Performance.

I do not suppose the Form of Expression used in this Proviso will be criticised upon, or that it will be urged that the Words of this Proviso only import, that those Bonds are left *in such Force as they would have been, if the Act had not been made*, and does not make them good.

That would be a poor Subterfuge. The Proviso makes them not good, ’tis true. Why? Because it plainly supposed them to be good before; but that Sect. III. would make them void, if this Proviso did not prevent it; and this Proviso is on purpose to prevent it, and for nothing else.

And would the makers of a Law, would these Gentlemen in making a Law, insert a Proviso that Agreements should continue of such Force as they were before, if they thought them of no Force before? Nay if they thought them not only void, but mischievous?

The saving a Right of Action upon such Bonds, and making a Proviso in Favour of them gives them such Countenance, that those that had any such would certainly insist upon them, and the

Persons

Persons that were bound would be discouraged from disputing with them what the Legislature did not think fit to deprive them of, and would therefore pay without standing a Suit.

There is yet one Proviso more in this Act, material to the present Purpose.

Sect. VII. provides, that this Act shall not extend or be prejudicial to the Lords Chief Justices or Judges of Assize——“ but that they may do in every behalf touching any Office to be given or granted by them, as they might have done before the making of this Act; any thing above mentioned to the contrary thereof in any wise notwithstanding.

This plainly implies, that at that Time, and before, it was the Practice for the two Chief Justices and Judges of Assize to take Money for the Offices in their Courts, else nothing in this Act could extend to what they usually did, or be of any Prejudice to them.

And it shews too, that the Law-makers did not dislike the Practice.

I beg leave to submit to your Lordships, whether this doth not amount to a Declaration of the Law, that the taking Money for Offices, whatever Danger there may be from it in some Cases, does not necessarily in all Cases, cause bad Officers to be made; nor the paying it make the Officer extort: For the Nature of Things changes not with the Titles of Persons. An Officer that pays Money to a Lord Chief Justice, will be under the same Temptation to get it up again, as he that pays to a Lord Chancellor.

As to the Wording and Form of Expression of this Proviso, I take it to be very clear, that the Words [*as they might have done before the making of this Act*] are declaratory; that they might before the making of this Act take Money for Offices; and because in the Case of those Officers the Danger was not so great, it is still saved and preserved to them.

If it be said that nothing is saved to them but *the doing what they might have done before*, and that they could not before lawfully take Money for Offices; I beg leave to answer, that if that be so, the Clause is perfectly frivolous. A strong Prejudice against the Exposition that makes it so in all Cases, but much more so here.

For as the Judges are always Attendants in this House, and this Clause greatly concerns them; it is highly probable that it was drawn up and proposed by themselves.

And if taking Money for Offices were then esteemed criminal; if the Notion is right which is now contended for, that taking Money for Offices was against Law, was Corruption; and that this Law was then passing to lay farther particular Restraints upon it; is it possible that the Judges could presume to ask not to have a Difficulty or Discouragement laid upon their being guilty of Corruption, or their doing a thing unlawful?

Or is it possible that the Lords and Commons should consent to it?

Or if the Judges would ask it, would they not have made it effectual? Would they, by proposing the Proviso, in effect, own a corrupt Practice, and their Resolution to continue it, ask Provision for it, and be indulged; and yet not ask what would effectually justify them in it?

I hope therefore that what is charged against

me is not condemned by the Common Law or Usage of this Kingdom. If it be, it properly lay on them to make it out; but they have shewn nothing to prove it; not one Instance of its being punished at Common Law, or blamed; not one Citation out of the old Books of the Common Law, precedent to the Acts of Parliament made relating to Things of that Kind. On the contrary, I have shewn it practised in the highest Instances, without Blame or Censure: And that several Clauses in the Statute of E. 6. were plainly founded upon a Supposition of this Practice being allowed by the Common Law, and continue the Allowance of it, in some Instances, to this Day.

This is what I had humbly to lay before your Lordships, with respect to the Common Law. And I shall now consider it as it stands upon the Acts of Parliament.

And as to Acts of Parliament relating to this Matter, they have suggested only two, the Statute 12 Ric. II. cap. 2. and the Statute 5 & 6 Ed. VI. cap. 16.

As to the Statute 12 Ric. II. The Provision of this Statute is to bind those who make or name Officers in the Cases to which it extends, under an Oath to observe the Directions of that Statute in their so doing. And I hope I have already fully answered the Pretence of my having taken an Oath upon this Statute, which extends to any of the Officers in the Court of Chancery, I shall now consider that Statute and what may be urged from it, a little more particularly. And,

1. As I have already mentioned, I take the Statute of 12 Ric. II. to relate only to such Nominations as are in nature of Elections; that is, such where the Nomination is in several Persons.

In those Cases it is common with us to have such Oaths administered, but not in others. We find them in Colleges, and other Bodies of Men.

The great Use and main Intent of such an Oath in those Cases is, to prevent Combinations, Strife, and Brigues, where the several Persons concerned will naturally have several Views. And the Animosities and Contentions arising thence among so great Officers as this Statute takes Care of, might greatly affect the publick Peace.

The Things which cause most Contentions on such Occasions, are *Money, Affection*, (by reason of Kindred or Friendship) and *great Solicitations*.

Accordingly this Act extends to all three, and takes Care to forbid the last (*Solicitation*) wholly; and the being influenced by either of the former.

The Persons called to name, or make Justices of the Peace, Sheriffs, or any other Officer or Minister of the King, are to be sworn, that they neither name nor make them for any manner of Gift or Brocade, Favour or Affection; nor any that pursues by himself or any other, privately or openly to be in any manner of Office, be put in that same Office, or any other; but that they make all such Officers and Ministers of the most good and lawful, and the most judicious to their Knowledge and their Conscience.

My Lords, in the next place,

2. The Words of the Statute plainly import as much; that the Nomination there meant, is what is made by several Persons when they are called together,

“ It is accorded and assented, that the Chan-
 “ cellor, Treasurer, Keeper of the Privy Seal,
 “ Steward of the King’s House, Chamberlain of
 “ the King, Clerk of the Rolls, Justices of the
 “ one Bench and of the other, Barons of the Ex-
 “ chequer, and all others who shall be called to
 “ name or make Justices of the Peace, Sheriffs,
 “ Escheators, Customers, Comptrollers, or any
 “ other Officer or minister of the King, shall be
 “ firmly sworn that they neither name nor make
 “ Justices of Peace, Sheriff, Escheator, Custo-
 “ mer, Comptroller, or any other minister of the
 “ King, &c. for Gift or Brokage, Favour or Af-
 “ fection, &c.

I own, that there seems some Difficulty as to this, because I do not know of any law, at that time, that any of these Officers, except Sheriffs, were named by an Assembly of several Persons.

But though there were no law requiring it, there might be an Usage to do it, by some Direction from the Crown for better Information.

And what is now done in relation to Sheriffs, turns in some part upon such Usage continued down to this Time, without any law, that I could ever hear of, for to support it, as to all the Persons who now meet to name them.

For by a Statute of 9 Ed. II. called the Statute of Sheriffs, printed in *Rast.* Tit. Sheriffs 2. “ Sheriffs are to be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and by the Justices.

By 14 Ed. III. cap. 7. *Rast.* 12.

“ *Sheriffs shall be ordained by the Chancellor, Treas-
 “ surer and Chief Baron of the Exchequer, taking to
 “ them the Chief Justices of the one Bench and of the
 “ other, if they be present: And in the Absence of
 “ the Chancellor, by the Treasurer, the Barons of the
 “ Exchequer and the Justices. And that shall be done
 “ yearly on the Morrow of All Souls (that is the
 “ third of November) in the Exchequer.*

This is the Statute that fixes the Time and Place now observed.

But as to the Persons, though the Justices of both Benches are in the first Act, yet none of them, but the Chief Justices are in the last. And the Lord Privy Seal, Lord Steward, Lord Chamberlain, and the Clerk of the Rolls, and other Lords of the Council, are in neither. And yet by constant Usage, all these attend at the naming of Sheriffs; and, as they see occasion, give their Advice and Assistance, and all take the Oath.

And by like Usage, which we cannot now account for, there was probably some such Practice with respect to other Offices.

For it is to make the Statute absurd, which provides that such and such, and all others that shall be called to name Justices of the Peace, Sheriffs, Escheators, &c. shall be sworn to name these Officers without Favour or Affection, if neither they nor any others were called to name any of these Officers.

3. This is the stronger, because constant Practice, the best Expositor, has thus expounded this Statute.

If the Intention of this Statute were, that all the Particulars first named, that is, Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King’s House, Chamberlain of the King, &c. were to be separately sworn, as to the respective Officers under each of them severally;

Then this must have been made part of their Oath of Office, or administered at the same time

with it, though in a distinct Oath.

But that has never been done, nor has it ever been administered to a single Person at that or any other Time. Which is the strongest Argument possible that it is not what was then meant, or ever understood to be meant, by that Statute. But on the contrary, in the single Instance where several are called together to name Officers, that is in the case of Sheriffs, the swearing of them; to observe this Statute on that Occasion, is never omitted to this Day.

Give me leave to observe one thing more, that a Chancellor, a Treasurer may possibly be seven Years in his Office; I believe Treasurers have in fact been all or the greatest part of their Time without ever taking this Oath, which is never taken, unless they happen to assist at the naming of Sheriffs, which there is no law requiring the other great Officers to attend at, and which is now become little more than a matter of Form, the list settled in that Assembly being every Year departed from in many Counties.

And if this that I have thus offered be the whole meaning of the Statute; then at this Day, as the Usage now is, it has nothing to operate upon but the Nomination of Sheriffs, and therefore extends to no other Cases, and consequently not to any of the Officers in the Court of Chancery.

But may it not be said, that though the Oath required by this Statute extend not to the present Case, yet will not this Provision amount to a Declaration of the Sense of the law-makers, that the Things thus provided against are such as should not be done, and consequently that the doing of them after such Statute will be against law?

To state this distinctly, would take up more Time than is proper upon this Occasion.

But this I beg leave to say, and it will be as well applicable to the Statute of E. VI. as to this, and perhaps more directly.

Acts of Parliament that contain political Provisions for making Regulations, or for avoiding Things not wicked, but which may be inconvenient, have not always this Consequence, that Actions done contrary to what they designed in the very Cases then in view will be criminal, and much less in Cases not in view.

Our law is sparing, in making the doing a thing a Crime, which may be rectified and redressed another way.

There are several Acts of Parliament to restrain Ecclesiastical Persons from making long leases, to prevent the Inconveniencies such leases may bring upon their Successors; those Acts declare such leases void, which therefore are against the Intent of those laws; but it was never thought that the making or accepting such leases was criminal.

The Sense of the law-makers is to have no Consequence, but what necessarily follows from the Provision by them made.

What they intended was, that the Successor, if he pleased, might set them aside; which would have this Effect, that none would take such leases, or they would do it on Terms advantageous to the Successor, or with a Resolution of being so good Tenants, as that the Successor would not take Advantage of it: So that either the lease would be vacated, or the Inconvenience would be prevented without, which fully answers the

the End of the Act. And this is very applicable to the Statute of *Ed. VI.*

In this Act of *Ric. II.* The Inconvenience provided against is only in Elections or Nominations by Numbers; the Provision is by taking an Oath.

If such Oath be taken and broke, that is a Crime; for that is the necessary Consequence of the Provision made, Violation of an Oath being undoubtedly criminal. But where no Oath is taken, much more where none is required, I do not see how doing the thing can be a Crime; merely because in some Cases it is in this manner provided against, and would be criminal if in doing it an Oath had been violated.

One thing intended to be entirely prevented in Cases within this Statute is Solicitation, or desiring a Place.

But has it ever been construed, in consequence of this Provision, that if I put a Person into an Office, who ever asked that or any other, I should be a Criminal, though I never took this Oath?

Then the Consequence will be, that the asking a Place, or the modest offering a Man's self for it, (which would be suing or pursuing for it in the Words of the Act,) will lay him under a perpetual Disability of having that Place, or any other.

Nay, since asking a Place is what the Statute has made a Provision to prevent; whoever asks a Place, does a thing intended to be prohibited by the Statute, and is therefore criminal.

Was this ever the Construction of this Act?

Nay, every one that assists in what was thus intended to be prevented will be criminal, and so will every one that asks for another at his Request.

My Lords, at this rate the Statute will be very extensive.

I would beg leave to mention one Case more, and hope the Gentlemen of the House of Commons will not take it amiss, or look upon it as any Disrespect to them.

By the Statute 1 *Hon. V. cap. 1.* "It is enacted, That Knights of Shires be not chosen unless they be resident within the Shire where they shall be chosen, the Day of the Date of the Writ of Summons. And that the Citizens and Burgeffes of the Cities and Boroughs be chosen Men, Citizens and Burgeffes, resident, dwelling and free in the same Cities and Boroughs, and no other in any wise."

The Statute 23 *H. VI. cap. 15.* recites this last part of that Statute, and enacts, that it be *duly kept in all Points.*

And this is the Statute upon which Actions used to be brought, in our time, for false Returns of members to Parliament.

This is in direct Words a Prohibition of any Person's, being chosen that is *not resident*: But since the natural Effect of this Provision would be, that (the subject matter thereof being the Case of a legal Authority conferred by the Choice) Persons chosen, not being so qualified, might in consequence of this law be rejected.

If this political Provision be not complied with, is there another Consequence to follow, instead of redressing it this way, and the Parties concerned to be therefore made criminal?

Is it criminal in those who chuse for their

Representatives in Parliament, Persons not only *not resident*, but whom they never saw?

Is it criminal in those unqualified Persons, to presume to take their Places in the House?

Is it criminal in the other members, knowing such to be amongst them, not to turn them out *ex officio*, even though no Complaint be made from without Doors?

I think not.

Yet I apprehend that will be the Consequence, if laws of that Nature are thus to be explained, and every Action is to be judged criminal, which any Act of Parliament has made any sort of Provision to prevent.

As to the Statute of 5 & 6 *Ed. VI. cap. 16.*

Although it has made Provision against the Sale or Disposal of Offices for money, yet nothing can be inferred from thence in Support of this Prosecution.

But that your Lordships may take a better View of that law, permit me to lay before you a few Observations.

The Preamble sets forth the End for which this Restraint was laid.

"For the avoiding of Corruption which may hereafter happen to be in the Officers and Ministers in those Courts, and Places, and Rooms, wherein there is requisite to be had the true Administration of Justice, or Services of Trust:

"And to the Intent that Persons worthy and meet to be advanced to the Place where Justice is to be administered, or any Service of Trust executed, should hereafter be preferred to the same, and no other."

Here is mention made of *Corruption*, but it is that which may happen in the Officers appointed, it calls not the taking money upon the appointing them *Corruption.*

It in effect says, what I have before said.

That giving and taking money is a *Temptation* to those who dispose Offices, to put in sometimes unfit Persons; to those who buy to extort and be corrupt: And consequently that if this Practice continue, there will be Instances, in which this Temptation will so far be yielded to, that Persons not worthy will sometimes be preferred, and those Persons will some of them venture upon being guilty of Corruption.

But to avoid all the Corruption which may happen in those Instances, and to the intent that this Temptation may in no case prevent, but that worthy Persons be advanced, and no other in any Instance, the Statute is made.

The main End whereof is answered, if worthy Persons be advanced, and they be not corrupt, but behave themselves well.

What then is the particular Provision made by this Statute? Not making way for an arbitrary Punishment, by declaring it to be *Corruption*, or criminal, or against the Provision of any former Law, to give or take money for an Office.

Not declaring that it shall be criminal for the future.

Not even enacting, that no Person shall take or give money for an Office: which might make the Contravention of this law, a Crime for the future:

For it is remarkable, that this Statute has not so much as any prohibitory Words in it;

But the whole Provision is barely putting the Case by way of Supposition, "if a Person do take money," &c. and

and declaring the *Consequence*, which Consequence is, that the *Person taking* the money, if it were for an Office, *shall lose the Nomination to that Office*; if for a Deputation, he shall lose his Interest in the Office: And the *Person paying* shall be adjudged a *disabled Person* to have, occupy, or enjoy the Office or Deputation. That is, as appears afterwards, he is *disabled, so far as concerns himself*, his right to have it, and to *continue the taking of the Profits*: But not so far as the *Publick has benefit* by him: For by a Proviso for that Purpose, all *Acts done by him are valid*.

The Effect of which is, that the Officer who comes in for money holds that Office *precariously*, which would otherwise have been *for Life*, and is *wholly at Mercy*, if he gives the least *Occasion of Complaint* against him; and since he that put him in has lost the Nomination, there accrues to the King a Right to fill the Place with a better man in case he thinks fit.

And therefore I will not controvert, but that the Right or Power of Nomination to an Office may, by a Prosecution grounded upon this Statute, be taken from the Person who enjoyed it, and vested in the Crown.

But as there is no *such Power of Nomination* to these Offices *now in me*; but I *have lost it with the Office of Chancellor*, and therein have suffered a *much greater Loss* than that of those *Nominations* only; No *Judgment can be given against me upon this Act*, and therefore neither can there be founded upon it any Prosecution against me; for that is but a method of praying and obtaining a proper Judgment.

And to adjudge, that upon the Case which has happen'd, (supposing it to be within the Words and meaning of this Statute) any *Punishment* shall be inflicted, or any *Consequence* follow, beyond the *Loss of the Nomination*, is (with great Submission) to go quite out of this Statute.

Thus I have endeavoured to make out what I first propos'd, that the receiving a Present upon these Occasions is not criminal in itself, or by the Common Law, and that there is not any Act of Parliament whatsoever by which the same is made Criminal, or subject to any Punishment or Judgment which can be pray'd in this Prosecution.

My Lords,

All this Reasoning is greatly fortified by Usage, by my Predecessors; which Usage is expressly proved before your Lordships by all the masters, who could not refuse giving Testimony; that is, all the present masters admitted by my Predecessors, who are indemnified by the Act of this Session for that Purpose: And, I think, is proved too by the former masters now living, who declined giving an Answer to the Question, when asked, what they gave or knew given; making this their Excuse, that by our law no man is bound to accuse himself, and that to own they had given money would expose them to the Penalties of this Act. For whatever might be the Consequence of owning they gave money; there was no Danger in saying they gave none. And they might have given an Answer in the Negative safely, but that the Truth and their Oath would not allow them to do it.

And this Refusal of theirs to answer, was not a Contrivance of mine, they were supported in their Objection by the Gentlemen that are managers, who were pleas'd to give their Assistance to defend

them from answering the Question.

And might I have been allowed to have given Evidence of what has been from time to time declared, by Parties concerned, who are now dead, it would have been proved much farther.

But I apprehend the Thing is notorious; altho' some Proofs have been offer'd for Form-sake, yet it was equally well known before; known to all the World.

Give me leave likewise to argue farther upon this whole matter from what I said once already, that it is admitted there is not one Instance, that such taking money has been punished either at Common Law or upon Act of Parliament; that this, according to the Rules of our Law, is one of the strongest Arguments that it is not punishable. For it is not to be presumed, but that it has been often done; the Statute of *Ed. VI.* takes notice of the Practice, not only of doing it, but of entering into formal Contracts and Bonds for that Purpose.

Littleton, our most celebrated Lawyer, upon a Question, whether an Action would lie upon a certain Act of Parliament, rests upon it as a decisive Argument in favour of the Negative, that it was never seen or heard that any Action was brought upon that Statute; alledging, that if any Action might have been brought for this matter, it must be taken, that at some time or other it would have been put in practice. And the Lord Chief Justice *Coke*, in his Commentary upon *Littleton*, observes, that as Usage is a good Interpreter of laws, so Non-Usage, where there is no Example, is a great Intendment (as he calls it) that the Law will not bear it. Not that an Act of Parliament (as he goes on) can by non-user lose its Force; but that it may thereby be expounded, or declared how the Act is to be understood.

This is what I have to submit to your Lordships, that the taking money for Offices is not criminal, which, I apprehend, is the whole Charge in the Articles, except the *manner of taking it* varies the Consideration, which I shall take Notice of afterwards.

There is not the least Pretence, that money was given for putting in Persons unqualified, the supposed Crime is singly the taking money.

And as to what has been said by way of comparing it to the Case where any judicial Order or Determination is made for a Bribe; give me leave, with great Submission, to insist upon it, that there is not the least Parity at all betwixt that and the present Case: For in matters of Judgment, if the Party have a Right to what he sues for, he ought not to be put to buy his own; and much less, if he has not a Right, should he be at liberty to purchase of the Judge, that which is the Right of another.

But this here is not matter of Justice, but matter of Favour and pure Bounty; whether I put in this man or that man into a Place in my Disposal, depended wholly upon my own Choice and Pleasure; so that the Cases are not at all alike.

A Bribe strikes at the Root of the equal Administration of Justice; it is a professed Bias, and can mean nothing but to destroy Indifferency, and to render the Judgment partial.

It is therefore disallowed in all Nations, and in all Ages; and is expressly forbid by the Law of God. And had the Gentleman who touch'd upon the Text which condemns Gifts, been pleas'd to cite

cite it at large, it would have appeared to relate to Bribes given in Cases of Judgment, *Deut. xv. 18, 19.* “*Judges and Officers shalt thou make thee in all thy gates — And they shall judge the People with just Judgment. Thou shalt not wrest Judgment, thou shalt not respect Persons, neither take a Gift. For a Gift doth blind the Eyes of the wise.*”

As to the manner of taking money in the several Articles V, VI, VII, VIII, the Case stands thus.

V. There are in all, eight Articles relating to this matter; but they have proceeded only upon four: The first of which is the fifth Article, and relates to the money taken on Mr. *Kynaston's* Admittance.

Upon their own Evidence it appears, that Mr. *Kynaston* was well recommended by Mr. *Bayly*, a Person of a very good Character; that the first and only message brought to me, with relation to his Admittance and the money to be paid, was this; that he desired to be admitted on the Surrender of Mr. *Rogers*, and would make a Compliment of 1500 Guineas, or, if I did not think that enough I should please myself; and my Answer was, I was pleased with the 1500 Guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by representing, that Mr. *Kynaston* first offered 1000 *l.* but Mr. *Cottingham* would not propose it; that it was work'd up by Mr. *Cottingham's* telling him that he had bought a good Office; that Mr. *Rogers* had told him he usually made 1700 *l.* and sometimes 2000 *l. per Annum* of it, and that he understood the Profits arose out of the ordinary Profits of the Office, and the Use of the Suitors money together.

As to the Offer of 1000 *l.* Mr. *Cottingham*, a Witness produced by themselves, denies it. And Mr. *Bayly*, their other Witness, who first broke the Affair to Mr. *Cottingham*, and at his Return from him, told Mr. *Kynaston* that Mr. *Cottingham* said 1500 Guineas would be expected, swears, that Mr. *Kynaston* immediately submitted to what Mr. *Cottingham* had so mentioned, only he said he thought it had been but 1500 *l.* And this was before Mr. *Kynaston* saw Mr. *Cottingham*.

So that Mr. *Kynaston's* Oath is directly contradicted by the Oath of Mr. *Cottingham*, one of their own Witnesses; and is highly improbable from what Mr. *Bayly* another of their own Witnesses swears.

And as to what Mr. *Cottingham* said about the goodness of the Office, he swears it was after the 1500 Guineas were agreed to be paid. And indeed upon that depended not so much what he was to present to me, as what he was to pay to Mr. *Rogers*, which had been agreed upon before Mr. *Cottingham* was spoken to.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was proposed to me as a voluntary Offer, when I was at the same time told I might have more, if I would insist upon it; without one aggravating Circumstance, with relation to the Person admitted, or what I did.

VI. The next of these Articles is the sixth, which concerns Mr. *Thomas Bennet*, and the money given me by him, on account of his being admitted Master upon Mr. *Hiccocks's* Surrender.

And the whole of the Fact, so far as I was con-

cerned in it or knew of it, was but this. That Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himself not ill used, and I being then extremely ill, he pressed to be admitted, for fear (as Mr. *Cottingham* swears he thought) of falling into worse Hands. On *Thursday*, and in the Nights before and after, I remember I lost near 50 Ounces of Blood, in about 24 Hours. And that Night Dr. *Mead* told Mr. *Cottingham*, that if the Distemper had not a Turn very soon, I could not live 24 Hours. On *Friday* Mr. *Cottingham* says, the Doctor told him the Distemper had a Turn: On *Saturday* morning Mr. *Bennet*, after great importunity, was admitted while I was in Bed, but Company kept out of the Room as much as could be.

This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet*, who mentions nothing at all of me of his own Knowledge, but of the Kindness with which I spoke to him, and told him that he was admitted by a dying Chancellor, is their other Witness, who is to shew invidious Circumstances. And very solicitous he seems to be to do it.

He takes care to say, that he was ordered to come alone, and bring no body with him; as if it were the better to keep secret the Payment of the money, tho' he knew my great Weakness was the Reason.

He affects to say, the Bank-Notes were taken out in feigned Names, and that it was not thought proper to use my Name or his. Tho' upon another Article, when he is examined again, it comes out, that the feigned Name was that of his Clerk, whom he sent to take out the Notes, and it was merely *Bennet's* own doing.

He says, he offered 1000 *l.* to *Cottingham* at first, and tells a long Dialogue they had about it, but *Cottingham* himself upon his Oath denies it all.

So that here, at last, nothing is proved that passed with me, but the 1500 Guineas being offered to me and accepted.

And give me leave to observe, that the two Sums in these two Articles, were certainly not paid out of the Suitors money. For whatever other Objection may be made against taking the Present before Admission, it has this Effect, to shew that it came not out of the money of the Suitors.

And yet there being a Pretence (without stating the Circumstance of Time, which I have just taken notice of) that they were paid out of that money, and that the Suitors were in danger of being Sufferers; I brought the money into Chancery, to be subject to the Orders of the Court.

