

vency; one of them (*Scott*) was employed to go to Mr. *Wilson* to Compound with him.

But then a very notable Distinction was taken by the Earl himself, That tho' *Poulter* disclosed to these Witnesses that he was Insolvent, and that they were let into the Secret; yet all other People took him to be a good Man. The Evidence produced to prove this, were only those that knew he was Insolvent, and not One of all those others that it is said took him to be Solvent.

But we hope we have made it plain (and if it were necessary, we could make it clear beyond Dispute) that *Poulter* was a broken man at that time.

Another Objection was, How does it appear that a better Composition could have been made?

My Lords, Those that presume to take upon them, without a lawful Authority, to make a Composition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Case on the Examination of Mr. *Edwards*, that *Wilson* (when he was afterwards charged with it) owned he had paid several others their full Debts; and 'tis notorious that he kept his Shop open till lately.

My Lords, The Answer to our Objection, That no notice was given to the Suitors, of this Reference about the Composition, carried in it (I thought) something extraordinary. It was said both by the Earl of *Macclesfield* and his Counsel, That whatever the Lord Chancellor did, could not bind the Suitors, they not having notice, and therefore the Suitors might recover the whole from *Wilson*, and no body was hurt.

My Lords, There is something very shocking in this Excuse, it strikes some Horror to think, that this poor ignorant man (*Wilson*) should be made to believe upon the Faith of a Court of Justice, that his Composition was in full Discharge of his Debt, if there was at the same time a Reserve, that it might be set aside for want of notice to the Suitors; the Excuse seems to carry in it a greater Guilt than the Crime charged. This unfortunate man (*Wilson*) was living at the Beginning of this Trial, but has since laid violent Hands on himself, and he is dead: I make no Reflection what might be the Occasion of it.

My Lords, I did mention that upon the Absolute Order made for Mr. *Edwards* accepting this Composition, it was ordered to be accepted with this Addition to the Order, *viz. Of which give Notice forthwith.* I mentioned it, that the Earl might have explained what he meant by directing Notice after the Composition was ordered to be accepted, or to whom Notice was intended to be given; I have heard no Answer to that, but what the Earl was pleased to say about the Articles, that on reading them he thought he had been charged with compelling Mr. *Edwards* to accept of a Composition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice should have been given to the Suitors, and that before the Composition was ordered to be accepted; that is what the Article charges, and what the managers insist on, and no Answer is given to that Objection.

It was said, That if it had been set down to be heard in the ordinary Course (it being the Third of *August*) in Vacation-Time, it could not have come on till the next Term.

I believe that Lord knows it has very often

happened, that particular Petitions have been heard in Vacation-Time, if Necessity required it; and I don't understand why there needed to be such a Fondness for having this done so much in haste, unless it were for the Purposes charged in the Articles. There was likewise something said by the Earl, of the striking out of the Prayer of Indemnification, that if it were justifiable, it needed no Order to indemnify, and if it were not justifiable, it ought not to be in; but what we say is, that it looks like a Diffidence whether it was justifiable or not, and since it was put into the Prayer of the Petition, that Mr. *Edwards* might be indemnified, if the Chancellor thought it not justifiable, he ought to have let Mr. *Edwards* know it, as much as he ought to have let Mr. *Wilson* have known that the Composition would not be good without the Suitors being Parties. As there is no tolerable Account given for such an extraordinary Proceeding, we submit to Your Lordships, whether it is not rightly charged to be for the unlawful Purposes mentioned in the Articles. If a Commission of Bankruptcy had been taken out against *Wilson*, the quantum of the Debt to *Dormer*, and consequently of the Loss of the Suitors, must have been known, and other Suitors might have been alarmed, and a thorough Reformation might have happened; which might have ended in the taking away the money from the masters, and the Price of the Places would have been lowered, which was always most carefully avoided.

My Lords, I now proceed to reply, to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjust Purposes, and to conceal the Deficiency, did call for the Accounts of the masters, not with any Intent of Examining them, or to secure their Effects, but to terrify the masters and oblige them to contribute 500 *l.* apiece; and after that Purpose was served, did not oblige them to bring in their Accounts.

The Sixteenth is, That he persuaded the masters to pay the 1000 *l.* ordered to Mrs. *Chitty* for the like Purposes.

And the Seventeenth is, For letting all the money belonging to *Dormer* be paid away to some of the Suitors, without observing a Proportion, to which all were equally intitled.

To the Fifteenth the Earl of *Macclesfield* says in his Answer, That he did really call for the Accompts with an Intent to examine them, and that he might regulate matters, and that after the 500 *l.* was paid, still he called for the Accompts; for that there was a Letter sent in *November* 1721, to the masters, insisting upon having them; but as to this second Letter, as Mr. *Cottingham* did not speak at all positively to it, but that *he believed, but could not be positive, that it was sent, and that he had taken no memorandum of it, &c.* we must beg leave to acquaint Your Lordships, that this second Letter was never sent; and every One of the masters will give Your Lordships that Account: But supposing it had been sent, can any one imagine that the Chancellor would not have pursued that Direction, and have had those Accompts, if he had really intended it? What is the Excuse at last? He had required so many Particulars in the Accompts, that it was almost impracticable to do it. My Lords,



Lords, if the Charge in the Articles be true, it answered the Design the better, that it should be difficult; we say it was done to get from the masters 500*l.* apiece to quiet matters for the present, and when that was done, there was no more Use made of that Order. But what is most wonderful of all is, that, tho' in Four Years Time it was so difficult a Work that it could not be done, yet, when the Committee of Council had called for the Accompts, the Earl of *Macclesfield* used such Diligence, that he procured them to be ready in a Week's Time; and tho' all the Directions and Particulars which he had required, were not observed, yet it seems they were all that were necessary and sufficient, and it was hoped such as would prevent a Parliamentary Enquiry.

The Earl in his Answer values himself much upon this Expedition, not considering how inconsistent it was with the Difficulties which were made an Excuse for not having it done Four Years before.

It was insisted on, upon this Head, that Mr. *Lightboun* did not pay, and yet he brought in no Account; but however, Nine of the masters did pay, and the Chancellor well knew it would have looked very partial to have proceeded against one single master, and not the rest; that would have been too barefaced, and so Mr. *Lightboun* escaped too; besides there was not a Total Despair even of him, for he was several Times afterwards spoke to, about making good his 500*l.*

It was said likewise, the Business of the Court must have been at a Stand, if these Accompts had been pursued.

My Lords, If it had been so, it had been more for the Reputation of the Court, and for the Benefit of the Suitors in general, to have had some Time employed about this necessary Work; and if there had been a willing mind, one long Vacation would have been sufficient without any Interruption to the Business of the Court.

After all these Excuses the Earl is pleased to say, if he had taken the Accompts, it would have signified nothing unless he went farther.

My Lords, If he never begun, he could never bring any thing to Perfection; and in his Answer he confesses, it was necessary to have the Accompts in order to make Regulations. But after all he is forced to come to this Conclusion (as he says in his Answer) *to go on in the same Road his Predecessors had done*; tho', by the way, it has appeared to Your Lordships, that it is not the same Road; for his two immediate Predecessors did call for the Accompts, and had them.

The Sixteenth Article is grounded on the Persuasions to pay 1000*l.* (ordered to Mrs. *Chitty*) to prevent a Parliamentary or publick Enquiry, and that the Earl afterwards paid the same himself to Mr. *Lockman*, &c.

My Lords, We called Six or Seven Witnesses to this Article, and did observe at that Time the Earl in his Answer said, He believed he did not persuade the masters to pay this 1000*l.* And his Lordship was pleased to say, when he spoke in his Defence, That he still believed, that he did not persuade them to pay it.

My Lords, It is very strange that there should be any Doubt made of it; the Occasion of the meeting, and the Nature of the thing plainly shews it. First Mr. *Cottingham* went to Mr. *Lightboun*, and told him, that there was a present Oc-

casion for this 1000*l.* that it was proposed he should pay the 500*l.* (which he should have paid before) and the other Masters 50*l.* apiece, which would make up the 1000*l.* When the masters were going to the Lord Chancellor's, they discoursed among themselves, that their going was upon Occasion of another Call for money.

When the Chancellor came to them, he mentioned the pressing Necessity there was for paying this 1000*l.*

Mr. *Edwards* particularly says, that he represented to them this matter of 1000*l.* as *a thing of Consequence, a very pressing Occasion of a Sum of money immediately to be paid*; he said, *I do not know what the Consequence may be*; *Clamours begin to grow strong. I do not know but it may come to a Parliamentary Enquiry.* Mr. *Lovibond* says, that my Lord told them, *This was a matter that required great Expedition, for one that belonged to the Prince's Court*, and all of them understood there was a Proposal to pay the 1000*l.* and that was the Occasion of the meeting. All the masters that have been examined on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (says the Noble Lord) persuade them to pay the 1000*l.* but I persuaded them to pay all *Dormer's* Deficiency.

My Lords, There is no Evidence to support this Distinction, but on the contrary, there were Arguments used for the advancing of this money. And if he was not able to persuade them to pay this 1000*l.* there was no Likelihood of prevailing on them to pay the whole.

My Lords, Another matter insisted on in Relation to this Article was, that the money, which was paid to *Lockman*, was paid out of Compassion; *Lockman* says he took it as his due, and I think he was in the right; he gave an Assignment of the Order, when it was paid; and certainly this can in no Sort be added to the List of this Noble Lord's Charities, that he has been pleased to publish; but the Discourse with the matters before shews plainly what were his Inducements for paying it; he feared the Consequence if it were not paid, and chose rather to do it, than venture those Enquiries that the not paying it might occasion.

I think the Earl seems to agree, in Substance, to the Declaration at the End of the Articles, that was made the Fifth of *December* last, *viz.* that he *had heard of Dormer's Deficiency, but knew nothing of it but as publick News, &c.* A strange Declaration to come from the Bench at the End of Four Years, during which Time were all these Transactions about *Dormer's* Deficiency! Then it was that he was pleased to refer it to Mr. *Edwards*, to enquire whether there was likely to be a Loss of any money, when at that Time he knew very well that all *Dormer's* money was gone, and Mr. *Edwards* had none in his Hands.

The Seventeenth Article is for ordering and permitting *Dormer's* money to be paid out without Regard to Proportion; this was a manifest Injustice, and so discoursed of between this Lord himself and Mr. *Edwards*; and the Answer that is given to it is, That we have produced but Four Orders made by the impeached Lord for such Payments.

My Lords, I think it not material whether the Orders were made by himself, or the Court; he was warned several Times of the Consequence; he took the management of these matters to himself, and let Things run on, hoping



the money would last his Time; and now all is gone, and paid away, and many distressed People are left without any thing. In the Cause of *Jett* and *Jones*, the Orders that were read, appeared to be made by this Lord himself; and the Parties have been so lucky as to have got their whole money, whilst others are in the utmost Necessity without any Subsistence.

The Consequence is, that the rest of the Suitors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compassion is of another Consideration; but their legal Right is taken away by him that should have protected them.

An Objection was made by the Counsel, That there was no fixed Fund of *Dormer's* Effects, from which to have settled a Rule of Proportion. This is excusing one Fault by another: First, Care is taken not to have an Accompt settled; and then that is made an Excuse for not settling a Proportion.

The Eighteenth Article relates to the masters trafficking with the money; which was as notorious, as that there was such a Place as *Exchange-Alley*.

The Year 1720 has been mentioned both by the Earl and his Counsel, and it was so fatal a Year, that surely, if a Reformation were ever to be made, it should have been upon that Occasion. I think there is but little Difference, whether they traded with the money themselves, or put it into another's Hands at high Interest, and permitted them to trade with it. Could any one imagine that *Dormer* let 24,000 *l.* lie in *Wilson's* Hands for nothing? Mr. *Cottingham*, upon the Examination of my Lord's own Counsel, gave Evidence, that *Wilson* insisted he allowed high Interest for it. And it was well known it was in the Power of all the masters to traffick with the money, and this after express Warning by one of the masters to the Chan. nor not only by Word of mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection; one Thing that was proposed was so easy to be done, that there is no Excuse it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the masters from disposing of the Securities.

This might very easily have been done. The only Answer that was given, was, that it would not answer all the Securities.

This was made a Reason for doing of nothing, and there was such a Backwardness to do any Thing of this Kind, that the meanest and most trifling Excuse was sufficient to satisfy his Lordship, not to take any Step towards it.

My Lords, Upon this Article the impeached Lord was pleased to mention some of his Predecessors, and also his Successors: As to his two immediate Predecessors, he doubts the taking the Accompts by him in the manner they did, would have been thought of no Use.

My Lords, I am apt to believe a good Use might have been made of it; it would have put a Check and Restraint upon the masters, they would have acted with more Caution, when they knew the Ballance was a Charge

upon them, and that it might be called for at any Time; and if his Lordship had those Accompts, I dare say he would have seen that there was ten Times as much Cash in the masters Disposal, as there was in one of those Predecessors Time. And it might have been of Use to him to have seen what prodigious Sums of money were in their Hands, and how great the Danger was.

As to the present Commissioners, the Noble Lord was pleased to say, the Difficulties of making the masters accompt have appeared by their Proceedings.

My Lords, They have been sufficiently taken up with endeavouring to compel the masters to give Security for the Deficiencies incurred in this Lord's Time. The Difficulty was not so much in taking an Accompt, as in making good the Deficiency.

They have been forced to take what Security they could get from the masters from Time to Time, and I wish the Deficiency do not fall come out worse than is expected; no one can yet say what it will be.

My Lords, The Nineteenth Article was founded on the Endeavours of the Lord impeached, to deceive His Majesty in Council, by persuading the masters to make false Representations of their Circumstances to His Majesty, by a Subscription to their Accompts, and by assisting one another to make an Appearance of Ability.

This, my Lords, was the sad Conclusion of this long Scene of Iniquity; when it was become necessary, and it was no longer to be avoided, that there should be Accompts delivered in. There is an Attendance on the Chancellor; and one of the masters having concluded his Accompt with a Representation of his Ability and Readiness to pay the money, the rest are persuaded to do it in the like manner, without so much as asking them concerning the Truth of it; and there is one Instance that was very remarkable, which was in the Case of Mr. *Lovibond*, that where he, of his own Accord, could go no farther than to say he was able to pay or give Security to pay; that was not thought sufficient by this Lord, because it would imply a Diffidence that the money was not then forth coming; and therefore those Words about Security were not to be mentioned. Others of them that were no ways capable of producing the money, were induced to make the like Subscription.

When it was expected the money should be produced, then Mr. *Dixon* and Mr. *Cottingham* have a meeting with the masters to consult what was to be done; then it was that Proposals were made for the masters to assist each other, and to get Goldsmiths Notes and other Effects to shew to the Judges.

It has been objected, that the managers did not think fit to call Mr. *Cottingham* and Mr. *Dixon*.

My Lords, We called the masters that were present at that meeting, who gave Your Lordships an Account of that Transaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cottingham* and Mr. *Dixon* (that were his Servants and Agents) to contradict that Evidence; if this Lord had no Concern in that matter, he would certainly have called them to that Purpose, and his  
not



not examining them to it, greatly confirms our Evidence.

Your Lordships may remember the many Inconsistencies, Evasions, Equivocations, and Insufficiencies in his Lordship's Answer to the Articles of Impeachment, which have been observed and plainly made out by the managers for the Commons.

My Lords, He was pleased to make a Distinction between an Answer to Articles of Impeachment, and an Answer to a Bill in Chancery; that the Plaintiff in a Cause had a Right to a full and plain Discovery, but that the Case before Your Lordships differs. My Lords, I would beg leave to mention, that there was an Instance of an Impeachment before Your Lordships, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Strefs upon the Insufficiency and Evasions in the Answer. The Person then impeached had very hard Names given to him on that Account, and *even his Silence was insisted on as a Confession of his Crimes.*

As to the Noble Lord's Charities, I beg leave to say, that, as it is a great Addition to the merit of Charity, to have it kept private, it was the more extraordinary these Charities should be now published; because I do not see they are any ways material to the matters before Your Lordships. Here are plain Facts charged and proved, and if in a Case of this Kind these Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the most meritoriously charitable, should first be just. The Lord should have first considered those Suitors that he had injured, he should first have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before your Lordships the whole Circumstances of this Case: There needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the most persuasive Eloquence, and when they have Justice on their Side, they will have Weight with Your Lordships.

My Lords, The Case before Your Lordships is founded on Corruption, and a Series of Fraud to support that Corruption. The People had long murmured at it, but the Grievance increased at last to such an intolerable Degree, that it became a National Concern, and there was an unavoidable Necessity of a Parliamentary Prosecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope your Lordships will give such Judgment, as will be consistent with Your Lordships Honour and Justice.

Mr. Serj. Pengelly. My Lords, We shall beg leave to call a Witness or two; the first to the Imputation endeavoured to be thrown upon Mr. *Thomas Bennet's* Character, in Relation to the Discourse that passed between him and the Earl. We shall shew that he declared it at that very Time, or soon after the Lord had spoke it to him. We desire also to examine Mr. *Lucas*, who applied for the master's Place. It was insisted, That the Earl was offered 6000 *l.* and actually refused to take it; but took 5000 *l.*

from Mr. *Elde* and Mr. *Thurston* for the master's Office: We shall shew how that happen'd.

Mr. *Richard Lucas* Sworn.

Mr. Serj. Pengelly. We desire that you would inform my Lords, whether you made any Application to the Earl of *Macclesfield*, or to Mr. *Cottingham*, about coming into the masters Office at the Time when Mr. *Elde* or Mr. *Thurston* were admitted, and what passed.

Mr. *Richard Lucas*. My Lords, Upon the Death of Mr. *Fellowes*, being persuaded by some Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. *Cottingham*; my Lord *Macclesfield* being then out of Town, I thought it proper to go to his Secretary.

Lord Ch. Justice King. Please to speak up.

Mr. *Richard Lucas*. I say, upon the Death of Mr. *Fellowes*, I was persuaded by some Friends to make Application for the Master's Place; and upon that, I went to Mr. *Cottingham*, and told him the Affair I came about. He told me, Mr. *Lucas*, you know you have formerly had some Talk with me about an Affair of this Nature; it is to no Purpose for me to recommend you to my Lord, unless you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000 *l.* There was some Talk passed between us besides, but it being so long ago, and not expecting to be called to give an Account of it, I cannot now recollect it. One Thing I can recollect that he intimated to me, That my Lord *Macclesfield* had some Intentions of making some Orders, or doing somewhat that should be for the Ease or Advantage of the masters; but his Lordship would not do it at that Time, because it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. *Cottingham* in the Hall, and asked him, If he had spoke to my Lord about me? He told me, he had; but that my Lord was pleased to enquire into my Circumstances, and did think it proper that some Security should be given by the masters; and I being immediately to be put in by his Lordship, it was the more incumbent upon him to see what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000 *l.* Security. I told him, That after such Time as I had parted with 6000 *l.* I could not take upon me to say, I could myself make up a Security to the Value of 10,000 *l.* but what with the Assistance of Friends, and mine own Estate, I might possibly do it. Upon talking of the matter with my mother, she was very willing to join in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord *Macclesfield*, or to his Secretary; but to one or the other it was. I sent it by my Servant, and I was informed by Mr. *Cottingham*, That his Lordship had a Sight of it. But afterwards being uneasy at giving so large a Sum of money, and considering from the Talk that then was, that these matters might come into Parliament, I was advised, and I thought it proper, to have some better Hold upon his Lordship, to make some Return, in Case any thing should happen to lessen the Value of the Place: Upon that, I did



did write a Letter, I cannot remember the whole Contents; but I pretty well remember the Substance, which was, That I would undertake to give the Security required to the amount of 10,000 *l.* I believe, I did also mention my real Estate, which was near 300 *l.* a Year, to be a Part of the Security, and I did add, That notwithstanding the present Disputes between the master of the *Rolls* and the other masters, and the Talk there was of bringing it into Parliament, I was not at all uneasy; because I could securely depend upon his Lordship's Generosity, that he would take it into his Consideration, in Case any thing happened amiss in the next Session of Parliament; I can't remember exactly the Words, but my Lord *Macclesfield* has the Letter; if I am mistaken, his Lordship will set me right.

Mr. *Serj. Pengelly*. Upon this Letter of your Expectation of being repaired, if any thing happened, had you any Answer?

Mr. *R. Lucas*. The next thing I heard, was That Mr. *Elde* was in the Place, and Mr. *Cottingham* was pleased to say, he was a particular Acquaintance of my Lord's, and therefore had it.

Mr. *Serj. Pengelly*. When Mr. *Cottingham* told you this, what Answer did he return as to my Lord's Approbation of the Proposal?

Mr. *R. Lucas*. He said, to the best of my Remembrance, That my Lord was pleased that I offered 6000 *l.* at once, provided I would give Security, if that should be thought proper.

Mr. *Serj. Pengelly*. Since you was disappointed when Mr. *Elde* came in, What passed when Mr. *Thurston* came in? whether did you renew your Application then?

Mr. *R. Lucas*. I was, with Abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. *Serj. Pengelly*. What were your Fears?

Mr. *R. Lucas*. My Fear was about the bringing this matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, his Lordship's Chaplain, and, if I pleased, he would go to him, and get him to speak to my Lord about it.

Mr. *Serj. Pengelly*. What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. *R. Lucas*. I cannot say whether my Brother had a direct Commission from me to mention that I was then ready to give 6000 *l.* but it was my Apprehension, and the Apprehension of all those that knew this Affair, that I should not come in under so much; I am not very positive that such a Direction was given. I did mention another thing to my Brother, to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the several Offices of the masters, and that I was not without Apprehension, that if I should give 6000 *l.* to come into this Place, I might from time to time be called upon for several Sums of money in order to make good past Deficiencies; and I thought that it would be unreasonable for me to be brought into any Contribution for making good those Deficiencies, when I had no Concern in them. I then desired it might be mentioned. As for the Answer, I never saw Mr. *Ellis*.

Mr. *Serj. Pengelly*. What Orders did you give to your Brother? Did you give him any Order to pay the money without Consideration of being liable to the Deficiencies?

Mr. *R. Lucas*. I gave him no Order at all, I thought it was not come to bear yet.

Mr. *Serj. Pengelly*. Was there any thing passed after that?

Mr. *R. Lucas*. I conceive, my Lords, you won't think it proper for me to give an Account of what passed between Mr. *Ellis* and my Brother.

Mr. *Serj. Pengelly*. I desire to know, whether your Brother had any Orders or Directions from you to go on?

Mr. *R. Lucas*. I have told you every thing I can recollect; I only told him, I desired him to speak to Mr. *Ellis* to recommend me to his Lordship, upon the Foot I have mentioned, viz. on the Foot of the former Proposals.

Mr. *Serj. Pengelly*. Had your Brother any Authority from you to give 6000 *l.* without being secured from the Deficiencies?

Mr. *R. Lucas*. Six thousand Pounds was the Sum to be given, and I desired my Brother to mention the Deficiencies, and that I should not be understood to be subject to any of them.