The two other Articles, the seventh and eighth, were upon Admissions to Places vacant by Death.

VII. The seventh Article concerns the Case of Mr. *Elde*; and the Fact, as they have themselves proved, is thus:

Upon the Death of Mr. *Fellowes*, the former master, 5000 Guineas is offered and given to me by Mr. *Elde*; 6000 *l.* is offered by another.

It is admitted, that *Thomas Bennet* about three Quarters of a Year before, upon coming into his Place gave his Predecessor, who surrendered to him seven thousand five hundred Pounds, and to
the

the Great Seal 1576*l.* in all 9075*l.*; and that Mr. *Kynaston*, two years before him, gave his Predecessor 6000*l.* and to the Great Seal 1575*l.* in all 7575*l.*

And Mr. *Elde*, a Man of unblemished Character, of a good Estate, and not one Objection to his Fitness, is admitted, though he pays so very much short of what others had paid, and less than was at the same time offered.

And of this that he paid, 3400*l.* was returned to him, and only 1850*l.* retained.

I will not trouble your Lordships in relation to what my private Intentions were in that Transaction; if they were capable of being proved, I believe your Lordships would not dislike them.

Some little Reflection has been made upon the Money being brought in a Basket, as if it were for Privacy, and even to conceal it from Mr. *Cottingham*.

Whereas it plainly appears to have been without any Design, and only Mr. *Elde's* making use of a Convenience he accidentally had in his Chambers.

But if there had been an Intention to conceal it from Mr. *Cottingham*, why was he the Hand to convey any thing? why was he the Person to bring up the Basket? Mr. *Cottingham* knew 6000*l.* had been offered by another, and might rather guess this to be more than less.

And had Mr. *Elde* not been himself examined (which at that time it was not expected he would be), and Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000*l.* for the Place; that another offered 6000*l.*; that he had told me of it; that Mr. *Elde* after delivered him a Basket, which by its weight he believed to have Money in it; that he brought it to me; and that Mr. *Elde* was that day, or very soon after, admitted: According to the Candour of construing my Actions, this would have been said to be a convincing Proof, that there was 6000*l.* in the Basket, or more: it being impossible for the *avaricious temper of the Earl of Macclesfield*, for his *Impotency of Mind*, his *constitutional Weakness in matters of Money* not to take the greater Sum.

VIII. The 8th Article concerns the Case of Mr. *Thurston*.

There, upon Mr. *Borrett's* death, 6000*l.* was offered me by another worthy Gentleman, but Mr. *Thurston* was admitted.

He says he gave upon that Occasion 5000 Guineas, but that all above 2000*l.* was returned.

My Lords, Since what passed relating to that matter is not capable of proof, I will not trouble you with the particulars of it, which might be material.

Mr. *Thurston* is likewise a Person unexceptionable; Mr. *Baron Gilbert*, now one of the Lords Commissioners for the Custody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his favour.

But there is no Objection to him neither, and therefore there needs no proof.

This is the State of the Fact upon these two Articles.

This is so far from *Extortion*; the Money is voluntarily offered.

So far from *Avarice*; the greater Sum is refused, and a less taken. And even the greatest part of that returned, 3400*l.* in the one case, and 3250*l.* in the other.

And the Persons such, that, were I to go through *Westminster-hall*, I cannot easily pick out two better Men.

Upon the whole, all that can be pretended to be in my hands now, upon these four Articles concerning Mr. *Kynaston*, Mr. *Tho. Bennett*, Mr. *Elde*, and Mr. *Thurston*, which are all the Managers have proceeded upon, relating to Money received from the Masters, is but 3850*l.*; that is 1850*l.* from Mr. *Elde*, and 2000*l.* from Mr. *Thurston*; the rest having been all returned.

And as to that which was given back to Mr. *Thurston*; he has sworn, that he was sent for several times, in order to have part of his Money returned, and received it before the first Seal after *Michaelmas*, near a Month before any Order by the Lords of the Council to call for the Accounts, and while every thing was in the same State as when he paid it, and from his Evidence, it cannot be judged to be any thing but the effect of Generosity.

Mr. *Elde's* was not returned till after the Accounts were begun to be taken, he continuing a long time in the Country; but when he came to Town, he had it.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Tho. Bennet*, upon his disposing of his Office of Clerk of the Cullodies or Lunatics to Mr. *Hamerfly*.

The Evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That *Bennet* having agreed to dispose of his Office to another, sent me a Present voluntarily of 100 Guineas upon that occasion, and tho' I, at that time, knew that more had been given in the like case, I was contented with that, and accepted it.

This is within the same reason, as the Case of the Masters; it has been practised by my Predecessors, as a Right of their Office, upon Dispositions of this Office, and others of the like nature.

Besides the proof of what had been paid to the Great Seal, upon another disposition of this Office; it has been proved, that another of my Predecessors, the late Lord *Cowper*, declared his Opinion, that he thought it his right to have a Present: And he having then passed a Grant of this very Office, without having had a Present, upon the Party's having pretended and assured him that it had not been usual to give any for that Office; he expressed great dissatisfaction, and declared that he thought he had been imposed on, that he saw no reason why that Office should not pay as well as others of the like nature. Which implies both the Fact of receiving Gratuities, or Presents upon Transfers of such Offices, and his claiming a Right to receive them.

As to the discourse Mr. *Bennet* pretends to have had with Mr. *Cottingham*, Mr. *Cottingham* denies it; and as they both are produced by the Managers to this point, this is a clashing between their own Witnesses; and that cannot be said to be proved by them, which is affirmed by one of their Witnesses, and positively denied by the other.

And if there had been any such Discourse, it is not brought home to affect me; for there is no pretence that I knew any thing of it.

But as to the whole Fact, wherein they differ, I think, from the Character that has been given of Mr. *Cottingham*, and what has appeared of Mr. *Bennet*, it will be no question at all, which of them two should be believed.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Substance of it is, *That in order to advance and improve the illegal and corrupt Gain arising to myself from the Sale and Disposal of the Offices of the Masters of the Court of Chancery, in violation of the Trust reposed in me for the Care and Protection of the Suitors, I did admit several Persons to the said Offices of Masters, who at the time of their Admissions were of small Substance and Ability, every one of us being charged with the great Sums of Money and other Effects of the Suitors lodged in their Hands.*

The Masters are not by this Article charged with the want of any other Qualification whatsoever, but that of Estate; nor is there the least Proof, or Pretence, that they were not in all other respects, Men of Abilities equal to the Day to be discharged by them, honest, and unexceptionable in point of Reputation; but the single Objection to them is, that they were Persons of a small Substance.

The Proof offer'd upon this Article is this:

They have produced three Orders made in the Court of Chancery in the Months of *January* and *February* last, whereby it appear'd that *Mr. Conway*, *Mr. Kynaston*, and *Mr. Tho. Bennet* had not at that time brought in all the Money that appear'd to be then in their Hands belonging to the Suitors of the Court. This is their whole Proof.

But I am intirely at a loss to know, how this can be stretch'd to prove, what Ability they were of at the times of their respective Admissions, or indeed that they are not of ability now to pay their whole Ballances, merely because on such a particular Day they had not paid their respective Ballances into Court.

Nor is there the least Proof that I had any reason to suspect their Ability, when I admitted them.

Mr. Conway had an Estate of between 5 and 6 hundred Pounds *per Annum*.

Mr. Kynaston was represented to me as a Man of Substance: Now, that he comes under another Article, to swear it down, he owns that he has an Estate of 4 or 5 hundred Pounds a Year, with Timber upon it worth 2500 *l.*; and had likewise, at that time, in Money in the Funds, to the value of two or three thousand Pounds.

Tho. Bennet was esteemed a Man of a very good Estate and Substance. He is the Person to swear himself now worth nothing. And, to do it effectually, he sticks not at owning, that he has mortgag'd part of his Estate for more than it is worth. Yet there is upon your Lordship's Table, the Particular given in by him to the Court of Chancery, wherein his Estate, besides that which he says he purchased since he was Master, appears to be about 500 *l. per Ann.* and he owns he had, when he was admitted, a Place for Life of 250 *l. per Ann.* which he after disposed of. He says he was worth 20,000 *l.* and had been sufficient still, but for the Losses in 1720, which he owns were not known to me, nor generally suspected.

But, my Lords, these two Gentlemen are making their Circumstances mean, in order to get back the money they paid for their Offices; which they could not do by their own Oaths, directly for their own Uses: and therefore they have thought fit to keep back so much of the money of the Suitors, when called upon to bring it in, that so the Suitors may complain to the Court of Chancery, and then their Oaths may be made use of, for the Suitors to found a Demand upon against their Predecessors.

And it is pretty remarkable, that their Deficiencies are neither more nor less than the Sums they at first paid to their Predecessors and to me, upon their being admitted to their respective Offices. In this therefore I apprehend your Lordships will think their Oaths are of very little value. It is hardly to be imagined, that they should have been so long in their Offices, and have just saved nothing, nor wasted; and that they are not a single Farthing either richer or poorer.

But whatever your Lordships Opinion, with respect to that, may be; I own, I cannot but think, that there is something very extraordinary in the Attempt; that these two Men have agreed with two Masters, that were in possession of two good Offices for Life, to give one of them 6000 *l.* the other 7500 *l.* for their Places; and now, that they are got into possession, would have the money back, and continue in the Places too: That is, in short, they are tricking those Masters out of their Places, under pretence of buying them.

But whatever their Behaviour or their Estates may now be, they appeared to me Persons of Reputation, and Fortune, when they were admitted: And I do not observe, that the Article hath so much as suggested, that I knew any thing to the contrary.

One of the managers wondered that I should let in Persons of no Fortune; and he solves it only by this, that they would give better Prices.

That had been something, if the Price had been given to me; but leaves it incredible, that I should let in any, that I had the least Suspicion had no Fortune; for the old Masters to receive 6000 *l.* and 7500 *l.* at the same time that they represent me acting upon the view of burying the Masters, and having the whole Price myself.

Where I was to have the whole Price, and the Temptation was greater, there is no Pretence I took in Men of no Fortune. And is it possible to think I would do it, where the Masters were to have the Price, and I so small a Proportion?

Great Stress has been laid on comparing the Sums in the Masters hands, with their Estates; in order to shew their Unfitness to be trusted with those Sums.

How that Proportion is to be adjusted, I own, I am a little at a loss. Here is a Master, that has an Office that brings in a considerable Profit, and is worth 5000 *l.* which cannot be run away with: He has a handsome visible Estate of 4 or 5 hundred Pounds a Year; and a good Reputation. How much money may he be properly trusted with? I do not mean as a Borrower, who may be presumed in some want, of one sort or other, because he borrows; but as a Cashier for the Suitors? There are very few Bankers that have such a Fortune to set up with. And I do not see that any of those Bankers, that is a Man of good Reputation, and good Credit (tho' perhaps he has not a good Fortune of his own) is thought the worse of by those who deal with him, because he is trusted with very great Sums, far more than he is worth. The more he is intrusted with, the more are his Gains, and the safer all think themselves that have money in his hands.

There is in the Close of this Article another Charge, that I *did publicly in open Court, falsely represent the Masters admitted by me, as Persons of great Fortunes, and in every respect qualify'd for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors.*

My Lords, as to that, I think nothing can more plainly shew, than this Article, and what has been said upon it, the forced Constructions put upon what I do.

Mr. *Waller* proves, that in July 1723, I declar'd in Court, that *the Masters were Persons of as good Fortunes and Abilities as any Set of Masters had ever been before them.* Which is spoke of the whole Body of Masters, and not of those only who were admitted by me. He says he was *astonish'd at it.* But he has given no Reason why. If he knew any thing, that any of them were not such as I described them; a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practiser, would have made him set me right.

But, my Lords, is there any Reason assigned, why I should think otherwise than I spoke?

Mr. *Lightsan* is examin'd, to prove, that he told me, some of them were suspicious: But he does not say any such thing. All he says is, that he took notice to me of Mr. *Dormer's* misfortune, and told me, he knew not how soon the like misfortune might happen to others; which might be, (though they were all sufficient) if the Person, with whom they should deposit Effects, upon going into the Country, should fail.

But his Expression is a little remarkable; that he cannot say he told me any of the Masters particularly were suspicious, "*For he did not know how far he might be liable to an Action.*" An Action! what! for one Master informing the Chancellor, of the Circumstances of other Masters, in order to have proper Care taken! could he fear it? Who was to be the Witness? What must be the ground of the Action, if he told nothing but what was true?

But I think, he said he had not any particular Grounds for his Suspicion; and he says, *I was unwilling to believe it of any of them.* Why? because (as he says I told him) *I had had very good Characters of them, and therefore I hoped they were all good Men.*

It was not very kind, in that Gentleman, to call it an *Unwillingness* to believe, there was Ground to suspect them; when I assigned some Reasons, why I should not suspect them; and he gave me none, why I should.

So that here appears not any Reason, why I should believe otherwise than what Mr. *Waller* heard me say.

But to what end should I say it, if I did not believe it? Or how were the Suitors injured, or deceived by my saying so? Mr. *Waller* was not deceived; was any body else deceived? Or could any one be injured? But they have discover'd a reason, why I said it. They say that Mr. *Fellores* was just dead, and there was a Master's Place then vacant: And that fact they have proved. But can any thing be more strained, than their Inference from it? Did I design, by saying these Masters were men of Fortunes and Ability, to raise the Price of that Vacancy? or to tempt Beggars to come in, that could not what they gave? Does not what was then done, clear me of all Suspicion of that kind? Mr. *Elde* was the Person then admitted, a Gentleman of a very good Estate, of very good Character in *Westminster-Hall*, and 750*l.* more offered by another, that was no Beggar neither, refused. And after that, Mr. *Thurston* was admitted, preferably to one that offer'd 6000*l.* Is it possible, that I should give better Proof that I had not that avaricious View in it, that is suggested?

It was observ'd by one of the Gentlemen, that open'd the Evidence, that this was upon a *remarkable occasion*, when the Master of the Rolls had made an Order upon one of the Masters, to make a Suitor some Compensation out of his own money in the Master's hands, and I set it aside. And Mr. *Waller* began to tell something of the merits of the Case. But a very learned and a very judicious Gentleman, one of the managers, was pleas'd to say, They did not dispute the Justice of my Order; nor is there any Charge of such Injustice in the Articles.

XII. The next Article is the 12th, which sets forth

" That whilst the said *Thomas* Earl of *Macclesfield* executed the Office of Lord Chancellor, an unjust and fraudulent method was practis'd in the Court of Chancery upon the Sale of Offices of Masters of the said Court, and upon the Admission of new Masters, that the Prices or Sums of money agreed to be paid for the Purchase of the said Offices, and for the Admission thereinto, were satisfy'd and paid out of the monies and Effects of the Suitors of the Court deposited in the Hands of the respective Masters, surrendering their Offices, or dying; either by way of retainer of the Purchase in the hands of the Master resigning, or of replacing the money disburs'd for such Purchase or Admission by the succeeding Master, out of the money and Effects of the Suitors coming into his hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions thereinto, during the Time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to contract for the said Offices, upon a Prospect of the easy method of paying for the Purchase of the same, by means whereof great Deficiencies have incurred in the Offices of several Masters of the said Court, admitted by the said *Thomas* Earl of *Macclesfield*, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well inform'd thereof, and fully acquainted therewith, yet the said *Thomas* Earl of *Macclesfield*, in order to increase his own unjust and corrupt Profit in the selling the said Offices and the Admissions thereto (which in consequence of this evil Practice was rais'd and receiv'd by him out of the Effects of the Suitors, for whom he was intrusted) did not at any time, whilst he continu'd in his Office of Lord Chancellor, use or take any measures to reform the said Abuse, or to prevent the same; either by causing proper Schedules to be taken of the money and Effects of the Suitors deliver'd over and transferr'd, or by appointing any Person in his behalf, to inspect or supervise the Transfers or Deliveries thereof, or in any other manner. But on the contrary, the said *Thomas* Earl of *Macclesfield*, unjustly, corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Masters and of their Accounts did appertain) did suffer the said fraudulent Practice to proceed and be exercised without any Controul or Check, whereby great Embezzlements have been made of the Suitors money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their re-

" speculate

“pective Ballances owing upon their Accounts, in
 “breach of the Trust reposed in him for the pre-
 “servation of the Estates and Effects of the Sui-
 “tors; to the dishonour and discredit of the said
 “Court, and to the great injury and defrauding of
 “the said Suitors in a Court of Equity, established
 “for their Relief and Protection.”

My Lords, In support of this Article, two of the Masters, Mr. *Kynaston* and Mr. *Tho. Bennet*, have sworn, that their Predecessors stopt the price of the Places out of the Suitors money, which was to be delivered over to them: and that they gave the greater Price for their Places, because they found this an easier way of purchasing them. Indeed I must confess, that, according to the manner of proceeding of these two Gentlemen, it will come out to be an exceeding easy way, which they have discovered: since, if they can prevail in their present Attempt, they will have paid no price at all for them; they are to have their money back again, and not to be in the least impoverished by the Transaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the least, but only upon the Oath of Mr. *Tho. Bennet*, who swears that in a Conversation with me about a Treaty between him and Mr. *Hiccocks*, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentioned 9075*l.* of his Cash to be in the hands of Persons of Ability, meaning, as he after explained it, in the hands of Mr. *Hiccocks* his Predecessor and myself; and said, I was sorry for it, because it was discovering the method of paying for their Places out of the Court money, which I had taken care constantly to deny.

This (supposing my meaning to be what he would have) is surprizing. He says, that at the beginning of this discourse I was so cautious, that I would not speak to him about returning the money I had had, because probably he might be examined about that Conversation in another place. And yet he pretends that in the same Conversation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he says, I expected he might probably be examined about his Conversation with me?

But I believe your Lordships will not give him the least credit, in this or any thing else that affects me. I beg leave to remind your Lordships that I asked him whether he did not then tell me, that, if Mr. *Hiccocks* would give him 2000*l.* he would pay the rest of the money (which was to shew that he was worth at the least all but that 2000*l.*) He denied it. My Lords, I then told your Lordships I could not disprove him in that, for I cannot be a Witness for myself. Therefore I asked him to another thing, wherein, if he did not tell the Truth, I might be able to falsify him; I asked him, if he had not said so to somebody else? He positively said, No. He said there was such a report, but he denied the thing. At last he did own that he had said, that if Mr. *Hiccocks* would repay 2000*l.* he would stand it, or run the hazard, but never told any body he would pay the rest; he was not able. But Mr. *Holford* swears, that Mr. *Tho. Bennet* sent a message by him to Mr. *Hiccocks*, that if Mr. *Hiccocks* would repay 2000*l.* he would discharge the Article in the Account, and take care to pay the rest, and he believed that Mr. *Bennet* was able to pay it, or he would not have carried the message. And

another Gentleman swears, that he said he would make it up, and a third that he could or would pay it. So that he stands contradicted in this particular, which I apprehend is material, by three Witnesses.

As to the method of Payment mentioned in the Article, it is stated to be, that the *Price of the Office was satisfy'd out of the Effects of the Suitors, either by way of Retainer of the Purchase Money in the hands of the Master surrendering, or of replacing the money disbursed for such Purchase by the succeeding Master, out of the money and Effects of the Suitors coming to his hands: and the Methods suggested for preventing this, are, causing proper Schedules to be taken of the money and Effects deliver'd over, or appointing Persons to inspect or supervise the Deliveries; but I took not these measures, nor any others.*

My Lords, the method of *paying by Retainer* could only be upon *Surrenders*. And why should I there assist to raise the Price? why assist to get a higher Price for one, whom I was to have no more to do with, only to have a poorer man come in, that might bring Disgrace upon the Court and upon me?

As for the other method, the *replacing the money paid*, that is, as I understand it, borrowing the money to make payment, and then when the Effects are transferred, discharging the Debt out of them: How was that to be hindered? not by *Schedules*, and *seeing the Effects deliver'd over*. The *Delivery of the Effects* is necessary to put that method in practice, and is far from hindering it.

But is this delivery over of the Effects so very material? Mr. *Atter* did not deliver over the Effects to Mr. *Borret* for some time: had they been still in his hands, had it been the worse for the Suitors? Whatever a Master does not deliver over, he continues responsible for, and the Suitors have the same Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but stopt Part for Payment; the consequence is, that they are compelled to bring them in. Had *Schedules* been made, and the Effects deliver'd over, and so *Kynaston* and *Bennet* been forced to pursue the other method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

Indeed I never apprehended it necessary for me to see the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Interest of the new Master to call for the Effects, and of the old one to have a regular Discharge, which I do not see how he can have, without an Inventory of the Particulars, and a Receipt upon it; which is what I understand to be a Schedule, tho' it be never filed; tho' I apprehend the word Schedule is taken in a different Sense in the Report to the Council. And this I did believe the Interest of the Parties had made them do. Nor has it yet been shewn, that it was my Duty to look after these Transfers. By what Law, by what established Practice, where does it appear, that a Chancellor is bound to see such Schedules made, and the Effects transferred? If it be his Duty, without doubt there is some method, by which it may appear he has discharged it, in cases where he has done so. But is there ever any Entry made of it? Are the Schedules filed with any Attestations, that the Effects were actually delivered over in presence of Persons appointed by the Lord Chancellor? The Effects in Mr. *Holford's* Case were deliver'd over, I think, the day of his admittance, in Mr. *Lowibond's* in about a Week, in Mr. *Bennet's* in a short time; whether in presence of Inspectors,

appointed for that purpose, or not, has not appeared. Yet, my Lords, the Question is not now, Whether it be wiser and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to see it done: But whether it be his *Duty* so that it is a *Crime* not to see it done? If the Suitors desire to have Schedules filed, in order to be the better able to know how much the new master is charged with; it is their part to search and make Application; and upon such Application, it is the Chancellor's part to make proper Orders; which they again are to take care to draw up, to enter, to prosecute, and see executed. And as to my desire, and Intention, to increase my own unjust Gain; which is to give the Tincture of Guilt to this, and make it criminal; can it be conceived, that I, who take not advantage of a higher Price, when I may have it, should, in order to raise the Price, refuse to check a Practice which the masters are supposed to make use of, to the prejudice of the Suitors, and only for their own Gain?

XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer's* Affair; and contain several supposed Stratagems to conceal his Deficiency: all founded upon the same View, and to prevent the Gain upon Sale of Offices from being lessened. Without that View to gain, I do not see any thing in these Articles, that is criminal. And therefore, if, in your Lordships Judgment, I shall stand acquitted of that, upon a full examination how my Heart stood affected in that Particular, I think all must fall to the ground.

XIII. As to the 13th Article particularly; It sets forth *That from an Apprehension that a publick Discovery of Dormer's Deficiency might lessen the unjust Gain I proposed to make to myself by selling and disposing the Offices of Masters, I neglected and declined either to secure his Person or Estate, or to make a proper Inquiry into the Deficiency; but endeavoured by many indirect Practices to conceal from the Suitors the true State and Condition of his Office, as well with respect to his Effects, as to his Debt to the Suitors.* And the latter part of the Article says, *That upon Motion made in the Court of Chancery (after I knew Dormer was absconded) to have the Effects of some of the Suitors transferred to another Master for better securing them, I, to delude the Suitors into a Belief that the Effects were safe, and thereby prevent a publick Inquiry, there said, That the Parties need not be in haste, that Dormer was only gone to take the Air in the Country, that he would return in a little time, and all would be well.*

As to this latter part, they have not so much as examined a Witness to prove it: So that what Evidence has been offered upon this Article, amounts in truth to no more, than a Proof of *Dormer's* being deficient. But as to any Endeavour of mine to conceal the State of that Affair? or any refusal or neglect to do my Duty? there is no Proof.

It appears, that he went off in November 1720, that his Clerk and his Servants by his Order, gave out, that he was only gone into the Country for a while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Christmas*, and then all the Steps were taken that were thought most likely to get as much as possible for the Suitors. His Chambers were searched by some of the masters, and directions were given to stop the

transferring his Effects in the public Funds. And it was carried on so far, that he was stripp'd of all, and with Tears begged, that Application should be made to me, for some Allowance out of it for his Subsistence; which *Mr. Cottingham* refused, because the Estate fell short, and he knew I could not order him the money of other People. And it is not now pretended, that any thing was not discovered by him, but only a parcel of Hops; and that plainly was not concealed fraudulently; for he made no advantage of it; the Hops are unfold to this day.

But the Charge of concealing *Dormer's* Affair being the Foundation of so many Articles, give me leave here to say something of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in *November*, and never appearing more in Court, or in his Office, but another put into his Place in *May*; it is impossible his failing was, or could be, kept a Secret. Must not all the Suitors, who had money in his hands, know that he was gone? For my own part, I never imagined it was a Secret. And as they, and their Agents, could not but know what was doing; had they not been satisfied, that the Court was taking the best measures to make up the Deficiency; would they not have made Application for some Relief? I did believe the masters would make it good, *Mr. Cottingham* swears he told me so from them: He indeed does not now rightly remember the time, and answered not at first very readily whether it were before, or after *November 1721*, when the second Letter about the Accounts was wrote. But, of necessity, it must be before; because *Mr. Edwards* says, *Mr. Cottingham* told him it would be made up, just about the time of his being made master, which was in *May 1721*; and it is not pretended, there ever was any Thought, that it should be made up any other way, but by the masters. *Mr. Edwards* says too, some of the masters told him it would be made up; he does not remember by whom they said it should be made up; but I think he says, he thought, I believe the thing speaks, it could be by no body else but the masters. And even *Mr. Lightbourn's* letter in 1722 takes notice of it as a thing always under deliberation, how the masters should make it up; and that he differed from the rest only in the manner; and in insisting that at the same time care should be taken, that the like Accident might not happen again, and they be exposed to another Contribution. If I was too credulous in believing this, sure it is no Crime. And I am apt to think, your Lordships will be of Opinion, that the Suitors believed the same, or those, whose money lay so that it might probably continue some Years, would have applied to have an Account taken, and that their Proportion should be reserved. But nothing of that kind was done by them. Afterwards there breaks out a Dispute between the masters and the master of the Rolls; thereupon *Mr. Lightbourn* informs your Lordships, that many Orders were made in prejudice of the masters in other Branches of their Office; the Language of the Court varied (as he expresses it) in orders; and the money put into another Channel; whereby they lost, not only any Advantage that might be made of the money, but many Fees and Perquisites, that arose thereupon, and in the other Branches of their Office. Had not this happen'd, or should it be cured, I am persuaded that *Dormer's* Deficiency would all be made good. Contrary measures may prevent it.

There was some little Reflexion made upon that part of the evidence, which related to the message I first sent to the Bank; and also for that the Order, which was afterwards sent, and a Copy of it read, was never enter'd with the Register.

But your Lordships have had an Account that the effect of my message to the Bank (tho' there was no formal Order made) was, that a memorandum was entered in their Books, that no Transfer should be made without leave from the Court of Directors, or Court of Chancery, which had the desired effect. But it is true I made no formal Order, because I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cause, wherein they were no Parties. And that which was sent after, was only to deliver them from the Restraint, they, it seems, look'd upon themselves to be under, by that message; and to answer the Entry in their Book.

And as to its not being enter'd; I must likewise observe, that even the Directions sent in *November* last to the masters by advice of the Committee of Council, for preparing and bringing in their Accounts were never entered: And yet the Gentlemen will not imagine, that that could be with a design to have it kept a Secret; but the true and only reason of it was, that those Forms are not necessary, but in adversary Suits, or unless there be occasion to enforce the execution of such Orders by the Process of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit?

Obj. I did not (say they) secure his Person.

Resp. My Lords, was that a Crime? He was in *Holland* out of my reach. When he came into *England*, it was to deliver up all he had to the Suitors, and on promise of Liberty.

But if I had, would that have been of use to the Suitors?

Obj. I issued no Sequestration to seize his Estate.

Resp. The Estate was got without one, which is much better. The most usual Allowance upon a Sequestration is 6 s. 8 d. a day to every one of the Sequestrators that are employed to put it in execution, which would soon have eat up great part of the Estate. And I do not know that the Sequestrators would have found out the poor parcel of Hops, which is all that was not got then; and it was not imbezzled, but has been brought in now without the help of a Sequestration.

Obj. I did not examine him upon Interrogatories.

Resp. I order'd *Cottingham* to propose to the masters, whether they would have one; and they thought he would make a fair Discovery without, and were afraid lest that appearance of Distrust and Hardship might drive him away again, but if they should find it requisite, they would apply. No application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any thing diverted from the Satisfaction of the Suitors. And if he made a fair and honest Discovery of all, what imports it, whether he were sworn, or not sworn to it?

But I would beg leave to ask, Why should I neglect what was proper?

The Reason they assign is, That if I had done these things, it *would have made a Noise* and brought the Matter out.

My Lords, what could make a *greater Noise*, than that a master in Chancery absconded, and no money was received or paid, nor Business done in his Office from *November* to *May*, and then another put in his Place.

One of the Gentlemen expresses his Astonishment, how it could enter into my Heart, that this *could always be concealed*, or that so ghastly a Wound could ever heal of itself, without the Application of proper Remedies.

My Lords, it is yet more astonishing that it should enter into my Heart to *endeavour to conceal* it, for those Reasons which he supposes I had in view. And I should have thought the Arguments that raised his Wonder at my having done so, strong Arguments that I never did it; and indeed it is *impossible* I should endeavour or hope to conceal that, which I knew was so *notorious* and *publicly* known. Nor was I without Endeavours towards healing the Wound: Some of those Endeavours are attempted now to be made part of my Crime.

XIV. The 14th Article suggests, "That the said *Fleetwood Dormer* having towards Satisfaction of the Suitors of the said Court, assigned to *Henry Edwards*, Esq. (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of 24046 l. 4 s. or some other great Sum due from *William Wilson*, a Banker, to the said *Fleetwood Dormer*, to the intent that the money received on the Account thereof, should be applied and disposed of, as the said Court of Chancery should order and direct, the said *Thomas Earl of Macclesfield*, whilst he continued Lord-Chancellor of *Great-Britain*, for the unlawful Purposes aforesaid, without Regard to the Interest of the Suitors, by Colour of his Office, did, in an unwarrantable, clandestine, and unusual manner, authorize, direct, and establish, a precarious and trifling Composition with the said *William Wilson*, upon the Terms of the said *William Wilson's* paying the Sum of 1463 l. 2 s. 1 d. and assigning 10000 l. part of a Debt of 22060 l. 12 s. 5 d. pretended to be due to the said *William Wilson* from *Edward Poulter*, or to that Effect, in discharge of the said Debt: And to that End, upon the Report of *John Niccocks*, Esq. then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order not made in open Court, order the said *Henry Edwards* to accept of the said Composition, in full Discharge of the said Debt, which said *Edward Poulter* was a Person insolvent, and has since absconded for Debt, and none, or a very small part of the said 10000 l. has been, or is ever likely to be received."

This Article your Lordships observe relates singly to the Composition with *Wilson*, which is charged to be authorized by me to the unlawful Purposes aforesaid, that is, to *conceal Dormer's Deficiency, and keep up the Prices of the Offices.*

Suppose this Transaction had been publick, nay suppose *Wilson* had been openly sued for this Debt; would that have fallen the Price of Offices, or discovered *Dormer's* Deficiency? If his absconding and assigning his Place to Mr. *Edwards*, did not discover it; would the Proof of his assigning this Debt to Mr. *Edwards* have discovered it? What End then could the Privacy of this Transaction serve?

But tho' it does not answer the Purpose, that is charged; yet it is insisted upon to be *prejudicial to the Suitors*, and giving up a great part of the money due to them from *Wilson*, and done in a clandestine manner, and without their Knowledge.

What Proof then is there, that this Composition was prejudicial to the Suitors? A small one it is indeed, but for a desperate Debt; and what Proof is there that they could have had a better; or that it had been better to have had none?

It is said, that *Wilson* paid to some of his Creditors their whole Debts.

It is true, that was said, but it has not been proved. If it had been proved, and the Circumstances shewn, probably it would have appeared, that he had a particular View in paying those their whole Debts, and it might be more beneficial to him to do so, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as small as the Sum is, my Lords, give me leave to say, it had never been got in for the Benefit of the Suitors, if this Composition had not been made. So that 2463 *l.* has been got for the Creditors, tho' no more should be recovered from *Poulter*, than the 1000 *l.* already got from him; where nothing had else been had, for what appears.

Obj. But *Poulter* was insufficient, and the Debt assigned from him worth nothing.

Resp. As to *Poulter's* Circumstances at that time: Some Persons have been called, who have proved ('tis true) that he was insufficient at that time, and could not pay more than three or four thousand Pounds; but the same Witnesses give an Account, that his ill Circumstances were then known but to four or five Persons of his Acquaintance, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very sufficient; he had left off his Business upon having raised an Estate; he was of good Reputation; he lived at *Hackney* in a House making a good Appearance, with good Furniture, and a great quantity of Plate, till the last, till the time of his being put in Prison, which was not till last Year, that he surrendered himself in discharge of his Bail.

But suppose he was not sufficient, how does that affect me? I was not obliged to concern myself with it, and left the Composition to the management of the masters; they made it: *Wilson* had sworn an Affidavit in Writing of his Circumstances, and that this was as much as he could pay to the Suitors: Mr. *Hiccocks*, a Gentleman of very good Reputation, was the master, he being then senior master, to whom I referred the Consideration of it, according to the course of the Court; he was upon his Oath in what he acted therein, and made his Report, that he was of Opinion this Composition would be for the Advantage of those to whom the money was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to dispute it.

Resp. The Consequence of that is only, that Mr. *Edwards* being their Trustee, and *Wilson* knowing it, whatever could be done between them would not bind the Suitors, if it were any way de-

trimental to them: Therefore they have the Benefit of all that has been got in upon it, and yet have still a right to enquire into the true Circumstances of Mr. *Wilson*, and to recover, in proportion with his other Creditors, any Effects he shall appear to have unfairly concealed.

Upon the whole of this Matter, could the Master, or I, have any indirect End to serve, by allowing *Wilson* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then should I designedly lessen *Dormer's* Fund, which was before deficient, and which I was endeavouring to make up?

Obj. But it is said, that this was by my Direction.

Resp. Suppose it were; they have not proved any thing to induce a suspicion that it was not perfectly innocent, nay beneficial to the Suitors, or probable to be so.

But the Proof is only, that Mr. *Edwards* spoke to me about it, and asked me, if he might compound it of himself. I thought not: But Mr. *Hiccocks* having afterwards informed him that it was usual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he proposed that method, and I thought it might be so done. And he did it.

But whether this was prudent, or imprudent; where is the Crime? This tended nothing to conceal *Dormer's* Affairs: he was known to be broke; and *Wilson's* Debt was esteemed desperate. There was no other View, nor could be, but to get somewhat towards *Dormer's* Deficiency, and no body is at all hurt by it.

Obj. But this was unusual.

Resp. In what?

Obj. No day was appointed to hear Counsel upon it.

Resp. My Lords, There was no occasion for Counsel; there was nothing for Counsel to be heard to; there was nothing for them to argue. The Order is in direct pursuance of the Report.

Indeed, upon carelessly reading the Article, one would imagine the Charge to be, that this was an Order made upon Mr. *Edwards*, without giving him Notice, or hearing Counsel for him. And that would be very unusual and unjust; if it were not that it is ordered upon his own Petition, and at his own Request.

Your Lordships will likewise observe, that this was the 3d of August, after the Seals were over; and if I must have appointed it to come on, upon a publick day (not to have it concealed) it must have waited till *October*; And by that time *Wilson*, and his Effects, might probably have been gone, and the Opportunity of getting any thing lost.

As to some few new Observations made upon reading these Proceedings, I see not how they tend to prove any Crime in me.

Obj. They are not filed.

Resp. That is not my Affair. And if they are never filed, they will affect no body, and cannot possibly do harm.

Obj.

Obj. Some Lines or Words appeared rased out : which import that Mr. *Edwards* should be indemnified.

Resp. If he acted fairly in this matter, he would be indemnified, tho' those Words were out ; and if he did not, they ought not to be in.

In short, here is not the least Evidence, but that this Composition was made with a View to get as much as could be for the Suitors, out of a desperate Debt ; there is no body hurt by it ; and if it be not of advantage to the Suitors, they may avoid it.

XV, XVI. The 15, 16, and 17th Articles were opened together : But one Gentleman spoke more particularly to the 17th, as being of different nature from the others ; and therefore I will speak to it separately.

The principal Subjects of the 15th and 16th Articles are 4500*l.* raised by the masters, and 1000*l.* by myself, towards *Dormer's* Deficiency.

In the last Article I spoke to, the Crime was, the lessning *Dormer's* Effects by a trifling Composition ; in these, increasing them 5500*l.* is a Crime.

At first sight, one would think this commendable, but, by I know not what Fatality, every thing grows criminal by my having any concern in it. My Intention infects all. It is said that I intended by it to carry on my corrupt Purposes, that is, as one of the Gentlemen explained it, to conceal *Dormer's* Deficiency.

But all that appears upon the Proofs offered relating to my Intentions is, that here was a strong Desire to make good *Dormer's* Deficiency ; and that way of concealing it is surely not blameable.

But then as to the 4500*l.* is is said, that I induced the masters to pay it by colour of my Authority.

How is this proved ?

Mr. *Conway* produces, and proves, the Receipt he had given him by Mr. *Edwards*, for 500*l.* voluntarily contributed by him towards Mr. *Dormer's* Deficiency ; and says, that he had promised it in *February*, and paid it accordingly in *August*.

Mr. *Edwards* says, that in 1721 he received 500*l.* apiece from all the masters, but Mr. *Lightboun*,

Mr. *Lightboun* says, that when Mr. *Cottingham* spoke to him of it in *February* 1720, he told him, all the other masters had agreed to it ; but Mr. *Lightboun* refused it : That I never spoke to him of it till *January* 1722, which was near two Years after ; that then, I was so far from making use of my Authority, that when he asked me, whether it was my Proposal or the masters ; upon its being said, it came from the two senior masters, he took occasion to speak more freely against it ; and though I used some Arguments with him, yet he says I left him to his own Inclinations.

My Lords, these are their Proofs. But they are to be helpt out by some Constructions.

Obj. It is said, that the Letter which I caused to be sent in *February* 1720 to require them to give in their Accounts, was in order to terrify them to

come into a Composition : for it is said, when that had its effect, and the money was paid, they were not obliged to bring in their Accounts.

Resp. This then, I suppose, is that Colour of Authority by which (according to the Charge in this Article) I induced them to contribute.

But in the first place I beseech your Lordships to consider, whether it can be thought, that any of the masters would pay 500*l.* rather than let me know what was in his hands ; which was all the Consequence of my having an Account ? If it cannot ; why should it be, without the least Proof, imagined, that I should expect it ?

In the second place I must beg leave to observe, that the masters best know, what effect that Letter had upon them, and what was the motive of their advancing that money ; but none of them have sworn, that they were in the least induced to pay the money by the fear of that Letter, or by the apprehension of being forced to give in their Accounts if they did not comply. Nor do the Circumstances shew it. For Mr. *Conway* came in but in that *February*, and had but little money in his hands, and a very short Account to make. Mr. *Kynaston* and Mr. *Tho. Bennet*, who are now deficient, were not then masters. Mr. *Holford* had got an Account ready, yet he paid. Mr. *Lightboun* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors ; and no indirect Practice to bring it about,

And therefore the Charge not being proved, I am according to my general Plea, not guilty of the matters contained in this Article, or any of them, in manner and form as they are therein charged against me. And there is no occasion to make out what I have stated in my Answer, to have made this matter more clear, in case they had given occasion, by having produced Evidence to maintain their Charge.

However I have shewn a second Letter, written by my Order, in *November* following, requiring those Accounts with more earnestness. Mr. *Cottingham* produces the Draught of it, and tho' he will not swear positively that he delivered or sent it ; because he does not find any memorandum of it : he verily believes he did, and has not the least ground to suspect the contrary.

Your Lordships will observe, how very particular the Account was directed to be.

The first Letter was wrote the 14 of *February*, 1720, Your Lordships will give me leave to read the Copy kept of it.

[Reads.]

“ 14 *February* 1720.

“ I am commanded by my Lord to signify to you, that you do, with all convenient speed, lay before his Lordship an Account in several Columns.

“ 1. Of the Cause.

“ 2. Sollicitour, or Agent.

“ 3. The Date of the Order.

“ 4. For what Purpose the money was brought in.

“ 5. How much was brought in.

“ 6. When.

“ 7.

- “ 7. How much in hand.
- “ 8. How much on Securities.
- “ 9. How much paid out.

A distinct Account of Securities.

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

A distinct account of Money paid out.

- “ 1. Cause.
- “ 2. By what Order, of what date.
- “ 3. When paid.
- “ 4. To whom.

The second Letter is dated the 7 November 1721. And is in these words :

[Reads.]

“ By my Letter of the 14 of February last, I signified to you my Lord Chancellor's pleasure, which was that you should with all convenient speed lay your Account before his Lordship, the method whereof was to be in several Columns subscribed at the foot of that Letter. I am now farther to acquaint you, that his Lordship is very much surprized to find that in all this time no such Account hath been laid before him; and therefore hath commanded me to tell you, that it is expected to be delivered on or before the last Day of this Term; and if this is not complied with, you will oblige his Lordship (tho' very unwillingly) to think of other measures, which I doubt not but you will avoid by a ready compliance with what is a second time required of you. And to the end there may be no mistake as to the method of your accounting, I have subscribed it again at the foot of this Letter.”

And Mr. *Cottingham* explains what he apprehends was meant by that Passage of *other Measures*, that I would make an Order in form, that is, an Order of Court to be entered with the Register. He tells your Lordships what Representations they made of the Difficulties of drawing up such Accounts: And I did not afterwards insist upon them. And your Lordships will be pleased to observe, that the Letter sent by me, in Form of an Order, in November last, by Advice of the Lords of the Council, was for an Account much in the same manner. The words are these :

[Reads.]

“ Dated 3 November 1724.

“ Let the several masters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the money in their Hands, therein distinguishing in several Columns.

“ The Names of the Parties to the Cause.

VOL. VI.

“ The Dates of the Orders for } { Money or
bringing in } { Securities.

“ The Time of bringing in each Sum.

“ Particularly expressing the Sums transferred and paid to them at their coming into their Offices, in the first Place.

“ How the same hath been disposed,

“ What Sums paid out, and to whom, } { when and
“ What invested in Securities, } { by what
Order.

“ Specifying the Securities by Dates, Numbers, &c.

“ Where the Securities are at present,
“ What money remains in their Hands,
“ Where the same now is.

Mr. *Holford* tells your Lordships, that another Account was carried in by my Order instead of one so particular; for that an Account drawn up in that manner, would have taken up several months: And in February 1721 or 1722 it must have taken up many more; because there were then masters, who had been much longer in their Offices, than Mr. *Holford* the now Senior master had, in November last, been in his. And those Accounts must have gone through their whole Time. And, if your Lordships will be pleas'd to look upon the Report on the Table, it will appear that the Judges and Directors reported, that no regular Accounts could be taken, unless they were brought down from the Beginning of the time, that each master had been in his Office; and yet the Lords never insisted on any such Accounts afterwards (tho' I had made an Order for them by their Advice) nor the Lords Commissioners since; which what is it, but falling into the same Sentiments that I had done before? The requiring the Dates of the Orders on which money was paid, and the Solicitors Names (which I found not one of the masters was able to give me) was intended by me, that I might be able to make some Examination into the Truth of the Accounts, that should be given in. And for want of that, your Lordships know, what methods the Lords Commissioners have been forced to take; to have the Accounts of the several masters printed and publish'd, and dispersed throughout *England* at a publick Expence; that People may come in voluntarily to make a Surcharge. And yet it is well known, that the preparing the present Accounts, short as they are, containing only the Balances of Securities and Cash, which the masters owned to be then in their Hands in each Cause, so took up their Times, that the Business of the Court before them stood still for some time, and their Attendance in Court was dispensed with. No Wonder then if I did not insist on these Accounts, which were to be attended with so troublesome, so tedious, and so fatiguing an Enquiry.

These are some Facts, that I have not indeed examined to; but with Submission I do not stand in need of them: If I did, they are notorious; and I believe the managers, some of them at least, know them, and will not deny them; and the masters, being your Lordships Attendants, may be asked to them, by any of your Lordships, who shall

think there needs any farther Satisfaction to be given concerning them.

Obj. But why then did I not content myself with the shorter Accounts, and take them at least, such as were deliver'd into the Committee of Council?

Resp. As to those Accounts; I shall beg leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships intire Satisfaction on that Head.

Upon the 16th Article I take the Liberty to say as to the 1000 *l.* paid on Mrs. *Chitty's* Account; I never expected that an Act of Humanity to Mr. *Lockman* should be made a Crime.

The supposed Crime, I think, consists in this, That it was in *farther Prosecution of my unjust and corrupt Purposes, that is, Keeping up my gain in selling Places, by concealing Dormer's Deficiency.*

How is this proved?

Mr. *Lockman* tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of *Dormer's* Effects left; that the masters were in great Apprehensions of losing the Profits of their Places, and were not willing to advance any money; that he told me of a Composition he had made, that the Time was near; that then I said, I would order *Cottingham* to pay the money; but told him, that if Mrs. *Chitty* had nothing else, he might by marrying her make himself worse; for there would be no more money paid her thence. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says, it was about a fortnight before the 1000 *l.* was paid, that I told him no more would be paid. Upon some Questions put to him by me, he said, he asked for another 1000 *l.* on account of Mrs. *Chitty's* Children: But that after I had told him, no more than the first mention'd 1000 *l.* would be paid, which was a fortnight before it was paid, he asked it no more; and deny'd that he apply'd for the Payment of 500 *l.* or 574 *l.* after I had promis'd the 1000 *l.*

My Lords, all this, supposing it true, does not prove that I paid this money to conceal *Dormer's* Deficiency; for he says I told him before, that *Dormer's* Effects were all gone; and at the Time when I made the Promise of that money, I told him no more of her money would be paid.

And is it rightly collected from this Action, without farther Proof, that my Intention in paying this money, was to *conceal* the very thing, which I at the same Time *expressly published*?

But, my Lords, it is fully proved on my Part by Mr. *Cottingham* and Mr. *Elphinstone*, that this 1000 *l.* was advanced out of a generous Compassion, and not out of any by-end: That his Application was founded on this, that he was to marry Mrs. *Chitty*, and was to have this 1000 *l.* to pay a Composition for his Debts; that I had sent him word of the Deficiency, and that he could not have the money; so the great Secret was out: But that he afterwards appear'd in the utmost Distress and Agony, in Danger of laying violent Hands on himself, and desperate: This Distress moved me; I told him, I would order the money to be paid out of Compassion to him; he afterwards spoke of it with the utmost Acknowledgment: I told him this, and gave the Order accordingly on *Monday*, and it was paid the *Thursday* following, which was the 30th of *July*;

and as to Mr. *Lockman's* Testimony, who denyed that he apply'd for a farther Sum; it has been proved, under his own Hand, that he apply'd for 574 *l.* for Mrs. *Chitty*, on Pretence she could no otherwise spare him the whole 1000 *l.* and this after the time was appointed for Mrs. *Chitty* to receive the 1000 *l.*

Here the Earl of *Macclesfield* informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure, and after some time the House being resumed, the Earl of *Macclesfield* went on.

My Lords, when your Lordships were pleas'd to allow me to retire, I was just upon Mrs. *Chitty's* 1000 *l.* and had spoke of that Part of the Transaction that related to Mr. *Lockman*. And as to the next, which is the Charge of endeavouring to persuade the masters to advance that 1000 *l.* and using the Arguments in the Article mention'd for that Purpose:

Upon the Evidence it does appear, that there was a meeting of the masters at my House in the latter end of *July* last; and some such Arguments used as in the Articles, but not (as is charge'd) to have a present Purpose of paying the 1000 *l.* answered, but to have *Dormer's* Deficiency all made good, by small annual Payments out of each Office. A View, which I hope your Lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the Intent of my desiring the masters to come together, that tho' that 1000 *l.* was the immediate Occasion, that discover'd the Effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the masters to pay it; Nor does Mr. *Lovibond* remember it; and Mr. *Holford's* Expression was (if I took him right) only, that he apprehended it was mentioned *as if* the masters should contribute to make up that 1000 *l.* However, my Lords that was not the End which I aimed at and mentioned; and upon the whole Evidence all agree, that the Discourse about the 1000 *l.* was soon over, and ended with my saying, That I would take, or had taken Care of it. Mr. *Lightboun* says, he is not sure which of the two Expressions I made use of. And even Mr. *Tho. Bennett* says, that when I had said so, nothing was afterwards said of that, but of *Dormer's* Deficiency; and then came in the Discourse of the Parliament. Mr. *Holford* represents it, that after some Discourse of the 1000 *l.* I spoke of *Dormer's* Deficiency; and particularly of the mischief, which was what Mr. *Edwards* had a little before said, that some had had all, and others none (which would not at all be cured by Payment of this 1000 *l.*) and that then I mentioned, that that might make great Clamour, and possibly occasion a Parliamentary Enquiry: Where if it were resolv'd that buying those Places was against the Statute of *Ed. VI.* it might affect me in the Disposal of the Places, and the masters in the Enjoyment of their Places: He says several things were propos'd, but nothing agreed on. One Proposal was, whether if the masters were continued on the same Foot they had been, it would not be worth their while to contribute?

The masters have not had so good memories in this Case as I hop'd. But Mr. *Lovibond* does swear,

swear, that all or the greatest Part did then agree, that if their Offices were establish'd, as they had been for forty Years, they would make an annual Contribution towards *Dormer's* Deficiency. And he heard no body say otherwise, only he himself (he says) did not agree to it.

So that it appears upon the whole, that what I said was not with Intent to supply a present Purpose, as is charged; for I had declared to them, I had taken care of that, or would take care of it. And if I could, by setting such an Example, or by any Arguments I could use, induce them to contribute by Payments, as they could be spared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of those who had had no part of *Dormer's* Effects, I see no harm; and I am sure there was no Fraud in it. It is to conceal it and prevent Clamour or Inquiry about it, only by paying it; which would leave no Room or Occasion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Proposal, to have it paid by Annual Payments out of the several Offices, did not tend to raise the Price of them, but on the contrary by laying a Burden upon them, would greatly diminish their Value.

Whether the Design I had, or the Arguments I used, were prudent, or discreet, or proper, I submit to your Lordships Judgment; but the Arguments were not used for the Purposes in the Article, but for the Benefit of the Suitors of the Court.

But to give this some appearance of a Crime, they are forced to attribute it to criminal Views and Designs, of which they have made no Proof, nor shewn any Probability, scarce Possibility, that they were the Principles of this Action.

I might farther observe, that the paying the 1000*l.* and leaving the 500*l.* (which in the very same Order is directed to be paid to the Plaintiff) unpaid, and the 574*l.* demanded by Mr. *Lockman*, unpaid; would not at all hinder the Deficiency from breaking out.