Mr. *Serj. Pengelly*. Was it to be given absolutely without Reserve, or with Regard to be secured from the Deficiencies?

Mr. *R. Lucas*. I did desire that the Business of the Deficiency might be explained, and that it might be understood that I would not be answerable for any of them.

Mr. *Edward Lucas* sworn.

Mr. *Serj. Pengelly*. I desire you would inform my Lords, whether you received any, and what Directions from your Brother, upon the last Vacancy, when Mr. *Thurston* came in, of the making Proposals for your Brother's coming into that Office?

Mr. *E. Lucas*. Soon after Mr. *Borrel's* Death, my Brother expressed an Inclination to me of succeeding in that Office: I told him, I had an Acquaintance with Mr. *Ellis*, my Lord *Macclesfield's* Chaplain; and if he would give me any Commission, I would communicate it to Mr. *Ellis*, I believing that a proper Way of communicating it to my Lord. My Brother did desire me to go to Mr. *Ellis*, and to inform him myself, that he had so just a Sense of my Lord's Honour and Generosity, that he believed he might leave the Terms to be fixed by my Lord himself. I went to Mr. *Ellis*, and did tell him as my Brother had desired me. Mr. *Ellis* said, He did not much care to concern himself in the Affair; if it had been to recommend to a Living, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of these Offices, and explained to him the Nature of the thing, and persuaded him to lay this matter before his Lordship. Upon which he was then pleased to say, He would go to my Lord (who was at *Kensington*) the next Day, and bring me an Answer.

Mr. *Serj. Pengelly*. Had he any Directions either as to the Price, or the Terms?

Mr. *E. Lucas*. I don't know of any Directions he had, either as to the Price, or the Terms.

Mr.



Mr. Serj. Pengelly. What did you say about the Security, and the Deficiencies in the several Offices?

Mr. E. Lucas. This was another Conversation, about a Week, or Ten Days after; after Mr. Ellis had brought me an Answer, then I remember my Brother gave me Directions to consult with Mr. Ellis, whether it was not proper to make my Lord a direct Offer of 6000 *l.* but then it would be reasonable, that he should be indemnified or secured from any Damage, or Deficiency by any of the precedent Masters; and that he should not be called upon to make good any such Deficiency. I told Mr. Ellis this, and he said, there was no Room for this, there might be Deficiencies in some other of the Offices, but he had heard, there was no Deficiency in Mr. Borret's Office. I had likewise heard so, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon these Terms.

Mr. Serj. Pengelly. Did you hear any Thing more about it?

Mr. E. Lucas. About a Week after Mr. Ellis writ to me, That my Lord Macclesfield had approved of Mr. Thurston.

Mr. Serj. Pengelly. Please to recollect whether your Direction was about Borret's Deficiency only, or about all the Deficiencies in general?

Mr. E. Lucas. My Directions from my Brother were about all the Deficiencies; Dormer's Deficiency ran in his Head, and he thought it unreasonable, that he should be obliged to contribute to any Deficiency precedent to his coming in master.

Mr. Serj. Pengelly. Did you communicate this to Mr. Ellis?

Mr. E. Lucas. I did communicate it to Mr. Ellis; if not in such express Terms, yet to that Effect, that it was unreasonable, that my Brother should be obliged to contribute to make up those Deficiencies that were preceding to his being master; I am sure, I added those Words, That he should not be obliged to contribute to make up those Deficiencies that were precedent to his being master.

Earl of Macclesfield. My Lords, I submit, whether it be not proper, that Mr. Ellis be called before this Mr. Lucas goes away.

Mr. Ellis called, but not examined again immediately.

Earl of Macclesfield. Mr. Lucas, I desire that you would declare to my Lords over again, what you have given in Evidence.

Mr. E. Lucas. The first Time I saw Mr. Ellis was at my mother's House, immediately after Mr. Borret's Death. I then told him of my Brother's Intention to purchase a master's Place, and that my Brother had so thorough a Sense of my Lord's Honour and Generosity, that he would leave the Terms to my Lord himself. Mr. Ellis was not at first inclinable to concern himself in it, but upon telling him what Steps my Brother had taken in Regard to it; he said out of Friendship to me he would engage in it, and go to my Lord, and bring me an Answer. This was the first Conversation. Mr. Ellis did the next Day bring me an Answer from my Lord.

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Mr. Serj. Pengelly. What was the Answer my Lord sent?

Mr. E. Lucas. The Answer that Mr. Ellis brought was, That my Lord had no Objection to my Brother; he did remember that he had been formerly recommended to him, but that there was some other Person proposed by some of the masters, of whom he expected a farther Recommendation, and could not now give any other Answer to it: He also told me, That he apprehended, if that Person did not succeed, my Brother might have the Refusal. I said it was indifferent whether my Brother then succeeded, or not; because my Lord told him, That one or two masters were inclinable to sell, and if they did, he might have an Opportunity of buying of those masters. This passed on the Second Conversation.

Mr. Serj. Pengelly. Go on.

Mr. E. Lucas. The Third Conversation was sometime afterwards at my Lord Macclesfield's own House in *Lincoln's-Inn-Fields*. I went by my Brother's Directions meaning to consult with Mr. Ellis in a friendly manner, whether he did think it adviseable to make his Lordship a direct Offer of 6000 *l.* I said if he gave it, it was reasonable, that he should be indemnified from any Damage that should happen by Reason of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he said my Lord had not spoken to him about that, that he could not have every Opportunity he desired to speak with him; that as to the Deficiencies, he had heard there was none. I said, I had likewise heard so; but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon those Terms. This to the best of my Remembrance is the whole I know of the matter.

Mr. Serj. Probyn. I only would beg leave to ask this Question, When the first Proposal was made to Mr. Ellis, whether he did propose a certain Sum?

Mr. E. Lucas. I don't remember I did; but I think I told Mr. Ellis my Brother had formerly offered 6000 *l.* and I told Mr. Ellis this, and did lay before him all the Circumstances of that Affair, to make him the more inclinable to engage in it.

Mr. Com. Serjeant. I desire he may be asked, whether any Terms besides were mentioned than what Mr. Lucas has mentioned before?

Mr. E. Lucas. I don't remember there were any other Directions then given, I can't be positive, but that he was willing to leave it to my Lord's Honour and Generosity. And my Lords I can swear positively, that till the first Day of these Proceedings, when I met Mr. Ellis in the Court of Requests, I never knew that he had offered my Lord Macclesfield 6000 *l.*

Earl of Macclesfield. My Lords, we beg leave that Mr. Ellis may give an Account of what Proposal he made to me from Mr. Lucas.

Mr. Ellis. My Lords, the Account Mr. Lucas has given Your Lordships is true in all the Particulars, as far as I can remember at this Distance of Time, though there are a good many that I could not have recollected of myself, only as to this one, his not impower-



ing me to offer this 6000*l.* I should not have gone to my Lord, unless I had had some particular Offer to mention. I particularly remember I made him that Offer, and I am as certain, that Mr. *Lucas* did speak to me to make the Offer of 6000 *l.* for this Reason, that I never knew that Mr. *Lucas* had offered 6000 *l.* before by Mr. *Cottingham*, till this Impeachment begun, when Mr. *Lucas*, being here, acquainted me that he had made that Offer to my Lord.

Mr. *E. Lucas*. I desire Mr. *Ellis* may be asked, whether ever he told me, that he offered Lord *Macclesfield* 6000 *l.*?

Mr. *Ellis*. I believe I only did tell him in general, that I had made his Lordship the Offer which he had desired me to make, and in general likewise, that my Lord was well satisfied with it.

Mr. *Com. Serjeant*. I desire he may inform Your Lordships, whether, when he told Mr. *Lucas*, that he had made that Offer which he had desired him, he did enquire what that Offer was?

Mr. *Ellis*. No, my Lords, he did not.

Mr. *Serj. Pengelly*. My Lords, they have called Mr. *Ellis* to confront Mr. *Lucas*; but they agree together in all the material Circumstances. Mr. *Ellis* says, what Mr. *Lucas* swears is true in every Particular, unless in Relation to the Offer of 6000 *l.* In all the rest Mr. *Ellis* confirms Mr. *Lucas*'s Evidence.

Mr. *E. Lucas*. I don't positively swear that I did not give him that Commission, but to the best of my Remembrance, I did not give him that Commission.

Earl of *Macclesfield*. I desire Mr. *Ellis* may be asked, when he made the Proposal to me, whether he mentioned any Condition whatsoever?

Mr. *Ellis*. No, my Lords, I did not mention any Condition.

Mr. *E. Lucas*. Till after the first Conversation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition; I gave an Account to Your Lordships of two different Conversations.

Earl of *Macclesfield*. When the Answer was brought, that I was satisfied with the Proposal, what did he do farther upon it?

Mr. *E. Lucas*. My Lords, Mr. *Ellis* did not tell me, that my Lord *Macclesfield* was satisfied with the Proposal, but that my Lord *Macclesfield* had no Objection to my Brother, and he had formerly received a Recommendation of him; but at present another Person was recommended by some of the masters, whom he expected to be farther recommended.

Mr. *Plummer*. My Lords, I desire Mr. *Ellis* may be asked, how long, before Mr. *Thurston* was admitted, was the Conversation about giving Security, that Mr. *Lucas* might be indemnified from the Deficiencies?

Mr. *Ellis*. My Lords, in one of the last Conversations, which was after I had spoken to my Lord *Macclesfield*, Mr. *Lucas* might say something about having Security. But I don't recollect it with any Certainty; if he did, it was some Days before Mr. *Thurston* was admitted.

Mr. *Serj. Probyn*. I desire he may inform Your Lordships, Whether he ever told my Lord

*Macclesfield* any thing of this Discourse about Security?

Mr. *Ellis*. No.

Sir *Geo. Oxenden*. He says, He never told my Lord *Macclesfield* of that Conversation: I desire to know, if he told my Lord *Parker*?

Mr. *Ellis*. No, my Lords, I told no body at all.

Mr. *Strange*. My Lords, I beg leave to make one Observation; a learned manager was pleased to observe upon the Appearance of these Two Witnesses together, That now the Evidence of Mr. *Lucas* is confirmed by Mr. *Ellis*: Your Lordships are pleased to remember, that Mr. *Ellis* was our Witness, and was first examined; and therefore I should apprehend the Observation may be turned much properer the other way: That the Evidence of Mr. *Ellis*, who was our Witness, and was first examined, is now confirmed by Mr. *Lucas*.

Earl of *Macclesfield*. My Lords, I desire he may inform Your Lordships with relation to the Discourse that passed betwixt them about the Deficiencies; Whether the Objection did not relate singly to them?

Mr. *Ellis*. I don't well remember what passed upon the Subject of the Deficiencies; what I have said to Your Lordships before, I remember full well, because a particular Circumstance made me recollect, that Mr. *Lucas* did say, he had heard there was no Deficiency in Mr. *Borret*'s Office; which I had heard too; but at what time that Discourse was, I can't recollect; it might be as he represented it.

Earl of *Macclesfield*. Mr. *Lucas* said to you, That he was willing to treat upon those Terms?

Mr. *Edw. Lucas*. Upon those Terms, or to that Effect, I did say.

Mr. *Plummer*. I only would make this Observation; Both these Evidences confirm this, that Mr. *Lucas* was an inquisitive man, and would not part with his 6000 *l.* so easily as to ask no Questions.

Mr. *Serj. Pengelly*. We beg leave now to call a Witness as to the second letter or Order, supposed to be sent in *November 1721*, to all the masters. Mr. *Cottingham* could not take upon himself to say, that it was delivered; he had kept a *Memorandum* of the first, but none of that, and he believed he might say, it was delivered; we deny any such letter was delivered, and beg leave to ask as to that particular Point.

Mr. *John Bennet* called.

Mr. *Serj. Pengelly*. I desire he may be asked, whether in *November 1721*, any second letter, or Order, of the Purport of the first Order, was sent, or delivered, in relation to the masters bringing in their Accompts?

Mr. *J. Bennet*. My Lords, I never saw any such letter.

Mr. *Serj. Pengelly*. Did you ever hear of it?

Mr. *J. Bennet*. I never heard of it before, till I heard Mr. *Cottingham* read it at the Bar.

Mr. *Serj. Pengelly*. Did you receive any Account from the other masters, that they had received any such letter?

Mr. *J. Bennet*. No, my Lords, never.

Mr. *Serj. Pengelly*. Do you recollect any Discourse between my Lord *Macclesfield* and your Brother, relating to your Brother's Account?

Mr.



Mr. *J. Bennet*. I don't recollect the whole.

Mr. *Serj. Pengelly*. What do you recollect?

Mr. *J. Bennet*. My Lord hath declared to me, That he wondered Mr. *Kynaston* and my Brother should put such an *Item* in their Accounts, which would make a Discovery, that the masters had bought their Places with the money of the Court, which might be of mischievous Consequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. *Serj. Pengelly*. When was this? About what Time?

Mr. *J. Bennet*. About *Christmas* last.

Mr. *Serj. Probyn*. We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the same Purpose to support what was given before, but new matter, and therefore not proper.

Mr. *Lutwyche*. We apprehend it is very proper, because Mr. *Thomas Bennet's* was objected to, and this confirms his Evidence.

Mr. *Holford* called.

Mr. *Serj. Pengelly*. My Lords, we desire he may be asked, whether this letter, or Order, of *November 1721*, was ever communicated to him by Mr. *Cottingham*?

Mr. *Holford*. No, my Lords, I never heard of it till now lately.

Mr. *Com. Serjeant*. I desire Mr. *Holford* would inform Your Lordships, whether there were not then several masters senior to him? and whether it is not usual to leave those letters, or Orders, with the Senior masters?

Mr. *Holford*. I don't know that such Order, or letter, was left at that Time. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me.

Mr. *Com. Serjeant*. I desire he may be asked the other Part of the Question, Whether it is not usual to leave Orders, wherein the masters are generally concerned, with the Senior masters?

Mr. *Holford*. It is no; but the Usage generally is to be left at the Publick Office. It might be left with the Senior master, for ought I know.

Mr. *Lovibond* called.

Mr. *Serj. Pengelly*. Did you ever hear or know of this Letter or Order of *Nov. 1721*?

Mr. *Lovibond*. I never heard of any such letter or Order, till I heard it read at this Bar.

Mr. *Kynaston* called.

Mr. *Serj. Pengelly*. Mr. *Kynaston*, will you give my Lords an Account, whether you heard of this letter or Order of *Nov. 1721*?

Mr. *Kynaston*. I suppose you mean the letter which Mr. *Cottingham* read.

Mr. *Serj. Pengelly*. The same.

Mr. *Kynaston*. I never heard of it, till I heard it read at this Bar.

Mr. *Serj. Pengelly*. I hope this will explain Mr. *Cottingham's* Want of memory, when he said that he could not remember it.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly*. I desire to ask you, whether you know any thing of this letter of *Nov. 1721*?

Mr. *Lightboun*. I never heard of it, till I heard it at Your Lordships Bar from Mr. *Cottingham*.

Mr. *Edwards* called.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he ever heard of this Letter of *Nov. 1721*?

Mr. *Edwards*. I never heard of such a Letter, till I heard it mentioned at this Bar.

Mr. *Serj. Pengelly*. So that, my Lords, we apprehend this letter, when written by Mr. *Cottingham*, was a Pocket-letter to be made use of on any proper Occasion. The managers have done with their Evidence and the Witnesses; they shall call no more. We humbly apprehend, that we have cleared up the Reason, why the Lord took 5000 *l.* rather than 6000 *l.* It was from Hopes of greater Gain in having 5000 *l.* absolutely, without being liable to refund, than 6000 *l.* liable to such a Contingency. Upon the Evidence we submit the whole matter to Your Lordships Determination.

Mr. *Serj. Probyn*. My Lords, we will be short in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was insisted upon by us, that there was Care taken in disposing of these Offices, and that my Lord *Macclesfield* having personal Knowledge of one Gentleman did prefer him before another, whom he did not know, though he had less money from him, than he could have had of the other. It is agreed by Mr. *Lucas* and his Brother, that there was a proposal of 6000 *l.* made upon this Occasion: Mr. *Ellis* tells you, Mr. *Lucas* gave him Orders to propose it to my Lord *Macclesfield* without any Terms whatsoever: He never mentioned any Terms, or intimated any Condition or Restriction to my Lord *Macclesfield*. Upon that his Lordship was pleased to direct a proper Enquiry to be made, what Security he was able to give for the Discharge of his Office; here there was 6000 *l.* proposed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5000 *l.* This doth not shew any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this shews that the Earl could not do this out of an immoderate Desire of Gain, when 6000 *l.* was proposed to be given; but he preferred another whom he knew to be well qualified for less money; so that we apprehend this is an Evidence which is much in favour of the Earl. As to the other matter, the masters not knowing of this letter, your Lordships observe what Evidence was given by Mr. *Cottingham*. This is a Transaction some time ago, he says that he writ this letter by the noble Lord's Order, that he cannot now say to which of the masters he delivered it, or whether it was personally delivered by him, or by one of his Clerks. Your Lordships will observe, that there were two masters Senior to Mr. *Holford*, viz. Mr. *Hiccocks* and Mr. *Fellowes*; and it might probably be delivered to one of them; one of them is since dead, the other is yet living; but we were not aware of the Objection, and so have not him here. This doth not impeach Mr. *Cottingham's* Credit or his Evidence, so far as it concerns the Earl.

Mr. *Com. Serj.* My Lords, I will not enter into a strict Comparing of the Evidence, we apprehend that what Mr. *Ellis* swore stands confirmed in every thing by Mr. *Lucas*, and we have

Reason



Reason to thank the Gentlemen of the House of Commons for this Evidence. There was one material Part of our Evidence, that the Earl had a thorough Intention of entering into the Regulation of those matters; but by Disputes arising in relation to the Jurisdiction of the master of the Rolls, he was hindered.

Now the Evidence of Mr. *Lucas* corroborates our Proof on this Head, he saith that Mr. *Cottingham* told him, tho' Security had not been taken, yet at present the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give; there was not only an Enquiry into his present Circumstances, but likewise an Intimation that Security would be expected. This shews the Earl's Intention; and if the Thirst of Gain had swayed him, Mr. *Lucas* would never have had those Bugbears to affright him from giving so much money. Upon the whole it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield*. My Lords, I beg leave to say a very few Words upon what hath been newly offered, as to the Evidence to take off my having preferred 5000 Guineas with a Person I thought a better man, to 6000 *l.* with another, whom I thought a good man. I apprehend it is not taken of at all by any Thing that has yet been offered. Mr. *Lucas* owns that at the first Time there was an Expectation of Security, and he has given your Lordships an Account that he asked what Security was expected; and was answered I think to the Value of 10,000 *l.* and that what he spoke of the Deficiency, was only that he should not be liable to farther Orders to be made upon him for Contribution to the former Deficiencies of other masters; and in the latter Time, when the Clamour was greater, Mr. *Ellis* offered me 6000 *l.* absolutely without any Condition, and I said I approved of the Person and of the Offer, but I had another Gentleman then under Consideration. Their Evidence indeed varies as to the Particulars of the Conversations they had upon this Subject: But whatever Discourse passed between them, unless it came to my Knowledge, it ought not to affect me. I never heard, nor is it so much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatsoever annexed to the Proposal made by Mr. *Lucas*.

Mr. *Ellis* has been asked this Question, and has sworn positively he mentioned none at all to me; so that there is not the least Pretence that the Restriction, supposing Mr. *Lucas* annexed any to the Proposal (which I must observe is flatly contradicted by Mr. *Ellis*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the letter of *November* 1721; your Lordships will remember, that when I spoke of that, I entered upon it as a Thing not at all necessary for me; because they had not proved the Article, that the letter writ in *February* was with an Intention to terrify the masters into a Contribution; but all the Proof they produced was, that the masters had paid a voluntary Contribution, and upon that they made some Observation; but not one of the masters ever gave your Lordships an Account that they did it by Reason of, or under the Terror of this letter;

they have called every one of them, and not one hath said so, but agreed that they had paid it as a voluntary Contribution; so that there is no manner of Occasion for what hath been said about this letter. Mr. *Cottingham* did say before your Lordships, that he thought the letter was sent, and he had no Reason to believe the contrary; but indeed he had no memorandum of its being sent. It is very extraordinary to suggest, that this should be a pocket letter. Can any Person imagine that that letter was calculated for an Occasion like this? Was there any Apprehension of this Prosecution in 1721? My Lords, it is not worth while to trouble your Lordships with any more Remarks about so groundless a Pretence. In the Reply there hath been something new offered to your Lordships to make out my receiving money from the masters to be an Offence at common law; and there have likewise been mentioned several Acts of Parliament, to neither of which I have had any Opportunity of giving an Answer before; I therefore apprehend I have a Right to take Notice of them now. And first I beg leave to observe to your Lordships, that every one of these Acts of Parliament relates plainly to Judges who take Bribes, or take money for doing their Duty, or for doing those Things they were bound to do; they lie upon your Lordships table, and if your Lordships will but look upon them you will find all to be so.

That of *Magna Charta* is plainly so, that Justice shall be administered to the Party without paying for it.

So the Statute of 12. R. II. that they shall. —

Mr. *Serj. Pengelly*. My Lord cannot be regular to reply to us on that Statute.

Earl of *Macclesfield*. The Statute is, that they shall not make any Officer for Brokage.

Sir G. *Oxenden*. We must submit it to your Lordships whether this can be regular; the noble Earl hath had his Defence, we have replied; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordships Table; and your Lordships will consider it.

Earl of *Macclesfield*. I will not take up your Lordships Time any farther in insisting upon it; but I hope at least those Gentlemen will not oppose my taking Notice of one Thing that is new; though not any part of the Articles, which is what the Gentlemen have said with relation to *Wilson*'s Composition not being binding upon the Suitors of the Court; that it is matter of Horror that *Wilson* should trust to the Faith of a Court of Justice, and upon that enter into a Composition, which at last should not be effectual and binding. To that give me leave to answer, that if *Wilson* had acted honestly, and given a fair Account of his Estate and Effects in this Case, and it had appeared upon the whole, that he could not pay more than according to this Composition; and at the same Time that it must be a real advantage to the Suitors to have received their Proportion of what he was able to pay, without the Expences of a Statute of Bankruptcy; in that Case he would have the Benefit of it: But in Case he could have paid more, and this appeared only to be a fraudulent or unfair Composition, it would be no way conclusive upon the Suitors; and as he ought not to reap any  
Benefit



Benefit, so neither would they suffer any Prejudice by it upon that Supposition.

Mr. Serj. Pengelly. The managers are entitled to the Reply and Conclusion.

As to our Evidence newly given, it proves in the strongest manner, that if there was a Reason for distinguishing between 5000*l.* and 6000*l.* it was because the 6000*l.* was attended with an Incumbrance; and if it be said that the Earl had no Notice of it, it is prov'd that his Agent, or the Person whom he employ'd, had this Account deliver'd to him, and knew it; and we appeal to the Letter which is in their Hands. And therefore this is so far a Confirmation of the other Part of the Charge of Neglect when Security was offered. Why was not the Person accepted? Why Mr. *Elde* preferr'd?

Mr. *Lucas's* Directions to his Brother, and his Transactions are confirm'd by Mr. *Ellis*, my Lord's own Chaplain; and the only Reason why the Bargain was not concluded, was, because of the Privilege insisted upon by the Person to be indemnified from all Contributions and Charges.

Earl of *Macclesfield*. I beg your Pardon, if I trouble your Lordships once more, in relation to a Piece of new Evidence, which I did not before reflect upon; I am under a very great Disadvantage from these Gentlemen, who are for tying me down to very great Hardships, so that if any thing slips my memory, at what they call the proper Time, it must at this rate be lost for ever. I would take Notice of one Thing, with relation to what Mr. *Thomas Bennet* said of what I spoke, of denying that the masters paid for their Offices out of the Suitors money; they are attempting to prove that I knew of their doing so, and they prove it by shewing, that I said I had always denied it. But, my Lords, is there any of the masters that came in in my Time, that says I knew any such thing? No, my Lords, not one of all those masters that came in in my Time, and appear to have transacted in this manner; there are only two, Mr. *Kynaston* and Mr. *Thomas Bennet*; but is there any of them, or any other, that pretend that I knew they did so? Here are two Persons that paid for their Offices out of the Suitors money; and because I told one of them afterwards, admitting what he said to be true, that I had heard it said it was so, and deny'd it; Is it from thence to be concluded that I knew it was really so? My Lords, I beg leave to observe as to the matter of the difference of the Prices; I gave Evidence of the difference of Prices in other Offices, and their Rise from 50*l.* to 500*l.* in one Instance, and from 200*l.* to 800*l.* in another.

Mr. Serj. Pengelly. We are unwilling to interrupt the Lord; but now for him to go back again into the whole, is a greater Right than his Lordship is entitled to; therefore from the Duty we owe to your Lordships, we hope every Thing that is regular shall be observ'd.

Earl of *Macclesfield*. I submit if your Lordships think I am irregular; in the Confusion my Papers were in when I made my Defence from them, the Notes relating to this and some other matters were overlook'd: But as to the Reply, I must beg leave to make one general Observation, That the Gentlemen have thought the Arguments used by me in that Defence, either such as they could not answer, or such as needed no Answer, since they have not attempted to answer any of them; and which of the two, I must leave to your Lordships Determination.

Mr. *Onslow*. My Lords, in the Course of our Reply, we made use of the Statute of *Henry IV.* We have it not printed, but we have an attested Copy in Writing, and the Original Roll; if your Lordships please, this attested Copy may be brought up to your Lordships Table.

Mr. *Nicholas Paxton* sworn.

Mr. *Paxton*. My Lords, I examined this Copy with the Deputy-keeper of the Rolls in the *Tower*, and it is a true Copy.

Earl of *Macclesfield*. Whether that Parliament Roll be in the Nature of a Journal or a Statute Roll, wherein the Act of Parliament is enter'd?

Mr. *Paxton*. My Lords, the Officer is here; he will give your Lordships an Account.

Mr. *Lutwyche*. It is quoted by my Lord *Coke* to be of the same Nature as a Parliament Roll.

Mr. *Holmes* called.

Mr. Serj. Pengelly. Mr. *Holmes*, Where is this Roll kept?

Mr. *Holmes*. My Lords, I am Deputy-keeper of the Records.

Mr. Serj. Pengelly. Where?

Mr. *Holmes*. In the *Tower*.

Mr. Serj. Pengelly. What Roll is that?

Mr. *Holmes*. It is the Parliament Roll of the 11th of *Henry IV.*

Earl of *Macclesfield*. I desire he may inform your Lordships whether there be any Difference or Distinction between the Parliament Roll and the Statute Roll?

Mr. *Holmes*. There are a great many private Acts enter'd upon the Parliament Rolls; that are not in the Statute Rolls; what is in the Statute Roll was sent down by Writ into the several Counties to be proclaim'd in the several County Courts.

Mr. Serj. Pengelly. Whether that is not the Original Roll?

Mr. *Holmes*. This is the original Roll.

E. of *Macclesfield*. I apprehend the Parliament Roll contains the Petitions, and the King's Answer.

Mr. *Holmes*. It doth.

E. of *Macclesfield*. Before it comes to be published as a Law, is it not drawn up in Form, and enter'd upon the Statute Roll?

Mr. *Holmes*. The Petition is a piece of Parchment; after it hath passed King, Lords, and Commons, then it is entred on this Roll.

Mr. *Onslow*. Whether the King's Assent is not entred upon this Roll?

Mr. *Holmes*. There is *le Roy le Veut*.

Lord *Lechmere*. I desire, for your Lordships Satisfaction, that he may read what is upon the Parchment Roll.

Mr. *Holmes* reads it, &c.

Parl. Rot. N<sup>o</sup> 28. 11 H. IV.

Respectuatur } Item, QUE nul' Chauceller, Tre-  
per Dominum } sorer, Gardein de Privie  
Principem & } Seal, Counseller du Roy, Serementz  
Concilium. } a Counsell du Roy ne nul' autre Offi-  
cer Juge ne Ministre du Roy parnant  
fees ou gages de Roy pur lour ditz  
Offices ou Services, preigne en nulle  
manere en temps avenir ascun ma-  
nere de don ou brocage de nully  
pour lour ditz Offices et Services,  
affaire sur peyn de respondre a Roy  
de la treble de ceo que issi preignent,  
et de satisfaire la Partie et punys al  
volonte de Roy, et soit dischargez de  
son Office, Service, & Counsell pur  
toutz



*toutz jours, & que chescun qui vorra pur fuer en la dite Matier eit la fuit sibien pur le Roy come pur luy mesmes & eit la tierce partie de some de qui le parties soit duement convict.*

Le Roy le Voet.

E. of *Macclesfield*. What is there in the margin?

Mr. *Holmes*. *Respectuatur per Dominum Principem & Concilium.*

E. of *Macclesfield*. That I may not be misunderstood in this matter, and accused of going to quibble away an Act of Parliament; your Lordships will give me leave to observe in the first Place, That supposing this to be an Act of Parliament, it relates to Cases where Judgments are given, or where the Parties have a Right, and not any way to me or to my Case; and having premis'd this, your Lordships will see how this matter stands. Here are two Rolls, the one is in the Nature of a Journal, wherein an Entry is made of the several Proceedings, and there are in it great Numbers of Petitions to the King by the Commons; whereby they pray, That Acts may be made, and the King's Answers upon them: The Answer it may be is agreeing to some Part of what they pray, or sometimes to no Part, but a Provision made quite different from what they pray. At that Time the Judges drew up the Acts afterwards in Form, and thence then those Acts were entered upon the Statute Roll; and they were promulgated at that Time by Proclamation on Writs issued to the Sheriffs of the several Counties. Now this hath in the margin of the Parliament Roll, *Respectuatur per Dominum Principem & Concilium*. When the Judges came afterwards to draw up the Statutes of this Parliament, in order to publish them, there being a *Respectuatur* set upon this in the Parliament Roll; they forbore to draw it up amongst the rest, and it is not entered upon the Statute Roll at all, nor ever printed in any Statute Book since, nor was it ever publish'd by the Sheriffs, nor consequently sent to the several Courts of Justice, nor ever taken Notice of by them as a Law; for the Reason of that maxim, That the Courts of Justice are bound to take notice, *ex officio*, of public Laws, and not of private Laws, was because the publick Laws were transmitted to them under the Great Seal. The Fact then in this Case doth appear to be, that when the Acts of this Parliament of 11 Hen. IV. came to be drawn up and promulgated, this having a *Respectuatur* enter'd upon it, was not entered upon the Statute Roll, and so not published; this is the Fact. However it doth not concern me, nor doth it relate to the present Case at all, as I observed to your Lordships before: If I had made a Decree for money; if I had refused a Writ or *Subpœna*, unless the Party had paid me money, then I had been within the Statute, but not in this Case.

Mr. *Lutwyche*. We say this Statute doth concern him: But as to what he saith, that there is an Entry in the Margin, *Respectuatur per Dominum Principem, &c.* this is taken Notice of in the 3d Institute, where my Lord *Coke* particularly affirms, that this is an Act of Parliament in Force, and is upon the Parliament Roll, and takes notice of *Respectuatur*, &c. that it was in Fact done by the Prince, the Son of King *Henry IV.* but without Authority; and that notwithstanding such Respite, this Act of Parliament is in full Force.

Mr. *West*. Supposing it to be an Act of Parliament it extends to the Earl's Case; but whether

it be an Act of Parliament or no, is a Question that the Noble Earl now makes. I thought it had been the common Learning, that all the old Laws were Petitions from the Commons, and the King's Answer to them; and that they were entered upon the Parliament Roll; and that the Parliament Roll was only a Voucher to the Statute Roll. I could give many Instances where that Voucher was not pursued, and the Statute Roll drawn up different from the Parliament Roll; and that was the very Reason of altering the manner of passing Laws into the method that is now used. This is my Lord Chief Justice *Hale's* Account in one of the modern Reports.

Mr. *Plummer*. The Earl impeach'd hath principally insisted on two things; the one is the taking a less Sum of money for a master's Place when vacant, when he had a greater Sum offer'd him; and that therefore it follows that he hath not made corrupt Advantages in order to raise his own Fortune, and that he is Innocent. He hath called the Negotiator in this Affair to prove, That when he was offer'd 6000*l.* he took 5000*l.* The Commons have by their Witness explain'd it; and this matter is now fully clear'd, and your Lordships have the whole before you; and I will make no farther Observation upon it.

The second Thing that he lays great Weight upon is, that he called for the Accounts of the masters, notwithstanding the 500*l.* apiece was paid in. Upon examining the Witnesses, it doth not appear that any of the now masters knew any thing of it. I leave it to your Lordships Consideration, whether, if the Earl of *Macclesfield* had been in earnest, he would not have had a Return of that Order. It doth not appear there was ever any Account given in; therefore when these two Points are made plainer against him now than they were on our first making good the Charge, tho' he seems to say the Sting of the Impeachment is taken out, yet it is plain the Sting is not taken out of it, but it still remains; and your Lordships will give such Judgment as is just and legal.

Then the Managers for the House of Commons, and the Counsel withdrew, and then the House adjourned.

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Tuesday, 25 May, 1725. *The 11th Day, the Lords being seated in their House, and the Managers being come, and seated as before, the usual Proclamation was made for Silence.*

L. Ch. Just. King. **M**Y Lords, Your Lordships having heard the Evidence in this Case, have agreed upon a Question, which is severally to be put to Your Lordships in the usual Order. The Question is this, Is *Thomas Earl of Macclesfield* guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or not Guilty, upon your Honour?

L. Ch. Just. King. *Robert Lord Walpole*, What says your Lordship? Is *Thomas Earl of Macclesfield*, guilty of High Crimes and Misdemeanors charg'd upon him by the Impeachment of the House of Commons, or not Guilty?

*Lord Walpole*, Guilty upon my Honour.

*The same Question was severally put to the rest, whose Names and Votes are as follow.*

*Nicholas Lord Lechmere*, Guilty upon my Honour.  
*Matthew Lord Ducie*, Guilty, &c.

*Thomas*



<i>Thomas Lord Onslow,</i>	Guilty upon my Honour	<i>Nicholas Earl of Scarfsdale,</i>	Guilty, &c.
<i>Allen Lord Bathurst,</i>	Guilty, &c.	<i>Robert Earl of Sunderland,</i>	Guilty, &c.
<i>Thomas Lord Foley,</i>	Guilty, &c.	<i>William Earl of Denbigh,</i>	Guilty, &c.
<i>Samuel Lord Masham,</i>	Guilty, &c.	<i>Edward Earl of Warwick,</i>	Guilty, &c.
<i>Thomas Lord Trevor,</i>	Guilty, &c.	<i>George Earl of Northampton,</i>	Guilty, &c.
<i>Thomas Lord Montjoy,</i>	Guilty, &c.	<i>John Earl of Leicester,</i>	Guilty, &c.
<i>George Lord Hay,</i>	Guilty, &c.	<i>Henry Earl of Lincoln,</i>	Guilty, &c.
<i>John Lord Gower,</i>	Guilty, &c.	<i>Thomas Earl of Pembroke,</i>	Guilty, &c.
<i>Henry Lord Herbert,</i>	Guilty, &c.		
<i>John Lord Ashburnham,</i>	Guilty, &c.	<i>John Marquifs of Tweedale,</i>	Guilty, &c.
<i>James Lord Waldegrave,</i>	Guilty, &c.		
<i>Charles Lord Lynn,</i>	Guilty, &c.	<i>James Duke of Chandos,</i>	Guilty, &c.
<i>Charles Lord Cornwallis,</i>	Guilty, &c.	<i>William Duke of Manchester,</i>	Guilty, &c.
<i>Charles Lord Bruce,</i>	Guilty, &c.	<i>Philip Duke of Wharton,</i>	Guilty, &c.
<i>William Lord Brooke,</i>	Guilty, &c.	<i>Thomas Duke of Newcastle,</i>	Guilty, &c.
<i>James Lord Compton,</i>	Guilty, &c.	<i>Peregrine Duke of Ancafter, Lord</i>	} Guilty, &c.
<i>William Lord Hunsdon,</i>	Guilty, &c.	<i>Great Chamberlain,</i>	
<i>Hugh Lord Clinton,</i>	Guilty, &c.	<i>John Duke of Roxburghe,</i>	Guilty, &c.
<i>John Lord Delawar,</i>	Guilty, &c.	<i>James Duke of Montross,</i>	Guilty, &c.
<i>Algernon Lord Percy,</i>	Guilty, &c.	<i>John Duke of Montague,</i>	Guilty, &c.
<i>William Lord Abergavenny,</i>	Guilty, &c.	<i>Charles Duke of Grafton, Lord</i>	} Guilty, &c.
		<i>Chamberlain,</i>	
<i>Stephen Lord Bishop of Exeter,</i>	Guilty, &c.	<i>John D. of Greenwich, Lord Steward,</i>	Guilty, &c.
<i>William Lord Bishop of Bristol,</i>	Guilty, &c.	<i>William Duke of Devonshire, Lord</i>	} Guilty, &c.
<i>Edward Lord Bishop of Chichester,</i>	Guilty, &c.	<i>President,</i>	
<i>Richard Lord Bishop of St. Davids,</i>	Guilty, &c.		
<i>John Lord Bishop of Norwich,</i>	Guilty, &c.	<i>William Lord Archbishop of Can-</i>	} Guilty, &c.
<i>John Lord Bishop of Carlisle,</i>	Guilty, &c.	<i>terbury,</i>	
<i>William Lord Bishop of Bangor,</i>	Guilty, &c.		
<i>Joseph Lord Bishop of Glocester,</i>	Guilty, &c.		
<i>Thomas Lord Bishop of Ely,</i>	Guilty, &c.		
<i>White Lord Bishop of Peterborough,</i>	Guilty, &c.		
<i>Samuel Lord Bishop of Rochester,</i>	Guilty, &c.		
<i>John Lord Bishop of Oxford,</i>	Guilty, &c.		
<i>John Lord Bishop of St. Asaph,</i>	Guilty, &c.		
<i>Richard Lord Bishop of Winchester,</i>	Guilty, &c.		
<i>William Lord Bishop of Durban,</i>	Guilty, &c.		
<i>Edmund Lord Bishop of London,</i>	Guilty, &c.		
<i>George Lord Viscount Torrington,</i>	Guilty, &c.		
<i>Simon Lord Viscount Harcourt,</i>	Guilty, &c.		
<i>Richard Lord Viscount Cobham,</i>	Guilty, &c.		
<i>Henry Lord Viscount Tadcaster,</i>	Guilty, &c.		
<i>Henry Lord Viscount Lonsdale,</i>	Guilty, &c.		
<i>William Lord Viscount Hatton,</i>	Guilty, &c.		
<i>Charles Lord Viscount Townshend,</i>	Guilty, &c.		
<i>Lawrence Lord Viscount Say and Seal,</i>	Guilty, &c.		
<i>Thomas Earl of Pomfret,</i>	Guilty, &c.		
<i>Bennet Earl of Harborough,</i>	Guilty, &c.		
<i>William Earl of Cadogan,</i>	Guilty, &c.		
<i>Talbot Earl of Suffex,</i>	Guilty, &c.		
<i>George Earl of Halifax,</i>	Guilty, &c.		
<i>John Earl of Bristol,</i>	Guilty, &c.		
<i>Thomas Earl of Strafford,</i>	Guilty, &c.		
<i>Washington Earl of Ferrers,</i>	Guilty, &c.		
<i>Archibald Earl of Ilay,</i>	Guilty, &c.		
<i>Henry Earl of Deloraine,</i>	Guilty, &c.		
<i>John Earl of Stair,</i>	Guilty, &c.		
<i>George Earl of Orkney,</i>	Guilty, &c.		
<i>Charles Earl of Selkirk,</i>	Guilty, &c.		
<i>James Earl of Findlater,</i>	Guilty, &c.		
<i>David Earl of Buchan,</i>	Guilty, &c.		
<i>John Earl of Rothes,</i>	Guilty, &c.		
<i>George Earl of Cholmondeley,</i>	Guilty, &c.		
<i>William Earl of Albemarle,</i>	Guilty, &c.		
<i>Frederick Earl of Rochford,</i>	Guilty, &c.		
<i>Richard Earl of Scarborough,</i>	Guilty, &c.		
<i>Montague Earl of Abingdon,</i>	Guilty, &c.		
<i>William Earl of Yarmouth,</i>	Guilty, &c.		
<i>Richard Earl of Burlington,</i>	Guilty, &c.		
<i>Charles Earl of Carlisle,</i>	Guilty, &c.		

L. Ch. Just. King. My Lords, Your Lordships have unanimously found *Thomas Earl of Macclesfield* guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

Then the Managers for the House of Commons and the Council withdrew; and then the House adjourned.

Wednesday, 26 May, 1725. The 12th Day.

The Lords being sat, and the Managers being come, the usual Proclamation was made for Silence.

THEN the Gentleman Usher was commanded to call in the Earl of *Macclesfield*, who being come to the Bar, the Speaker acquainted him, that the Lords had fully considered of his Case, and had unanimously found him guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

E. of *Macclesfield*. I attend your Lordships, in Obedience to your Lordships Command; but I am persuaded, that if your Lordships knew what I suffer, your Lordships would not have required this of me, the rather as I did not intend to make any Exceptions in relation to the Proceedings, or give your Lordships any farther Trouble. I am now to expect your Lordships Judgment; and I hope that you will be pleas'd to consider, that I have suffered no small matter already in the Trial, in the Expence I have been at, the Fatigue, and what I have suffered other ways; besides the cruel Distemper which this hath brought upon me. I have paid back 10,800*l.* of the money already, I have lost my Office, I have undergone the Censure of both Houses of Parliament, which is in itself a very severe Punishment. My Lords, the Deficiency of Mr. *Dormer* doth sound large, 25,000*l.* but my Lords, it was not through my Fault that the Deficiency happened, nor was that master put in by me; on the contrary, with great Difficulty, it is reduced by my means to 10,000*l.* less than other-



wife it would have been. My Lords, all the Loss that can be sustain'd by any thing charged against me, is only what some of the Suitors might have had more for their Proportion, than they can do now out of Mr. *Dormer's* Effects. His Debt came to about 47,000 *l.* his Effects to about 13,000 *l.* which is about a fourth Part: I don't find there is one Suitor hath made his Complaint, that he hath not received his five Shillings in the Pound, Mrs. *Chitty* hath received her Share.

Mr. *Onslow*. My Lords, We must submit it to your Lordships. This was proper when the Noble Lord was making his Defence; but it is not so in Arrest of Judgment. Your Lordships have found him guilty of the Fact, and he is now arguing in Defence of it: If he hath any thing in Arrest of Judgment, he may say it, and the Commons are here ready to answer it.

I was very unwilling, my Lords, to interrupt the Earl, and do it now with great Reluctancy; but it is for the sake of Regularity in your Lordships Proceedings; and we must appeal to your Lordships whether the Noble Lord is not now going into the Repetition of what he said in his Defence?

E. of *Macclesfield*. My Lords, I submit whether this be not proper in mitigation of your Lordships Sentence; but whether it be or be not, I leave myself to your Lordships Justice and Mercy; I am sure neither of them will be wanting, and I entirely submit. I don't know whether your Lordships will be pleased to dismiss my Attendance at this Time, or whether your Lordships will require me to come again under this very great Uneasiness; I submit it to your Lordships.

Then the said Earl, as also the Managers, were directed to withdraw; and the House ordered *Thomas Earl of Macclesfield* to be committed to the Custody of the Gentleman Usher of the *Black Rod*; and then proceeded to the Consideration of what Judgment to give upon the Impeachment against the said Earl, and afterwards adjourned to *Thursday* Eleven of the Clock, the 27th of *May*.

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Thursday, 27 May 1725. *The 13th Day.*

A Message was sent to the House of Commons by Mr. Baron *Page* and Mr. Justice *Denton*, to acquaint them, That the Lords are ready to give Judgment against *Thomas Earl of Macclesfield*, if they with their Speaker will come and demand the same.

Hereupon a Motion was made, and the Question proposed, That this House will demand Judgment of the Lords against *Thomas Earl of Macclesfield*; which occasioned a warm Debate, that lasted till Five in the Afternoon, when the previous Question being put, that the Question be now put, it was carried in the Affirmative by a majority of 136 Voices against 65; and then the main Question being put, it was resolv'd, That this House will demand Judgment against *Thomas Earl of Macclesfield*. This done, the Commons resolv'd, *Nem. Con.* That the Thanks of this House be given to the Members, who were appointed the Managers of the Impeachment against *Thomas Earl of Macclesfield*, for their faithful Management in their Discharge of the Trust reposed in them. Hereupon Mr. Speaker gave them, they standing up severally in their Places, the Thanks of the House, as follows:

GENTLEMEN,

“ IT is with the greatest Cheerfulness that I obey the Commands of the House on this Occasion; and yet I was never, on any Occasion, more sensible of the Difficulties of performing them as I ought; but I have this Satisfaction in this Motion's being made when I least expected it, that my not being prepared may be some Excuse for those Defects, which I should not have been able to have supply'd, had I had never so long a Time for Consideration.

GENTLEMEN,

“ You have maintained the Charge of the Commons, with that Force of Argument, Beauty of Expression, and Strength of Reason, as would have gained you the highest Applause in the most flourishing of the *Grecian* Commonwealths; and I may add,

*Nec dignius unquam*

*Majestas meminit sese Komana locutam.*

“ But I shall not enlarge farther on this Part of your Praise, being sensible that I am not able to express myself in a manner suitable to the Dignity of the Subject; your own Tongues are only equal to such an Undertaking; and were I able to do it, your Modesty would not permit it: I shall therefore proceed in obeying the Commands of the House, in such a manner, as you yourselves may hear it, not only without Offence, but I hope with Satisfaction; by endeavouring to set in their proper lights the great and lasting Benefits your Country will receive by your faithful Discharge of your Duty.