As to the Expression charged in the End of the Article, to be used by me, I agree, I used one very near it; but with other Expressions along with it (which the Witness in effect owns) that shew, I could not possibly have any ill Design in it; nor could any Inconvenience ensue upon it. No Question had till that time been laid before the Court relating to *Dormer's* Deficiency: *Chitty's* was only an Application for Favour, for a Sum then particularly wanted, because there were at that time no Effects; and was paid by me out of Compassion; there was no Question of Right about it to be decided, as was here, when the Dispute was, who was to bear the Loss, if any, and could be determined only upon Circumstances. I at the same time was so far from endeavouring to have it believed, that there was no Deficiency in *Dormer's* Office, or that I knew not of it, that I declared a great deal, which I knew about that matter.

As to what they object, that the Order is drawn up in such a manner as implies (as they say) my being wholly ignorant of the matter, by directing an Enquiry whether there was likely to be any Deficiency or not:

Give me leave to say, that if I had known more

of it; if I had known to a Farthing what *Dormer's* Deficiency would be; I could not as a Judge found an Order upon my own private Knowledge, but must make it in the same manner as if I had known nothing at all; and accordingly that Order is worded in the same manner, as it must have been, if I had never heard of *Dormer's* Failure before.

Besides, it had been then talked, that *Wilson* had not dealt fairly in his Composition; and if so, and if he were worth it, the Suitors might recover near 22,000*l.* more against him. A matter extremely proper for the master to enquire into.

XVII. As to the 17th Article, which relates to Orders for payment of monies deposited with *Dormer*; which Mr. *Edwards* (as is charged) was directed by me to pay, without regard to that Proportion, which ought to have been observed in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cause; and only one of them directs the whole money to be paid out. I said in my Answer, that I did not know that I had made any other Order than that of *Chitty*; but believed the Court might have made others; which gave occasion, it seems, to some of the Gentlemen to wonder at the Distinction between me and the Court. My meaning was, that such Orders might have been made by the Court in my absence, for ought appeared; that is, by the master of the Rolls and Judges, with others in Commission for hearing of Causes.

But as to what was done by me; the proper Answer to this Article, the true one, and I hope a satisfactory one, is, that I acted so as I thought would be most for the good and benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was mistaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me in this Article.

1. Not taking proper care of the Securities lodged with the masters.
2. Not taking Security for the Cash.
3. Not taking the masters Accounts.

There is another thing expressed, which is permitting and encouraging the masters to traffick with the Suitors money and Effects. But that I apprehend means only, that the not taking due care to hinder them, is permitting and encouraging them. So that it does not make a distinct Branch of the Article; but is only a supposed Consequence of the rest.

As to the *Securities* and *Cash*, what I am charged to have omitted doing, was never done before by my Predecessors, nor desired then of me by the Suitors. And, therefore I suppose, there is a particular Reason assigned why it should have been done by me, tho' not before; and that is Mr. *Dormer's*

mer's Failure, which is charged to have been chiefly occasion'd by his taking upon himself *unduely to dispose and employ* the money and Effects of the Suitors in his hands. And this the Article charges that I knew.

My Lords, as to this particular Reason: To add a new Duty to my Office from it, and to lay me under an Obligation to do that, which my Predecessors were not obliged to; it ought to be clearly made out that the Fact is true, that this was the Cause of *Dormer's* Failure; that I knew it to be so; and that thereby it became my Duty, unasked by the Parties interested, to make the new Provision expected. But there is no Proof that *Dormer* did unduely dispose of or employ the money and Effects of the Suitors in his hands; much less is it proved, that I ever knew it, or had the least reason to suspect it; but the contrary.

The Account Mr. *Parkhurst* gave of what passed at the time of *Dormer's* going off, was this (which was represented to me, and never shew'd to be false) That Mr. *Dormer*, who was his Uncle, informed him, that having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacation 1720, he knew not where to leave it safer than with Mr. *Wilson*, an eminent Banker; and he left it with him to the value of 24,000*l*; that upon his return to Town, he found Mr. *Wilson* stop't payment; and that therefore he would withdraw himself, for fear of a Goal; that accordingly he went into *Holland*, and wrote a Letter from *Rotterdam* to Mr. *Parkhurst*, with one inclosed, to be shewn to the masters, and sent to me or Mr. *Cottingham*; he gave some account of the Letter, that it set forth the Case to the effect above; and the Draught thereof is in the hands of the managers, which they might produce, if they thought proper. This I took to be the true State of the Case; and never heard any thing to the contrary (except Mr. *Lightboun's* Guesses, founded on no Fact, but on the greatness of the Sum, which this accounts for another way) till *December* last, when I was told, that *Wilson* pretended, he borrowed it of Mr. *Dormer* at an high Interest; but as this appears to be spoke in excuse of himself, an After-thought at four Years distance is little to be regarded, and however, if it were true, ought not to affect me, to whom it was never disclosed. But according to this that I have stated above, which was certainly the truth of the Case, or however what appeared to me; *Dormer's* Failure was not occasioned by his undue disposing of or employing the money and Effects; but it was a *Misfortune owing to the Year* 1720, and Circumstances peculiar to that Time; so not likely to happen again. On Dr. *Eddisbury's* Failure there appeared no Accident, but his own ill Conduct: Yet no Change was made by the Lord Chancellor, as to the Effects, or Cash, or giving Security.

But it was urged, that tho' this had not been desired of me by the Suitors, it had been proposed to me by the masters themselves:

And three of the masters were called to prove this. But only two of them pretend to have spoke

to me about it, Mr. *Lightboun* and Mr. *Kynaston*. Mr. *Holford* the 3d says, He never was once with me about it, only he liked some things which Mr. *Lightboun* told him he propos'd.

Mr. *Lightboun's* whole Evidence, taken all together, clearly proves what I set forth in my Answer; that I had in view three things. 1. The making good *Dormer's* Deficiency. 2. Settling the masters in their just Rights. 3. Securing the Suitors from future Accidents. The 1st was the Principal, and always uppermost with me. The 2d was plainly necessary, in order to that. The 3d for securing the Suitors from future Accidents of that kind, I was likewise very desirous of; but, I own, at that time, while I thought the masters then in being Persons of Ability and Substance, and he gave me no reason to think otherwise, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that at the time of Mr. *Lightboun's* Proposal, the masters were all willing to contribute; only Mr. *Lightboun* stood out; and his Reason, which in his Examination to the 16th Article he says, he upon one Occasion mentioned to me as sufficient, was, that it would be a Precedent for his paying other Debts of other masters. And upon his Examination to this Article, he says, that he told me in discourse on that Subject, that as *Dormer's* Accident had happened, the like might again; and so often, that it could not be supported; and afterwards, that if any thing could be done to make good *Dormer's* Deficiency, and put things upon a secure Bottom, he would be as ready to contribute as any body. He then gives an account of the Proposals he made, which he says, I desired him to reduce into Writing for my Consideration, which he did; the Copy of it was produced and read, and I have the Letter itself here in my hand; and there only, I apprehend, is to be found the Proposal which is to affect me, and not that which he now from his memory mentions to be the Proposal, but differs from the Writing in several things; which not being in the Letter, if he had mentioned them cursorily in that Discourse, I must have looked upon them as what upon farther Consideration he did not think proper.

My Lords, The occasion of the Proposal was my speaking to him about contributing to *Dormer's* Deficiency; and both that and the Proposal itself shew, that it was really no more, than laying before me the Terms upon which he would contribute.

In those Terms, the principal thing insisted upon by him was, that the money should be continued to be brought before the masters; which, I apprehend, had then been a little broken in upon: Which is expressed in these Words, shewing the Improbability, that a Fact objected should happen, "if (as his words are) the money be directed as usual to be brought before the masters, both by your Lordship and the master of the Rolls; without which the masters cannot think themselves much interested in the Event of Mr. *Dormer's* Affair."

The other thing he insisted upon was, that he should be secure from being exposed to the like Inconvenience, by failure of another master; and therefore what he proposes, in relation to securing the Effects, is not a thing proposed to be done of itself, separately, but in company with the other Regulations.

That part that relates to the Rights of the masters, was afterwards pressed farther, as it was apprehended they were more broken in upon; and produced the Representation of the masters, which Mr. *Lightboun* the other day mentioned to your Lordships.

And this likewise explains several parts of his Evidence: It explains what he says, that he pressed me so often to do something, and thought that to be *Irresolution*, which was indeed my *Caution* to proceed upon sure grounds, in doing a thing, which, if not perfectly well founded, might have the Appearance of being contrived on purpose to advance, or keep up the Profits of the Offices of the masters. It explains his Apprehension, that if I did not do it, it would not be done by my Successor, unless the Seal should come into the Hands of a noble Lord, whom he named. It shews, that what he pressed, was not so much for the masters to give Security, or to make up *Dormer's* Deficiency, and retrieve the Honour of the Court, as to have Orders made, for the Benefit of the masters; which I thought ought to go together.

For it wanted no Resolution in me, or in any other Chancellor, to make Orders upon the masters, to secure the Effects of the Suitors in their Hands; had that been the thing pressed, and especially if, as is pretended, they themselves desired it. But it might require Resolution to support the masters against the Claims of an honourable Person, with whom they then had a Dispute.

This View of this matter will make your Lordships consider it in a different light from what the managers have endeavoured to set it in; and that my Slowness did not proceed from my concern for the keeping up of the masters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the measures desired, and made Orders to prevent the master of the Rolls from directing, in his Decrees, the money to be brought before the Usher, and from referring Irregularities to the six Clerks; and to settle in their favour the other matters in dispute (tho' I will do them the Justice to declare, that I do, so far as I have seen of it, think the masters in the right therein) yet I am apprehensive, that at first sight it would have been matter of Complaint against me, as a contrivance to advance the Offices of the masters; and that the Schemes proposed by Mr. *Lightboun* for giving the Security he represents as sufficient, would not have been thought a Ballance to it.

Having said this, give me leave to weigh the Proposals.

And first, his Proposals for providing for *Dormer's* Deficiency.

The way of doing it, which he proposes, is this: Having stated, in the first page of the Letter, what he takes to have been the occasion of *this great Deficiency*, he goes on, "which I hope may be provided for, and the Credit of the Court retrieved and supported by every

"master advancing 2000*l.* or such other Sum
"as shall be agreed on, out of the Cash of the
"Court in his Hands; which being placed out
"at Interest, the yearly Income thereof, together
"with the Produce of Mr. *Dormer's* Estate,
"will answer the Demands that may be expected
"on his Successor, and will in due time
"make good the Debt upon the Office.

But as to this, I thought it both impracticable and insufficient; and I told him, and he very fairly owns it in his Evidence, that I could not make an Order of that kind; because it would indeed be ordering one man's money to be put out at Interest, to pay another's Debt.

His next Proposal relates to the *Securities*, lodged in the hands of the masters, which he thought of the greatest Consequence; because, as he now says, he told me that *Dormer's* Accident came by trafficking with *Securities*; which he inferred from a Supposition that there was not then so much Cash in his hands. This Fact is contrary to the Representation made as above to me, and the Supposition, with respect to the quantity of Cash, is obviated by his having just received a great Sum out of the Exchequer. And your Lordships have heard from the Report to the Lords of the Committee of Council, that the masters have brought in all their *Securities*; so that what Mr. *Lightboun* thought the greatest Danger, has proved to be none at all.

However, to prevent that, which he thought the greatest danger, he proposes the taking all Government *Securities* for the future, in the Names of two or more masters; his Words are in page the 2d. "Having before observed from whence this great Deficiency arose, I submit it to your Lordship, Whether the taking all Government *Securities* for the future, in the Name of two or more masters, may not prevent the like misfortune hereafter." He says now, that he proposed them to be taken in the Names of some masters, and of a third Person; but that is not mentioned in the Letter, nor does Mr. *Holford* mention it in his Evidence.

As to this Proposal, he has now sworn, as the Truth is, that I started a Difficulty upon that head, by objecting that this would not answer all Cases, particularly with respect to the *East-India* and *South-Sea* Bonds, by reason that they are payable to the Bearer. And his Answer was, That there was no necessity of taking these *Securities*; such might be taken as are transferable in the Books of the Companies.

On consulting others upon this, I found, that as to *East-India* and *South-Sea* Bonds, wholly to disallow the taking those *Securities* would be hard. Many People choose them, because there is little variation in the Price, only sometimes a few Shillings higher or lower; whereas in *Annuities*, and much more in other Stock, the fall of the Price, by the time the money was to be paid out, might eat up the Interest and more. That there would be a difficulty to dispose of those at that time in the hands of the masters; probably the Owners would not consent; it had been their choice, that had determined the laying out of the money upon those Bonds; that to send them to the market all together would occasion a fall of the Price, and a great loss, which would raise a Clamour, and give great Dissatisfaction.

I thought these several things had great Weight, and deserved most serious Consideration. I then thought of locking up these Bonds in Chests, with two Locks, one to be kept by the master, to whom they belonged, and the other by the next master after him, and to take the other securities in the Name of two masters.

But I was told by Persons of great weight, that that was but two masters instead of one, and would not be satisfactory: And should I join more of them, it would occasion more trouble, and possibly more charge; but they were still masters.

At last I resolved to take the Securities (other than the Bonds) in the Names of two masters, and a third Person to be named by the Parties. But still I stuck at the Bonds, and was never set right in that, till it was too late. But I have now learned, which neither I nor Mr. *Lightboun*, as your Lordships may observe by his Evidence, had skill enough to know, that they might be indorsed to two masters and a third Person, and so the Property be fixed in them; which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Cash, how that might be made secure, his whole Proposal is contained in these Words, in the second Page: "The Deposit to be put out at Interest, to raise a Fund for the Payment of Mr. *Dormer's* Debt, together with our Office, would in a great measure be a Security for the Cash, with which we should then only be intrusted." By the Deposit he means that of 2000 *l.* or such other Sum as should be agreed upon, as I before read to your Lordships.

This is the Nature of his Proposal, with relation to the Security for the Cash; which I apprehend must appear to be neither practicable, as I observed before, nor satisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehensive those that were before dissatisfied, would call it *trifling*.

He then takes notice of the money being lodged with the masters very effectually, tho' it is by way of answer to an Objection, that every master may not always have such a Sum in his Hand; to which he answers: "*I will venture to say, it's scarce possible that can happen, if the money be directed as usual by your Lordship and the Master of the Rolls.*" And then he adds (to shew the Strefs laid upon this) "*without which the masters cannot think themselves much interested in the Event of Mr. Dormer's affair.*" And says in the 3d Page: "If I have the happiness to have offered any thing thought practicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall with Pleasure contribute, as becomes me, to facilitate any Undertaking of this kind."

I think this proves what I said in the beginning; and I submit it to your Lordships, whether I am criminal in not complying with these Proposals.

My Lords, I have told your Lordships several thoughts I had about the Securities. Give me leave to mention something of my thoughts, with relation to the Cash.

I thought to take a small Security would only shew that I was convinced that a Security was

necessary, and yet trifled in it; and those that were willing to find fault, would say, it was done only to amuse the Suitors, and lull them into a false Security.

And till I could adjust the matter of the Securities lodged with them, particularly the *East-India* and *South-Sea* Bonds, no Security, that it would be practicable for the masters to give, would bear any Proportion to what was in their hands, when it should be 50, 60, or 80 thousand Pounds.

But if I could contrive to make all the Securities safe, and reduce the Cash into a narrower Compass, by making Orders for putting out the money of course, whenever, through neglect of the Parties, or otherwise, it should happen to lie beyond such a time; then a Security might be given by the masters to answer it.

But, as I told your Lordships, the *East-India* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the masters behaved themselves, as I expected they would in the matter of their Accounts, I then intended to have laid my Thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Proposal supposed to be made to me, is spoke to by Mr. *Kynaston*, and him only. And though he says all, or most of the masters, agreed to it, and thereupon he waited upon me about it; I do not find that any of the rest know any thing of it. I observed, that neither Mr. *Lightboun* nor Mr. *Helford* (both produced to this Article) are examined to this great matter, upon which the masters are said to be agreed; nor is any other master called to it, tho' his Account of it is so very imperfect, and stands in need of being explained, as well as supported. As to the Securities, it reaches not all; the Bonds are left under the same difficulty as before. And as to the Cash, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. *Kynaston* and Mr. *Lightboun* say, it is plain they were consulting their own Interest, to keep the Office free from Incumbrances: And their Interest and mine (if I could have any in view) was the same: So that if it was their Proposal, what should hinder me from agreeing to it, but that I thought it insufficient?

The third thing charged in this Article is, That I did not take the masters Accounts, that is, Accounts of what Effects of the Suitors they had in their hands.

My Lords, It is true, this was proved to be done by my Lord *Cowper* at his Entrance into his Office, both the first and second time; it was done by another noble Lord, as has been proved at your Lordships Bar, once, and I believe it was done by that Lord oftner.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the same approbation, as it had in those noble Lords. In my Case it would have been asked, What care I had taken to be sure that the Accounts delivered me by the masters were true? Whether I had seen the Securities and Cash? And what

what Satisfaction I had, that they were able to make them good? I should, perhaps, have been told, that without that, the bare taking of an Account was of no use. And these Enquiries were of such a Nature, that if they were to be pursued effectually and with exactness, I own I had not strength to go through them.

Nor did I think the taking Accounts from the masters necessary, because I do still take the Liberty to say, I was fully persuaded, all the masters were good and honest men; and if they were not, I do not see it would be of any use to take such Accounts. For I would be glad to know, whether if I had taken an Account yearly from every master, he would have been one half-penny richer or poorer, or at all more able to pay the Suitors?

Obj. It is said indeed, that all these were wilful Omissions; and for fear the Price of Places should be sunk.

Resp. But of that there is not the least Proof. And the Circumstances of the Case above set forth, I hope, give a much more natural account of it. And the Difficulty what to do in such a case cannot be expressed by any Words I can make use of, so strongly as by what has passed, since I order'd the money and effects to be locked up, and lodged at the Bank, which were intended (and so the Order of the 17 December expresses it) to continue there only till the Affair could be more maturely considered, and a proper Provision made for the Security of the Suitors. Five months are now elapsed, and nothing has been yet done: Tho' the Suitors suffer vast Inconvenience. For, in order to get any money from thence, there must be a Master, and a Six-Clerk, and two Directors, and a Certificate from the Register, which occasions so great an Expence, that in the case of small Sums, People do not think it worth their while to go for them to the Bank, but choose to be without their Interest rather than come at it through so many Difficulties. And if the Lords Commissioners, three of them, such great men, have found this matter too difficult to settle to their Satisfaction; is it a Crime in me, that I was not able to discover a method for making things easy and secure?

This Article is closed with the great Deficiencies that have happened with regard to the Effects of the Suitors.

But, my Lords, give me leave to say, if that Deficiency have not happened by any fault of mine; if those misfortunes, which have befallen some of the masters, be not owing to any Crime in me; no part of all that is charged in this Article, ought in Justice to lie at my door. As I have observed before, the great danger, which was at first apprehended, and so often talked of by Mr. *Lightboun*, related only to the Securities, which the masters had in their hands; but that which happened related to the money only. And tho' this Accident fell out, whilst I had the Great Seal, yet it might as well have happened in my Predecessor's time, since nothing that I have done has given the least occasion to it.

But is there at last, any Deficiency made out to be in these masters, by which the Suitors are to be Sufferers?

Mr. *Thompson* has been called as a Witness to prove these Deficiencies; but he has only shewn an Estimate of *Borret's* Deficiency, and that some of the present masters had not paid in their Ballances at such a time; and how much the farther Sums they were to pay amounted to.

But have the Suitors therefore lost the money? No, my Lords, that does not appear; but on the contrary,

Mr. *Conway*, one of them, and whom they have themselves produced as a Witness, has sworn, that he has assigned an Estate sufficient to pay all his Deficiency.

One of the managers was pleased to own that he meant by Deficiencies, the money not yet paid in, nay the money not paid in at the time of making the Orders ready; and did admit, that since those Orders, there had been Satisfaction or Security for the most part.

But, my Lords, it is the Loss of the Suitors, that alone can give ground to complain.

The Order concerning Mr. *Tho. Bennet* mentions his Deficiency to be only 7500*l.* and 1575*l.* represented by him to be in the hands of his Predecessor and me.

The latter Sum of 1575*l.* is brought into Court. And we have shewn that Mr. *Hiccocks*, his Predecessor, has petitioned, that he may pay in the 7500*l.* which is the whole Deficiency. And here appears a considerable Estate, of I think 750*l.* per ann. of Mr. *Bennet's* besides.

Mr. *Kynaston's* Deficiency is represented to have been before *Christmas* 26,908*l.* 11*s.* 3*d.* $\frac{1}{4}$; arising all, but what he said was in my hands, and the hands of Mr. *Rogers* his Predecessor, only hence, that his Cashier was dead intestate, and Administration disputed; and so he could not come at the money.

There is paid in by me	1575 <i>l.</i>
There is offered to be paid	}
by Mr. <i>Rogers</i> , and will	
be paid — —	6000
A Debt from Mr. <i>Delabay</i> ,	}
which he swears a just	
one, is assigned —	20,850
	28,425
In all	28,425
And the Deficiency being	}
computed at —	
	26,908 11 3 $\frac{1}{4}$
	1516

And he has an Estate of between four and five hundred Pounds a Year, and Timber of the Value of 2500*l.* to make good any part that may not be got from *Delabay's* Estate, tho' his Effects

fects are in one of the Reports mentioned to have been then found to be in *London* alone above 20,000 *l.* And I have heard that the Lords Commissioners have ordered them to be brought into Chancery, and that 16 or 18 thousand Pounds are actually brought in.

What is said to be Mr. *Borret's* Deficiency, is the foot of an Account, which the Report that represents it, and Mr. *Thompson* in his Evidence, say could not be properly taken.

And when fully examined into, there may come out to be no loss there neither. Mr. *Godfrey* swears Mr. *Borret* to have been in good Circumstances when admitted; to have an Estate; to have sold an Office for, I think, 5000 *l.* upon the occasion of his coming in master; to have lived with small Expence, his Wife's Father maintaining his Family. And, as he enjoyed the Office four Years, there can be no great Deficiency, and probably will be none at all.

But, my Lords, it is extremely hard upon me, if by their producing an uncertain Estimate, I am to be obliged to state the Accounts of one, who is dead, whose Administrator is Solicitor against me, without their searching into his Papers and Affairs, and giving a perfect Account how they stand. It is exceeding hard, give me leave to say, that your Lordships should be judging upon me as criminal, from Facts of this kind, to which I am an intire Stranger, when there is nothing like Proof, that there will be a Farthing Deficiency at last, but only that the money is not yet come in.

I beg leave to observe one thing more, That the Masters, that are now called the deficient masters, are not one of them in Custody; though it is made an Article against me, that I did not commit Mr. *Dormer*, who was in *Holland*. Therefore, since they are at Liberty, it must be taken for granted, that the Lords Commissioners had good Reason not to commit them; and yet their Deficiency, which is not a Crime in them, sufficient to justify the committing them, is to be made a Crime in me, sufficient to support a Charge of High Crimes and misdemeanors. Your Lordships see how far this ought to affect me; and I submit, upon what I have said, whether it can support the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts: It charges,

“ That whereas his most sacred Majesty, out
“ of his Fatherly Goodness to his People, did in
“ or about the month of *November* last, direct
“ an Enquiry to be made into the Accounts of
“ the masters of the said Court of Chancery,
“ to the Intent that proper methods might be
“ taken for the Security of the Suitors of the
“ said Court; the said *Thomas* Earl of *Maccles-*
“ *field*, being then Lord Chancellor of *Great-*
“ *Britain*, and one of his Majesty's most Honou-
“ rable Privy Council, in order to obstruct the
“ same, and to prevent a Parliamentary Enquiry
“ into the State and Condition of the Offices
“ of the said masters, in Breach of the several
“ great Trusts reposed in him, did give Advice

“ and Encouragement to the said masters to as-
“ sist and supply each other with money and ef-
“ fects, and did represent to the said masters,
“ that it would be for their Honour and Service,
“ to appear able and sufficient; and that if they
“ made a bold Stand now, it might prevent a
“ Parliamentary Enquiry, or to that Effect; and
“ did persuade several of them to make false
“ Representations of their Circumstances to his
“ Majesty, by adding a Subscription to their re-
“ spective Accounts deliver'd to the said Earl, to
“ be laid before his Majesty, to the Effect follow-
“ ing, *viz.* That they were able to answer the
“ money and Securities in their Hands, and were
“ willing to pay the same to such Persons as
“ were entitled thereunto; although the said
“ Earl knew, or had good Reason to believe, that
“ several of the masters were not then able to
“ answer the Ballance of their Accounts, nor are
“ they yet able to satisfy or make good the
“ same; and when the said masters were after-
“ wards required to produce the Cash and Ef-
“ fects of the Suitors in their Hands, some of
“ the masters, according to such Advice and
“ Encouragement given by the said Earl, did
“ supply others of them with Cash and Effects,
“ to make a false Shew and Appearance of their
“ Ability and Readiness to answer the Ballance of
“ their Accounts.”

My Lords, the two things, which are made the Heads of the Charge in this Article, relate to the Subscriptions of some of the masters written under their Accounts; that they were able to make good the Ballances; and their afterwards producing Cash, to make a false Shew and Appearance of their Ability. As to the first; I take it, that the material Part of the Charge is, that I *persuaded* them to make *false Representations* of their Circumstances by a Subscription which I *knew, or had good Reason to believe, was false.*

As there is not the least Proof offered that I knew or had reason to believe the Subscription false, this Charge I think intirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that when Mr. *Holford* brought in his Account, pursuant to my Order, he (without my knowing any thing of it) had wrote a Subscription at the End of it, to this Effect: “ I
“ have all these Securities standing in my Name,
“ as in this Account is specify'd, and will pro-
“ cure Certificates from the proper Offices, that
“ I have and had them before this Account, if
“ your Lordship require it, and as to the money,
“ I am ready to give your Lordship Satisfaction
“ to a Demonstration, that I have it in my Power
“ to answer it to every Person, that shall appear
“ to be intitled to it, and who can give me a legal
“ Discharge.”