“ You have stopp'd the Cries of Orphans, and dried up the Tears of the Widow; even those who must ever be insensible of the Benefits they receive, Ideots and Lunatics (and such only can be insensible of them) will be Partakers of the Fruits of your Labours.

“ But you are more particularly intitled to the Thanks of this House, by having made the Prosecutions of the Commons against great Offenders, practicable; The Power of Impeachment, that Sword of Vengeance, which the Constitution has put into the Hand of the Commons, and which, when drawn by Party-Rage, when directed by the Malice of Faction, or wielded by unskillful Hands, has too often wounded that Constitution it was intended to preserve, has now, by your able Management, turn'd its Edge to its proper Object, a Great Offender; and if the Wound it has given should not be so deep, as many expect; yet you may be very sure, it never can be imputed to the Want of Strength in your Arm; And I hope and trust, from your prudent Conduct through the whole Progress of the Trial, that this great Privilege of the Commons will ever remain a Terror to evil Doers; and that it may be a Praise to them that do well, the House has unanimously come to this Resolution:

“ Resolv'd, *Nemine Contradicente*, That the Thanks of this House be given to the Members, who were appointed the Managers of the Impeachment against *Thomas Earl of Macclesfield*, for their faithful Management in their Discharge of the Trust reposed in them.”

A Message



A Message was brought from the House of Commons by Sir *William Gage* and others, to acquaint the House of Lords, That the Commons, with their Speaker, do intend immediately to come to demand Judgment against *Thomas Earl of Macclesfield*; and do desire that the Painted Chamber, and other Passages to the Lords House, may be cleared forthwith.

The Messengers were called in, and told, That the Lords had given Order as desired, Which was done accordingly.

Then the Commons, with their Speaker, being present at the Bar of the House, the Lord Chief Justice *King*, Speaker of the House of Lords, directed the Gentleman-Usher of the *Black-Rod*, to bring *Thomas Earl of Macclesfield* to the Bar; who, after low Obeisances made, kneeled until the said Lord Chief Justice acquainted him he might rise.

Then the Speaker of the House of Commons said as follows:

“MY LORDS,  
“THE Knights, Citizens, and Burgeses in Parliament assembled, in the Name of themselves, and of all the Commons of Great-Britain, did at this Bar impeach *Thomas Earl of Macclesfield* of High Crimes and Misdemeanors; and did exhibit Articles of Impeachment against him; and have made good their Charge:

“I do therefore, in the Name of the Knights, Citizens, and Burgeses in Parliament assembled, and of all the Commons of Great-Britain, demand Judgment of your Lordships against *Thomas Earl of Macclesfield*, for the said High Crimes and Misdemeanors.”

Then the Lord Chief Justice *King*, Speaker of the House of Lords, said,

“Mr. Speaker, The Lords are now ready to proceed to Judgment in the Case by you mention’d.

“*Thomas Earl of Macclesfield*, The Lords have unanimously found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons, and do now according to Law proceed to Judgment against you, which I am ordered to pronounce.

“Their Lordships Judgment is, and this High Court doth adjudge,

That you *Thomas Earl of Macclesfield*, be fined in the Sum of Thirty Thousand Pounds unto our Sovereign Lord the King; and that you shall be Imprisoned in the Tower of London, and there kept in safe Custody, until you shall pay the said Fine.

Then the Speaker with the Commons withdrew, and the Earl of *Macclesfield* was taken from the Bar.

Ordered, That the Speaker of this House do give Order for the Printing and Publishing the Trial of *Thomas Earl of Macclesfield*; and that no other Person but such as he shall appoint, do presume to Print the same.

Ordered, That the said Earl of *Macclesfield* be committed to the Tower of London, there to be kept in safe Custody until he shall pay the abovementioned Fine of Thirty Thousand Pounds to the King; and that the Gentleman-Usher of the *Black-Rod*, in whose Custody the said Earl at present is; do him safely convey to the said Tower, and deliver him to the Constable thereof, or in his Absence to the Lieutenant, or Deputy-Lieutenant of the same; and that the said Constable, Lieutenant, or Deputy-Lieutenant do receive the Body of the said Earl, and him keep in safe Custody there, until he shall have paid the said Fine.

Then the House adjourn’d to Monday, 31 May, 1725.

And the Earl of *Macclesfield* was conveyed to the Tower, where he continued Prisoner for some Time till he paid his Fine.



## CXCVI. Proceedings in the Trial of Captain John Porteous for Murder. Published by Order of the House of Lords.

*Curia Justiciaræ, S. D. N. Regis, tenta in Novo Sessionis Domo Burgi de Edinburgo, Quinto Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newall, et Gilbertum Eliot de Minto, Commissionarios Justiciarum, dictos S. D. N. Regis.*

*Curia legitime affirmata.*

Intran.

**J**OHAN PORTEOUS, lately one of the Captain-Lieutenants of the City Guard of *Edinburgh*, present Prisoner in the *Tolbooth* of *Edinburgh*, Pannel. INDICTED and ACCUSED at the Instance of *Duncan Forbes* Esquire, His Majesty’s Advocate for His Highness Interest, for the Crimes of Murder and Slaughter, and others, as is more fully mentioned in the Indictment raised against him there annext. Setting forth, THAT WHERE, by the Law of God, the Common Law, the Municipal Law and Practice of this Kingdom,

and the Laws of all other well-governed Realms, Murder and Slaughter, maiming and wounding with mortal Weapons, any of the Subjects of such Realms, and the ordering, commanding, and causing any Band, or Number of Men, armed with Firelocks, and other mortal Weapons, to fall upon, wound, murder, and destroy Numbers of His Majesty’s Subjects, innocently and lawfully assembled, by firing sharp Shot amongst them, whereby Multitudes are, or may be endangered, and many Men, Women, and innocent Children are, or may be killed or wounded, without any just Cause or Occasion, and without lawful Warrant, more especially when committed in the publick Streets of a City, by a Person lawfully commissioned by the Magistrates thereof, to command such Band of armed Men, for the Preservation of Peace and Order, and for the Defence of the Inhabitants, and others resorting thereto, are Crimes of a high Nature, and severely punishable: YET TRUE IT IS, and of Verity, That he the said *John Porteous* had presumed to committ, and was guilty and accessory, or art and part of all and every, or one or other of the forsaid Crimes aggravated as aforaid; IN SO FAR AS, upon the Fourteenth Day of *Aprile* last, or one or other of the Days of the said Month, when the deceas’t *Andrew Wilson,*



*Wilson*, sentenced to be hang'd to Death by the High Court of Justiciary, was to be executed at the *Grass-market* of the City of *Edinburgh*, he being at that time one of the Captain-Lieutenants of the Town Guard of the said City, lawfully commissioned by the Magistrates and Town Council thereof; and in the ordinary Course of Rotation with the other Officers of the said Guard, being order'd to attend at the said Execution, to preserve the Peace, and support the Executioner in the Discharge of his Duty, having under his Command a Detachment of about Seventy Men, he did then attend in the said *Grass-market* accordingly, and after the said *Andrew Wilson* had hung upon the Gallows, erected for his Execution, until he was dead, at least for a considerable time, and so long as there was ground to conclude he was dead; he the said *John Porteous*, shaking off all Fear of God, and Respect to his Majesty's Laws, and conceiving a most wicked and malicious Purpose of destroying, wounding and maiming Numbers of his Majesty's Subjects, the Inhabitants of the said City of *Edinburgh*, and others there assembled at the said Execution, without any just Cause or necessary Occasion, ordered the said Detachment of the Guard under his Command to fire upon the People so assembled at the said Execution; and the Men, at least severals of them having fired, as it seems he apprehended, over the Heads of the Multitude, so as to avoid doing them harm, he with Threats and Imprecations repeated his Commands to fire, calling out to them, to level their Pieces and be damn'd, or Words to that Purpose; and at or about the same time, he levelled the Firelock that was in his own Hand, taking Aim at *Charles Husband* Servant to *Paul Husband*, Confectioner in the *abbay of Holy-wood-House*, and most wickedly and murderously fired at him, whereupon he immediatly dropped to the Ground, having received a Wound by a Bullet or large Drop of Lead on the left Side of his Head, which pierced into his Brain, and another large Wound likewise by a Bullet or large Drop of Lead on the left Side of his Neck, and a third Wound in his Body, and a fourth Wound in his left Hand, at least a mortal Wound or Wounds, whereof he died in some short Space thereafter; AT LEAST, he did so level his Piece, and appeared to take his Aim at some one of the innocent Multitude, who happened to stand directly over against him, and he did fire, and upon his so firing, the said *Charles Husband*, at least one or other of the Persons particularly after mentioned, or more of them, did immediatly drop to the Ground, having received a mortal Wound or Wounds, whereof they soon after died; and by his said Example and Command, severals of the said Guard, to the Number of Twenty, less or more, did at the same time with him, or soon after him, fire upon the innocent Multitude, whereby all, or one or more of the following Persons received mortal Wounds, whereof they soon after died, *viz.* *Archibald Bellantyne*, Son to *John Bellantyne*, younger Dyster in *Dalkeith*, received several Wounds, with Bullets or large Drops of Lead, which peirced into his Body, at least a mortal Wound or Wounds in his Head or Body, whereof he died a few Days thereafter, and *John Anderson* Son to *George Anderson* in *Craigbrad*, Drover, received a Wound in the Head with a Bullet or large Drop of Lead, at least a mortal Wound or Wounds in his Head or Body, so that he died in few Hours thereafter; and the following Persons were grievously maimed, hurt,

and wounded, to the great Danger of their Lives, *viz.* *Margaret Arthur* alias *Airth*, Residenter in the *Cannon-gate*, near the *Water-gate* thereof, *Jean Peal*, Servant to *James M Dowal* Merchant in *Edinburgh*, *David Wallace* Journeyman Wright in *Edinburgh*, *James Philp* late Servant to *Lauder* Esquire, Residenter in the *Cannon-gate*, *David Kidd Taylor* in *Edinburgh*, *Patrick Spalding* Apprentice to *David Mitchell* Jeweler in *Edinburgh*, *James Lyle*, and *Alexander Wallace* both Servants to *James Wright* Staymaker in *Edinburgh*, *John Miller Taylor* in *Edinburgh*, *David Ogilvie* Writer in *Edinburgh*, and *James Nivan* late Servant to *William Sellers* Writer in *Edinburgh*, Residenter in the *Potter-Row*: AT LEAST, the said Persons were so killed, wounded, and maimed, by the firing in manner, and by the Direction, as aforesaid, and by the second firing after mentioned; for not contented with the Barbarities thus committed, after he had with the said Company or Detachment of the City Guard marched towards, or into the Place or Street called the *West-bow*, he, without just Cause or Occasion, again ordered the Men under his Command, to face about and fire upon the People, and at or about the same time, he fired a Musket or Firelock that was in his own Hand, having either reloaded, or caused to be reloaded his own Piece, or taken another out of the Hand of one of the Guard; and severals of the said Guard did, upon that second Example and Command of his, fire upon the Multitude, whereby *Alexander M Neil* Son to *Edward M Neil* Indweller in *Morton-hall*, received a Shot in the Head with a Bullet or Lead-Drop, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, so that he died thereof in a few Days thereafter; and *Margaret Gordon* Servant to *William Ogilvie Taylor*, in *Saint Mary Wynd* in *Edinburgh*, received a Wound in the Head above the left Eye, with a Bullet or large Drop of Lead, which pierced into her Brain, at least a mortal Wound or Wounds in her Head or Body, so that she died thereof in a short Space thereafter; and *Henry Grahame Taylor* in *Cannon-gate* received a Wound in the Head, with a Bullet or large Drop of Lead, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, of which he died in a few Hours thereafter: AT LEAST, by this, and the other Firings by him, and by his Order and Example above mentioned, all, or one or more of the Persons particularly above recited, as having been killed, received mortal Wounds, of which they soon after died, and all or one or more of the Persons above recited, to have been wounded, were grievously maimed, hurt, and wounded, to the great Danger of their Lives; AT LEAST, at the Time and Place aforesaid, the said Persons above named and mentioned to have been respectively killed and wounded, were all, or one or more of them, wickedly, and maliciously slaughtered, murdered, and wounded, by Wounds severally given them by mortal Weapons: AND HE WAS GUILTY, art and part of the Slaughter, Murder, and wounding of all, or one or more of them: ALL WHICH, or any Part thereof being found proven by the Verdict of an Assize, in presence of the Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, he ought to be most exemplarily punished with the Pains of Law, to the Terror of others to committ the like in time coming.

*Sic Subscribitur,*

*Ch. Arskine, A. D.*  
Pur-



Pursuers.  
*Duncan Forbes*, Esq; his Majesty's Advocat.  
*Mr. Charles Erskine* his Majesty's Solicitor.  
*Mr. Hugh Forbes*, his Majesty's Advocat-Depute.  
*Mr. Patrick Haldan*.  
*Mr. Hugh Murray Kinnymont*.  
*Sir James Elphinstoun*.

Prolocutors in Defence.  
*Mr. James Grabame*, junior.  
*Mr. Henry Home*.  
*Mr. Alexander Lockhart*.  
*Mr. James Leisly*.  
*Mr. James Holburn*.

Advocats.

The Libel being openly read, and debate *vi-va voce*, in presence of the Judges, Pannel, and Jury, the Lords ordained both Parties to give in their Informations to the Clerk of Court in order to be recorded, and the Pursuers to give in theirs against *Friday* next, at Six o' Clock at Night, and the Prolocutors for the Pannel to give in theirs against *Tuesday* thereafter, and continued the Cause till *Friday* the Sixteenth Instant, and ordained Assizers and Witnesses then to attend, and the Pannel to be carried back to Prison.

July 12<sup>th</sup>, 1736.

Information for his Majesty's Advocat for his Highness's Interest, against *John Porteous* late Captain Lieutenant of the City Guard of Edinburgh, Pannel.

THE Pannel is charged by the Indictment, with murdering, slaughtering, maiming, and wounding divers of his Majesty's Subjects, by firing with his own Hand, and causing and ordering a Band of armed Men under his Command, to fire upon a Multitude of innocent People, assembled to see an Execution in the *Grass-market* of the City of *Edinburgh*, without any just Cause or Provocation; contrary not only to the Laws of God and Nature, and to the good and laudable Laws of this and all other well governed Realms, but also contrary to the express Duty of his Office, who was one of the Commanders of the City Guard, intended to preserve the Peace of the City, and to protect the Inhabitants thereof from all violence; and who was on that Occasion entrusted with the Command of a large Detachment of the said Guard to preserve Peace and Order, to secure the Execution of a Sentence of the High Court of Justiciary, and to prevent all Riots and Tumults, whereby the Execution of the said Sentence might be disappointed, the Laws might be violated, and the People assembled might be hurt or destroyed.

The Indictment sets forth, particularly, That at the time and Place libelled, where a great Multitude of Innocent Persons, of all Ages, and of different Sexes, were lawfully assembled, to see the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court aforesaid; the Pannel having under his Command a Detachment of seventy armed Men of the City Guard, and having conceived a most wicked and malicious Purpose of destroying, maiming, and wounding Numbers of his Majesty's Subjects, the Inhabitants of the said City, and others assembled at said Execution, without any just Cause or necessary Occasion, ordered the said Detachment under his Command to fire upon the People so assembled; that the Men under his Command, having probably, in his Apprehension, fired over the Heads of the People, he, with Threats

and Imprecations, repeated his Commands to fire, calling out to them to level their Pieces, and be damn'd; that at or about the same time he levelled the Firelock that was in his own Hand, taking aim at one *Charles Husband*, and fired at him, whereupon he immediately dropt to the Ground, having received Wounds, whereof he instantly died; at least, that he levelled his Piece, seeming to take aim at some One in the Croud, and fired it; and that upon his firing, the said *Charles Husband*, or one or other of the Persons in the Indictment mentioned dropt, having received Wounds by Bullets, of which they instantly died; and that by his Commands and Example, several of the City Guard under his Command, fired upon the innocent Multitude, whereby the Persons particularly mentioned in the Indictment, were killed, maimed, and wounded.

The Indictment further charges, That not contented with this Barbarity, the Pannel, after he had marched off his Detachment towards, or unto the Place or Street called the *West Bow*, again ordered the Men under his Command, to face about and fire upon the People, and at or about the same time, fired a Musket or Firelock that was in his own Hand, having either re-loaded, or caused to be re-loaded the Piece formerly fired by him, or having taken another out of the Hand of one of the Guard; and that several of the said Guard, did upon that second Example and Command, fire upon the Multitude, whereby the Persons described in the Indictment, were killed or mortally wounded: And the Indictment concludes in common Form, that the Pannel is guilty, or Actor art and part of the Crimes aforesaid, or one or other of them.

The Charge in this Indictment is so heinous, that one should have imagined, it would have been decent in the Pannel, to have made no Objection to the Relevancy, and to have founded upon no Defence for avoiding the Effect of the Libel, if true, but to have contented himself with a flat Denial thereof, reposing himself upon his Innocence, if he is truly not guilty of the Facts alledged, without any other Desire, but that of having a fair Examination of unbiassed Witnesses, to be produced by him as well as the Prosecutor, in order to discover the real Circumstances of the Transaction.

But his Procurators, it seems, thought it their Duty to move every Objection against the Relevancy of the Libel, and to offer every Defence that their Invention could suggest from a particular Relation of the Circumstances of the whole Transaction, which they laid before the Court upon the Pannels Information, and which they offered to prove, to make good their Defence.

They informed the Court therefore, on behalf of the Pannel, That the Magistrats apprehending, that some violent Attempt might be made for rescuing *Wilson*, the Offender sentenced to be hanged, had ordered the Pannel to attend the Execution, with the greatest Part of the City Guard, to support and protect the Executioner in the Discharge of his Office, with Directions to repel Force by Force; that to make those Directions effectual, Powder and Ball were by the Town Treasurer delivered out of the Town's Magazine to the City Guard, the Morning of the Execution, with Directions to load their Pieces: That besides this Precaution, the Danger of the Rescue appeared to the Magistrats



so great, that they desired of General *Moyle*, and obtained a Detachment of the regular Troops, who were posted near to the Place of Execution, in order to support the City Guard, if there had been occasion; and whose Commanders were told, that the Lord Provost would give them Authority to fire, if it should prove necessary; that the Pannel with the Town Guard attended accordingly the Execution; That when the Offender was hung up on the Gibbet, the Magistrates retired from the Scaffold, and repaired to a House over-against it in the *Grass-market*; that after the Offender had been hung up for some time, the Multitude became unruly, and begun to sling Stones of great Size, and with great Violence, that some of the Guard were thereby hurt; one had his Shoulder-blade broke, others were bruised, and the Timber of the Drum was beat to Pieces; that the Insolence of the Mob growing still greater, and they pressing from all Sides upon the Guard, the Pannel, who apprehended they might have intended to carry off the Criminal, who by this time was cut down, in order to attempt the recovering him to Life, found it necessary for him to keep off the Multitude by Threats and Menaces; that to this end he presented his Piece, first to one Quarter, and then to another, calling to the People to stand off, and threatening that if they did not, he would fire, that nevertheless, he neither fired himself, nor gave any Orders to fire, but on the contrary, when some of the Guard, provoked by the Hurts they received, had, without his Orders or Authority, presumed to fire, whose Example was followed by several others, he did all he could to prevent that Mischief, by commanding them to desist, and actually did beat down the Muzzle of one of the Mens Pieces, who was presenting it in order to fire; that finding he could not be obeyed, he endeavoured to march off his Men, and prevailed with several of them to follow him some small Way up the *West Bow*, when again some of those Men who followed him, provoked, by what, he did not know, faced about, and fired towards the *Grass-market*; that the first Notice he had of this Firing was by hearing it, which made him turn about in order to stop it; that at this last Place, he neither fired, nor gave Orders to fire; that he marched as many of his Men as he could gather together back to the City Guard Room; that there he prevented the Mens cleaning their Pieces, that the guilty who fired might be distinguished from the Innocent who did not fire; that his own Piece had not at that time been at all fired; that conscious of his Innocence, and that he had on this, as well as on every former Occasion, done his Duty with Patience and Temper, he presented himself before the Magistrates, whereas nothing was easier for him than to have made his Escape, and that in their Presence the Firelock which he had in his Hand was presented, and appeared not to have been at all fired; and that therefore it was impossible the Lybel, as lybelled, could be true.

From this, which was said to be the State of the Case, the Procurators for the Pannel, contended, first, That the Lybel was insufficient, as not describing with proper Accuracy the particular Part of the Street, where the Person supposed to be shot by the Pannel stood, and his Situation with respect to the Pannel at the Time, because thereby the Pannel was deprived of the

Opportunity of making his Defence, by founding it particularly on Circumstances, which he might avail himself of, if the Position and Situation had been distinctly described.

To this it was, and is answered, That the Lybel is as particular as the Law requires, describing the Street where the Execution was had, which is all that the utmost Scrupulosity could expect in such a Case. Minute Circumstances cannot be known to the Prosecutor, or certainly discovered, but by Proof upon the Trial: Every Circumstance of the Pannel's own acting must be known to him; and therefore, if from the Position or Situation in which he was at the Time of the Firing, he can show that it was impossible he could have killed the Person, whom he is charged to have shot, describing and proving those Circumstances, he may have Advantage from them, but cannot object to the Prosecutor, that he did not minutely describe a Situation that was not known to him, and which describing perhaps erroneously, might minister an unjust Occasion to a Criminal to escape Justice: Wherefore this Objection to the Form of the Indictment, ought to be repelled.

But in the Second Place, The Procurators for the Pannel, very unnecessarily, one should think, if he is Innocent of Firing, or ordering to fire, and in some degree inconsistently with that Plea, alledged, That the delivering out Powder and Ball to the City Guard; the ordering so great a Detachment to attend; the calling for the Regular Troops to support the Town Guard; the Intimation to the Commander of those Troops, that they should have Orders to fire, in case of Necessity; and the Direction to the Pannel to support the Execution of the Sentence against *Wilson*, and in case of a violent Rescue or Deforcement, to repel force by force, amounted to a flat Order from the Magistrates to fire, when it became necessary: And that the violent Assault made by the Mob, as aforesaid, with Stones, which were to be considered as Lethal Weapons, in order as the Pannel believed to carry off the Offender, in hopes of recovering him to Life, made it necessary to repel force by force: Wherefore these Circumstances to infer the Order, and the violent Assault of the Mob as mentioned, ought to be sustained and admitted to Proof, as a total Defence against the Indictment, at least as Circumstances fit to mitigate the Punishment, and restrain it from the *pena ordinaria*; since the Pannel being *versans in licito*, and engaged in the Discharge of a lawful Piece of Duty, if any Excess was committed by him, it ought not to be attended with Capital Punishment, but ought to be corrected *extra ordinem*, according to the Degree of the Excess.