They say, I read it, and spoke of it with Approbation.

There were only Part of the Masters ready with their Accounts; and Mr. *Lovibond* was the next, that delivered me his, and he had wrote to the same Effect in Substance; only as to the Cash, he wrote that he was ready to give Security.

My Lords, Every Body knows that he was able to answer it; and he swears he had it ready, and was able to have paid it the next Day; and he appears to have lent 10,000 *l.* to a Brother Master on that Occasion. I was therefore surprized to see him make use of an Expression, which looked as if he were not able to pay the money. And upon that it was, that he says, I recommended to him to make use of the same Expression, as had already been used by Mr. *Holford*; and so accordingly he did.

Thomas Bennet had subscribed, before he came, thus, "I have all the Securities standing in my Name as in the within Account are specified, as also the Tallies, Orders, and Bonds in my Custody;" but had said nothing of the money: He swears, that I said, I wished all would make use of the same Form as Mr. *Holford* had done: And that it would be for their Honour and Service to appear able and sufficient. He says, that Mr. *Lightboun*, as I remember, asked what was the meaning of bringing it before the Committee? and that I said, it would be a means to prevent a Parliamentary Enquiry; that I did not ask him whether he was able, but directed him to write; I suppose he means by the general Direction; for I do not apprehend he says, that I spoke it to him in particular: And it is not pretended, that he made the least Scruple of signing it as true, or expressed any Backwardness in it; and he in Effect owns he did not. But he informs your Lordships how extremely tender he was, not to write any thing but what was strictly true; and that therefore, in his Subscription, he took Care to leave out the Words *to a Demonstration*, which are in Mr. *Holford*'s. And Mr. *Holford*'s Subscription running, "And as to the Money, I am ready to give your Lordship Satisfaction TO A DEMONSTRATION that I have it in my Power to answer it to every Person that shall appear to be intitled to it, &c." Mr. *Bennet* could not come quite up to this; but he subscribes, "And as to the money, I am ready to give your Lordship Satisfaction, that I am able to answer it to every Person that is intitled thereto." This therefore, that he has subscribed, is, I suppose, if he is to be credited, *exactly true*: And if so, I have not persuaded him to make a false Subscription.

Mr. *Kynaston* says, it was recommended to them by me to make such a Subscription as Mr. *Holford*'s; that I said, it would look well to the Council, and prevent farther Enquiry or Parliamentary Enquiry, or some other Enquiry, he knows not which; so he comply'd. But, my Lords, his Subscription is not what I recommended. Mr. *Holford* only undertakes to shew he had it in his Power to answer the money, &c. that is, that he either had the money, or Effects, which being disposed of, would raise it. But Mr. *Kynaston* goes farther, he says, I am ready to pay it to the Persons intitled.

Mr. *Lightboun* heard nothing spoken of the Subscription; he went away to finish his Accounts, which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had said to the others, he, without Scruple, subscribed, without my speaking to him.

Mr. *Edwards* says he was able to pay it.

Mr. *Lovibond* was called last; but I before gave an Account what he said.

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So that of the six masters who made Subscriptions, I spoke only to five.

Three of them have proved themselves able; and I believe no body doubts it.

Mr. *Thomas Bennet* made no Objection, or Difficulty, and has been curious not to let his exceed the Truth.

Mr. *Kynaston*, has voluntarily gone beyond what I desired. And I make no Question but he thought himself able to answer it, though I doubt his being ready.

But is there the least Evidence offered, that I knew Mr. *Kynaston* and Mr. *Thomas Bennet* were not able, or had Reason to believe or suspect it? No, on the contrary, Mr. *Lovibond*, their own Witness, who is one of the masters, and conversant among them, told your Lordships upon his Oath, that by their Conversation he believed they were able to make good their Accounts.

In the mean time, your Lordships observe, that these deficient masters had all their Securities ready, and voluntarily subscribed so to their Accounts, without my speaking to them. In which Point Mr. *Lightboun*, under the last Article, thought there was the most Danger.

As to the Words, *That it would be for their Honour or Service to appear able and sufficient*;

I will not be positive as to the Words, whether it were *to appear able*, &c. or *to make it appear that they were able*, &c. In a fair Construction, the Sense of the first is the same as the latter.

When Mr. *Holford* subscribes, That he is able to pay to every Person, who shall appear to be intitled; or, if I should say, Mr. *Thomas Bennet* appears not so fair or able a Man, as I formerly thought him; does it import only a false Shew?

As for what is said of preventing a Parliamentary Enquiry;

Mr. *Thomas Bennet* represents it to be spoke in Answer to the Question, What was the meaning of bringing it before the Committee? And says, my Answer was, That it would prevent a Parliamentary Enquiry.

If I said it, the Reason is obvious, and the Thing innocent.

It is notorious, that the last Summer there was a great Clamour against masters in Chancery, which was heightened by some Disputes they caused in the Court of Chancery; that it was generally believed, that it would come into Parliament; and I am persuaded it would have come into Parliament something sooner, if the Committee of Council had not taken this matter into Consideration.

I am likewise persuaded, that had the masters all been able to make good the money in their Hands, and proved that they were so; and that they had behaved themselves well; and that the Lords of the Committee, after finding their Accounts right, had proceeded to advise proper Regulations, the matter would never have come into Parliament with Respect to them, whatever it might as to me.

And as to them, I believe, they were not desirous to have the matter in Parliament, because of the vast Trouble it must give them, had there been nothing else in it. And it was natural for me to think, that nothing would more tend to

make them easy, in complying with what the Committee should think fit, than by letting them know, that if it gave them Trouble in one respect, it would ease them more in another.

And so far I thought it for the King's Service, and my Duty, to hasten the Accounts before the Council, and to use all means I could to have things carried on with Speed and Effect; that such members of Parliament, as had their Eyes on this Affair, might plainly see that proper measures were effectually carrying on by the Lords; so that there would be no Occasion to take up this Affair in Parliament, or for the Legislature to interpose.

But as to my own Share, I freely own I had not the least Apprehension of what has since befallen me.

I was so far from obstructing the taking these Accounts, that Mr. *Holford* has informed your Lordships, that when the first Order was such, as would require a very long Time to be complied with, I pressed them not to make use of that as an Excuse for Delay, but to bring in an Account of their present Ballances, and to let the Lords know the Reason, and then to ask Time for more perfect Accounts, if such should be required; which were not.

As to their making a *false Shew* of Cash pursuant to my Advice and Encouragement,

They have not offered a Word of Proof of any Thing said or done by me, or by my Order, concerning any Part of that whole Affair; if they had, I am sure, whatever had appeared to be done by me, would at the same Time have appeared not capable of the Construction in the Article.

But instead of that they have given a confused uncertain Account of something, that passed between Mr. *Cottingham* and the masters; but never called Mr. *Cottingham* to bring it Home to me, nor any way shewn that I knew any thing of it, either before or after. Nor do I really understand it at last. I do not apprehend that Mr. *Cottingham* advised them to furnish one another with money, but upon good Security; nor did they do it. Nor do I see, what harm it is, if a master, having Occasion for money, borrows it of another master, upon good Security.

The only Person that they seem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he seems to justify himself too.

But if not; there is no Proof, nor Ground of Suspicion, that I was any way privy to it, or assisting in it, or that I had any the least Share whatsoever in it:

And therefore I am not Guilty.

XX, XXI. On the 20th and 21st nothing has been offered.

My Lords, I have now gone through all the several Articles, that have been *endeavoured to be supported* against me; and I think I may say as I did in the Beginning, that except those relating to the Disposal of Places, which are of another Kind and another Consideration, all the rest must, to be made criminal, turn upon that Aggravation in the Articles, from my *inordinate, wicked, and corrupt Designs of procuring to myself excessive and exorbitant Gains and Profits by divers unjust and oppressive Practices after mentioned.*

It is such a *corrupt Heart* only can change Actions, that in themselves are innocent, and

some of them perhaps commendable, into so many Crimes.

And yet it is very extraordinary, and scarce possible to be conceived, but that if there had been such a corrupt Heart, it must have broke out upon some other Occasion of my Life. Not one instance of my whole Life has been yet produced to shew it.

Several of those under me have been examined; several Officers immediately attendant on me, that received considerable Profits and Salaries, to the amount of Three or Four Thousand Pounds *per Annum*, and more; If I had set my Heart upon Gain, a certain Profit might have been there yearly made, amongst those whom I had wholly at mercy, and in private. But there has no Appearance been found of any thing of that Kind: And is it not more likely that I should have laid hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Masters Offices?

The Value of such an Expectation is a mere Trifle; and with Respect to the Probability of its happening, it was exceeding uncertain whether I should have an Opportunity of putting in one single master.

Three masters have happened to die in my Time; and two of those in less than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the last Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are 24 Curfitors; only one has died in my Time: 30 Commissioners of Bankrupts; only one died in above six Years.

Surrenders of the Offices of masters are rarely till after 16 or 17 Years, sometimes 30 or 40 Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more so.

Little therefore was to be hoped from the Profit to be made by masters Places.

My Lords, in the next Place, I apprehend, that it appears I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all those Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) see, whether there be the least mark or Symptom of this impotent Desire of Gain!

What I did proves, beyond all Contradiction, that I never had any such Views, as these they lay to my Charge.

I took not the Advantage I might have done; I took a less Sum, when a greater was offered; and Part of the money was returned again to Mr. *Elde* and Mr. *Tburston*. And when Mr. *Tburston's* money was returned, only for being more than it was expected to be, every thing was in the same State as when it was paid.

And possibly your Lordships will think, from some other Evidence given, that amassing a great Estate was never my View; and that rapacious and base Ways of getting money are not consistent with my Way of laying it out.

As this is a full Answer to the Charge of my Desire of Gain; and the whole *Malignity* of all I am charged with arises from that supposed Principle of my Actions; without this, though there should have been Imprudence, Indolence, too great

great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakness, there has been nothing wicked.

And, if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

My Lords, Having thus gone through all my Observations, it may possibly be expected I should close them with offering something in General: But I think it properer to forbear.

I am not conscious to myself, that it is necessary in this Case to apply to the Passions; which is a common Artifice to assist a weak Defence. If I have done any publick or private Good (of which last some Specimen has been laid before your Lordships) it will, I am confident, have its full Weight.

I submit my whole Life and Conduct to your Lordships Judgment; and rely entirely upon your Justice for my Acquittal.

Mr. *Plummer*. My Lords, I am not going to make any Observations upon this Speech; neither did I interrupt the Lord in making it. But one thing I am to say for Form Sake: We produced to your Lordships a Copy of a Letter writ from Mr. *Lightboun* to my Lord, he hath now read the Original Letter; I desire that the Original may be delivered into Court, that we may have the Perusal of it.

E. of *Macclesfield*. I believe the Gentleman is perfectly in the Right of it. It is here.

The House adjourned to *Friday* Morning next, at Ten a-Clock.

Friday May 21, 1725. The Tenth Day.

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

Ld. *Ch. Jus. King*. Gentlemen of the House of Commons you may proceed.

Mr. *Serj. Pengelly*. My Lords, The Part assign'd to me in this Impeachment against the Earl of *Macclesfield*, is to reply to his Defence upon the *Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and Twelfth* Articles.

Before I enter into the particular Examination of the Objections made against the Charge of the Commons contained in these Articles, and of the matters alledged, either in Justification, or Excuse of the Lord Impeached; I shall take the Liberty of observing,

That your Lordships are now exercising a Power of Judicature, reserved in the original Frame of the *English* Constitution, for the Punishment of Offences of a publick Nature, which may affect the Nation; as well in Instances, where the Inferior Courts have no Power to punish the Crimes committed by the ordinary Rules of Justice; as in Cases within the Jurisdiction of the Courts of *Westminster-Hall*, where the Person offending is, by his Degree, raised above the Apprehension of Danger, from a Prosecution carried on in the more usual Course of Justice; and whose exalted Station requires the united Accusation of all the Commons of *Great-Britain*, by their Representatives in Parliament.

This High Jurisdiction may be exercised for the Preservation of the Rights of the Lords and Commons, against the Attempts of Powerful Evil Ministers, who depend upon the Favour of the Crown;

Or, it may be put in Execution for the Ease and Relief of a good Prince, whose Honour has been betray'd by a corrupt Servant; and yet, whose Clemency makes him unwilling to punish; so that it becomes necessary for his faithful Commons to take into their Care the prosecution of such an Offender.

Former Reigns have supply'd your Journals with many Examples of the first Kind.

The present Reign produces an Instance of the latter Sort, wherein the Commons bring before your Lordships in Judgment a Peer offending, with the greatest Ingratitude, against a most just, and most merciful Sovereign.

For, the King's Royal Munificence bestowed upon this Earl, in the most abundant measure, could not exempt the Inferior Officers from his Exactions, nor protect the Suitors and their Properties in the King's own Court of Chancery.

The general Crime charged upon the Earl, in *Five* of these Articles, is *Extortion by Colour of his Authority as Lord Chancellor*.

The Offence alledged in the other *two* Articles, is *gross and wilful Negligence in his Office, to the great Damage and Loss of the Suitors of the Court, but to his own private Gain and Advantage*.

The particular Exactions are his taking *One Hundred and Five Pounds* from Mr. *Thomas Bennet*, for accepting the Resignation of the Office of *Clerk of the Custodies* in the Court of Chancery, in order to obtain a New Grant to Mr. *Hugh Hamersley*, and procuring the same to pass the Great Seal accordingly.

His exacting *Fifteen Hundred Guineas* from Mr. *Kynaston*, for the admitting him to be a master of the Court of Chancery, upon the Resignation of Mr. *Rogers*.

His exacting the like Sum of *Fifteen Hundred Guineas* from Mr. *Thomas Bennet*, for the admitting him to be a *Master* of the same Court, upon the Surrender of Mr. *Hiccocks*.

His exacting the Sum of *Five Thousand Guineas* from Mr. *Elde*, for the admitting him to be a *Master* of the same Court, upon the Death of Mr. *Fellowes*.

His exacting the like Sum of *Five Thousand Guineas* from Mr. *Thurston*, for the admitting him to be a *Master* of the same Court, upon the Death of Mr. *Borret*.

The last Article relating to Mr. *Thurston* is charged with this Aggravation, *That the former Master was Dead Insolvent, greatly indebted to the Suitors of the Court; and that the Earl did not secure a just Satisfaction to the Suitors*.

And the Exaction of the *One Hundred and Five Pounds* from Mr. *Thomas Bennet*, is alledg'd to be done when the Earl was *one of the Lords Justices*.

These Misdemeanors, as well as all the other Offences, of which the Earl is now accused, were committed by him *whilst he executed the Office of Lord Chancellor*.

From whence the Earl and his Counsel take Occasion to make a Triumph upon the supposed Justice and Regularity of his Administration and Conduct, when he presided in the Court of King's Bench; because the Commons have not produced any misbehaviour in the Execution of

of that Office wherewith to furnish out an Article against him.

This may be an Instance of the Lenity of the Commons, but it is no Proof of the Earl's Innocence; who best knowing his own Behaviour, declines to abide the Examination of his Actions during the six Years of his Continuance in the Office of Lord Chancellor;

But flies to a Sanctuary for Indemnity and Discharge; which shews, that the Earl esteem'd himself more secure under Shelter; than upon a Justification of his Conduct.

And the Success of the Commons, in the very strong and full Evidence, which they have laid before your Lordships in maintenance of those Articles, upon which they have proceeded, leaves very little Reason to imagine that they would have fail'd in their Proof, if they had extended their Inquiry into his former Life; or had enter'd into the rest of the Articles.

And after the strict and long Examination of Witnesses, which has entertain'd your Lordships for so many Days, I may venture to say, that the Consistency and Uniformity of the Proof given in Support of the Accusation of the Commons, upon so many different Heads, are sufficient to convince all the World of the Necessity, which there was, for the Honour of the King, and the Welfare and Satisfaction of the Nation, to carry on the present Prosecution;

And, I hope, have already fully satisfied your Lordships of the Truth and Justice of the Commons Impeachment.

But as there have been several Objections made on the Behalf of the Earl impeach'd, as well to the Foundation of the Charge itself, and to the Event and Consequence of it, as to the Sufficiency of the Evidence of the Facts alledged; it will be necessary for me to give an Answer to these Objections, and to maintain the Charge in these Respects; which I shall proceed to do by shewing, that *the Impeachment is well founded*, and that *the Facts in the Articles before stated have been plainly and fully prov'd*.

The Earl himself began with insisting, That his General Oath of Office has no Relation to the Offences charg'd; and that no Inference can be made to his Prejudice from the Tenor of that Oath.

But the Earl's Remembrance, or Explanation of his Oath, is very defective; he has set it out at large in his Answer, and thereby he swears, that *He will well and truly serve the King and his People in the Office of Chancellor, and do Right after the Laws and Usages of this Realm*; which comprehends the Observation of every thing, which is Part of the Duty of, or incident to his Office,

And the avoiding of every illegal and unjust Action in the Execution of it.

And the Omission of any Part of his Duty, or the Commission of any Offence against the Duty of his Office, is a Breach of this Oath of Office, altho' the Particulars are not enumerated in the Oath; and the contrary Opinion will open a Door to the Commission of all manner of Injustice and Rapine by Civil Officers.

The Earl likewise relies upon it, That the whole Charge turns upon his wicked and corrupt Intent and Views alledg'd in the Introduction, which (as he says) have not been made appear;

But these will be apparent from the Proof of the several Facts charg'd; which, if they are un-

lawful and unwarrantable, and do tend to the raising money by corrupt and extorsive measures; will manifest that Intent, and prove it as strongly as if he had declared his Designs in open Court; for such Acts cannot be done with a good and honest Intention.

The main Objection against the Article is, That there is no matter of a Criminal Nature contained in the money Articles; or if there is a Crime, yet that there is no Punishment annexed or incident to it, which your Lordships can now inflict upon the Earl, after he is removed from his Office.

In answer to which I shall insist That,

The Earl's selling these Offices, or disposing of them for money taken by him before the Admission of the succeeding Officers in the manner alledged and prov'd, is an Offence at the Common Law, and punishable by Fine and Imprisonment, upon Indictment or Information; as well, where the money was taken for an Admission upon a Resignation, as upon a Death.

To make out this, it must be consider'd, That

The King having the executive Power, or the Administration of Ordinary Justice, lodged in Him, is in Consequence obliged to provide and appoint capable and sufficient Officers, necessary for the due Execution of Justice, in his several Courts, for the Benefit of His Subjects: His Coronation Oath proves this.

And accordingly the Crown has always paid the Salaries or Fees of the Lord Chancellor, and other principal Officers of Justice, and also of many inferior ministers, out of the Royal Revenue; and other subordinate ministers were maintain'd by the chief Officer, to the End that the Subject should not be expos'd to Exaction or Oppression, under Pretence of any Demand of Fees or Reward by the ministers of publick Justice for the Execution of their Offices; which is the Source of all that Corruption, which at any Time springs up in the Courts of Justice.

The Antient Law of England was, that none having any Office concerning the Administration of Justice, should take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free and at Liberty to do Justice.

And several Charters of former Kings, and Statutes declaratory of the common Law in that Respect, have been made to enforce the due Observation thereof, as,

Stat. Westm. 1. 3 Ed. I. c. 26. 20 Ed. III. c. 1.

My Lord Coke, 3 *Inst.* 146. says, the *Co. 2. Inst.* 74, 176, 209, 20 *Ed. III. c. 1.* is 210.

only a Commandment of the King; and that there is no Record of any such Act in any Parliament Roll, and yet necessary to be printed, because the 4th Chapter of this Parliament refers to the Pains contained in it.

Yet, if it be only the King's Charter, it is a Declaration of the Common Law at that Time; but it is printed in Old *Rastal's* Edition of *Statutes*, Fol. 89, and in all the rest of the printed Statutes.

Co. 3. Inst. 224, 225.
Co. 3. Inst. 146. cap. 68.
of Bribery, Extortion, &c.

20 Ed. III. cap. 6. and more particularly the act of
11 H. IV. Rot. Parl. Num. 28. by which it is
enacted,

Item, *Que null Chancellor, Tresorer, Gar-
dein de Prive Seal, Counseller du Roy, * se-
rementez a Conseil du Roy, ne null autre Officer,
Judge, ne Ministre du Roy, prenant Fees ou
Gages de Roy, pur leur ditz Offices ou Services
preigne en null Menere en Temps avenir ascun
Manere de Done ou Brocage de nully pour leur
ditz Offices et Services, a faire sur Peyn de re-
spondre a Roy de la Treble de ceo que issi preig-
nant, et de satisfaire la Partie et purys al Vo-
luntas de Roy, et soit dischargez de son Office,
Service, & Conseil pur toutz jours, &c.*

Item, *That no Chancellor (this High Officer is
mentioned in the first Place by Name)
Treasurer, Keeper of the Privey Seal, Counceller of
the King, * sworn of the King's Council, nor no o-
ther Officer, Judge, nor Minister of the King, receiv-
ing Fees or Wages of the King for their said Offices
or Services, take in no manner in Time to come, any
manner of Gift or Brocage of any Person for doing
their said Offices and Services, upon Pain to answer
to the King the Treble of what they so take, and
to satisfy the Party, and to be punish'd at the
King's Pleasure, and shall be discharg'd from his Of-
fice, Service, and Counsel for ever, &c.*

* N. B. The Printed Books have mistaken this Word.

This Statute is enter'd on the Parliament Roll
of that Year, amongst the Records in the Tower ;
it is not indeed enter'd on the Statute Roll: But
the Parliament Roll is the Original, and is the
Warrant for the Statute Roll, and is therefore of
greater Authority.

In the Margin of the Roll is enter'd thus,
viz.

Respectuatur per Dominum Principem & Consilium.

For which Reason my Lord Coke says it was
never printed in the Book of Statutes, of which
he highly complains ; and therefore has recited
it at large, and caused it to be printed in his
3d Inst. Fol. 146. c. 68. of *Bribery, Extortion, &c.*
and c. 101. of *Judgments and Executions*, Fol.
224, 225. which is one of the first Books rela-
ting to the Crown Law, read by the Students of
the Law, and was thus published by that great
Man, to impress an early Abhorrence of every
thing which may tend to Exaction and Extortion ;
and must have often come under the Consideration
of the impeach'd Lord.

These Statutes have indeed been opened, and
alter'd by subsequent Statutes, as to several infe-
rior Officers ; and some small Fees have been an-
ciently allow'd, and permitted in particular Ca-
ses ; but it has been

Co. 2. Inst. 74, 209, 210. observ'd, that from
such Indulgences ma-
ny Oppressions of the People have ensued.

But the Common Law, and the several Acts of
Parliament before mention'd, do not only still
remain in Force, with respect to the Lord Chan-
cellor, but have been confirmed and enforced by
other Statutes.

And the Great Charter of our Liberties, *Ma-
gna Charta*, c. 29. Co. 2. Inst. 55, 56. does im-
ply this,

Nulli vendemus Justitiam aut Rectum ;

which according to my Lord Coke's Comment,

*Is spoken in the Person of the King, who in Law
is present in his own Courts of Justice, and repeat-
ing these Words, which (says He) extend to the
End, which is Justice, and to the Mean, where-
by Justice may be attained, which is the Law ;
or, as it must be understood, the Administration
of the Law by the Officers of Justice ; unless*

it can be supposed, that the Statute provides a-
gainst the lesser Evil, but allows the greater Mis-
chief ; that it prohibits the Sale of a particular
Decree or Order, which may be right and just in
itself ;

But leaves the King's superior Officer at Li-
berty to sell the whole Body of the Suitors of
the Court in the Gross, to the Exaction and Op-
pression of the under Officers, in the Fees which
they shall demand against Law and Right.

So that if the Earl impeach'd had exempli-
fied this Rule of my Lord Coke in the Court of
Chancery, where he immediately represented the
King's Royal Person ; and once in a Term sitting
in Court between his Masters, who paid for their
Places out of the Suitors Effects, had repeated to
the Suitors this glorious Declaration,

Nulli Vendemus Justitiam ;

He must have made a very inconsistent Figure, in
the Opinion of the meanest Capacity.

It will then be plain, That as to such Offices,
which are in the immediate Gift and Disposal of
the Crown, they cannot in their own Nature be
saleable, or disposed of for money ; because the
King himself cannot be supposed to suffer them
to be put to Sale.

And the Ministers of the Crown, who have no
immediate Right in the Office, and are only to
execute and confirm the King's Pleasure in the
Disposal of the Office, cannot sell that which is
not their own ;

Nor ought, or can they lawfully take any Fee
or Reward, for accepting Resignations, or mak-
ing new Grants, or Admissions into Places, or for
conferring inferior Offices, with which they are
intrusted by Virtue of their own Office ; which
would be the taking money for the doing of their
Office, contrary to the Law, and the before men-
tioned Statute.

But there is another very good Act of Parlia-
ment, which has been read at your Lordship's
Table, and proves this Practice of selling such
Offices, to be an Offence at the Common Law,
viz.

12 Rich. II. c. 2.
Co. 1. Inst. 134. a. Inticuled, *None shall*
Co. 3. Inst. 145, 147, 148. *obtain Offices by Suit*
or for Reward.

Item, *It is accorded, that the Chancellor (by
expres*

express Name) *Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls; the Justices of the one Bench, and of the other; Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King, shall be firmly sworn, That they shall not ordain, name, or make any such Officers, nor other Officer or Minister of the King for any Gift or Brocage, Favour or Affection.*

The Act proceeds farther in a different Form of Expression, and to another matter :

Nor, that none which pursueth by him, or any other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other; but that they make all such Officers and Ministers of the best and most lawful Men.

The Earl apprehended the Strefs of this Statute, and how much it pressed upon him; and therefore has endeavoured to distinguish himself, not only out of the Oath, but out of the intire Act, by objecting, that this Statute, and the Oath therein directed, only extend to such Nominations as are made in the Nature of Elections, by an Assembly of all these great Officers and Ministers, when they are called *together* for that End; which Word (*together*) is of his own inserting, to serve his Purpose; as in the Case of *Sheriffs*, and not to their single and separate Nomination of Officers, in Right of their respective Offices by themselves.

This is the Earl's own Objection, and not of his Counsel, and will (if allow'd) expound away the whole Act, in all the express Instances mentioned in the Statute, save one;

For there is but one Officer named in the Act, who is nominated thus in an Assembly or public meeting, which is *Sheriff*; and all the rest are ordain'd, and made by the great Officers separately, in their own Right; as *Justices of Peace* by the Chancellor; and *Escheators, Customers, and Comptrollers* by the Lord Treasurer.

And the rest of the Words of the Act, *viz. Or any other Officer or Minister of the King*, will be totally expunged by this nice Interpretation.

But the Words plainly mean, that every one of these Officers, who by virtue of his Office shall be call'd (not call'd *together*) by Command of the Crown, or in Execution of his Office, to name or make any inferior Officer, shall be sworn; for they never are all call'd together, unless on the Nomination of *Sheriffs*.

The Earl, for more Security, and for the sake of better Company, objects farther; That the Argument from this Act and the Oath will go too far; for then they are sworn not to prefer any *who make Suit or Application for any Office*.

But that is no Part of the Oath; and they are only sworn so far as the Statute extends it, which is to the former Part; and this Clause in the Conclusion of the Act is only directory, and introduces a new Instruction to the great Officers, but does not carry on the Purport of the Oath; for the Words are, *It is Accorded, that the Chancellor, &c. (in the Affirmative) shall be sworn, that they shall not name, &c.* and the Sentence which follows is a new Clause, beginning with a Negative, *viz. Nor, that none which pursueth, &c. shall be put into any Office, &c.* and refers to the Person applying, and not to the Officer appointing.

So that this latter Part of the Statute ought to be observ'd; but the Officer is not required to be sworn to the Observation of it.

This Statute takes it for granted, that the contrary Practice of naming subordinate Officers for Gift or Brocage was unlawful before, at the Common Law; since it does not create or enact it to be an Offence, but provides an additional Constraint or Obligation upon the superior Officer by an Oath, not to commit the Offence; and it still remains an Offence at the Common Law, and don't depend on the Statute, but is a great Offence, altho' the Oath be not taken.

This Statute contains the most extensive and general Words, and mentions Officers of many Sorts, and different Degrees, as well high as low, relating to the Peace, publick Justice, and the Revenue; and that no Officer, of any Kind whatsoever, in the King's Service, nam'd or ordain'd by the great Officers of State, might escape or be omitted, the Act concludes the Description with these Words; *Or any other Officer or Minister of the King;*

And therein manifestly comprehends both these Offices of *Clerk of the Custodies*, and of *Masters in Chancery*:

For this Statute refers to Officers who are only nam'd or recommended to the King by the Chancellor, &c. and yet are constituted by the King's Letters Patents, as *Justices of the Peace, and Sheriffs*, whereby the usurped Fee for Recommendation is declared illegal; and also to other Officers, who are immediately constituted and appointed by the chief Officers, by Authority deriv'd from the King, and by virtue of the Trust in them reposed for the King's Honour and Service, and for the Benefit of his People, as *Escheators and others*; and thereby the other pretended Fee for Nomination is condemned.

Sheriffs and *Escheators* named in the Act, are Officers relating to the Administration and Execution of Justice; and *Escheators* more especially, to Inquisitions touching Idiots and Lunaticks, and the Commissions and Proceedings thereon; which is the chief Part of the Trust and Office granted by the Letters Patents to Mr. *Hamersley*, as *Clerk of the Custodies*, and which was resigned by Mr. *Thomas Bennet*; and it will appear by the Patent itself, that this Office in the Court of Chancery, has a very near Relation to the Office of *Escheator*; and the Grant very fully describes the Nature and Antiquity of this Office.

And as to the Nature and Antiquity of the Offices of *Masters in Chancery*, they appear fully from the Oath taken by every *Master* upon his Admission, which is of the same Import and Effect, in many things, with the Oath taken by the Lord Chancellor himself, *viz.*

To serve the King and his People, and to counsel the things that toucheth the King; to prevent the Disberitance of the King, or Fraud to his People; and not to disclose the Counsel which he shall give touching the King; and to redress Damage or Fraud in the keeping the Great Seal, and to advise the Chancellor thereof, &c.

And also from the ancient Commissions produced and read, giving the Masters Authority, by the Name and Description of *Masters of the Court*, to hear Causes, and make Decrees (in like manner

in manner as the Judges Assistants) in the Absence of the Chancellor; and to punish Contempts, and to do other like Acts of Jurisdiction; and likewise from the actual Exercise of their Offices in making Reports, and Taxation of Costs, and the manner thereof prov'd by some of the masters (and not contradicted) as that a *Subpœna* issues immediately upon the master's Taxation of Costs, without any Order or Confirmation of the Lord Chancellor; that their Reports in other Instances are turn'd into Decrees of Court, if not alter'd upon Exceptions, and from many Authorities in the Law Books.

By all which it is evident, that the Offices of *Masters in Chancery* are judicial Offices, or Offices which partake of a judicial Authority and Nature; and do touch and concern the Administration and Execution of Justice in that Court; and that the *Masters* are associated for that Purpose to the Lord Chancellor, as alledged in the Articles.

But upon this Occasion it will be proper to recite more particularly the Authority of the Statute of

A. 13 Edri. I. call'd Westm. 2. cap. 24. Et quotiescunque de cætero evenerit in Cancellaria, quod in uno casu reperitur breve, & in consimili casu cadente sub eodem jure, & simili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciundo, vel atterminent querentes in proximum Parliamentum, &c. & de consensu jurisperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Justitia perquirenda.

Co. 2. Inst. 405, 407. Those here called *Clerici*, were at this Time, and before, called *Magistri Cancellariæ*, and were associated to the Lord Chancellor; of whom *Fleta* saith,

Cui associantur Clerici honesti & circumspècti, Domino Regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant plenorem, quorum Officium sit supplicationes & querelas conquerentium Audire & Examinare, & eis super qualitatibus Injuriarum ostensarum, debitum Remedium exhibere per brevia Regis.

The granting and issuing the Writ, or first Process, upon the Prayer of the Plaintiff, or Party prosecuting, is the first judicial Act of the Court, upon the Commencement of a Suit.

And this proves strongly, that the King by his Royal Office, confirm'd by this Act of Parliament, did at his own Expence, and not at the Charge of the Suitor, provide these *Clerks or Masters*, to the End, that no Subject who had a Right, should be without a Remedy in the King's Courts;

Ne curia Domini Regis deficiat conquerentibus in Justitia perquirenda.

And the Nomination of these *Masters* is only intrusted with the Lord Chancellor, as representing the King, and for the Relief of the Subject.

13 Edri I. Stat. Westm. 2. cap. 24, 50. Co. 2. Inst. 407, 486. Co. 1. Inst. 54. b. John Webb's Case 8 Co. 48, 49. Co. 3. Inst. 82.

So that it is a Breach of his Trust, in the Lord Chancellor, to confer any of these Offices for Gift or Brocage, or to name and appoint unfit and insufficient Persons; since it is the Duty of his High Office to provide a Supply of proper Officers to carry on the due Execution of Justice in that Court.

But it is said, That it has not been constantly used to put all the *Masters* into Commission,

and that in the Commission 9 Oct. 4 Ed. VI. four of the *Masters* only were in Commission; and when they are in Commission, that they have no Authority to act without the Presence of the *Master of the Rolls*, or one of the *Judges*; and therefore these Commissions did not give them a judicial Authority.

These Commissions, as well as the Office of a *Master*, subsisting so anciently, shew, that *They* were to be taken Notice of, and comprehended within the Statutes made to prevent the Sale of *Offices of Justice*; and of late Times they have all been put into the Commission, as appears by the late Commissions granted to the present *Masters*, since the Earl had the Custody of the Great Seal, and produced at the Table; and (without entering into the Dispute between the *Master of the Rolls*, and the *Masters in Chancery*, touching Jurisdiction, wherein the Earl, in his Defence, has declared, he thought the *Masters* were in the Right) the *Judges* themselves in these Commissions are only authorised to hear Causes, and make Decrees, with the Presence and Concurrence of two *Masters*; so that the Authority under this Commission is not less of a judicial Nature, from the Number of Persons necessary to make a Court; no more than it can be argued from the same Reason, that the *Judges* in that Commission are not *judicial Officers*, because they cannot make a Decree without two *Masters*.

And altho' the Commission is not properly incident to the Office of *Master*, as annexed thereto; yet as it has always attended upon, and accompanied the Office, it proves, that the *Masters* from the first issuing these Commissions, have been always invested with a general judicial Power, if they had not enjoy'd such Authority before.

But it is not necessary to rely intirely upon that Point; for if these *Offices* were only *Ministerial*, yet they concern the Administration and Execution of Justice in the Court of Chancery, and, as such, are under the Regulation of the like Offices at the Common Law, and are fully within the Description of the Statutes of 12 Ric. II. and 5 and 6 Ed. VI. And this,

According to the Earl's Opinion, when he endeavour'd to terrify the *Masters* to contribute to Mr. *Dormer's* Deficiency.

And as the Earl impeach'd, in Right of his Office of Lord Chancellor, was only intrusted with the Nomination of the *Masters* for the Service of the King, and for the common Benefit of all the King's Subjects; these Offices are no more saleable, or to be disposed of for money, than if they had remain'd in the immediate Gift of the Crown, by Grant under the Great Seal.

It was objected, that *Masters in Chancery* are not expressly mentioned in the Act of 12 Ric. II. and that the Statute is a Penal Law, and ought to be construed strictly, and ought not to be extended by Equity to these *Officers*:

But the constant Rule of Exposition of Statutes of this Nature contradicts that Assertion; for,

Statutes made for the Furtherance and Advancement of Justice, for the Suppression of Extortion and Oppression, which (*says the Book*) are horrible and odious Crimes, shall have a benign and favourable Interpretation.

Beaufage's Case, 10 Co. 101, 102. *Twine's Case*, 3 Co. 82. *Gooch's Case*, 5 Co. 60. *Booth's Case*, 5 Co. 77. *Powlter's Case*, 11 Co. 34.

And upon this Occasion permit me to repeat the Words of that Great Man, the Lord Coke:

Extortion is no other
Beawfage's Case, 10 Co. *than Robbery, but is*
101, 102. *more odious; for Rob-*
bery is open, and has al-

ways the Appearance of Vice; but Extortion puts on
the Visage of Truth, and is more difficult to be try'd
and discern'd, and is for the most part accompanied
with the damnable Vice of Perjury in the breaking
that Oath which the Of-

Co. 3. Inst. 149.

fer took when he was
admitted to his Office;

Which proves the Import and Effect of the general and usual Words in an Oath of Office.

And here I can't help taking Notice of the Attempt of the Earl Impreach'd, by his own cross Examination of Mr. Eyres, the Officer of the Exchequer, and the Questions proposed by himself relating to the manner of his being sworn pursuant to the Statute of 12 Ric. II. viz. The Earl ask'd him,

What was it that you did read? Did I say any thing? Or what did I do? Or to that Effect;

The Officer answers, *I read over the Statute out of the Exchequer Book in Old French; and after I had read it, I carried the Bible to the Lord Chancellor, &c. who, at the Conclusion, kiss'd the Book, but he said or repeated nothing. But this has been the ancient Form, which I have observ'd for forty Years, and I believe has been always us'd.*

In this Instance, your Lordships saw an Endeavour of the late *Supreme Officer of Justice* to explain away, or turn to Ridicule, the strictest and most solemn Tie and Obligation upon his Conscience and Honour, imposed by Authority of Parliament for the preventing Corruption; whereby the Earl did then (tho' since upon the Observation made by the World of such his Behaviour, he has a little recollected) shew, that his calling God to Witness to his Promise for the Observation of an Act of Parliament made against that Vice, deserv'd to be as little consider'd by him, and to have as little Influence upon his mind,

As Oaths taken by Traders at a certain Place, for their better Accommodation in carrying on a prohibited or fraudulent Traffick.

This is a full Explanation of his Reserve in an equivocal Answer, where he says, *That when he took the usual Oath of Office, he at the same Time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth.*

Altho' he could not but understand the meaning of the Introduction to the Articles, alledging, *That he did take such other Oaths as have been accustomed;* and could not but remember his repeated Observations of the Ceremony, at least, which he had annually practis'd under this Statute.

But the Earl's Counsel have made it necessary to enter farther into this Transaction, by their insisting, that here was no *Formal Oath* prescrib'd or taken, no Entry or Registry kept of it; and that the reading over the Statute is merely an Admonition or Exhortation by the Officer to the whole Assembly.

And the Earl has insisted, That it is not an Oath of Office, because an Oath of Office (as he express'd it) is taken once for all, but this is repeated Annually; and if it is an Oath of Office, yet it is not particularly charged in the Articles, nor refer'd to in any manner, because the Articles sup-

pose it to be taken *at the Time of his coming into the Office*, which was in May 1718. and this Oath, at the soonest, could not be taken by him till the November following.

To this I answer, That the manner of administering this Oath is in the most solemn and significant Form possible; for the repeating an Oath briefly to observe the Statute in all Things, or containing a short Abstract of the Substance of it, would not be near so explicate and directory, as the reading over aloud, by a proper Officer of the Court of Exchequer, the *Act of Parliament* itself, the *Chancellor* at the End *kissing the Bible*; an Exhortation, which ought to make the deepest Impression upon the Conscience of a righteous Magistrate, when confirm'd by the Sanction of a Promissory Oath.

And to say, that it is no Oath of Office, because he repeated it Annually, is to contradict the Act itself, which enjoins him to take it *as Chancellor*, and in the actual Execution of his Office; and the Repetition of it Annually, upon this great Occasion of nominating Sheriffs, demonstrates the Opinion of our Ancestors, of the Importance and Consequence of the Observation of it, for the Service of the King, and the Benefit of his Subjects; because there can be no other Time more memorable, or more likely to engage Attention to it, than in so publick an Assembly proceeding to appoint the *Sheriffs* of the several Counties of the Kingdom, upon whose Power, Fidelity, and Justice in the Execution of their Offices, not only the Properties, Liberties, and Lives of the Subjects of this Kingdom so much depend, but even the Security of His Majesty's Person in any Time of Danger; and the very Being of the *House of Commons*, upon the just and fair Returns which ought to be made by *Sheriffs*, upon the Election of *Members* to serve in *Parliament*.

Can this Statute then be treated and called obsolete, which is thus publickly proclaim'd every Year, to enforce the more exact Observation of it?

And to say, That the Articles are confin'd to such Oaths of Office, as were taken by him on his first Appointment, is an equivocal Interpretation peculiar to the *Answer*; for the Articles refer generally to *all such Oaths* which have been accustomed to be taken by the Lord Chancellor by reason of his Office. And this Oath ought to have been taken by him upon his first Appointment, if the Usage of administering it at this annual Season had not been an Excuse for his postponing it to that Time; and from that Usage it has follow'd, that this Oath is not taken by any of the Officers at any other Time; but it was the Earl's Duty to observe this good and wholesome Law, as well before his taking this Oath, as afterwards.

And the Earl could not have forgotten this his solemn Engagement without Design; it was for his Interest not to mention it; and he might flatter himself, that the managers would not have taken notice of it.

And as to the Difference in the Form of administering *this Oath* from the common method, it is not material; for the usual Form is not essential to the Oath itself, it being
Co. 3. Inst. 164, 165. sufficient that there is a calling *Almighty God* to be a Witness of the Truth of the Earl's Promise, by his touching the *Holy Scripture*.

But whether the Oath be constantly or usually taken in Practice, or not, it will not alter the Law; and the Crime of selling these Offices for Gift and Brokage still remains, notwithstanding the Neglect of this additional Obligation to refrain from the Commission of it.

The Objections made by the Earl and his Counsel upon this Head, have occasioned this Digression.

The next Part of the Earl's Defence is a direct Justification of the Fact of which he is accused; and, not contented to leave it to his Counsel (for whose Excuse it might have been said, that they were willing to try every thing) the Earl himself has insisted upon it, that his taking these Sums of money is lawful; because, as Lord Chancellor, he had a Right of Recommendation of Mr. Hamersly, as an Officer appointed by Patent under the Great Seal, and also the Right of Nomination and Admission of the Masters, solely in himself; and a man may dispose of and dispense his own Favour upon what Terms he pleases; and Officers may give money for their Places, and yet be good Officers, as it is suggested.

But some Instances of a very extraordinary Nature were cited out of the *History of the Exchequer*, to prove that Chancellors, Judges, and other Officers of Trutt, had purchased their Places of King Stephen and King John; viz. That Richard Fitz-Alured gave King Stephen fifteen Marks to bear Pleas; and Walter de Gray gave King John five thousand Pounds to have the King's Chancery for Life; and other Officers there named.

Mr. Madox, the Collector and Publisher of this *History of the Exchequer*, 43, 44, mentioning these Instances, says, That in the Time of King Stephen, Geoffrey the Chancellor fined in three thousand and six Pounds and a Mark for the King's Seal. This I understand to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. But at the same time Mr. Madox the Publisher makes this honest Reflection upon his Precedents;

Which Precedent, says he, may justly seem strange to us at this Day; but it seemeth that in those times things of the like kind with this were sometimes done. Which Observation the Counsel, or the Earl himself, were not pleased to repeat.

And some Instances were cited out of the Roman Law, where Part of the Revenue of the Emperors did arise out of Perquisites of this Kind; from whence it was infer'd, that the taking these Sums for Sale of Offices, was not against Natural Justice.

But these are of no Authority in this Kingdom, when they are repugnant to the Law of the Land, and have never been receiv'd; and the Common Law of England must be the Rule of Justice in this Case.

And Mr. Dupper, the Earl's late Under Secretary of the Bankrupts, was produced, to prove by his Opinion and Observation, that no Office whatsoever passing by Grant under the Great Seal ought to be surrender'd or granted without an Acknowledgment (as he call'd it) to the Chancellor or Keeper; and that he had formerly communicated these his Thoughts to the Earl and his Secretary Mr. Cottingham.

And your Lordships, upon Recollection of the Evidence, will find the Use and Improvement they were pleased to make of this Advice, in the Case of Mr. Thomas Bennet's Surrender.

But in Answer thereto, it appeared upon the Evidence in regard to Mr. Hamersly's Office of Clerk of the Custodies, that there being no Salary annexed to the Place, it did belong to the Secretary of State to recommend or to obtain the Sign Manual; so that the Earl's Desire of Gain in this Instance carry'd him beyond the Limits of his own Office, where he had no Right of Recommendation, to raise the poor low Sum of One hundred and five Pounds, at the Time when he was One of the Regents; and thus he join'd his Share of the Royal Authority to his Power of Lord Chancellor, in order to get and secure to his own private Use so considerable a Sum as One hundred and five Pounds from an exhausted Matter! A strong Evidence of his corrupt Intent and Views.

This single Exaction overturns the whole Fabrick of Merit, supposed to be raised by the few scatter'd Instances of Charity, which he has been pleased to divulge in Evidence.

But if the Authorities cited for the Earl to this Purpose prove any thing, they prove too much; that the Offices of the Judges in the Supreme Courts of Justice were lawfully to be bought and sold at the Common Law, before the Act. 5. Ed. VI. which is an Opinion that the Earl himself, in his Answer, did not think convenient to disclose or insist upon; and it is going a long way back for an Example to prove the Lawfulness of an Action, which he could not find without the Assistance of an Antiquary.

He might have brought more recent Instances from Countries, where unlimited Power does prevail, and where Justice itself; and the Places in which it is to be dispensed, are not to be attained without a Bribe.

But it seems as if the Lord impeached had an early Inclination to look out for a Precedent, to give him a Countenance in such like Practices; yet he found none publish'd to the World, except in the Reigns of two Princes, whose arbitrary Behaviour produced that memorable Law, the Great Charter of our Liberties, first pass'd in the Form of a Charter ann' 17 Joban', and confirm'd ann' 9 Hen' III. wherein it was at that time found necessary to declare by a Law, *Nulli vendemus Justitiam aut Rectum*. Magna Charta, cap. 29. Co. 2. Inst. 55.

From which Declaration of the Crown it necessarily follows, that the Administration and Execution of Distributive Justice to a free People, are not to be esteem'd the Property or Estate of a Great Officer, to be raised or increased by his Sale of the subordinate Offices of Justice; but are the great Prerogatives of an English Prince, to be exercised freely for the Safety and Ease of the Subject, without introducing Expence and Charge upon the People, in their Application for Justice and Right.

And when a Doctrine of this dangerous and destructive Nature to the Rights and Liberties of the whole Nation, as it exposes their only Security to Sale for money, is thus avowedly and openly justified and insisted upon at your Lordships Bar, by a Peer of your House, who has born the high Office of Lord Chancellor of Great Britain in the first Reign under the Act of Settlement of the Crown: Your Lordships will take the best measures to render the Subjects secure in their Expectation of Justice, by a suitable and public mark of your Detestation of so licentious an Opinion; and thereby convince the Nation, that even the meer Suggestion of such a corrupt Principle is an undelery'd Reproach,

and highly injurious to his Majesty's Administration.

Yet if it should be supposed, by way of Argument (which has not been proved, and therefore cannot be admitted) that the Sale of these Offices has been of late tolerated, for the greater Increase of the Perquisites of the first Officer of the Crown, in the principal Court of Justice; yet the Earl's raising and receiving these exorbitant Sums, above double to any Instance before his own Time, which he has made appear, upon a Pretence that the Business of the Court of Chancery was very much advanc'd during his Residence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his method of Practice there can be no Distinction between a Present and a Price; for he made the *most* always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took *fifteen Hundred Guineas* for his Good Will and Approbation merely; and when he admitted upon a Death, he took *five thousand Guineas* at the least, altho' the Office was greatly in Debt; as in *Borret's Case*, where the Suitors will lose upwards of *twelve thousand Pounds* of their Effects, by the lowest Computation.

As for the small antient Fees which have been paid to the Great Seal for Time immemorial, upon the sealing every Patent, these are out of the present Question; and where Usage beyond Time of memory has allow'd the Receipt of these little Sums, it will be presum'd (if there was Occasion for it) that some Act of Parliament had pass'd to make it lawful.

And when it is said, that a good Officer may give money for his Place, and may resist the Temptation of Extortion; it is what the Law of *England* would not trust to human Frailty; and if all the Actions and Behaviour of the best of the *Masters*, with respect to their Fees, their manner of Proceeding upon References, and their disposing and trafficking with the money of the Suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in Evidence upon this Trial, but that the Temptation and Inclination to Profit, towards reimbursing themselves the money advanced to the *Earl*, and the preceding *Master*, have overcome their most steady Resolutions to Virtue and Self-denial.

As to the citing particular Cases, wherein the Sale of Offices Judicial, or of the like sort with those in Question, have been determin'd to be illegal at Common Law, I apprehend it is not necessary; for that the Reason of the Common Law, and the Purport of the several Statutes mention'd, do fully and sufficiently maintain the Validity of the Articles in that respect.

And the managers might more properly call upon the *Earl* and his Counsel for Authorities or Judgments to the contrary.

But matters of a corrupt Nature are always privately transacted, and no Witnesses, or at most very rarely, are to be produced besides the Parties concern'd.

And if the *Earl* will produce any Instance in the Books, where such a Transaction has been mention'd, I may engage to shew him at the same time, that it has been holden illegal.

The Authority already cited by a Learned manager is express:

Stockwith *cont'* North, *Moore*
781. North was fined in the Star-Chamber, for that he being Sheriff of the County of Nottingham did take money for the Goaler'ship and the Bailiwick for his Year; and at first he gave them to his Servants, who sold them, but himself received the money; and this was adjudged to be a letting to Farm of his County, contrary to the Statute of 4 Hen. IV. cap. 5. Yet there note, says the Reporter, that the Statute itself gives a Penalty certain and pecuniary, and it is *malum prohibitum*, non in se. But the Court held, that in as much as great Corruption ensues from the Greediness of the Officers, and they are enforced thereto by the Prices which they give for Things which ought not to be sold, that this setting of offices to Farm and Sale, is *malum in se*, and *finable*.

But the *Earl* objected, that this Opinion is extrajudicial; and the Court were mistaken in one part, when they say, that the Statute 4 Hen. IV. did inflict a Penalty; whereas it did not, but only prohibited the letting to Farm the Bailiwick, which was lawful before, and therefore properly finable, as a Breach of the Act.

In Answer to which, it is plain upon Perusal of the Book, that that Part relating to the Act 4 H. IV. imposing a Penalty, is only the Note of the Counsel, or Reporter, who took that particular Offence to be only *malum prohibitum*; and whether the Court did impose that Fine by Force of the Statute, or as warranted by the Common Law, it will not weaken the Authority; because the Court expressly declare it to be their Opinion, that the selling of the Office of Goaler was *malum in se*, and *finable*; which shew'd the Judgment of the Court on that part of the Question; so that there is no mistake to be imputed to the Court.

And my Lord *Coke*, in his 3 *Inst.* fol. 146. cap. 68. of *Bribery and Extortion*, and fol. 224 & 225. cap. 101. of *Judgments and Execution*, describes these Crimes as *Offences at the Common Law*, and puts his Examples accordingly, which may be there consulted.