To this it was answered, That tho' it were true, which is not at all upon the Part of the Prosecutor denied, that the Magistrates upon just Apprehension of Disorders, and an Attempt for a violent Rescue of the Criminal, who was sentenced to die, had ordered Powder and Ball to be distributed to the Guard, had increased their Numbers, had obtain'd Assistance from the Commander of the regular Troops, with Assurance, that in case of necessity they should be authorized to fire, had directed the Pannel at all Hazards to support the Execution, and prevent a violent Rescue, and had even told him, that in case of necessity he was to repel force by force, it will not in the least follow, that those Orders could



in any Degree justify him, except in case of Necessity, except there had been an Attempt towards a violent Rescue, which could not otherwise have been prevented, and except all the proper Precautions for dissipating otherwise the Mob, and for legitimating the Act of Firing upon them, had been previously made use of.

For in the first Place, No Order from any Civil Magistrate whatever, can justify a Barbarity so horrid, as that which is charged on the Pannel. Had the Provost, and all the Magistrates of *Edinburgh* been present on the Spot, and had they ordered him to fire upon the Innocent People, when there was no just Cause for so doing, those Orders indeed might subject the Magistrates, as well to the Penal Consequences that attend Murder, but could not on the least acquit him, who was not at all bound to obey such illegal Orders, and who therefore acted at his Peril.

In the Second Place, It is not at all pretended, that the Pannel had any Orders expressed or implied to fire, except the Violence of an Attempt to rescue, not otherwise avoidable, made it necessary. Had that been truly the Case, Firing possibly might have been the Pannel's Duty, the reading the Proclamation undoubtedly would have made it justifiable; and this the Magistrates knew, when they ordered Ammunition to be distributed, and invited the regular Troops to their Assistance: But till it became necessary, when there was no Hazard of a Rescue, before any Disorder was sought to be quell'd by the legal Precaution of reading the Proclamation, which is intended to intimidate Rioters, and to separate the Innocent from the Guilty, by giving due Notice to all thoughtless People, who without any Malevolence are mixt with the Multitude, to separate from the ill Meaning, it was the most Cruel, as well as unjustifiable Act, that has at any Time been heard of, to make use of the Weapons that were put in the Hands of the Guard, for the Security of the Peace and of the People, to destroy so many Innocents, who had not in any Degree offended.

For, Thirdly, Tho' the Pannel mentioned the flinging of Stones, and the Size of some of them, with some Hurts received therefrom, yet the Libel charges, and he admits that the Criminal was cut down before this trifling Provocation prevailed with any one to fire: His Duty then, so far as concerned the Execution of the Sentence, was over: He alledges no Danger, nor can he in those Circumstances of a Rescue, no Invasion with Fire Arms, or other mortal Weapons, fit to deforce or destroy a Detachment of Seventy disciplined Men, with loaded Pieces and screwed Bayonets: How then can the Exigence, or the Orders defend him? If his Act had been absolutely necessary, some Defence might have been founded on that Necessity joined with his Orders: But when his Allegations, tho' they were true, do not point out the least Necessity, and are in reality founded on nothing else than the customary Impertinence on such Occasions, of flinging Dirt and Stones at the Executioner, tho' the Provocation thereby given might perhaps justify a Cholerick Man, for drubbing any of the Actors for their Wantonness, yet to be sure, it could not justify the Slaughtering of the Offender, far less can such Impertinence in a few Boys, or other idle People, excuse the firing sharp Shot upon an Innocent Multitude,

whereby Numbers of his Majesty's Subjects were destroyed: And therefore it seems to be beyond all doubt, the Pannel can find no Shelter from those Orders, or the Duty he imagines lay upon him to fire; and must therefore stand or fall, upon his being, or not being Guilty of the Facts charged upon him.

The Procurators for the Pannel endeavoured to find an Argument for him, in a late Resolution of the Court, which suspended a Sentence of the Court of Admiralty, proceeding upon an *Interloquitor* that found it necessary for Soldiers, who happened to kill in the Execution of their Duty, when by Order attending Custom-house Officers, to prove, that the killing was necessary for the Defence of their Lives, inferring from this Resolution, that the Court did not think it necessary for the Pannel to prove, that he was in Danger of his Life: And though all that their Observation necessarily implies were granted, they could have no Benefit by it, because in this Case the Pannel neither does, nor can aver, that the Firing which he was personally guilty of, and ordered, was necessary for securing the Execution of that Trust that was committed to him, or for preserving the Rights of the Crown, or any Subject.

Where a Man has by Law Weapons put in his Hand, to be employed, not only in Defence of his Life when attack'd, but in Support of the Execution of the Laws, and in Defence of the Property of the Crown, or Liberty of any Subject, he doubtless may use those Weapons, not only when his own Life is put so far in Danger, that he cannot probably escape without making use of them, but also when there is imminent Danger, that he may by Violence be disabled to execute his Trust, without resorting to the Use of those Weapons: But when the Life of the Officer is exposed to no Danger, when his Duty does not necessarily call upon him for the Execution of his Trust, or for the Preservation of the Property of the Crown, or the Preservation of the Property or Liberty of the Subject, to make use of mortal Weapons, which may destroy His Majesty's Subjects, especially Numbers of them, who may be innocent, it is impossible, from the Resolution of the Court of Justiciary hinted at, to expect any Countenance to, or Shelter for the inhumane Act.

And upon a Principle very near allied to this, the Pannels Pretence, that being *versans in licito*, and intrusted with the Execution of legal Orders, any Excess, that for lack of Discretion he may have been guilty of, cannot be punished *pœna ordinaria*, ought to be repelled; for it's obvious, the Trust reposed in him, and the Duty expected from him, was no more than to see the Execution perfected, and to resist any violent Attempt to rescue, which should disappoint the Execution of the Law. Now when the Sentence of the Court of Justiciary was executed, when the Criminal was hanged and cut down, before any Person fired, the Trust reposed in the Pannel, and the Duty expected from him ceased; he was no longer an Officer employed, to that end for which the Fire Arms were loaded, and his Actions came to be estimated of by the same Rules, that would have made them lawful or unlawful upon every ordinary Occasion, where no particular Danger threatned, and where no necessary Service was in view.



And therefore, as in such Cases, the Pannel must be convinced, that nothing short of being constituted in immediate Danger of Death without firing, could justify him or his Guard for making use of loaded Fire Arms, he must in consequence acknowledge, that in the case in Question, no Danger of Life, which he could not have avoided, having threatned him and his Guard, he was absolutely inexcusable for firing, and that therefore his mischievous and temerarious Act must be attended with the highest Penalty.

An armed Man who assaults, and without just Cause destroys another Man tho' armed, and in no particular Trust or Confidence with him, the Law considers and demeans as a Murderer; but when the Captain of a City Guard, who has an armed Force committed to his Care, for the Good and Safety of the Community, thinks fit, upon any slight Offence or Provocation, to turn those Arms, and that Force upon a Crowd of Citizens lawfully as well as innocently assembled, he is, in Addition to the Slaughter and Destruction that ensues, guilty of the most notorious Breach of Trust, and for an Example to others, whom it may be necessary for the Good of the Community to trust, ought to be punished in the most severe manner. Men so trusted are under double Tyes, for besides the general Obligations of Duty and Humanity, a particular Confidence is reposed in them, which at the Peril of their Lives they ought to answer.

The Procurators for the Pannel complained, That in the Indictment he was charged with a wicked and malicious Purpose of destroying, wounding, and maiming Numbers of his Majesty's Subjects; and by the Pannel's sober and modest Deportment on former Occasions, and the whole Circumstances precedent to the melancholy Accident now in Question, endeavoured to shew that he had no premeditated malicious Design. But this again was to no purpose: The Prosecutor never heard, nor, so far as he knows, did ever any Man before this time, complain of the Wickedness or Inhumanity of the Pannel, and he has received no Information, by which he can be induced to think, that for any considerable time before the Fact complained of, the Pannel had premeditated the destructive Action of which he is accused. But then his Procurators very well know, that firing and ordering to fire, imply, and are Proof of a wicked and malicious Purpose of destroying those that are fired at: *Malitia* and *Propositum procedunt ictum*, in the Construction of Reason as well as Law, and whoever wilfully murders and destroys his Majesty's Subjects, must be demean'd as a Murderer, if his malicious Purpose preceded the drawing of the Tricker, or giving the Orders, one Moment, as much as if it had been preconceived a whole Year.

These Shews of Defence, rather than Defences being removed; the next thing that comes to be considered, is the History of the Pannel's Behaviour, during the melancholy Transaction, which his Procurators offered to prove, and insisted, would, if proved, be a sufficient Defence against the Facts charged in the Lybel.

But in this the Prosecutor can by no means agree, for he takes it to be extremely plain, that every single Circumstance alledged by the Pannel may be true, and yet it may also be true, that

he with his own Hand fired, and killed one or more of the innocent People, and that he ordered the Men under his Command to fire.

It may, for Example, possibly be true, that he, at some Period or another of the Action, called out to the Multitude to stand off, or that he would fire; that he at some one Point or another of Time prohibited the Men to fire, and struck down the Pieces of such as were presenting them; and yet it may also be true, that he at some other point of Time gave the precise Word of Command to fire, and actually fired the Piece that was in his Hand: Before he lost his Temper he might have threatned only, before he took the Resolution of annoying, as well as after he saw Mischief done, he might have endeavoured to prevent a particular Act of Inhumanity; but his doing so at certain Periods, is no conclusive Evidence, that at other Points of Time his Conduct might not have been very different.

Were his giving Orders, or actual firing dubious, the Circumstances mentioned for the Pannel might create a strong Presumption for him: But if it shall be proved, as it is charged in the Lybel, that he actually fired the Piece in his Hand oftner than once, and gave positive Orders to fire; what can it avail him, that at some other Periods of the Fray, he behaved himself in a different manner? since both the one Allegation and the other may be true.

But the Procurators for the Pannel insisted, That though the Proposition they undertook to prove was in some degree a Negative, yet it was so circumstantiated as to be capable of a positive Proof; for they said that credible Witnesses could be produced, who would inform the Court and Jury, that during the whole Fray, they kept their Eyes upon the Pannel, and were attentive to his Actions; and that they could take upon them to say, that thorow out the Scuffle he did not fire his Piece, nor order the Guard to fire, but that he threatned to fire, which might by Persons at a distance who heard the Word Fire only pronounced, be mistaken for a Command, and that he presented his Piece only in a menacing Posture, but without firing, which might have misled the Spectators into an Opinion that he did fire, though he really did not; if any one who was near him happened to discharge his Shot about the same time.

This reasoning however is manifestly defective, because the Evidence of the Witnesses, who shall say, they did not see or hear, bears no Proportion in point of Weight, to the Testimony of those, who shall upon Oath positively say, that they did hear or see.

And besides the obvious Reason for maintaining this Distinction in the common Case, there is a particular Consideration that supports it, in the case of a Fray or Tumult, where Shots are fired, Murder ensues, and there is a general Confusion and Surprize. No one could possibly be so interested in keeping his Eyes upon the Pannel, when it could not be foreseen there would be occasion to give Evidence touching his Behaviour, as not to be lyable to be carried off from that Object, upon any fresh Surprize that happened in the Tumult: The firing of a Shot, the flinging of a Stone, the extraordinary Behaviour of any one of the Multitude, or of the Guard, might imperceptibly have drawn the Eyes and

Atten-



Attention of any Spectator from the Pannel, to that new Object, and prevented his seeing or hearing what he said or did in the mean time: And therefore no Witness, or Number of Witnesses, who should take upon him or them to say absolutely, That the Pannel did not at any Period of the Frey fire, or order to fire, would at all be credible, at least most certainly they could not be credited against such Witnesses as should positively say, that they saw or heard him fire, or order to fire.

If Witnesses shall say against the Pannel, that they saw him present his Piece and fire, and for their *Causa Scientie* shall aver, that they observed Fire and Smoke issuing out of the Muzzle of his Piece, and a Man drop down dead in the Place towards which he pointed it, will that Evidence be sufficiently contradicted by Persons who may say they observed no such Thing, or that others of the Guard fired about the same Time, and at the same Place? 'tis humbly thought it cannot, because this is setting up Negative Evidence, only against positive, which neither Law or Reason permits.

And if credible Witnesses shall aver, That the Captain distinctly ordered the Guard to fire, can it avail him that other Witnesses heard him threaten the Croud, that if they did not retire he would fire, without hearing the positive Orders for firing given? in a Tumult every individual cannot possibly hear every Thing that passes; but then it is no Evidence that particular Words were not uttered in a Fray, that some Persons present at the Fray did not hear or attend to them.

And the Pannel in framing his Defence on this Article, does not seem to have attended to what is expressly lybelled against him, That in great Anger he said to the Men under his Command, upon their firing over the Heads of the Multitude, Level your Pieces, and be damn'd. Will this Circumstance, should it be proven, be at all consistent with that Part of the Defence, which tends to render the Expression Fire dubious? If the Pannel's Passion moved him to utter the Expression, Level your Pieces and be damn'd! Is it at all doubtful in what Sense the Word Fire was pronounced? These things are, 'tis thought, too plain to be further insisted on.

The only remaining Circumstance, on which the Procurators for the Pannel seemed to lay stress, was the Condition of his Firelock, when the Action was over, and his voluntary presenting himself before the Magistrates, when he could have made his Escape, from which they would have inferred, an Impossibility that he was guilty of actual firing, his Firelock appearing not to have been discharged, and a strong Improbability that he was conscious of having given any criminal Orders, since without necessity he freely presented himself to Justice.

Now as to these Matters, it must be observed, First, That the Condition in which the Pannel's Firelock appeared, can yield no Evidence for him: A Piece that has been fired may be re-loaded, and so cleaned and brushed up, as to leave no Vestige or Mark of the former firing; and the Piece which the Pannel made use of in firing, might have been changed, and another produced to the Magistrates in the Room thereof.

But 2dly, The Indictment no where avers, that the Pannel made use of his own Piece when

he fired. Where he is first charged with firing, no more is said, than that he levelled the Firelock that was in his Hand, and fired it at *Charles Hufband*. Now the Firelock that was in his Hand, might have been that belonging to another Man, as well as his own: And in the other part of the Indictment, where he is charged with firing, it is said that he made use of a Musket or Firelock that was in his Hand, having either re-loaded, or caused to be re-loaded his own Piece, or having taken another out of the Hand of one of the Guard: So that the Lybel in every Article of it may be true, and proved; and yet it may be also true, that the Pannel did not fire his own Piece.

And as to the Article, That the Pannel, conscious of no Guilt, appeared voluntarily before the Magistrates, when he could easily have made his Escape: It can possibly infer no Presumption for his Innocence, if the Facts charged in the Indictment are made good. Whoever shall be satisfied by the Proof, that the Pannel acted in manner lybelled, must be convinced, that he was governed in his Actions by no Principle of Discretion, and must therefore lay no weight upon an Act of his, which can yield no Inference, unless he is supposed to have been governed by Discretion and Prudence.

Having thus run over the several Circumstances of the Pannel's Narrative. The Prosecutor apprehends, he may safely conclude, that they cannot jointly or separately, be sustained as a Defence, against the Charge laid in the Indictment: Because, tho' every Circumstance alledged, were undeniably proved, the unhappy Pannel might nevertheless be guilty, and a positive Proof of the Facts charged must necessarily prevail with every unbiassed Jury-man, to join in a Verdict against him.

The Prosecutor is nevertheless far from wishing, that the unfortunate Pannel, should be deprived of an Opportunity of laying every Circumstance, that may make for his Defence before the Jury by Proof, tho' he humbly insists they cannot be sustained as a Defence Relevant to absolve from the Indictment. It is possible the Fact may come out otherwise in the Trial, when Witnesses are upon Oath, than it did when the Examination was taken in the Precognition; and should the Proof of the Indictment be in material Circumstances defective, the Evidence offered for the Pannel may have its weight; wherefore, so far as the Forms of the Court will allow, the Prosecutor makes no Opposition to the indulging the Pannel to bring what legal Evidence he can, for the Information of the Jury.

It is far from being the Interest of the Crown, or of the Publick that an innocent Man should suffer; but it is greatly the Interest of both, that a fair and strict Enquiry be made, where the Guilt lyes, when a Massacre so cruel and so dangerous happens, to the end, that if the Officer, who has Power put in his Hand, for the Preservation of the Peace, and for the Protection of the People, should, from any unjust Motive whatever, make use of that Power in breach of the Laws, to the Destruction of the People, he may be made an Example to restrain others in the same Circumstances, from the like monstrous and dangerous Abuses in time coming.

In respect whereof, &c. *Sic subscribitur.*

*Dun. Forbes.*  
In



July 13th, 1736.

*Information for John Porteous late Captain Lieutenant of the City Guard of Edinburgh, against His Majesty's Advocat.*

THE Pannel stands indicted at the Instance of His Majesty's Advocat for his Highness Interest, for the Crimes of Murder, and Slaughter, Maiming, and Wounding; and the Facts charged against him, from whence these Crimes are pretended to be inferred, are these following; That the Pannel being one of the Captain Lieutenants of the said City Guard, was by the Magistrates of the City, ordered to attend with a Detachment of about Seventy Men of the said Guard, at the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court of Justiciary; and that the said *Andrew Wilson*, having hung upon the Gallows, erected for his Execution, in the Street called *The Grass Market*, until he was dead, at least for a considerable Time, and so long, that there was ground to conclude he was dead, he the said Pannel, conceiving a wicked and malicious Purpose of destroying, wounding, and maiming the Persons, Inhabitants of the said City, and others, assembled at the said Execution, did, without any just Cause or necessary Occasion, order the said Detachment, under his Command, to fire upon the People so assembled; and that some of the Men having fired, as it would seem the Pannel apprehended, over the Heads of the Multitude, with Intention to avoid doing them harm, he the said Pannel, did with Threats repeat his Commands to fire, calling out to the Men, to level their Pieces and be damn'd, or Words to that Purpose; and that at the same Time, he levelled the Firelock that was in his own Hand, taking Aim at one *Charles Husband*, and having fired the said Firelock, the said *Charles Husband* immediately dropt to the Ground, having receiv'd a Wound or Wounds by Bullets or large Drops of Lead, whereof he died in a short Space; and that by the Pannel his said Example and Command, severals of the said Guard, to the Number of about Twenty, did, at the same Time, or soon thereafter, fire upon the Innocent Multitude, by which Fire, two other Persons were killed, and several others wounded, maimed, or hurt; and that the said Pannel having thereafter marched off the said Detachment of the Guard into that part of the Street aforesaid, called *The West Bow*, he did again, without any just Cause or Occasion, order the Men under his Command, to face about and fire upon the People; and that at this Time, the said Pannel did fire a Musket, that was in his own Hand, having either reloaded, or caused to be reloaded, his own Piece or Firelock, or taken another out of the Hands of one of the Guard; and that severals of the said Guards, did upon that second Example and Command of the Pannel's, fire upon the Multitude, by which Fire, Three other Persons were killed; at least that, by the said Firings of the Pannel, or of the Firings of the other Men in the said Detachment of the Guard, proceeding from the Pannel's Order and Example, the several Persons, mentioned in the Indictment to have been killed, maimed, or wounded, were all respectively killed, wounded, or maimed: Whereby the Pannel is guilty of the Killing, Wound-

ing, or Maiming the said Persons; at least is Art and Part thereof, or accessory thereto; from whence the Indictment concludes, That the Pannel out to be punished with the Pains of Law, *i. e.* Capitally.

To this Indictment the Pannel pleaded not Guilty; for that he had, at no time, during the Execution of *Andrew Wilson* aforesaid, given any Order, or shewed any Example to the said Detachment of the Guard then under, or that ought to have been under his Command, to fire upon the Multitude so assembled; and that he did, at no time, fire any Piece or Firelock himself upon the said Crowd; that tho' it might be true, that at, or about the Time of the said Execution, several Persons were killed and wounded by the Firings of that Detachment of the Guard, which indeed ought to have been under the Pannel's Command, and which he does, with great Grief and Sorrow, regrette; yet that, as such Firing proceeded wholly from the Men in the said Detachment, without any Order or Example from the Pannel, so he could not be charged therewith, however fatal or tragical the Consequences of such Firing may have proved.

That tho' the Pannel, as conscious of his own Innocence, could safely rest his Trial upon the Denial of the Facts aforesaid, and upon such Proof, as he could bring, by the Evidence of Multitudes of Persons of undoubted Credite, who happened to be present, close by him, during this unhappy Scene, that he was noways instrumental in the Killing or Wounding the said Persons, but that upon the contrary, he did all that was in his Power, to prevent and restrain the said Firing upon the Multitude; yet, that he was advised by his Council, that they could not, during the conducting of his Trial, consistent with their Duty, suffer him the Pannel, to omitt or abandon any Defence that was compitent to him in Law; and that therefore, as by the Law of *Scotland*, the Pleading to an Indictment, upon supposed Facts, is no legal Admission of such Facts, the Pannel was at Liberty to plead any other Exception, that lay against the Form of his Indictment, or even to plead, that tho' such Firing had proceeded from his Order or Example, yet even in that Case, such Firing, and the Consequences wherewith it was attended, was not sufficient to support the Charge against the Pannel, of the Crimes of either Murder, Slaughter, Maiming, or Wounding, or to render him obnoxious to the Pains libelled,

And in the Entry of the Debate, The Procurators for the Pannel ask Liberty to offer to the Court, a full Recital of the Behaviour of the Pannel, during the Execution of the said *Andrew Wilson*, and for some short Space previous and subsequent thereto; and also, to offer a short Relation of what they apprehend was the Cause, that the Execution of the said *Andrew Wilson* was attended with such an unusual Confluence of People, and was ordered to be guarded and over-seen by such a numerous and unaccustomed armed Force.

The said *Andrew Wilson*, along with one *Robertson*, and others, had been sentenced to Death by your Lordships, for robbing one of the Collectors of His Majesty's Revenue of considerable Sums of Money of the Publick; and while they lay under this Sentence, they were allowed, as usual, to go to the Church adjoining to the Prison, for the Benifite of Divine Service, under the

Custody



Custody of a small Detachment of the City Guard; and while the Convicts were thus at Church, *Robertson*, one of them, found means to escape from his Keepers of the Guard, by suddenly jumping over a Pew, and getting out at the Door of the Church; his Retreat apparently being favoured by the Mob, or lowest Sort of the People, he easily made his Escape, without having been ever since overtaken.

From this Escape of *Robertson's*, so favoured by the Mob, and from strong Surmises and Suggestions, that, at the Execution of *Wilson*, a Rescue was intended by the Mob, which indeed there was a reasonable Ground to apprehend; because the Commons have imbibed a pernicious and absurd Conceit, as if the Robbing of the Publick Money, was a Crime more pardonable, than private Robbery: Therefore it was, as the Pannel apprehends, that the Magistrats of the City, from a Sense of their Duty to prevent the Execution of the Laws being any further defeated by the Rescue of *Wilson*, took the strongest Precautions that the Execution of him should be made effectual.

In Consequence whereof, as would seem, the Provost of the City, sent for the Pannel, in whom, he must take the Liberty to say, Confidence was generally put upon those difficult Occasions, and told him, that there being great Apprehensions of a Mob at *Andrew Wilson's* Execution, that therefore there was a Necessity to be well prepared to prevent their Designs; and for that end, that he would have the whole City Guard, to attend at the Execution, he having given Orders to the Town Treasurer to furnish the Men with Powder and Shot, and such other Military Ammunition as might be necessary for the Use of the Men in maintaining the Peace of the Town, and supporting the Execution of the Laws. And this Conference with the Provost happened upon the *Monday* preceeding the Execution of *Wilson*, which followed on the *Wednesday* thereafter. But it seems the Magistrats of the City, not thinking even this Precaution sufficient, upon the *Tuesday* thereafter, the Provost sent the Pannel with a Letter to General *Moyle's* Residing near the City, and Chief Commander of the Forces in *Scotland*, telling the Pannel, that the Import of this Letter was, desiring from the General an Order for a Party of the Regiment lying in the *Cannon-gate* to enter the City (a Thing very uncommon, except in the Case of urgent Necessity) in order to over-awe the Mob, and thereby maintain the Peace during the said Execution.

It seems this Letter to the General induced him to send a verbal Message in return thereto, by a Person of known Honour and Veracity, Major *Pool*, of that Regiment now lying in the *Cannon-gate*, who told the Provost, that the General wanted to know of him, what part the King's Troops were to act, and what Precautions had been taken for preventing any Insult or Invasion that might be made upon the Troops, or what Length these Troops might go in the case of Tumult or Disturbance. To which the Provost made answer, That there was no reason to apprehend any Inconveniency would happen to the King's Troops, because he would have them only to parade, for a Terror to the Mob, in a Street called the *Lawn-market*, removed from the Sight of the Execution, but at a small Distance

only, where nevertheless they would be ready at a Call in case of Necessity; but that he had ordered the whole Band of the City Guard to attend at the Execution it self, with proper Arms and Ammunition, namely, Slug Shot; with Orders to repel Force by Force, and even to discharge their Arms among the Mob in case of Resistance.

On *Wednesday* the Day of the Execution, in the Forenoon, the Pannel attended the Provost, and told him, That in Obedience to his Commands, the Men were all ordered to be in Readiness, their Arms put in order, and loaded; whereof the Provost approved, and told the Pannel, That he was to be ready betwixt Two and Three in the Afternoon, with his Guard, and to draw out until the Party of the King's Troops, from the *Cannon-gate* past him; and that so soon as the King's Troops were drawn up in the *Lawn-market*, the Pannel, with the City Guard should furthwith march to the Prison, and conduct the Prisoner to the Place of Execution, without allowing him first to go to the Town's Council-house, as usual, still with Intention, as would seem, to prevent any Opportunity of Rescue, or Disturbance upon that Head; and at this Time in the Forenoon the Pannel humbly proposed to the Magistrats of the City, that they would send a Proclamation through the Town, as a Caution to such Innocent unwary People, as might by Curiosity be drawn to the Sight of the Execution, warning them of their Danger, in case any Disturbance should happen, or attack be made upon the Guard. And accordingly *George Lindsey* one of their Clerks, made a Scroll of the said Proclamation to be sent through the Town; but for what Reason it was not proclaimed, the Pannel knows not, and at the same time the Pannel remembers some one or other of the Common-Council of the City proposed in case of Disturbance, the reading of the Riot Act, and for that Purpose sent for a Dozen of Copies of the Act to a Book-fellers Shop, in order to distribute them among the proper Officers of the Law, authorized to read and proclaim such Act; but it seems at no time either of those Proposals were put in Execution; nor at the Time of the said Execution, did any Officer of the Law, authorized to proclaim such Act, attend with the Pannel.

A short space before the Pannel marched with his Men from the Guard-house, towards the Place of Execution, he was heard say, That he had no Cartrages in his Box; on which a Corporal told him, that he would get him some; and accordingly the Corporal did, in presence of several of the Men, open the Pannels Cartrage Box, wherein it was observed there were no Cartrages, and put three Cartrages therein, with one of which the Pannel loaded his Piece, and immediately marched away with the Men.

When the Criminal was conducted to the Scaffold erected for his Execution, the Detachment of the City Guard were posted on the Street, in a Circle surrounding the Scaffold, in order to keep off the Mob; but because of a certain Building, called the *Corn-market*, nigh adjoining to the Scaffold, part of the Men did also incircle that Building. And here it may not be improper for the Court to cast their Eye upon a Plan of the Ground, and the Posture of



the Men, in order to have a clearer view of the Descriptions to be hereafter mentioned.

So soon as the Criminal was thrown over the Ladder, and so left hanging upon the Gibbet, the City Baillies immediately withdrew nigh to, directly opposite, and in view of the Scaffold, but without leaving any Order or Officer of the Law to attend with the Pannel: And it had happened, that some short Space before the Act of Execution, while the Minister was assisting the Criminal by Prayer, the Pannel had gone up to join, leaving his Piece with the Serjeant; and so soon as publick Prayer was ended, or some short time after, and the Convict left to his own private Devotion, the Pannel took back his Piece in his Hand, and afterwards came off the Scaffold, and posted himself at the West End of the Detachment of the Guard.

So soon as the Convict had been hung up as aforesaid, and that the City Baillies had withdrawn from the Scaffold, the Mob became to be troublesome, intending, as would seem, to use this last Shift, immediately to cutt down the Criminal, and endeavour to bring him to Life by bleeding; an Expedient, which when timeously applied, has on many other Occasions been known to be attended with Success, and the Mob fell a murmuring, that they would have him instantly cutt down, and if it were not quickly done, they would do it themselves: And at this time they pressed hard upon the Guard, striking at them with Sticks, seizing of their Fire Arms and Bayonets, and throwing exceeding big Stones at the Guard; one whereof cutt a Drummer to the Scull, another broke one of the Men's Shoulder Bones, another wounded one of the Men's Legs, and several others of the Men were wounded, whereby they are yet unable to do Duty: The Truth of all which can be attested by their common Surgeon, who is by the City ordered to attend them upon all Exigencies.

This Insolence in the Mob alarm'd the Pannel, and still observing it to encrease, he was apprehensive that the Mob might obstruct the perfecting of the Execution; for no Criminal can be cutt down from the Gibbet, but upon the Order of a City Bailiff, upon a Judgement that the Criminal has hung up until he is compleatly dead, agreeable to the Sentence which always commands such Convict to be hang'd until he be dead; therefore it was that the Pannel sent a Message to the Bailiffs, to know if he should suffer the Criminal to be cutt down from the Gibbet; who brought back an Answer, That the Convict was to hang there yet for a Quarter of an Hour.

At this time the Mob wax'd exceeding bold, became very turbulent, and prest hard upon the Guard, and while the Pannel was endeavouring to keep off the Crowd from pressing among the Soldiers, at one End of the Scaffold, some of the Convicts Friends, assisted by the Mob, catched an Opportunity and cutt him down without any Order: And tho' the Convict, being thus cutt down, was in the Possession and Keeping of the Mob, who were endeavouring to recover him to Life, by causing the Veins of both Arms to be opened: Whither it was that they were apprehensive, that the Guard would recover him out of their Hands, as having been cutt down without Order; or that the Officers of the Law were designed to see to his Interment, and that he was executed to death; or that the Convict's Body

was intended to be given to be anatomized by the Surgeons, as is sometimes practised, where Persons of low Degree or notorious Offenders, are sentenced to Death; or from whatever Motive it proceeded, the Mob began to insult and attack the Guard: And upon this Attack it was, that the Man aforesaid had his Shoulder Blade broken; and another so bruised, that he has been never able to do Duty since; and the Timber of the Drum was broke by the force of an exceeding large Stone that was thrown, and several others of the Men were hurt and wounded.

This Violence in the Mob so alarmed the Pannel, that he made a Step or two forewards to the Westward of the Scaffold, turning about his Face towards the West Port, from whence the throwing of the Stones mostly proceeded; and having put his Piece to his Shoulder, he levelled it at the Mob, and pointing it around to them, threatning with an audible Voice, That if they would not be at Peace, and leave off throwing Stones, and attacking the Men, he would fire among them; but immediately recovered his Piece without firing it; the Threats being only intended to intimidate the Mob.

But unfortunately upon this ensued the whole Tragical Scene; for no sooner had the Pannel stept forward, threatning to fire as aforesaid, but one of the Men came up from behind him, and running by him upon his Right Hand, instantly discharged his Piece, upon which one of the Crowd dropt down, supposed to be *Charles Husband*, and which *Charles Husband* will upon Proof be found to have been the Person who tumultuously stept in and cutt down the Criminal.

Immediately upon this first Fire, another of the Guard came up to the Pannel, with his Piece presented and cocked, and ask'd if he should fire; to which the Pannel answered with some Vehemence, No, by no Means, and struck up his Piece, bidding him go to his Rank, and actually thrust him thereto.

After the Example of this first Fire, several more of the Men were heard to discharge their Pieces, but upon what Provocation the Pannel cannot tell; these Shots having been at a considerable Distance from the Pannel, proceeding, as is supposed, from such of the Men as were standing at the South-west Corner of the *Corn-market*; whereas, as has been noticed, the Pannel was still standing at his former Station, to the West of the Scaffold and Gibbet.

The Pannel not knowing the fatal Consequences of those Shots, but suspecting however that Mischief would happen, seeing the Men had been so rash as to fire without Orders, thought it was the best Course he could take, to lead off the Men of the Guard as soon as he could; and for that end he called aloud to them to follow him, and after having given Orders to the Serjants to gather them together (for it was impossible to bring them into Ranks by the confusion of the Mob) he marched off as many of them as he could find, by the North-side of the Scaffold, towards the Foot of the *West Bow*, and towards a Parcel of the Men, whom one of the Serjants had gote together at the Foot of the *Bow*, but as he was going to join that Parcel of the Men, he heard a Piece fired near him, with which he was a good deal surprized, and yet more, when he observed two or three People fall to the Ground, and which Observation was the first



first thing that greatly alarmed the Pannel, as knowing from thence, that certainly Mischief was done: But it is certain that this fatal Shot did not proceed from the Pannel, but from a certain Man in the Guard, that can be well proven; who, after having fired this Shot, immediately retired amongst the Croud, and then got himself joined to the Party: And surely the Magistrates of the City will remember, that when a Precognition was taking of the several Facts and Occurrences upon this tragical Day, that a certain Person told them, That if they would be pleased to list the whole Band of the Guard before them, he would point out the Man who made this last Fire, but the Magistrates overlooked this Offer.

As soon as the Pannel saw there was no restraining the Men from Irregularities, he marched off so many of them as he had got together, without taking time to forme them into any Order; giving Orders at the same time to the Serjants, to beat and press off the rest with all manner of Dispatch. Upon which he observed those that had straggled come off partly from about the Scaffold, and partly from East-end of the *Corn-market*, and fall into the Rear; and while the Pannel was thus marching up the *Bow*, upon the Front of the foremost Part of the Men, and had come as far as the Turn of the *Bow*, he heard some dropping Shots firing in the Rear, and about thirty or forty Paces distant from him, which he supposes may have proceeded from those Men who were straggling upon the East-side of the *Corn-mercate*, nigh to the Head of the *Cow-gate*, but upon what Occasion the Pannel knows not; but being alarm'd with the Shots, he looked back, supposing the Men might be attack'd by the Mob, and observing no Marks of any such Attack, he thought the most prudent Course he could take was forthwith to march off the Men.

It falls here to be noticed, That all this Firing, from first to last, and whereby so much Mischief has been done, lasted not above two or three Minutes; and therefore, considering the Violence of the Mob, and the straggling Situation of the Men of the Guard, and supposing the Truth of the above Narrative, which will be attested in proper Time by the Oaths of many Gentlemen of undoubted Veracity; and who had fair Opportunity of Observation at the Time, it is left with the Court, and to every impartial By-stander, whether the Pannel could well have done more for the Safety of the Burgh; considering that it shall also be proved, that during these few Minutes of Firing, accompanied with great Hurry and Confusion, the Pannel gave several repeated Orders to the Men to restrain from firing; but observing those Orders prove ineffectual, he endeavoured to sweep them off the Field with all manner of Precipitation.

The Pannel marched on with the Men to the Guard-house, and as he thinks with Coolness and Deliberation, passing by the King's Troops in the *Lawn-market* (a Thing generally esteemed somewhat inconsistent with Guilt, especially such horrible Guilt as he is charged with.) Upon his Arrival at the Guard-house, he drew up his Men there, sending a Serjant to the Provost for Orders, which were brought, That they should wait on their Arms till the King's Troops pass; and some of the Men in waiting, offering and attempting to clean their Guns, but the Pannel

discharged it, and would not allow it to be done; mean time a certain Person of Credite came up to the Pannel, and asked if he had fired? To whom he made answer, He had not; but the Person not being satisfied with the Answer, put his Finger into the Muzzel of the Pannel's Piece, and after having rubbed it about, and after having also viewed the Lock, said to the Pannel, I see you have not fired, and I am glad of it.

The King's Troops having passed the Guard, the Pannel filed off the Men into the Guard, and ordered the Serjeants to keep them close till further Orders, and by all means not to suffer them to clean their Pieces: And at the same time the Pannel delivered his Carabine, loaded as aforesaid, at the Guard Door, to one of the Guard, neither entering the Guard himself, nor any other House, but went immediately to the Provost: Thus his own Piece was brought back loaded, and apparently without having been fired, and the other two Cartrages which he had got at the Guard were found upon his return in his Cartrage Box.

When the Pannel went up to the Provost, some Person there present alledged he had seen the Pannel fire, which he contradicted, and beg'd the Provost to send for his Piece, which he told he had deliver'd at the Guard as aforesaid, and that it would appear from inspecting of her, that she had not been fired: And the Piece being accordingly sent for, and brought up to the Council Chamber, and after being strictly inspected, it was agreed by all present that she had not been fired; and in this Condition she still lies loaded, in the Custody of the Magistrates along with the Cartrage Box, containing the two Cartrages, as aforesaid.

Tho' the Pannel has a pretty important Prize at Stake, yet he rests in full Security, that he will prove to the Conviction of the Court every Article above recited, and a good deal more in his behalf to be hereafter mentioned: And if it should here be made matter of Wonder, how such different Accounts as are given of this Matter can consist together, seeing Numbers of People are impressed with the Guilt of the Pannel, and that even good, well-meaning People, who were present upon the Spot, persist in affirming that the Pannel was guilty, by both firing himself, and giving repeated Orders to fire.

The Pannel can give no other Account of this Matter than in this Way. A miserable Slaughter was, some how or other, committed within the Town. The Guilt must be laid to some-body's Door; and whether any Art might be used to lay the heavy Load upon the Pannel, in order to draw the Attention of the Multitude from another Point in View, the Pannel shall not say; but intreats the Honourable Court, and every candid Reader, who may happen to take up this Information, to look into the *Caledonian Mercuries* of the fifteenth and nineteenth of *Aprile* last, Papers supposed to be published by Authority; where will be found a most charitable Account of the Matter, touching this misfortunate Pannel, who was then lying in close Confinement, without any body being allowed Access to him; and of consequence, could have no Opportunity of vindicating himself, until once the Prejudices were deep-rooted and rivetted, so as even to catch the unwary, though well-meaning, Part of the People; and these beautiful Relations of this



Transaction, are adorned with some witty Sarcasms, very proper to this melancholy Occasion, and painted out with ingenious Reflections, and quaint rhetorical Invectives, very suitable to the Authors of these historical Relations.

And indeed the Authors of these Accounts of the Matter, whoever they are, have the Impudence to affirm, and the Wickedness to endeavour to fix it upon the Pannel, as an Instance of Premeditation and Felony forethought, that the Pannel had ordered the Detachment of the Guard to load with Ball and Slug-shot, before they marched from the Guard: And this worthy Author affirms, that such doing was unprecedented, and such as the Pannel would not pretend Orders for; notwithstanding that it is now, with his usual Candor, admitted by his Majesty's Advocat in his Information against the Pannel, and dare not be denied, but that the Pannel had Orders to see the whole Mens Pieces loaded with Bullet and other Shott, and even to fire those Pieces amongst the Mob in case of Exigency.

The Prejudices against the Pannel being once artfully rooted, it was an easy Matter to catch the giddy Mob, who are not able to look back and discern the true Springs and Causes of Things: For such is the Nature of human Passions, that if they are once artfully moved, they will be apt to misguide the Understandings; even of Persons of Observation; and thus the Speat having once been created against the Pannel, it grew into a Torrent, and flew like a Train of Fire, every one adding Fuel to the Flame, and Sparks originally increase into a mighty Combustion; and so, in like manner, Things entirely of themselves innocent, may be multiplied into horrid Cruelties and savage Barbarity.

It might also operate to the Prejudice of the Pannel, that this Scene was acted in a very short Space, attended with great Commotion and Confusion. Words and Actions might be misconstrued (whereof more particular Notice shall be taken hereafter) whereby Persons even of Judgement, might be deceived, and thereby fall into the vulgar Notions. And here it cannot be deemed an useless Digression in the Pannel to give a Caution to all Gentlemen, who may happen to be called in Evidence upon this Trial, (for 'tis feared the Mob are not capable of this Advice) not to affirm Things upon Oath, except their Observations have been accompanied with all that Certainty which those Sensations wherewith Mankind is endued, can admit of; because any inconsiderate Rashness to the Prejudice of the Life or Fame of the Pannel, cannot fail, for hereafter, to be attended with very painful Stings of Remorse.

It was observed for the Pannel, as a Thing that could not be denied, that upon many former Occasions, he had been singled out as the fittest Person to maintain the Peace of the City, by quelling of Mobs and Tumults; and that he had never hitherto, during all the many Occasions on which he had been employed, ever discovered any imprudent Rashness or cruel Temper in the Exercise of his Command, but had exposed his Person to very great Danger, rather than involve the City in Blood, or proceed to such Extremities, as the Law even would have entirely justified.

It was also observed in Behalf of the Pannel, that it was no new Thing for the private Men in

the City Guard, who, though they are tolerably acquainted with Discipline, yet are not subject to the military Law, to take upon them to fire upon the Multitude, without any Order from their Commander, whereof the following Instances are offered, and which cannot be denied; to witt;

That at the Settlement of Mr. *Wotherspoon*, as a Minister in the West Church Parish, a Party of the City Guard under the Pannel's Command, did, one or more of them, in the Rear Ranks, within the West-gate of *Edinburgh*, while the Pannel was marching on their Front, face about and fire upon the Mob, without any Order, and by which Fire severals were dangerously wounded; and the like happened in a few Years ago, after the Execution of one *Campbel*, when a Detachment of the City Guard were conducting the Corps of the Person executed, which was delivered over to the Surgeons of *Edinburgh*, by Order of the Magistrates. And the same Thing happened a few Years ago at a Race at *Leith*, where the Party of the Guard was commanded by Captain *Lind*, whereby several Persons were wounded. And another Instance was given, where the same Irregularity happened, within these few Moneths at the Execution of *Brown* the Smith, when the Detachment of the City Guard was commanded by both Captains, *Lind* and *Ferguson*. And, indeed, innumerable other Instances might be given of the Rashness of the Men in this Particular, which it is needless to condescend upon, because they are notourly known in the City.

It may also deserve Notice, that the private Men of the Guard might be prompted to fire without Orders, partly from Resentment, that *Robertson* before-mentioned had escaped out of their Hands, and partly from being encouraged by the general Order they heard was given by the Magistrates to fire, in case of Resistance: For it is now found, that severals of them were heard say before they went out to the Execution of *Wilson*, that now they had got Arms and Ammunition put in their Hands, and therefore would not fail to use them, in case they were attacked, or any Resistance made.

These Observations 'tis humbly thought cannot fail to operate in favours of the Pannel, in case the Proof of the Libel shall be attended with any Uncertainty or Dubiety: And altho' the Pannel is not so weak of Judgement, as to imagine that such Presumptions can prevail against positive and certain Proof; yet he doubts not, that in due Time, when the Proof is led, such Observations must have Weight with the candid Jury.

One Thing more we must observe in general, That as he has been employ'd for these many Years past, as the Scourge of the Mob, tho' never once known to proceed to Extremities; yet such Station of his may be the Cause of drawing Resentment from the lower Sort of the People against him.

The Pannel has just Reason to ask the Forgiveness of the Honourable Court for dwelling so long upon Generals; but 'tis hoped, from what is above noticed, and that this is the first Occasion he had of vindicating himself from the Aspersions and Prejudice of his Adversaries, he may merit the Pardon of the Court.

And now to proceed to the Particulars in the Indictment: And whereas it sets forth, That the Pannel conceiving a most wicked and malicious Purpose



Purpose of destroying, wounding, and maiming Numbers of his Majesty's Subjects, Inhabitants of the City of *Edinburgh*, had acted the several Matters and Things charged in the Indictment: The Pannel must observe, that the Circumstances of the Case naturally exclude any Supposition of premeditate Malice and Resentment in the Pannel, because 'tis impossible to conceive, that the Pannel should have retain'd any Malice against a Multitude of Persons, of whom he neither had, nor can be supposed to have had, any Acquaintance: And tho' it was admitted, that the Circumstances of the Case do exclude any supposed long premeditated Malice; yet it was urged, that in Law every wicked Action does presume Malice, tho' instantaneous to such Wickedness committed.

To which it was answered in Behalf of the Pannel, That the Circumstances of the Case, as laid in the Indictment, do even exclude any Presumption of Malice accompanying the Acts charged in the Indictment; because every Action must be construed in the most favourable Sense; and therefore the Actions charged against the Pannel, must even be construed to have proceeded from a principle of Duty in the Pannel, in maintaining the Peace of the Place, and in supporting the Authority of the Laws, and the guarding of that Execution of them, which was committed to him by lawful Authority.

In the next Place, An Exception was taken to the Indictment, as not having been laid with sufficient Certainty; the Indictment no where expressing the particular Places of that large Street wherein the Guilt is charged to have been committed, whereby the Pannel was precluded from making his Defences with Certainty: For had it been laid in the Indictment at what Places in the Street the particular Persons, affirmed to have been killed and wounded, were so killed or wounded; the Pannel might have had an Opportunity of proving, from the Circumstances of his Situation at the several Periods, that it was impossible that such Wounds could have been received from his Hands. And tho' it may be true, that such Part of the Indictment as charges the Pannel's Order to fire, would be of universal Influence, and reached over the whole Circumstances of Guilt charged in the Indictment, yet as actual Execution made by the Pannel was charged separate from his Order to fire, such Proof of Innocence, whereof the Pannel pleaded an Opportunity might have afforded him a Defence against such Part of the Indictment as charges his own Firing and Killing.

To this it was answered by his Majesty's Advocate, That the Lybel was as particular as the Law required, describing the Street where the Execution was committed, which is all that the utmost Scrupulosity could expect in this Case: Because minute Circumstances cannot be known to the Prosecutor, or certainly discovered, but by Proof upon Trial, and that every Circumstance of the Pannel's own acting must be known to him. And therefore, if from the Position or Situation in which he was at the Time of the Firing, the Pannel can shew that it was impossible he could have killed the Person whom he is charged to have shot; by describing and proving these Circumstances, he may have Advantage from them, but cannot object to the Prosecutor, that he did not minutely describe his Situation,

which was not known to him; and that by the describing of which, perhaps erroneously, the Prosecutor might minister an unjust Occasion to a Criminal to escape Justice.