So in the Case of *Smith and Mall*, 2 *Rolls*, Rep. 263. and *Linley's Case*, *Hutton*. 70. where it is holden, That if any Judge or Officer takes more than the usual Fees, he is punishable by Indictment at the Common Law. Which necessarily implies, that they are punishable at the Common Law, for taking money where no Fee at all is due.

The strict Definition of Extortion is, *When any Person, Colore Officii extorquet Ecceam non debitam, plusquam debitam, aut antequam debitam.* *Hutton*. 52, 53. *Co.* 3. *Inst.* 149, 150. *Beaufage's Case*, 10 *Co.* 101, 102. *Dive and Manningham*, *Plowden*, 68. a. *Co.* 1. *Inst.* 368. b. *Sir John Bingley's Case*, *Poph.* 149. *Rex & Gover*, 1 *Sid.* 91.

But largely, *Extortion is taken for any Oppression by extort Power, or by Colour or Pretence of Right.* *Co.* 1. *Inst.* 368. b.

But it is urged by the *Earl* and his Counsel, that it appears from the Statute 5 & 6 E. VI. that the buying or selling of these Offices was lawful at the Common Law, and is not prohibited by the Statute 12 *Rich.* II. and that the Statute of E. VI. neither declares nor creates any Crime, but only imposes a special and particular Penalty, by Loss of the Office or Disability, and therefore the *Earl* having been dismiss'd the Great Seal, there can be no Punishment inflicted upon him.

It is agreed by them, that the Statute 5 and 6 E. VI. includes both the Offices of *Clerk of the Custodies*, as an Office of Clerkship in a Court of Record:

Noy 102.

Record; and of the *Masters in Chancery*, as Officers touching the Administration and Execution of Justice, in point of Description.

And upon reading the Act it is evident, that this Statute in the *Preamble*, and throughout the whole Act, treats this way of dealing, as a *Corruption*, and illegal in its Nature, and expressly calls it so.

The *Preamble* says, *For the avoiding of Corruption, which may happen hereafter to be in the Officers and Ministers in those Courts and Places, wherein there is Requisite to be had the true Administration of Justice or Services of Trust.*

And this Statute carries the Punishment farther, but does not take away the Punishment of it as a misdemeanor at the Common Law, by Fine or Imprisonment upon Indictment.

And there is not any *Proviso* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court; but in consequence, when it mentions other Courts in a *Proviso*, must more strongly be intended to include them in the Act.

The *first Proviso* extends to Offices of a private Nature, and to Offices of Inheritance, and can't relate to any *judicial Office*, nor to either of these Officers, who hold only for Life; altho', where the Nature of the Office has allow'd it to become inheritable, it makes it alienable; but no such Instance is to be met with in the Case of *judicial Offices*.

The *second Proviso* is to prevent any Person's being surpriz'd into the Penalty unwittingly, before Notice of the Act, or by a Retrospect. And altho' the Statute takes Notice that divers Persons did make such corrupt Bargains, it is only by Way and with an Intent of preventing, and not of legitimating them; and it leaves them all as they stood at Common Law, until that Day appointed by the Act was past.

And the *last Proviso* does nothing more, and leaves the Justices to act upon their own Knowledge and Discretion in the Law, according to the Nature of the Office, without casting any Imputation upon them unnecessarily.

But so exceeding cautious was the Legislature, that there is not any Expression, in any Part of the Act, to declare or enact such Bargains in the Cases excepted, to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that altho' the *Earl of Macclesfield*, by his being dismiss'd from the Office of *Lord Chancellor*, is not liable to suffer the additional Punishment, contain'd in this Act, of Loss of his Office: Yet he will still be liable to the Punishment at Common Law, and upon the several other Statutes, and accordingly remains open and subject to your Lordship's just Sentence.

For where a Statute does give or impose a new Penalty, for a matter which was an Offence at the Common Law, the Prosecutor may pursue either the Remedies; altho' where a Statute makes or creates the Offence, that Remedy must be taken which the Statute gives.

Reg. cont. Wigg' Pas' 4. Ann. Banco, Regim' Salk. 460. 2 Ann' Leicest. & Mansf. 2. Sid. 32. Dr. Haff's Case, 9. Co. 74. Cranbark's Case, 2. Rolls Rep. 29. Burgen's Case, 1. Ven. 13. 1. Sid. 409.

Thus I have gone into this long Debate, to shew that the *Commons* have founded their *Articles* upon the general Rules of the Common Law, supported and enforced by divers Acts of Parliament.

As to the Proofs;

I shall now take notice of the *Evidence* upon

the particular *Articles* assign'd to me, and shall observe not only upon the Proofs given by the *Commons* in maintenance of those *Articles*, but likewise upon the Examination made on behalf of the *Earl* impeach'd, and in his Defence.

As to the *money Articles*, I shall make this general Observation upon the Evidence, that it has been agreed by all the Witnesses examin'd there-to, as well by Mr. *Cottingham*, the *Earl's Secretary*, and on these Contracts his Lordship's Broker, as by the *Masters* themselves, and their Agents, that the whole Transaction was done and finish'd, and the money actually paid and deliver'd into the *Lord Chancellor's* own Hands (except Mr. *Thurston's Five Thousand Guineas*, which were deliver'd to another for his Lordship's Service) before the Resignation of the former Officer was accepted, and before the Admission and Swearing of the Successor.

So that the principal Point and main Stress of the *Articles* are thus in fact agreed upon by both Parties.

But as to these *Articles*, and more particularly with respect to the *One Hundred and Five Pounds* receiv'd from Mr. *Thomas Bennet*, and the *Fifteen Hundred Guineas* each receiv'd from Mr. *Kynaston* and Mr. *Bennet*, the *Earl* and his Counsel have suggested a Deficiency in the Proof, arising from a Contrariety in the Evidence given by Mr. *Cottingham* the *Earl's Secretary*, to what has been sworn by Mr. *Bennet*, Mr. *Kynaston*, and Mr. *Charles Baily*; and, upon the Credit of the *Secretary's* Testimony, would suppose that each of these Sums proceeded first from the free and voluntary Offer of the *Masters*, and was not insisted upon by the *Earl* or his *Secretary* before hand, as charged in the *Articles*, and prov'd by the *Masters*, but only accepted and receiv'd by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Transaction, and the Circumstances of the Persons, do very strongly support the Credit of the *Witnesses* produced by the *Commons*, and the Probability of their Testimony, who have prov'd every Part of those *Articles*, in the very Words of them; and Mr. *Cottingham* himself has confess'd enough to maintain the *Articles* in Substance, altho' he should be credited in any Circumstance wherein he varies from the other *Witnesses*.

As to the *ninth Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* so large a Sum for his Admission to the Office of a *Master*, which he had borrowed of his *Brother*, and who had paid no Admittance money for this Place of *Clerk of the Castles* to the former *Chancellor*, the *Earl Cosper*; and who had likewise been informed by his *Brother* Mr. *John Bennet*, that nothing was paid by him to *Earl Cosper* upon his being admitted to the same Office, and that *Lord Cosper* himself had declared to Mr. *John Bennet* that there was nothing due upon his Admission; that Mr. *Thomas Bennet*, under these Circumstances, should of his own Accord first propose a *Present* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And *Cottingham* himself has own'd, that he told Mr. *Thomas Bennet* that something was expected, and that he carried the *Proposal* of *One hundred and five Pounds* to the *Earl*, who accepted it, and thereupon he receiv'd the money from Mr. *Bennet*, and paid it over to the *Earl*; after which the *Earl* then took the whole Care upon himself

of

of expediting the *Sign Manual* and the *Patent*.

Now, *Cottingham* being the Factor employ'd by the *Earl* in all these Bargains, who has been avow'd by the *Earl* to be his Agent, and has been produc'd as his *Witness*, and supported by him; every thing that *Cottingham* declares and acts in completing these Contracts, will be consider'd as the Act of the *Earl* himself, and his own bartering; especially, when *Cottingham* (as he deposed before your Lordships) did not conclude the Bargain, until he had receiv'd the *Earl's* Approbation thereof; and when the *Earl*, at the End, confirms the whole by his Receipt of the money.

And a *Lord Chancellor's* expecting something, or a Sum of money, be it more or less, and this his Expectation declared and notified by his *Secretary* to the Person applying to be admitted into the Office, is a peremptory Demand, and an insisting, when the *Lord Chancellor* alone, and no other, has the Power of taking the Resignation, or making it effectual by passing the new Patent, and of admitting the new Officer.

But this matter has been explain'd and confirmed by the Evidence of *Dupper* the *Under Secretary*, the *Earl's* own *Witness*, upon whose Authority the *Earl* relied, who acquainted your Lordships, that upon *Cottingham's* telling him of the intended Surrender of Mr. *Thomas Bennet*, *Dupper* said, there ought to be an Acknowledgment to the *Great Seal*, and he had heard that money had been given, which *Cottingham* himself at first doubted of; but *Dupper* soon satisfied both the *Earl* and his *Secretary* that money might be ask'd.

This confirms the Evidence of Mr. *Thomas Bennet*, that nothing was said about money to be given, or an Expectation of something at his first meeting with *Cottingham*, but it was introduced by *Cottingham* at their second meeting; which must be after this Advice and Information of *Dupper*, and that then the Resolution was taken of expecting a Sum of money.

This argues the Disidence of the *Earl* impeach'd in setting up this Pretence, and his Suspicion of the Illegality of it; yet the Opinion of the Person advising, and the *Earl's* own Inclination to Gain, were too powerful to be resisted.

But to remove the Foundation of this *Objection*:

The Point or *Charge* of these *Articles* lies in the taking these Sums by the *Earl*, *colore officii sui*, as *Lord Chancellor*, and without Right, which is *Exaction* and *Corruption*.

And if he did receive these Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crimes charg'd upon him, in how artificial a manner soever he transacted these matters.

It will amount to the same, whether they propos'd the Sum to him, or he made the Demand upon them; yet if something was expected by him, and he declin'd doing the Duty of his Office, until that something was offered and paid to him, it is an *Exaction* and an *Imposition*, which is *criminal*, and maintains the *Articles*.

And it is remarkable, that the *Earl* would never give Credit for his *Present*, but always had it safe in his own Hand, before he admitted the *Officer*.

It has been attempted, on behalf of the *Earl* of *Macclesfield*, to prove that former *Chancellors* have used to claim and receive money upon the taking Surrenders, and making new Grants of this Office; but herein the *Earl* has fail'd, and has

not been able to give legal Proof of any one Instance of that kind, upon the change of this Office of *Clerk of the Custodies*.

For *Dupper* did not see any money paid on that Occasion, nor knows any thing of it, of his own Knowledge, but only copied an *Account* which he came by very oddly, wherein (as he says) there was an *Item* to that effect; and his Evidence depended meerly upon Hear-say, and ought to have no Regard.

The Evidence of Mr. *Oker* turns against the *Earl*; for altho' there were Surrenders in both the Times, when *Earl Coeper* held the *Great Seal*, yet nothing was paid or taken by him; and upon the Surrender of *Thompson* to *Edwards* in the late *Queen's* Time, it was said that nothing was given; and upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, whilst *Earl Coeper* enjoyed the Seal under his *Majesty*, nothing was paid or claimed.

And the supposed Intimation or Opinion of *Lord Coeper*, which *Oker* mentions, was between these two Surrenders, which makes it very unlikely that *Earl Coeper* should make such a Declaration; yet if such Discourse there was, it is plain, that upon better Consideration, the *Lord Coeper* departed from such Pretension, and discover'd no Expectation of any thing, upon the last Surrender and Grant of this Office.

And as nothing was taken by *Lord Coeper*, upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, it will be prov'd, that on the Surrender of Mr. *Edwards* to Mr. *John Bennet*, *Lord Coeper* refused to hear of a Present, when it was hinted at, and declared that nothing was due to the *Great Seal*.

But this *Defence*, which is founded upon a supposed Usage to receive a *Fee* for permitting such Surrenders, and from thence would infer a Right, or an Excuse to the *Earl* impeach'd, in doing the like, is a Proof and Confirmation of the *Article*, as charg'd by the *Commons*; That the *Earl* did insist upon the money, as his *Right* and *Due*.

ART. V. As to the Bargain with Mr. *Kynaston*, it appears from his Testimony, and the Evidence of Mr. *Charles Baily*, who paid the money, that Mr. *Kynaston* endeavour'd to obtain the Admission at a lower Rate. At first he offer'd but *one thousand Guineas*; and at the End Mr. *Baily* understood it to have been agreed for at *fifteen hundred Pounds*; and when Mr. *Cottingham* said *fifteen hundred Guineas* were expected, *Baily* did not proceed till he had informed Mr. *Kynaston* therewith, who answer'd, that since Mr. *Cottingham* had mentioned that Sum, he must submit, and do accordingly.

And this Dispute, upon the Difference between *Pounds* and *Guineas* only, explains the manner of these Dealings; That they were formal Contracts and Bargains between the *Secretary* and the *Masters*, at the best Price that could be got; and tho' there was no haggling with the *Earl* himself (as *Cottingham* express'd it at one of these Dealings) yet he had a faithful *Steward*, who could and did haggle very well for him; and when the *Secretary* had done his utmost, the *Earl* accepted the Price which had been agreed upon.

ART. VI. As to the *fifteen hundred Guineas*, paid by Mr. *Thomas Bennet* for his Admission, and the manner of making that Bargain, Mr. *Bennet's* Evidence of his first offering *one thousand Guineas*, and *Cottingham's* Refusal of it, saying, He hoped Mr. *Bennet* would not lower the Price, and the Hazard of his being refus'd, and that there was

no haggling with my Lord, and at last agreeing for fifteen hundred Guineas, is supported from the usual Behaviour of *Cottingham*, as well as from the Probability of the thing itself; that a man may reasonably be presumed to endeavour to save what he can, and when he is purchasing, to get it at the cheapest; altho' (as it has appear'd upon the Examination) Mr. *Bennet* had little Reason to expect that a succeeding *Chancellor* would be satisfied with his Circumstances, and admit him.

Upon the *Earl's* Defence against the Charge contained in these two *Articles*, it was prov'd by Mr. *Goldsbrough* the *Register*, that the *Earl*, about the 23d of *February* last, had paid those two Sums into the *Court of Chancery*, to be apply'd for the Benefit of the *Suitors*; and this is offer'd either in his Discharge, or as a Merit. But this was done several Days after the *Impeachment*, and after publick Complaint had been made against the *Earl* upon these two *Instances*, and is a very proper example of the *Earl's* own Construction of a voluntary Present; for after the *House of Commons* had taken this Affair into their Consideration, and had demanded Justice and Satisfaction from the *Earl* by a *Parliamentary Prosecution*, the *Earl* then did freely and voluntarily, and of his own accord, make a Present to the *Suitors* of the *Court* of these two Sums, which he had, in the like free and voluntary manner, receiv'd as a Present from Mr. *Kynaston* and Mr. *Bennet*.

But this Action contradicts his whole Defence; and shews that he was convinc'd that he had no Right to receive or detain the Money, and was afraid to keep it any longer.

ART. VII. and VIII. As to the two five thousand Guineas receiv'd by the *Earl* of Mr. *Elde* and Mr. *Thurston*, it is prov'd that the Price was settled between them and Mr. *Cottingham*; and when Mr. *Elde* (of whom the *Earl* express'd so good an Opinion) offered five thousand Pounds, *Cottingham* said Guineas were handsomer; and the particular method of Payment shews the inward Rebukes of his Conscience, and his Fear of a Discovery.

And these two Facts shew the Prevalency of his Avarice, above any other Passion. For in Mr. *Elde's* Case, he broke thro' the Obligation of Gratitude and Friendship to him, to receive his money in a cover'd manner, in a Basket. And in Mr. *Thurston's*, he tried to beguile his Fear of a Discovery, by suffering the money to come to him thro' a private and unsuspected Hand.

And these two Instances were of so nice a Nature, that his faithful *Secretary* own'd, that he was not admitted into the Secret. For it appears that the *Earl* either knew or suspected there would be a Loss in *Borret's* Office by his Insolvency, tho' it was not reduc'd to any Certainty; and it now appears, at the least, to amount unto twelve thousand Pounds.

But the *Earl* left the *Suitors* of the *Court* to bear that Loss, and never took Care to procure a just Satisfaction to them. Which the *Commons* urge both as an Evidence and an Aggravation of his Guilt; since he therein prefer'd his own private Gain to that Security, which his high Trust required him to have provided for the *Creditors* of the *Court*.

And the returning great Part of these two Sums, after the Confusion and Disorders of the *Court* became publick; and Part of Mr. *Elde's* money, after the *Masters* had been call'd upon to bring in their Cash, and which upon Mr. *Elde's* Evidence

may be reasonably presum'd to have been made use of by him to make a false Shew before the *Commissioners*; are rather Decrees against himself; than any Extenuation of his Guilt.

And as to the *Earl's* great merit, which he so largely dwelt upon, and so often repeated, that he might have had six thousand Pounds from Mr. *Lucas*, which he relinquish'd, to accept of five thousand Guineas from Mr. *Elde*. The *Managers* will call Mr. *Lucas*, who (in answer to Mr. *Elde's* Testimony) will prove, that when he offer'd the six thousand Pounds, it was upon this express Condition, that if the Money of the *Suitors*, or the Cash, was taken out of the *Masters* Hands on a *Parliamentary Enquiry*, he should have a Return of some Part; and that the *Earl* should indemnify him against all Deficiencies.

So that the *Earl* did not refuse Mr. *Lucas's* six thousand Pounds, from a Disinclination to the Sum, if he could have kept the whole securely; but because five thousand Guineas paid absolutely, was better than six thousand Pounds subject to a Condition of refunding, and incumber'd with an Engagement of Indemnification.

But the *Earl's* chief Defence is rais'd from the Practice of his Predecessors, who (as he pretends) led him into these mistakes; and he has prov'd seven hundred Pounds to have been paid by Mr. *Lowbond*, about twelve Years since, and eight hundred Pounds by Mr. *Holford*, and five hundred Pounds by Mr. *John Bennet*, in the Year 1716. upon their respective Admissions into the Offices of *Masters*; and from thence insists, that altho' he can't claim the exact Sum of fifteen hundred Pounds receiv'd by himself upon Admissions, as a certain and establish'd Fee or Perquisite, because he has taken twice as much as his Predecessor did; yet this Practice gives him a Right to a Present, and it was in his own Discretion to declare the Sum, as he should think reasonable, according to the late Increase of the Business of the *Court*.

But, a Present altogether uncertain in the Quantum, and depending in this manner upon the Pleasure of the Person who is to receive it, seems to differ very little, if at all, from a Price.

The *Earl* insists likewise, that the Denial or Refusal of some other of the *Witnesses* to answer his Questions, is a farther Proof that they paid money.

This shews that the *Earl* thinks he wants the Proof very much, when he makes use of such an Argument to raise Evidence.

The *Witness* refuses to answer such Questions, which he is not oblig'd by the Rules of Law to resolve, concerning the manner of his Admission; and the *Commons* cannot call *Witnesses* to contradict or explain that which has never been deliver'd in Evidence.

Yet the *Earl* desires your Lordships to believe this as Evidence, tho' you never did hear it, and to act and vote, upon your Honour, as if you had heard and admitted it.

But howsoever the *Earl* may have directed himself, he can never think that such an unjust Insinuation will prevail upon your Judgment; or that he can thereby move your Lordships to give up your Honour in the highest Exercise of your judicial Power.

And these two or three late Instances, which he has produced, cannot change the Common Law, or repeal the several Acts of Parliament, whereby they are declar'd illegal; and if he makes use of them as Precedents, he ought to take them with all their

Circumstances, which upon the whole matter rather turn against him. For Mr. *Holford* and Mr. *Lowibond* were at that time, and still continue men of Substance; and Mr. *John Bennet* was of Ability at the Time of his Admission, altho' in the Year 1720, he sustain'd several Losses, which impair'd his Estate. And they all paid the Sums of Money mentioned out of their own Estates, and no Part of it out of the Suitors Cash or Effects: And the whole of the Suitors Effects was deliver'd over to them by an Account with which they stood charg'd.

So that altho' these few Instances were not animadverted upon, either because they were not publicly known, or that no Inconvenience did ensue therefrom; yet they will afford no Excuse to the *Earl* impeach'd, for taking double or treble the Value of those Sums upon his Admission of Masters, who were Persons of small or incumber'd Estates, and who were necessitated to employ the Cash and Effects of the Suitors in the Payment for their Offices, and for their Admissions; and thro' whose Insolvency so great a Loss and Damage has come upon the Suitors.

But an Officer of publick Trust and Service ought to look well to his Precedents before he follows them; and if he will pursue an illegal or unjustifiable Precedent, he does it at his Peril, and must answer for the Consequences; especially in the Situation of the highest Officer in the Kingdom, who was intrusted with the Administration of publick Justice, in the supreme Court of Law and Equity; and whose Duty it was, as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuses, which at any Time may have crept into the inferior Courts of Justice to the Injury and Oppression of the Suitors of other Courts, as to prevent or suppress Corruption and Extortion in the Court where he more immediately presided.

ART. XI. As to this Article, the particular Circumstances of Mr. *Kynaston* and Mr. *Thomas Bennet* have been prov'd, and the Deficiencies in their Offices, and how unequal they were to the Trust of the great Sums and Effects deposited in their Hands.

By the Orders of the Court, which have been read, it appears that Mr. *Kynaston's* Deficiency amounts to 26,908 l. 11 s. 3 d. 1 q. and Mr. *Bennet's* to 16,075 l. Mr. *Kynaston* had about 50,000 l. in money and effects of the Suitors in his Custody, and Mr. *Thomas Bennet* near 100,000 l.

This is likewise a high Breach of Trust in the *Earl*, and is an Offence against the Statute of 12 Ric. II. cap. 2.

12 Ric. II. cap. 2. — But that they make all such Officers and Ministers of the best and most lawful Men.

Which Words in the Law import Sufficiency of Substance, as well as Capacity.

And the Statute 2 Hen. VI. cap. 10. takes it for granted, that the superior Officers were before that Time under the Obligation of the Common Law, or some former Statute to that Effect; when by the said Act, 2 Hen. VI. cap. 10. Co. 4. Infl. 114. intituled, *What manner of inferior Officers shall be appointed in the King's Courts*, it is enacted, *To the Intent that better and more sure Government be had within the Courts of our Lord the King, for his Profit, and Ease of his People, which have to pursue and to do in the same; it is ordained and established, That all the Officers made by the King's Letters Patents Royal within the said Courts, which have*

Power and Authority by virtue of their Offices of old Times accustomed, to appoint Clerks and Ministers within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers for whom they will answer at their Peril, which be sufficient, faithful, and attending to that which pertaineth to them in Performance of the Business, as well of the King as of his People.

This Act would have been extended farther, if it had been esteemed necessary.

The Frame of both these Statutes does shew the Bent of the English Constitution, to provide for the Ease and Benefit of the Subject.

But the old Rule, *respondent superior*, will hold against the *Earl* in this Case, especially when it appears by the Evidence of Mr. *Goldsbrough* the Register, a Witness produc'd by the *Earl*, that this Practice of paying money generally into the Hands of the masters, was not in use at his first coming into the Register's Office, about the Time of the Revolution. So that the *Earl* impeach'd took upon himself the Disposition of the Suitors money, without a proper Ground and Justification.

And the Offence contained in this Article does not depend upon his Knowledge, that the Persons admitted were insufficient and unable; but that the *Earl* did not require and take full Satisfaction and Evidence in a proper manner, to make it manifest that they were able and sufficient, as had been done by his Predecessors; particularly when Mr. *Holford* was admitted Master, his Father was obliged to settle a real Estate upon him of good Value.

The *Earl* ought either to have advanc'd Persons equal to the great Trust and Charge, or to have reduced the Trust and Deposit to the Condition and Circumstances of the Person, as his Predecessors had done.

So that it is evident the *Earl* had only in view the Price and Profit of the Sale of the Office, which would rise highest upon the Inability and Unfitness of the Officer.

And it was therefore very properly said by one of the *Earl's* Counsel, that he weigh'd the Masters before he admitted them.

But he weigh'd them only for the Sake of the Price they were to pay to himself; and when he had done with them, he left them of very little Weight for the Security of the Suitors.

His false, tho' memorable Declaration in open Court, upon the 21st of Jan. 1723, explains his whole Scheme, when he publish'd from the Bench, *That the present Masters were Men of as great Fortunes as any Set of Masters had ever been.*

The Words were prov'd by Mr. *Waller*, and have not been contradicted by any Witness.

At that time Mr. *Dormer's* Deficiency had taken Air; and Mr. *Waller* upon his Examination said, The Suspicion of several of the masters was then so strong, that this Publication rais'd Astonishment in the Hearers. But there was then a Vacancy, and an Office to be sold. Mr. *Feltham* died 19 Jan. 1722, and it became necessary to give the Office a Reputation.

And altho' the Insufficiency of some of the Masters had been decently intimated to the *Earl* by Mr. *Lightboun*, upon his several Proposals, and the *Earl* may be presum'd to know the general Apprehension of the World. Yet in this solemn manner the *Earl* became an Officer to himself, to proclaim his own market.

ART. XII. The Practice and Injury to the Suitors can hardly be more aggravated than is express'd in the Article itself. And

And it has been prov'd in every Particular necessary to support the *Article*; and no Proof has been offer'd on the Part of the *Earl* to contradict or extenuate the *Charge*, by making appear his Vigilance, or any Care or Regard to prevent the fatal Consequences of the *Practise*.

The particular *Methods* of preventing this Fraud specified in the *Article*, are only to shew the Practicability of some sort of measures proper to have been put in Execution, in order at least to render the corrupt *Practise* and Abuse difficult, altho' they had not prov'd compleat in all respects to redress and prevent them.