To which it was replied for the Pannel, That tho' it is true that, in most Cases, the describing the Street where the Guilt was committed, would be a sufficient Description; yet, that, in the present Case, where it was laid in the Indictment, That in a Crowd or Multitude, various Shots were fired by different Hands, and thereby Wounds given; 'tis even necessary to describe the particular Place of the Street where such Wounds were received, in order to form a Judgement from whose Hands those Wounds had proceeded. The Pannel might have fired elusory, or in the Air, and the Wounds received may have proceeded from the Shots of others: That tho' the Pannel knows his own Position and Situation, and can prove them; yet such Proof could not avail him, nor be received by the Court in the Point of Relevancy; because it would be a simple Negative, which could not be admitted of, nor would not apply, unless the particular Places of the Street, in which the Wounds are said to have been received, had been described to him; a Situation which the Pannel cannot be supposed to know; whereas the Prosecutor must be supposed to have known it, seeing the same Information that led him to know of the Wounds received, must necessarily upon Inquiry have certiorated him at what Places of the Street such Wounds were received, seeing the Matters and Things laid in the Indictment, are charged to have been committed at High-daylight, in Presence of Multitudes. And tho' the Pannel is fully satisfied of the good Disposition of the Honourable Prosecutor, to lay a fair and certain Inditement against every Pannel, yet it must be admitted, that all Indictments ought to be laid with all that Accuracy and full Description that the Nature of the Thing can admit of: And, as to such Part of the Answer for his Majesty's Advocate, as saith, that such particular Description of Place, if perhaps erroneously described, might minister an unjust Occasion to the Pannel to escape Justice; it's answered, That such erroneous Description of Place could in no sense affect the Trial, beause tho' such Description should not be proved, it would not vary the Case, providing the act of Killing were proved against the Pannel, because such Description of Place is but a Circumstance immaterial to be proven by the Prosecutor; but for the Reasons above assigned, highly material for the Pannel to know, in order to lay his Defence before the Court.

It was in the next Place offered as a Defence for the Pannel, That the Resistance of the Mob was so great, and the Attack of the City Guard so violent against them, in beating, bruising, and wounding the Men, as has been above noticed, while they were in the lawful Execution of that Office, committed to them by lawful Authority, that such Resistance and Attack must have justified the Guard, in repelling the Violence of the Mob; since such Proceedings in the Guard were acted in support of the due Execution of the Laws, which the Mob were highly Criminal in disturbing. That this Argument as pled for the Pannel, was not only consonant to the Rules of Reason, but agreeable to sundry Judgements and Precedents of the Court, particularly that in the



Year One thousand six hundred and ninety two, it appears from the Books of Adjournal, That *James Gordon* Messenger at the Execution of a Caption, did, with many others his Assistants, armed with Guns, Swords, and other hostile Weapons, shoot several Shots, whereby one *Alexander Jack* was killed dead upon the Spot, amidst a numerous Crowd, which the Alarm of Noise and Tumult had drawn together, and whereof only part can be supposed to have come there with Intention to resist the Messenger; and the said *James Gordon* and the others his Assistants, being indicted for Murder, the Lords sustained this Defence to him, relevant to elide the Libel simply, viz. That he, in the Execution of a Caption, haven his Blazen displayed, was by force of Arms hindered to enter the House of *Loanmy*, by the Persons within that House, and that they did threaten and menace the Messenger and his Assistants, and that they threatened to raise the Country, and that the Country did accordingly rise, and beset and surround the Messenger, either in the House, or without the House; the said Country People being armed with Guns, Swords, and other invasive Weapons.

Here your Lordships perceive, that the Court justified the Messenger in shooting amongst the Mob, and killing; because the Persons in the House forcibly hindered him from entering, and threatened and menaced him, being armed with invasive Weapons; and the present Case is more favourable in behalf of the Pannel, who acted by lawful Authority, as well as *Gordon* in the other Case did, and who was supporting the Execution of the Laws, as well as *Gordon* was; with this Difference upon the side of the Pannel, That he was not only hindered and menaced in the Execution of his Duty, but he and his Guard invaded and assaulted, beat, bruised, and wounded, as has been above noticed, and whereof a strong Proof shall be brought; and that the Mob in the present Case were not only armed with, but in their Attack upon the Guard, made use of, big Stones, of Two or Three Pound weight, which must be allowed to be very invasive Weapons; and therefore the Pannel subsumes, that the Defence offered for him in the present Case, is stronger, and ought rather to be allowed him, than that which was sustained to *Gordon*. Only the Pannel must do the Justice to His Majesty's Advocat, as to acknowledge, that this Precedent was not hitherto offered in the Debate; but when the Record is inspected, will be found to stand in the precise Terms as above-mentioned.

There was in the former Debate, a Precedent of the Court offered, as against the Pannel, which the Pannel, with Submission, apprehends makes for him, namely *Captain Wallace's Case*, sometime after the Revolution. *Captain Wallace* was indicted in the One thousand six hundred and ninety two, for having refused in the One thousand six hundred and eighty eight, to deliver up himself, in Obedience to an Order of the President of the Council, and several Privy Councilers, whereof Two were Officers of State; and the Bailiffs of *Edinburgh*, having gone down to the *Cannon-gate*, with a Heralld and Pursevant, with their Coats of Arms displayed, to put the Order of Privie Council in Execution; notwithstanding which, *Captain Wallace* would not deliver himself up, but retired with the Men under

his Command to the *Abbey*, and defended himself, and fired upon the Bailiffs, Herallds, and Pursevants; shot several Persons dead upon the Spot, and wounded a great many others.

The Defence pled for *Captain Wallace* was, That the keeping of the *Abbey* was committed to him by order of the Privy Council, which he was obliged to maintain so long as the Trust of it was committed to him; That as to the Order of Privy Council, to deliver up his Person, it was contrair to an Act of Parliament *James the Sixth*, whereby any General Warrant, for putting the Person of any Man in Ward, except where such Warrant was signed by four Officers of State, whereof the Chancellor, Treasurer, or Secretary of State to be one, which had not been practised in *Wallace's Case*, was prohibited and discharged.

The Lords, after a very learned Debate, did sustain these Defences to *Captain Wallace*, viz. That on the Sabbath Night, or shortly before, a Rabble did meet in several Places, in great Numbers, and that severals of them did declare to *John Paterson* their Resolution to trouble the Pannel on his Guard, and to pillage the *Abbey*, relevant to restrict to an arbitrary Punishment.

Here your Lordships perceive, that the Court sustained a previous Intention only declared, that they would trouble the Pannel on his Guard, and pillage the *Abbey*, sufficient to moderate the Punishment; so tender are the Laws towards any Person committing Hostility in Defence of his Guard: And then the Lords sustained the following Defence relevant to elide the Libel altogether, to wit, That the Rabble did, in a tumultuous Manner, come down the *Cannon-gate* with Swords and Fire Arms, and did beat some of the Pannels Centinels; and being desired to stand, they notwithstanding advanced so near, that the Pannel could speak with them; and after he had desired them to remove, or be at their hazard, they, notwithstanding thereof, still persisted to advance.

The Application in the present case is easy: The Pannel many Times exhorted the Mob to stand off; notwithstanding of which, they still pressed upon him; he many times advertised them of their Hazard; threatned to fire upon them if they would not keep off; his Centinels were not only beat, but bruised and wounded; all which is offered to be proved.

Another case was mentioned in the Debate to your Lordships, which strongly supported the Plea of the Pannel, because it was a Judgement of your Lordships pronounced but very lately, after the most solemn Declaration of the Court; and whereish, the Pannel is informed, The Court was unanimous; and which Judgement seemed to be of that Importance, as to induce the Court to reverse the Proceedings of the High Court of Admiralty, after a solemn Trial by Jury in that Court; a Verdict returned, finding the Lybel proven, and the Defence not proven; and a Sentence of Death pronounced by the Judge of the High Court of Admiralty.

The case before the Admiralty was this; A Corporal and a private Centinel in *Collonel Hamilton's* Regiment were indicted before the Admiral for Murder; for that they had, upon the High Seas, killed *Hugh Frazer* younger, of *Bel-nain*, by stabbing him with a Bayonet in the Breast,



Breast, and afterwards throwing him into the Sea, whereof he instantly died.

The Defence plead for the Pannels, was this, That the Pannels were by military Order, appointed to attend the Officers of the Customs in seizing of Goods by Law made seizable; and that the Pannels being in a Boat, upon the Seas, along with the Custome-house Officers, in quest of such Goods, the Person killed did come up with them in another Boat, with others in Company with him; and that *Frazer* the deceas'd jumped into the Boat, where the Pannels and the Custome-house Officers were, and endeavoured to take hold of their Arms; which was both a Resistance and an Attack of the Custome-house Officers while in the Execution of their Duty.

Upon the other hand, it was pled against the Pannels, That *Frazer's* jumping into the Boat, was with no Intention to make Resistance, but rather to save his own Life from the Thrusts of the Pannels, their Pieces having been aimed at him; that those in the Custome-house Boat could have no just Apprehension of being mastered by Mr. *Frazer*, he having no invasive Weapon about him whatever, and being the only Person who offered to get into the Custome-house Boat, in which there were several Persons well armed.

The Judge of the High Court of Admiralty admitted of the Pannels Plea, in this Manner only, sustains the Defence of Self-Defence proponed by the Pannels, that the killing of the said *Hugh Frazer*, by them, or either of them, was in the necessary Defence of their Lives, and repelled the whole other Defences proponed for the Pannels.

The Jury returned their Verdict, finding the Pannels both guilty, art and part, of killing the said Mr. *Frazer*; and finding it not proven, that the killing of Mr. *Frazer* was in the necessary Defence of the Pannels Lives: Upon which Verdict returned, the Judge sentenced both the Pannels to be hanged,

The Proceedings of the Court of Admiralty were laid before your Lordships for a Review, which, 'tis believed, is the single Instance wherein it was ever contended, that the Proceedings of the High Court of Admiralty in Matters Criminal could be reviewed by any other Court.

Notwithstanding of which, your Lordships, were pleased to reverse the Sentence of the Judge Admiral; no doubt, upon supposed Error in his Proceedings; because the Verdict of a Jury, pronounced upon Evidence, cannot be reversed; and in consequence of which Judgement of your Lordships, the Pannels were sett at Liberty.

Now the Pannel is advised, that such Judgement in your Lordships could stand upon no Foundation other than this, *viz.* That your Lordships had reversed the Judgement of the Admiral as erroneous, in not sustaining this Defence to the Pannels: That they were resisted by Mr. *Frazer* deceas'd, while they the Pannels were in the Execution of their Duty.

And as the degree of Resistance offered by Mr. *Frazer* to the Pannels, was by the Pannels themselves maintained to have been no higher than what has been set forth to your Lordships; the forsaide unanimous Judgement of your Lordships pronounced after many solemn Deliberations, does by consequence show, that it was your Lordships unanimous Opinion, that a very small degree of Resistance of Persons in the Execution

of their Duty, will justify the Persons resisted in the Act of killing the Resister.

And if that was the solemn and unanimous Opinion of the Court in a Case so recent; must not such Judgement afford a strong Argument to the Pannel, that he and his Guard were resisted, while in the undoubted Execution of their Duty, in being beat, wounded, and bruised by an unruly Mob; who, there was good Reason to apprehend, intended to defeat the Execution of the Criminal;

To this last Case, the Pannel met with no other Answer from his Majesty's Advocat, but this, That the Pannel cannot plead the Benefite of this Case; because he neither does, nor can aver that the firing proceeding from him or his Order, was necessary for securing of the Execution of that Trust that was committed to him: His Majesty's Advocat does admitt, that where a Person has by lawful Authority Weapons put into his Hands, to be employed either in defence of his Life, when attackt, or in support of the Execution of the Laws, or of the Property of the Crown, or Property of the Subject; such Person may use those Weapons, not only when his own Life is so far in danger, that he cannot probably escape without making use of them, but also where there is imminent Danger, that he may by Violence be disabled to execute his Trust: But withall seems to contend, that the Pannel was under none of those Circumstances at the time he committed the Guilt charged upon him in the Indictment; for that the Execution of the Criminal was over before the Scuffle began, or any Resistance was made to the Pannel, and the Guard under his Command; and that being the Case, the Pannel can plead no other Defence, than such as might arise from his being put under the imminent Danger of his Life.

But with great Submission, These Positions of his Majesty's Advocat are assumed without any Authority, and, as would appear, not only in plain Opposition to the Laws, but to the many Precedents already offered in behalf of the Pannel; for it's hoped it must be admitted, even by my Lord Advocate himself, and is indeed so admitted by him, that the Pannel was once in the lawful Execution of his Duty, and was obliged at all Hazards to support the Execution of that Criminal who was committed to his Guard; surely then, the Execution of the Pannel's Duty can never be said to have been at an end, until once the Criminal was fully executed to Death, and as such ordered to be cut down by lawful Authority; unless it shall be said that it was the Pannels Duty, the Moment the Convict was hung up, to let him instantaneously be cut down, rescued by the Mob, and brought to Life again; which seems to have been their plain Intention: For it seems to be confessed upon all Hands that there was danger of a Rescue, which seems to have been the occasion of all this extraordinary Apparatus; and for preventing of which 'tis admitted, that the whole Guard was sent out with their Pieces loaded, and even with Orders to fire at all Ventures in Case of such Rescue. Was it not then a necessary part of the Pannel's Duty to protect and support the Execution of the Convict, when hanging by the Neck in the Air, until such time as he was cut down by lawful Authority, as supposed fully dead? And 'tis certain that in answer to the Pannel's Message, Orders were brought



brought from the Bailiffs that he should yet hang a quarter of an Hour, which surely it was the Pannel's Duty to see obeyed, and which Orders of the Bailiffs the Mob nevertheless did resist, and cut down the Criminal long before that time was elapsed, and which the Pannel was in duty bound to oppose; and from this Contrast, it is offered to be proved, all the Violence in the Mob proceeded: But can it be with any Justice affirmed, but that the Pannel was in the Execution of his Duty, while he and his Guard were standing upon the Spot under Arms? Is not every Person in the Execution of his Duty while he is either going to, or coming from any lawful Expedition? and therefore it seems impossible to maintain, but that the Pannel, and the Detachment under his Command, were in the lawful Execution of their Duty, until they had once returned, and were dispersed and dismissed from Duty, at which time only they were reduced under a private Capacity.

And even the Protection of the Hangman, who had actually received several Wounds and Contusions, and was in danger of being tore to Pieces by the Mob, was a part of the Pannel's Duty: For tho' he is a Minister of the Law, somewhat odious; yet he is a necessary One for the Society, and lies under a greater Necessity of being protected, from his being so obnoxious to the Resentment of the Mob; and at least in Humanity, must have such Protection afforded him, as to defend him from having his Brains knocked out.

How then can it be said, in any Sense, that the Pannel was in such Situation, that he could only plead the Benefite of Self-defence? It is a known Rule in Self-defence, that a Person invaded must retire as far as he can with Safety: But if that is the Case of a City Guard (maintained at great Expence) that so soon as they are invaded, they must immediately betake themselves to their Heels, it will be apparent, that they are but kept up for very useleſs Purposes.

At the same time the Pannel can with great Candor aver, That he is far from being of that Disposition of Mind, as to be ready to take the Advantage, which the Law might afford, against an unruly giddy Mob; whereof he has given Proof upon many former Occasions, as must be allowed him; and whereof even the present Case will be an Instance in his Favours, if he meets with Justice from the Evidence: But with all, he must be allowed to observe, that it would be a dangerous Position, That a Guard kept up for the Maintenance of the Peace of the capital City of this part of the Nation, when they are assembled together upon Duty, should be allowed to plead no higher Privilege, than that of Self-defence in the strictest Sense.

And whereas my Lord Advocate seems only to admitt, That a Person who has Weapons put in his Hands by lawful Authority, for the Defence of the Property of the Crown, or Liberty of the Subject, may only use these Weapons when he is in imminent Danger of having the Execution of his Trust defeated by Violence: If such is the Case, the Execution of Duty will become a very ticklish Point; and 'tis apprehended, that few Folk will be fond of it, if they can possibly live without it; and of Consequence, such Doctrine must very much discourage any Persons

from offering their Service, either to the Crown or Commonwealth.

And as the Supreme Executive Power is by the Constitution vested in His Sacred Majesty, our Sovereign; therefore my Lord Advocate, who, by his Office, is of Council for His Majesty in all Causes, will, no doubt, have due Consideration, how far an Argument is to be pressed against the Pannel; which by plain Consequence, must tend to weaken, if not defeat, the Execution of the Laws.

One would rather be inclined to think, That where a Person has the Trust of the Execution of the Laws committed to him, the smallest Resistance to this Trustee, as such, is a guilty Aggression, and that every Opposition of such Aggression is lawful Defence, because no Man must be above the Laws; and the Life of the Laws, in which the common Good is employed, is of greater Value than the Lives of any One or Number of the Individuals, and so ought to be defended at all Perils.

His Majesty's Advocate upon this Head, in his Information against the Pannel, does assume this Fact, That the Mob or Multitude assembled at the Execution, were behaving themselves peaceably; and from this seems to draw his Inferences against the Pannel, which indeed will run high enough. The Pannel very well knows, that no Order whatever will justify the Person executing that Order, if such Order appears evidently to be unlawful; and yet in Cases which appear doubtful, an Order from a Superiour will have it's own Weight; more especially in military Matters, or such other Things as resemble them.

But with Submission, This Reasoning upon the Mobs being supposed quite peaceable and innocent, is entirely out of the Case; for, as we are now upon Relevancy, the Facts must be supposed, and then the Argument considered in that View: And as the Pannel does aver, That he and his Guard, while in the Execution of their Duty, did meet with strong Resistance from the Mob, in so much that many of the Men were greatly hurt and bruised: And if that was the Case, it was an unlawful Invasion of Persons, to whom the Execution of the Laws were committed; and so might be by them, in support of those Laws, resented to a pretty great Length; except it shall be maintained, that in the Situation of the Pannel and his Men were posted, they could plead no higher Privilege than that of Self-defence; which, with great Respect, cannot be maintained, but rather seems to be a Contradiction; because they had not only their own Defence to take care of, but also the Defence of the Peace and Quiet of this City, and of the Execution of the Laws, and that due Obedience was given to them.

In a Word, upon this Head, the Pannel's Argument is not only supported from the Nature of the Thing, because a Man who fights with the Laws upon his side, fights with great Advantage against those who are fighting against the Laws; and for that reason, if a Man were to fight a Duel, the Laws would be the best Second; but also, 'tis believed, that no Instance can be given in this Country, or in any other of civilized Policy and Government, where a Person, proceeding to what Extremities whatever against Persons who had assailed him, while in the due Execution



Execution of the Law, ever suffered the Pains lybelled.

My Lord Advocat seems to insinuate, as if the Reading of the Riot-act, had been a Duty incumbent upon the Pannel, whereby the Innocent Part of the Multitude would have had time to have taken care of their own Safety: But then his Lordship will be pleased to consider, that no Person is by Law authorized to proclaim that Act, other than a Justice of Peace, Sheriff, Mayor, Bailiff, or other Head Officer; and no Person, under any of these Characters, was left with the Unfortunate Pannel; but he was abandoned and left to grapple with Occurrences in the best Manner his own Discretion could suggest to him.

But then the Reading of that Act could not answer the present Exigency: For tho' the Reading of that Law may perhaps sometimes answer the End for which it was intended, namely, The preventing the Demolition of any House or Meeting-house; but if the Pannel in the present Case, should be supposed bound to have kept his Hands across for the Space of one Hour, after the Reading of this Act; then it is certain that the Mob might have prevented the Execution of the Law in far less Space. And it is certain, that by the Act, the Mob is not put in Contempt, or exposed to the Penalties of it, until once they continue together one Hour after the Reading thereof.

His Majesty's Advocate is also pleased to hint, as if the offering of this Plea in Behalf of the Pannel, founded upon the Resistance of the Mob, was in some sort inconsistent with another to be hereafter mentioned for him, viz. his Innocence of the Facts: But, no doubt, my Lord very well knows, that by the Laws of *Scotland* there is no Inconsistency in such different Pleas. And this leads to the Consideration of the Exculpation offered for the Pannel, arising from his Innocence of the Guilt, either of the Action, Command, or Order charged against him in the Indictment.

And in the first Place, as to such Part of the Indictment as charges him with either having fired himself, or having given Orders to fire, whereby *Charles Husband* was killed. Though it is indeed true, that it is impossible, from the Nature of the Thing, for the Pannel to prove an absolute Negative; because, as His Majesty's Advocate very justly argues, if the Charge in the Lybel is proven, to witt, That the Pannel either did fire, or gave Orders to fire, at this Time himself, no negative Evidence can prevail against it; yet as to this Point, the Pannel offers to prove, what the Lawiers call a circumstantiate Negative, which in a good Measure resolves into an Affirmative, viz. That at this Time, when *Charles Husband* fell, and got the Wounds charged in the Indictment, whereof it's supposed, he died, the Pannel as has been above recited, was in the following Situation; that is to say, he was pointing his Piece with his Face towards the West Port, threatening the Mob, that if they would not keep off, he would fire; and that immediately, upon this Expression, a private Centinel of the Guard, came up from behind him, and discharged his Piece, by which it will be proven *Charles Husband* received his Death Wounds; because it shall be proven, by Persons of undoubted Veracity, that were hard by the

Pannel all the Time, that they not only observed, that he did not fire his own Piece, and gave no Order for firing; joined with this other Circumstance, that no Proof will appear, during the whole Scuffle, that ever the Pannel made use of any Firelock, but his own; and that his Piece, when returned to the Guard, was found loaded, and in such Condition, that it was even confessed by the Magistrates themselves, and many others, not to have been fired; with this further Addition to exclude that further Part of the Charge in the Indictment, of the Pannels having made use at any Time of any other Piece than his own, viz. that he carried his own Piece in his Hand the whole Time, except during the Space of Prayer above-mentioned, when he gave it to his Serjant: And it shall also be proved, that there was but one Shot fired at this Time, at which *Charles Husband* is supposed to have received his Death Wounds. And as to the other dropping Shots that are charged in the Indictment to have followed upon this first Shot, if from the Evidence adduced, the Pannel's Proof shall appear to be most pregnant, that he gave no Orders to fire at this Time, then he is not chargeable with the Consequence of such Firings.

And this further Circumstance must strongly operate in favours of the Pannel; to witt, that at the Time of this supposed Orders to fire, the Men were not drawn up in a regular Line or Band; but were either straggling, mixt with the Mob, or in a circular Form, surrounding the Scaffold in the *Grass-Market*, which excludes all Possibility of any supposed general Order to fire; unless it be supposed that the Pannel was a mad Man, seeing any Compliance with such Order must have led the Men to fire each in his opposite Neighbour's Breast, and a great many into that of the Pannel.