And by the *Witnesses* call'd on the Part of the *Earl* himself, it was expressly prov'd, that some of these *Methods* had been practis'd with Effect in the time of his *Predecessors*, and that no *Loss* had happen'd to the *Suitors* during that Regulation.

An *Account* of the *Suitors* Cash and *Effects* was brought to the then *Lord Chancellor Harcourt* by Mr. *Holford*, as the *Account* of his *Predecessor*, before he was admitted; and he was thereupon ask'd if he would be bound by that *Account*, and stand charged accordingly? to which he agreed, and his Substantance was sufficient to answer it.

The *Cash Money* was for some Years lock'd up in the Hands of the two junior *Masters* in *Lord Chancellor Cowper's* Time.

And it has been prov'd, that the *total Accounts* of all the *Masters* have been taken three several Times within a few Years; that is, twice by *Lord Cowper*, and once by *Lord Harcourt*.

And altho' the *Earl* seems either to doubt of his Authority, or of the Possibility of doing this in his own time; it can be prov'd, that he requested to see the *Accounts*, and to be inform'd of this method, and accordingly had a Sight of the *Books*, and made an Appearance of putting it in Execution.

Besides, the late *Accounts* deliver'd in by the several *Masters* before the *Commissioners* named for that Purpose, shew, that such an Attempt was practicable, and might have been compleated in a reasonable Time.

But the *Earl* of *Macclesfield*, by his own Confession, is guilty of a total Neglect of all measures; and never prosecuted one honest and real Step towards the suppressing this Abuse.

He might have given Directions and made Orders for the securing the *Suitors* *Effects*, in the same manner before the late *Inquiry*, as he has done since.

His *Secretaries* and *Agents* might have supervised the Observation of these *Orders*; and have attended to inspect the complete *Transfer* of the *Suitors* *Effects*, as well as to receive his *Lordship's* extorted *Premium*.

And if after the *Earl* had taken these, or any other probable measures, the *Masters* had broken their *Trust*, the Fault would have lain upon the Dishonesty of the *Masters*, and not upon the Connivance or Negligence of the *Lord Chancellor*.

But upon this *Article* the *Answer* of the *Earl* impleach'd is directly falsified. For he declares upon his *Honour*, upon that *Honour* which is communicated to him from the Privilege of the whole *Order of Peers* (but of which he himself has only made a Shew or Appearance) that he was totally ignorant of this *Practise*; although it appears in *Proof* to have been a matter publicly known during his *Administration*. It was one Inducement to Mr. *Kynaston*, and the single Temptation to Mr. *Thomas Bennet*.

This *Notoriety* is a reasonable *Evidence* to charge the *Earl* with the Knowledge of a fraudulent Transaction propagated under himself; especially when the Pretence of his Ignorance must arise from the wilful Neglect of his *Duty*.

But express *Notice* is prov'd out of his own *Mouth* by Mr. *Thomas Bennet*; and farther, that the *Earl* had been used to prostitute his *Honour* by a Course of Denial of this Fact upon former Occasions.

For Mr. *Bennet* in his *Account*, which he had deliver'd in to the *Judges*, had inserted this remarkable *Item*, viz. *Item* 9075*l.* in the *Hands* of *Persons* of *Ability*; which included the 7500*l.* paid to Mr. *Hiccocks*, and the 1575*l.* paid the *Chancellor* for his *Admission*.

Mr. *Kynaston* also in his *Account* had inserted an *Item* to the same Effect for a like Sum.

Mr. *Thomas Bennet* went soon afterwards to the *Chancellor*, who enter'd into Discourse with him thereupon, and said: *I am sorry you have given in your Account in this manner; it was the worst way in the World: For all the World will now judge, that you paid for your Office out of the Suitors Money; and what hath been so much suspected will now be discover'd, which I have always taken so much Pains to deny, whenever I was ask'd the Question: And wish'd he had been acquainted with Mr. Bennet's Necessities before Mr. Bennet had given in that Item; or to this very Effect.*

The Probability of the Truth of this *Evidence* stands confirm'd from the Nature of the thing, and the State of the *Account* itself, which has not been contradicted by the *Earl*; and seems farther strengthened by an Opinion which the *Earl* had entertain'd, and which he dropt in his *Defence* on *Wednesday*, viz. *That the Suitor was not the worse by this Method; for by this Detention the former Master remain'd still responsible, and (as he observ'd) by Mr. Meller's retaining some Part of the Suitors Effects, the Deficiency in Mr. Borret's Office was not so large.*

This seems a strong Symptom of the *Earl's* Knowledge of the *Practise*, when it had obtained his *Approbation*.

But the *Money* retain'd by Mr. *Meller* was no part of the *Price* of the *Office*, but were other *Sums* and *Effects* which he retained in his Hands, and never paid over to Mr. *Borret*, upon the repeated Application and Request of the *Suitors*, who doubted Mr. *Borret's* Sufficiency.

But suppose the former *Master* had died, or fail'd with these *Effects* in his Hands; how should the *Suitor* have come to a full and legal *Proof* of this Transaction? and how many Persons was he to prosecute, to discover and receive his own *Money*?

The Importance of this Part of Mr. *Thomas Bennet's* Testimony has given Occasion to the *Earl* and his Counsel to object to his *Credit*; and an Endeavour has been used to make out, that Mr. *Bennet* has contradicted himself, and has deny'd here at your *Lordships* Bar upon his *Oath*, what he had formerly declared to other Persons.

For that Mr. *Bennet* being ask'd (with an Intent to prove his Ability to pay the rest of his Deficiency) *Whether he had not said, that if Mr. Hiccocks would pay him back two thousand Pounds, he would pay the rest himself, Mr. Bennet denied he had so declared*; and yet, as they urge, the contrary is sworn by Mr. *Holford*, Mr. *Thurston*, and Mr. *Elde*.

In Answer to this Mr. *Holford* gave in Evidence, that Mr. *Bennet* said, that if Mr. *Hiccocks* would pay him back two thousand Pounds, he would take

Care

Care that the rest of the Money should be raised. But Mr. Bennet did not say, he had the Money, tho' Mr. Holford believed he had by his manner of speaking.

Mr. Thurston deposed, that Mr. Bennet declared he would make up the rest himself; but afterwards told him, that all he had in the World would not pay it:

And Mr. Elde swears to the same Effect.

And this Testimony does not contradict, but rather confirm Mr. Bennet's Evidence. For he made no direct Declaration of his Ability to pay the rest, but, being liable to the Suitors, he seem'd to be willing to get what he could from Mr. Hiccocks:

Besides, his Discourse at these times cannot stand in Competition with his Oath, according to the common Rules of Evidence; and a Witness's Credit is not to be taken away upon an uncertain Expression, proved by each of the Earl's own Witnesses in different Words, when from the Ambiguity of it there cannot possibly be any voluntary Contradiction.

But the Commons will confirm the Truth and Fairness of this Testimony of Mr. Bennet, by proving that the Earl had express'd the same Concern and Dislike of the manner of these Accounts in respect of these Items to others, before any Parliamentary Enquiry.

There is likewise another matter of Fact, which afflicts the Proof of this Article, which is, That the Price of the Office, and of the Admission, are comprehended in the Accounts of the Masters Deficiencies, and make the greatest Part of Mr. Bennet's Deficiency, and near a Moiety of Mr. Kynaston's.

Which manifests the Danger and Injury of this unjust Practice to the Suitor, whose Estate is thereby put upon the Hazard of the Master's good or bad Success, and his Property lost with a deficient Master.

And here the Corruption and Misbehaviour of the Earl appear with the highest Aggravations.

The extorted Profit made by the Earl is raised out of those Effects which are deposited in the Court upon the Faith and Honour of the King's Administration under the Care of the Chancellor, as chief Trustee, by whose Connivance (if not Consent) they are thus imbezzled; and the miserable Suitor must either sit down with the Loss, or be forced to expend his little remaining Substance in a tedious Process to recover back his own Estate thus wasted and converted by the Masters.

Unnecessary Delays and Protractions of Causes are the unavoidable Consequences of this Practice; and in this manner the Business of the Court, and the Profits of the Masters Offices have been increased by the Pursuit of the Parties after their own Effects, which in the Conclusion terminates in so heavy a Loss.

The late Orders made upon the Petitions of Mr. Hiccocks and Mr. Rogers since the Impeachment, and some since the Trial commenced, tho' not proved to have been as yet comply'd with, and at best are but Deposits to attend the Event of the Contest between the former and the present Masters, have been made use of by the Earl in his Defence; which is a new Attempt in him to make a false Shew and Appearance of Restitution and Satisfaction.

Altho' if it was a real and a compleat Return of the Principal Money, it would be a very small Excuse and Extenuation for the vast Prejudice done to all the Suitors of the Court, by the locking up their Money, Effects, and Securities, and stopping the Payments thereon for so many months, besides the

Loss of Interest on the Cash, and their being hinder'd from the Employment of their Money.

The Earl has not adventured to enter into a particular Discharge of the total Deficiency assigned by the Commons, upon the Evidence of Mr. Thompson, and collected from the Accounts stated upon the late Enquiry, amounting to more than one hundred thousand Pounds. Nor has he given any Answer to the great Loss which the innocent Suitors sustain by the Insolvency of the two deceased masters, Dormer and Borret.

This great Confusion and Damage brought upon a Court, where the Estates of the most wealthy Subjects, as well as of lesser People, do sooner or later come, became a National Concern, not merely from the Extensiveness of the Loss to the particular Suitors, but likewise from the apparent Danger thereby arising to the Publick.

This general Ruin awaken'd the Care and Zeal of the Commons in Parliament for Justice to their Fellow Subjects.

This introduced the Charge against the Earl in the Twelfth Article, which has been proved as it is alledged, viz. That by this unjust and fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of the Offices of Masters in Chancery, has in Consequence been raised and received by him out of the Effects of the Suitors of the Court, for whom he was intrusted; in Breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Suitors, to the Dishonour and Discredit of the Court, and to the great Injury and Defrauding of the Suitors, in a Court of Equity establish'd for their Relief and Protection.

My LORDS,

If the Misdemeanors of which the Earl impeach'd stands accused were not Crimes by the ordinary Rules of Law in Inferior Courts, as they have been made out to be; yet they would be Offences of a publick Nature, against the Welfare of the Subject, and the Common Good of the Kingdom, committed by the Highest Officer of Justice, and attended with so great and immediate Loss to a multitude of Sufferers; and as such, they would demand the Exercise of the extraordinary Jurisdiction vested in your Judicature for the Public Safety, by virtue whereof your Lordships can inflict that Degree and Kind of Punishment which no other Court can impose.

When these Offences have been proved upon the Earl impeach'd, of what Consideration in Judgment can the Earl's mistaken and misplaced Charities be? Can they alter the Facts charged upon him? or turn Extortion and Fraud into Liberality and Piety? Can the merit of a few private Good Works atone for the Plunder of the whole Body of the Suitors of the Court of Chancery, upon whom this Earl, by his Misbehaviour, has brought a Deficiency of one hundred and eight thousand Pounds?

He depends upon the Prayers and Wishes of those few, who have been the Partakers of his Bounty, without being Sufferers by his Crimes. But the Voice of the Commons for Justice against this Great Offender, not only includes the Complaints of the particular Sufferers, but the Accusation of an injured Nation, whom the Earl had endeavour'd to cut off from the Protection, which ought to be deriv'd to them from the Father of his People.

The Commons having now maintain'd the Truth and Justice of their Charge against the Earl impeach'd upon these Articles, leave him to your Lordships just Determination.

Mr.

Mr. LUTWICHE.

My LORDS,

I am commanded to assist in the Reply; and since I was obliged to bear my Share in this Prosecution, I was willing it should be such as would give me an Opportunity of hearing what would be said and proved in the *impeach'd Lord's Defence*, before I spoke freely upon the matters in Judgment before your Lordships.

And I may now venture to say, as he was unfortunate to bring so heavy a Charge upon himself, he has still been more unfortunate in his Defence; I submit it to Your Lordships Observation, whether any Part of the Evidence offered by the managers has not been confirmed, nay enforced upon him, by his own Evidence; and some of the Charges upon him he has endeavoured to evade by such Excuses and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the first Witness produced on the Part of the Commons, his Lordship was pleased to make it a Question whether he took the Oath directed by the Statute of 12 *Richard II.* The Objection seemed to be, that tho' the Statute was read, and his Lordship kissed the Bible, yet he was sworn to nothing. This was so surprizing to all that heard it, and the Report of it raised such Indignation, that it might have been expected his Lordship would have drawn a Veil over this Part of the Case, and have taken Care that it should not be mentioned again; but instead of that, his Counsel, nay he himself, have thought fit to bring this Point into Dispute in his Defence, and his Lordship does not even yet fully own that he took the Oath.

The Statute has been represented as obsolete, read in Old *French*, and not regarded, and the Oath not duly administered; that the Officer said nothing to his Lordship, nor he to the Officer.

The Witness told Your Lordships, that at a meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately kissed the Book; and that this was the usual method of taking the Oath prescribed by that Statute.

My Lords, I would observe, that if there had been any thing in the taking of the Oath that his Lordship thought not regular, it was his Duty, who was the Chief of that Assembly, to put them in a right method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a Shew of taking an Oath, and yet, by some nice Distinctions, endeavour to persuade himself or others that he is not sworn.

I do not know but most of the Old Oaths that are taken, may by the like Arguments be evaded, as well as this; the very Oath of Office set forth in this Lord's Answer is, *You shall swear*, &c. and in that Case a nice Distinguisher may as well say, that he repeated nothing, and that there are not Words *de presenti*, whereby he is sworn. But where is the Defect in administering this Oath? The Officer reads out of the Statute, That the Chancellor, Treasurer, &c. shall be sworn, and then they kiss the Book.

I do not see there is much Difference between saying, The Chancellor, Treasurer, &c. shall be

sworn (they being at the same Time present) and saying, *You* the Chancellor, Treasurer, &c. shall swear.

I shall therefore have the Charity for the Noble Lord to think and take it for granted, that he was sworn as the Statute required, and that he understood the Statute, tho' it was read in Old *French*, and that he did not prevaricate, when he did this solemn Act.

Supposing therefore that the Statute 12 *R. II.* is in Force, and that the Oath was really taken; the next Consideration is, what the Law is upon the several Facts and Circumstances proved against the impeached Lord in Relation to his selling the Offices of masters in Chancery.

The Answer put in to the Charge of the Commons says, The masters freely and voluntarily sent a Present without admitting any particular Sum; we say that particular Sums (and those very exorbitant) were insisted on, and a Bargain driven for the Offices, as much as could be in any Case by way of Brokage; nay the very Benefit of having the Suitors money comes into the Consideration of the Price.

The Words of the Statute of *R. II.* are general, and in Point of Reason it should extend to this Case above others; because the Offices of masters in Chancery do not only concern the Administration of Justice, but are in some measure judicial; they transact a great Part of the Business of the Court, and have usually been in Commission together with the master of the Rolls, and the Judges, for hearing of Causes.

Lord Chief Justice *Coke* in his *Third Institutes*, p. 145. places this Offence of selling Offices under his Chapter of Bribery, where he states the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Pension, Robe or Livery, Gift, Reward, or Brokage of any Person that hath to do before him any way, for doing his Office, &c.* He comments upon the Words of this Definition and more particularly upon those Words, *of any Person that hath to do before him any way*, and he takes Notice that it is not confined to taking money, where a Suit is depending; but also where any in a judicial Place doth any thing for Gift or Reward by Virtue or Colour of his Office, tho' there be no Suit at all depending.

For Example, (says he) *If the Lord Treasurer, for any Gift or Brokage shall make any Customer, Comptroller, or any Officer or Minister of the King; this is Bribery: For he ought to take nothing in that Case by the Statute of 12 R. II.* This Example also proves, that the Statute is not confined to the Construction that has been endeavoured to be put upon it, that it relates only to Cases, where the Chancellor, Treasurer, &c. meet together, as they do, when they nominate Persons for Sheriffs; for the Example is of the Lord Treasurer alone.

But, My Lords, we insist upon it that this, as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Case that was cited out of *Moor's Reports*, 781. takes it to be so, of a Sheriff selling the Office of Gaoler, and his Bailiwick; but there was an Objection made to the Report of that Case, that it says the Statute, 4 *H. IV. c. 5.* gives a Penalty certain and pecuniary; whereas that Statute gives no certain Penalty, and therefore it might be a right Resolution upon that Statute. But the Declaration of the Court, upon which the Party was fined, was because the Offence was *malum in se*; and

and tho' that Statute of 4 H. IV. gives no Penalty, yet I think the Statute 23 H. VI. c. 10. does give a Penalty of 40*l.* in the same Case of a Sheriff, and yet the Party was fined at the Discretion of the Court. The same Case is also reported in *Noy*, 102. where he takes no Notice of any Penalty, and the Report is in these Words: "N. was Sheriff of *Nottingham*, 43 *Eliz.* and took " money for the Offices of Gaoler and Bailiwick, " and he first gave them to his Servants, who " sold them, but he himself had the money." And he was fined for that, for it is contrary to 4 H. IV. cap. 5. And also by the Court, That that is a Corruption, and a great Cause of Oppression in the Officers, and such Sale of Offices is *malum in se*, and fineable.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, the Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold for taking money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, that the Difference between this Case and taking a Bribe for Judgment in a Cause is, That in the one Case the Party has a Right to have Judgment, but in the other Case no man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary, and the same Argument would prove, that it is lawful for him to take money from every Judge that comes into *Westminster-Hall*. It is well known, that the Chancellor generally recommends in that Case, and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely this is such a Doctrine, as is not fit to be proclaimed to the World, and would tend to universal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox's* History of the *Exchequer*, p. 43. where he says, in the Reign of King *Stephen*, *Geoffery* the Chancellor, fined in 300*l.* 13*s.* 4*d.* for the King's Seal. This the Author understands to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himself observes, that this Precedent may justly seem strange to us at this Day. And truly so it may, for in the Instance before Your Lordships, instead of paying money to the Crown for the Office, here are very great Sums of money paid by the Crown for an Acceptance of it.

But what does this Precedent tend to? Is it to prove the Office of Chancellor likewise saleable? This is so entirely new, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the same Author, p. 42. says, That the Ancient Historians say little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Business of his Office was at that Time, and nothing pertinent to the matter before Your Lordships is to be collected from it. It is very strange to suppose the Common Law, that is founded upon Reason, should admit the highest Place of Judicature to be filled by those that come in by such corrupt methods. And therefore we must beg leave to

insist, that it was an Offence at Common Law, as well as by the Statutes.

But suppose this matter rested only upon the Statute of *Edward VI.* I do not see but it is an Offence and misdemeanour in his Office of Chancellor to sell these Places of masters in Chancery, and that he is answerable for it before Your Lordships as a Crime.

This Statute is made against buying and selling of Offices (for that is the Title of the Statute) And shall it not be an Offence cognizable before Your Lordships, for a Chancellor to put in Officers in a manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Breach of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom; but more especially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to see that proper Persons be appointed according to Law; instead of that, by this method he shews them a bad Example on their very Admission into the Office, and introduces them by Corruption in the first Instance, even by the very Act of Administring the Oath to them.

If this Great Officer should be liable to no other Punishment, than an Incapacity of Nominating again to the same Office, the Act would have little Effect, and that Penalty would signify very little; since his own Office is during Pleasure.

My Lords, I shall now proceed to reply to the Defence that has been made on the Thirteenth and all the subsequent Articles, which is the Province more particularly assigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dormer*, instead of taking proper Steps for obtaining a Satisfaction by regular and justifiable methods, the Earl of *Macclesfield* neglected and declined those methods, and by many indirect Practices endeavoured to conceal the true State and Condition of the Office; lest a publick Discovery of the Deficiency should lessen the unjust Gains he proposed to make by the Sale of the Offices of masters in Chancery.

Upon this Article the impeached Lord has said, he thinks it hard that these miscarriages should be charged upon him, that this Affair about *Dormer* was a misfortune that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this unfortunate Lord had done what became him in his high Station upon the Failure of this master, God forbid that the misfortune upon the Office should any ways have been laid to his Charge; if he had been desirous to have proceeded in a regular method, he might very easily have done it; the Paths of Virtue and Justice would have been easy, he need not have found himself at the End of Four Years surrounded with such insuperable Difficulties.

If a fair, plain, and open method had been taken for enquiring into, and stating the Debt due to the Suitors, and the Account of *Dormer's* Effects to satisfy it, there could have been no Danger to the Chancellor, whatever the Deficiency had been; but the Truth was, he could not part with those vast and exorbitant Prices, to which he had at that Time raised the Places of masters; he

he found the sweet of that Gain, and was willing to run some Hazard for it.

Tho' it was known that *Dormer* was gone, yet the *quantum* of the Deficiency was not known; and if it had been publick, the money might probably have been taken out of the master's Hands; a Parliamentary Enquiry might have ensued, and he might have lost those exorbitant Profits, which he afterwards actually made of those Places; and these were the true Reasons of the Concealment, and of the clandestine Proceeding that followed; nothing else hindered him from proceeding with Safety to himself by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been observed by the Counsel in this Case, that it is more expeditious against an Officer of the Court, than another; and it is certainly so. There might have been a Sequestration against *Dormer* in a very little Time, and that would have intituled the Court to the Possession of his Effects for the Benefit of the Suitors; which in a great measure answers what was objected of the Necessity of *Dormer's* coming over, and having his Liberty in Order to transfer his Stock. It was likewise said, that it was necessary for the Discovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely if a Chancellor will take upon him to grant a man his Liberty, when he is to make Satisfaction to the Suitors, he ought to take care that the Consideration for the granting him his Liberty should be performed.

But it is said, What Harm has happened by not taking those Methods?

My Lords, Here are two remarkable Instances of the Consequences of this Neglect, by which it appears neither the Debt to the Suitors was known, nor the *quantum* of the Effects that there were to pay it.

Mr. *Edwards* told your Lordships, That the Deficiency of *Dormer* was at first about 25,000 *l.* but that about a month ago he discovered a farther Debt of about 1500 *l.* here there is a very great Deficiency concealed: On the other side the Effects of Mr. *Dormer*, that should have gone towards paying this Debt, have been concealed and lessened by the want of such an Examination. Your Lordships heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth Seven or Eight Hundred Pounds, that lay concealed Four Years, and were not discovered till lately. The Counsel, indeed, said, They were only a Parcel of musty Hops that have been found. But if he had been examined on Interrogatories, in all Probability, he would have discovered them at first, and they had been worth 5 or 600 *l.* more than now, and the Suitors would have had the Benefit of them; 5, or 600 *l.* is a considerable Sum in Mr. *Dormer's* Effects; and no one can tell but there might be other Instances of the like Kind.

What is the Answer his Lordship gives to this gross and wilful Neglect? He tells Your Lordships, That he gave Directions to the two Senior masters to make Enquiry into *Dormer's* Affairs and Accounts; *He left it to them*, and that they did not think it requisite to examine him upon Interrogatories, or to use him with Hardship.

It is very extraordinary, that in a matter of that great Concern, he should content himself

with a parol Direction; Orders from a Lord Chancellor, that are in Earnest, are always in Writing; nor can they be enforced unless they are so; and therefore there must be some private Reasons for these extraordinary Proceedings.

Another Thing that was insisted on, was, That the Earl (as he expresses it in his Answer) was made to believe that the masters would make good the Deficiency. What Reason had he to believe it? They never told him so; in a matter of that moment he had no reason to depend on an hear-say Evidence. He knew this was to be an Undertaking for the Debt of another; which could not by Law be Obligatory, unless reduced into Writing.

My Lords, I cannot account for these Things, either in the Chancellor, or those masters that had the management of this Affair, unless it be (as the Article charges) to conceal the Deficiency of the Office, I mean, the *quantum* of that Deficiency; and that both the Chancellor and the two Senior masters thought it their Interest to do so, that all of them might share in the Sale of the Places: The two Senior masters were desirous (as was mentioned by the Evidence) to sell out, and the Chancellor was ready to receive his Share of the money.

The Fourteenth Article is the Article about the Composition with *Wilson*; and I must beg Leave to say, notwithstanding what has been insisted upon, That it is a clandestine, unusual, and unwarrantable Proceeding. We did take the Liberty on our Evidence to this Article to observe to Your Lordships, That the Petition of Mr. *Edwards* (on which this Composition is founded) takes notice that *Dormer* was indebted to the Suitors of the Court in several considerable Sums of money; which should have been a Caution to the Chancellor to have taken a more than ordinary Care in this matter; but instead of that, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Hiccocks's* Hand, which was a Demonstration that it was not filed at the Time when the Order was made for establishing this Composition, nor has been since.

My Lords, If there be but an Affidavit annexed to a Petition, care is usually taken to order that it shall be filed; but it was not thought convenient in this Case to have any thing publick.

My Lords, The Earl of *Macclesfield* in his Defence to this Article begun with a Copy of a Judgment obtained by *Wilson* against *Poulter*, that was signed 22 December 1721, and is for 18,774 *l.* whereas the Debt pretended to be assigned by *Wilson*, is 22,060 *l.* So that tho' the Judgment was for all that *Wilson* could pretend to (for ought appears) yet the Debt pretended to be assigned, is mentioned to be above 3000 *l.* more than what the Judgment is for; which is a farther Objection to this Composition, that did not appear before.

The next Point the Earl examined to, was the Sufficiency of *Poulter*, in order to prove the Assignment of *Poulter's* Debt to be valuable; and there were two or three Brokers produced on this Account.

They were very unlucky Witnesses to prove the Man's Ability, for they happened to be the very Persons to whom he had declared his Insolvency;