It is not altogether impossible that the Pannel's Expression of the Word *Fire*, might have erroneously induced this Fellow that came from behind his Back (who of himself perhaps was too forward to embrace such Order, had it been given) to discharge his Piece: And if the Person firing was guilty of an Error, or of a Misconstruction of Duty, the Pannel is not chargeable therewith; seeing that every Person that has the least Knowledge of the Exercise of Arms, must know, that he is not to receive an Order to fire from Implication, but from some known certain Rule of Discipline.

And for this Reason it is, that the Pannel takes it to be a very wise Part of the military Institution, to avoid Misconstructions, That no Man receives Orders to fire (especially when he is resting or shouldering his Arms) but upon a precedent Series of Exercise attended with some Solemnity, to avoid Mistakes; greater or less indeed according to the Nature of the Occasion.

Sometimes indeed, as was observed in the Debate on the Side of his Majesty's Advocate, Persons will, very justly, fire upon so short Advertisment as the Tuck of a Drum; but 'tis believed, that is never practised, but during the Noise or Tumult of Battle; when it is supposed that the Voice of verbal Order cannot reach the Men; and then this Tuck of the Drum, or any other Signal of firing, must be previously advertised to be the Signal of such Action.

Another thing falls also to be noticed here, touching this first Charge in the Indictment, and



which may be even taken thro' the whole; That when two or more Persons are nigh together, levelling their Pieces at the same time, it is not easy for the sharpest Eye, especially if at any Distance, to determine from what Piece the Fire proceeded; and of this Point military Men, best acquainted with the Exercise of Fire Arms, can give the best Account.

And lastly, upon this Head, the best Conjecture the Pannel can make, is this, That upon this first Fellow's firing, without either Order or Example from the Pannel his Commander, the other dropping Shots that ensued, proceeded from other rash Fellows of the Guard; who encouraged by this first Example, directed and discharged their Pieces against such Part of the Mob, as they respectively supposed any Injury or Invasion upon them had proceeded.

The next material Circumstance, charged in the Indictment, is that, touching the Pannel's Behaviour at the *West-bow*; where it is charged, That he commanded the Men to face about, and fire upon the People; and that at or about the same time, he fired a Musket or Firelock that was in his own Hand; having either reloaded, or caused to be reloaded, his own Piece, or taken another out of the Hand of one of the Guard; and that upon this second Example and Command of the Pannels, several others of the Guard, under his Command, did fire; whereby the Persons mentioned in the Indictment were killed and wounded.

As to which Part of the Charge, the Pannel offers the following Proof: And First, As to Order he shall prove by Multitudes of Persons nigh him at the time, and who were narrowly observing him (and Orders are generally given with an audible Voice) they heard no such Order given, nor heard no Expression of the Pannel, that, by the most remote Consequence, could have been interpreted an Order to fire: And here the Pannel's Memory, upon the most serious Reflection, cannot divine what could have given Occasion to any Body's conjecturing that he gave an Order to fire at this time. And here also the former Observation falls to be noticed, touching the Solemnity of an Order for firing.

2<sup>do</sup>. As to the Action of firing charged against the Pannel himself, for firing at this time; the Pannel offers to prove the very Centinel, at least, that it was a Centinel of the Guard, who gave the first Fire at this time, which was the Shot at *Robertsons Closshead*. And the Pannel is informed, as has been above noticed, That at the time of taking the Precognition, an Offer was made to the Magistrates to single out the Fellow, if they would suffer the Guard to be drawn out, who fired that Shot towards *Robertsons Closshead*, by which the two or three People fell. And further, The Pannel offers to prove, upon this Head, not only that this Fellow was the first Person that fired, without any Order from the Pannel circumstantiated, as is above noticed, but also by many Persons of undoubted Credite, that they could not observe the Pannel fire, or discharge any Piece himself, during the whole Time that this Firing is supposed to have continued. And here the

Pannel could evidently cast up many Inconsistencies to your Lordships, that must necessarily be implied, and many Presumptions that strongly exclude any supposed Order or Example of the Pannel at this Time; but does not think it altogether so prudent to mention them at present.

As to the taking a Piece out of another Man's Hand, and firing of it, such Action was a remarkable Occurrence, and must have fallen out under Observation; and so the Pannel can say nothing about it, but leave it to Evidence, with this only Observation, That, as it was a notable Event, it will operate almost as strong in the Negative as in the Positive. And it must be left to the Jury to balance the Evidence, if a Contrariety shall appear; and to lean to that Side attended with the greatest Credibility, taken the known Rule of the Law into the Compass, namely, Favour to the Pannel in case of Dubiety. Only this Observation falls to be made to your Lordships, That the Circumstances of the Case call aloud for the Pannel's being allowed a Proof upon this Part of the Indictment.

The Pannel does agree with His Majesty's Advocate, That no negative Evidence can take away a positive Proof; but the Pannel humbly thinks he has offered a pretty circumstantiate one: And as my Lord Advocate seems to admitt the Necessity of a Proof on both Sides, so the Pannel will not labour that Point with your Lordships; not doubting but you will allow him in general, to prove what he can, to exculpate him from the Guilt laid in the Indictment; and that your Lordships by your *Interloquitor* will allow him as much Scope in that Particular, as any Precedent of your Lordships Court can authorize. And there are several Instances, and one very particular one, wherein great Latitude was allowed, both as to the Circumstances precedent, concomitant, and even subsequent to the Acts charged in the Indictment.

Some general useful Reflections might be made, but this Paper is already drawn out into too great Length, and as the Pannel has learned Judges, and a discerning and candid Jury, the less needs be said; because 'tis supposed they will naturally occur to these interested in the Trial; and no doubt such will lay aside all Prejudices and Prepossessions; and will never once think of, but utterly despise the Consequences of popular Rage or vulgar Clamour.

If the Pannel is guilty of the Charge in the precise Way and Manner it is laid against him in the Indictment, he is of Opinion himself he deserves to suffer: But if upon the other hand, it shall come out that he is entirely innocent of the Blood of those Men where-with he is charged; he thinks his Case deserves singular Commiseration: Because, if Bonds and Imprisonment, Loss of Employment and Bread, Obloquy, and Reproach of Blood-guilt, and Massacre, and, of Consequence, loss of Character, be Calamities in human Life; then has he had as great a Share of them as ever attended Innocence. *Sic subscribitur.*

*Ja. Grabame, jun.*



*Curia Jusficiaria, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, Decimo sexto Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Jusficiarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newhall, et Gilbertum Eliot de Minto, Commissionarios Jusficiarii, dictos S. D. N. Regis. Curia legitime affirmata.*

Intran.

JOHN PORTEOUS lately one of the Captain Lieutenants of the City Guard of Edinburg, Pannel,

INDICTED and ACCUSED as in the former Sederunt,

The Lords, Justice Clerk, and Lords Commissioners of Justiciary, having considered the Indictment pursued at the Instance of *Duncan Forbes* Esquire, his Majesty's Advocate, against *John Porteous* Pannel, with the foregoing Debate thereupon, FAND, That the Pannel having at any of the Times and Places libelled, fired a Gun among the People assembled at the Execution libelled, or having given Orders to the Soldiers under his Command to fire; and thereupon, they the Soldiers or any of them having accordingly fired; and upon the firing, either by himself or them, the Persons mentioned in the Indictment; or any of them, were killed or wounded, or the Pannel's being art and part of any of the forsaide Crimes; all *seperatim* relevant to infer the Pains of the Law: But allowed the Pannel to adduce what Evidence he could with respect to his Behaviour at the Time the forsaide Crimes are libelled to have been committed; for taking off the Circumstances which should be brought for inferring his being guilty, or art and part of the Crimes lybelled; and remitted the Pannel and the Indictment as found relevant to the Knowledge of an Assize, *Sic Subscribitur*  
*Andr. Fletcher, I. P. D.*

The Lords, Justice Clerk, and Lords Commissioners of Justiciary, continued the above Diet at the Instance of his Majesty's Advocate, against Captain *John Porteous*, till Monday next at Seven of the Clock in the Morning; and ordains Assysers and Witnesses then to attend, under the pain of Law, and the Pannel to be carried back to Prison.

*Curia Jusficiaria, S. D. N. Regis, tenta in Novo Sessionis Domo Burgi de Edinburgo, Decimo nono Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Jusficiarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, et Dominum Gilbertum Eliot de Minto, Commissionarios Jusficiarii, dict. S. D. N. Regis. Curia legitime affirmata.*

Intran.

JOHN PORTEOUS lately one of the Captain Lieutenants of the City Guard of Edinburg, Pannel,

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INDICTED and ACCUSED as in the former Sederunts. Thereafter the Lords proceeded to make Choice of the following Persons to pass upon the Assize of the said *John Porteous*,

A S S I Z E,

Sir John Inglis of Cra-	James Hunter, Wright
mound.	there.
Alexander, Gibson of Pent-	William Wight, Baxter
land.	there.
George Halyburton of	John Bell, Bræwer in
Fordell.	Edinburg.
James Baird of Chester-	James Davidson, Book-
ball.	seller there.
John Hogg of Cambo.	David Inglis Merchant
Thomas Dundas of Le-	there.
them.	Alexander Sharp, Mer-
Alex. Brand of Brandf-	chant there.
field.	Patrick Manderstoun,
John Follie, Vintner in	Merchant there.
Edinburg.	

The above Assize being all lawfully sworn, and no Objection of the Law in the Contrary;

THE Pannel *John Porteous* judicially confessed, That Time and Place libelled, the several Persons mentioned in the Indictment to have been killed and wounded, *viz. Archibald Ballantyne*, Son to *John Ballantyne* the younger, Dyser in *Dalkeith*; *Margaret Arthur*, alias *Airth*, Residenter in the Cannon-gate near the Water-gate thereof; *John Anderson*, Son to *George Anderson* in *Craighead*, Drover; *Jean Peat*, Servant to *James M<sup>r</sup> Dowal*, Merchant in *Edinburg*; *David Wallace*, Journey-man Wright in *Edinburg*; *James Philp*, late Servant to *Lauder Esq*; Residenter in the Cannon-gate; *David Kidd*, Taylor in *Edinburg*; *Patrick Spalden*, Apprentice to *David Mitchell*, Jeweller in *Edinburg*; *James Lytk*, and *Alexander Wallace*, both Servants to *James Wight*, Staymaker in *Edinburg*; *John Miller*, Taylor in *Edinburg*; *David Ogilvie*, Writer in *Edinburg*; and *James Nevin*, late Servant to *William Sellers*, Writer in *Edinburg*, now Residenter in the *Pottercraw*; *Alexander M<sup>r</sup> Niel*, Son to *Edward M<sup>r</sup> Niel*, Indweller in *Mertounball*; *Margaret Gordon*, Servant to *William Ogilvie*, Taylor in *Saint Mary Wynd*, in *Edinburg*; and *Henry Grabame*, Taylor in *Cannon-gate*; and *Charles Husband*, Servant to *Paul Husband*, Confectioner in the Abbay of *Hely-rood-houfe*; were so killed or wounded by Firing proceeding from the Party of the City Guard, then under his Command, as mentioned in the Indictment. *Sic subscribitur,*  
*John Porteous.*  
*Andr. Fletcher, I. P. D.*

His Majesty's Advocate for proving his Lybel, adduced the Witnesses after deponing, *viz.*

*James Drummond* Merchant and Residenter in *Edinburg*, aged Thirty Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, that Time and Place libelled, and after *Andrew Wilson* had hung some Time upon the Gallows, about a quarter of an Hour, as the Deponent thinks; he saw the Executioner going up the Ladder, as the Deponent apprehended, to cut him down; upon which he saw some small Stones thrown by the Mob at the Executioner; some



some whereof the Deponent believes might have fallen upon the Guard : Upon which he saw the Pannel advance from the Guard West-ward, resting his Firelock upon his Thigh, as if he had been bending it, and thereafter saw him raise it to his Breast, moving it from one Point to another: And soon thereafter, the Deponent heard a Shot from the Place where the Pannel was standing, but did not observe, whether the Shot came from Captain *Porteous's* Firelock; and, much about the same time, observed one of the Soldiers go out of his Rank Westward, and upon the North-side, and saw him go further West than the Place where Captain *Porteous* was; the Side of the Window, where the Deponent was standing in *Robertson's* House, covered the said Soldier from the View of the Deponent, by the Time the first Shot was fired; and which Soldier had a Gun and a screwed Boyonet in his Hand, levelled with the Butt end of it at his Breast; and the Deponent did apprehend at the time that Captain *Porteous* had fired, because he saw him in a firing Posture, and immediately heard a Shot, and saw a Man in a few Minutes thereafter, as soon as the Mob dispersed, lying upon the Street, upon a Line, whither the Deponent saw Captain *Porteous's* Piece directed; and that the above-mentioned Soldier came from the Body of the Guard which was behind Captain *Porteous*. *Causa Scientie patet.* And this is the truth, as he shall answer to God. *Sic subscribitur*

*J. Drummond.*  
*Andrew Fletcher.*

Sir *William Forbes* Advocat, aged Thirty Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the deceast *Andrew Wilson* had hung about Twenty or Twenty-five Minutes upon the Gallows, The Deponent from a Window in *Orr* the Stablers House, opposite but a little to the West-ward of the Gallows, saw the Executioner go up some Steps of the Ladder, as the Deponent believes, to cut down the said deceast, and saw thereupon, Stones thrown at the Executioner; upon which the Executioner immediately retired to the Guard, and the Mob continued throwing of Stones; so that the Deponent does believe some of the Stones might have touched the Guard; and about this time, the Guard were drawing together to the North and West of the Gallows, where the Captain was standing, and did soon thereafter see the Pannel, advancing Westward, fire his Gun among the People assembled at the Execution; and observed the Fire and Smoak issuing out at the Muzzle of his Piece, to the best of the Deponent's Observation; which he thought at the time very distinct, and that the said Shot was the first which the Deponent heard; and the Deponent at the Time did imagine, that the Pannel had fired his Shot high, but whether that proceeded from the Situation that his Firelock was in, or from the Appearance that the Fire and Smoak made that issued out of his Piece, the Deponent cannot now particularly charge his Memory. That thereafter the Deponent heard several dropping Shots, about Twenty, but cannot be positive as to the Number; that when the forsaide Facts happened, the Deponent was upon the South-side of the Street, and the Pannel to the North of the Middle of the

Street almost opposite to the Window where the Deponent was; and when the Pannel so fired, the Deponent did not observe any Soldier so far advanced West-ward from the Body of the Guard as the Pannel was. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*William Forbes.*  
*Andrew Fletcher.*

Mr. *William Fraser* Son to the Lord *Saltoun*, aged twenty four Years or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was in a Window in one *Orr's* House in the *Grass-Mercat*, the South Side of the Street, that Day that *Andrew Wilson* was execute; that after *Wilson* had hung some time on the Gallows, he saw the Executioner go up some Steps of the Ladder, as he apprehended, to cut him down; and then saw the Mob throw Stones and Dirt at him; upon which the Hangman came down, and went in amongst the Soldiers that were standing at the Foot of the Scaffold: That soon after the Hangman had come down, he saw the Pannel present and level his Gun, moving the Muzzle to and fro, and then saw him fire; and to the best of his Knowledge or Apprehension, saw the Smoak issue out of the Mouth of the Piece; that immediately thereafter within a Second or two, he heard several dropping Shots fired by the Soldiers, who were there on their Arms; that he thinks the dropping Shots he then heard came from near the Place where the Pannel was standing. And deponed, that at the Time forsaide the Pannel fired his Gun, he did not observe any of the Soldiers advance before him and present their Guns. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic. sub.*

*William Fraser.*  
*Ja. Mackenzie.*

Mr. *William Urquhart* of *Meldrum*, aged thirty eight Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, that he was present at *Andrew Wilson's* Execution the Time libelled, in the House of one *Orr*, on the South Side of the Street, in Company with Sir *William Forbes* and Mr. *Fraser*, the preceeding Witnesses; that after *Wilson* had hung some Time, he saw the Executioner go up some Steps of the Ladder in order to cut him down, as he apprehended, and saw the Mob throw several Stones at him; upon which he came down, therefore the Mob continued to throw Stones, some of which fell amongst the Guard; whereupon he heard several dropping Shots fired by the Soldiers; that he saw the Pannel present his Piece, immediately heard a Shot, which he apprehended was Shot by the Pannel, but did not observe it so narrowly as to see the Smoak or Fire issue out of his Piece. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*William Urquhart.*  
*Ja. Mackenzie.*

*James Dewar* of *Vogrie*, aged sixty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled at *Andrew Wilson's* Execution, he was in a Window



in his own House at the Foot of the *West-bow*, in the East-side of the Way; that he saw the Hangman go up some Steps of the Ladder, after *Wilson* had hung some time; and saw the Mob throw some Stones, one of which hurt the Executioner on the Face; upon which he came down the Ladder; whereupon he saw the Pannel present his Piece and Fire, which was the first Shot he heard or saw; that when he saw the Pannel fire, his Side was to the Deponent, and that the Pannel was then standing on the East-side of the Gibbet; and that he fired his Piece to the West: And Deponed, he saw the Fire of the Powder from the Pan, and heard the Report of the Shot. Depones, That when the Pannel fired, as aforesaid, he was standing on the South-east side of the Scaffold. Deponed, That *Wilson* was cut down not by the Hangman, but by some that were standing at the Foot of the Gallows, and that *Wilson* was cut down before he heard any Shots: Deponed, That he stood at his own Window before *Wilson* was thrown over, and continued looking at the Place of Execution till he was cut down, and heard the Shots as before mentioned. And being interrogated what kind of Cloaths Captain *Porteous* had then on, declares he cannot be positive, but believes they were Red Cloaths; but is positive that he knew Captain *Porteous* Face when he saw him fire. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*James Dewar.*

*Ja. Mackenzie.*

*George Drummond*, Esq; One of the Commissioners of the Customs, aged      Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was in the House of Baillie *Halyburton* on the right Hand, on the North-side of the Corner of the *Srait-bow*, the Third-story, at the time of the Execution of *Andrew Wilson*, and from a Window of the said House, after the Criminal was thrown over, and had hung for fifteen or sixteen Minutes, the Executioner was about going up the Ladder; and after he went up two or three Steps, he observed several Stones thrown at him; which made him return; and while he was on the Ground, he observed his Nose bleeding; and at this time he observed one or two Persons or more standing at the Foot of the Gallows; one of whom stretcht up his Arm with a Knife, he observed cut the Rope; the Executioner having mixed with the Soldiers, he did observe the throwing of Stones to continue, and some of them fell among the Soldiers. Deponed, That immediatly thereafter he observed one of the Soldiers advance a little before Mr. *Porteous* to the West-ward, with a Gun in his Hand, which he presented; and immediatly thereupon the Deponent heard a Shot, which he imagined to be from that Soldier, but did not observe Fire or Smoak; tho' at the Time he concluded it was from that Soldiers Gun, and is positive that that was the first Shot that was fired; and the Deponent did not think that the Stones that were thrown, did give any just Cause for the Firing. Deponed, That about the Time when he observed the Soldier present his Gun, as said is, he also observed the Pannel holding his Gun in his Hand in a Level, but is not sure of his

putting the Butt of it to his Shoulder. Deponed, That after the said first Shot, within a Minute he heard another; and so it continued till about the Number of Eighteen or Twenty; and this was at the Time of the Firing observed by the Deponent; but within some Minutes thereafter, there was a second Firing, which he did hear, and upon hearing came to the Window, and observed some Lime fallen from an opposite House, which he judged to have been occasioned by the Bullets: And as to the eighteen or twenty dropping Shots, in the first Firing, were from the Soldiers immediatly behind the Pannel, betwixt whom and them, he observed no Person interposed; and he observed the Time of the first Shot the Pannel's Face was looking West-ward, as was all the Soldiers behind him, Deponed, That the Soldiers at that time, who fired, were to the Deponent's best Remembrance to the North-ward of the Scaffold; and the Pannel was then, to the best of his Remembrance, either upon a Line to the Gibbet, or a little Westward of it. Further deponed, That the Soldier who first fired, as said is, advanced from behind the Pannel, and past upon his right Hand, to the North-ward of him. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic sub.* 1736.

*Ge. Drummond.*

*Da. Arskine.*

*William Johnston*, Druggest in *Edinburgh*; aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, he the Deponent being present at the Execution of *Andrew Wilson*, he did observe the Pannel take a Gun out of a Soldier's Hand, at which Time he was standing 'twixt the *Corn-mercate* and one *Tod's Shop*, which is under Baillie *Halyburton's* House; thereupon he observed the Pannel advance some Steps Westward, and did see him present and level his Gun, that is to say, Hold it out and fire amongst the Multitude; and did observe the Smoak come out of the Gun: And deponed, That this was the first Shot he heard, which Shot immediately followed after the Criminal was cut down by a Hand standing at the Foot of the Gibbet; and the Deponent at the Time was standing in a Window in the House of one *Gairdner*, Horse-Ferrier by the *Muse Well*; and when the Pannel was taking the Gun out of the Soldier's Hand, he appeared to be in Passion, and it was some short time before he was Master of the Gun. Deponed, That to the best of his Remembrance the Pannel was clothed in red, but he being well acquainted with the Pannel's Face, he is positive, that he was the Person that took the Gun and fired as aforesaid. And Deponed, That he believes there was about thirty Yards Distance betwixt the Window where the Deponent was, and the Pannel, at the first firing. *Causa Scientie patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*Wm. Johnston.*

*Da. Arskine.*

*Mark Sprot*, Skinner, and one of the Constables of *Edinburgh*, aged twenty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, as he stood on *William Orr* Stablers Window, South-



South-side of the *Grass-mercate*, he saw *Wilson* the Criminal cut down from the Gibbet; upon which Occasion he did not observe that there was any greater Disturbance than usual at Executions: That a very little while after the Criminal was so cut down, he observed the Pannel advance before the Soldier, and upon the North-side of the Scaffold over-against the Gibbet, he saw him fire his Piece towards the West, and the Smoak issue out of the Mouth of his Gun; this he says was the first Shot that was fired; but immediately, upon the back of that, a tall Man with his own Hair, about the third behind the Pannel, as he thinks, fired off his Piece likewise towards the West, but up in the Air over the Heads of the Multitude: That very soon after several other dropping Shots followed after, which when the People fell back and opened, he observed a young Man lying upon the Ground as dead, directly opposite to the Place where the Pannel fired. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*Mark Sprott.*  
*Gilb. Eliot.*

*George Campbell*, Wright in *Edinburgh*, aged Twenty eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent stood in the Window of Mr. *Carmichael's* House, in the South-side of the *Grass-mercate*, directly opposite to the Gibbet; That a very little after *Wilson* was cut down, he observed the Pannel with four or five of his Men about him, and that as he pointed his Piece to and fro towards the Multitude, he observed him receive a Stroak by a Stone thrown from behind the Scaffold, off which it rebounded and struck him; upon which he immediately fired his Piece; but whether this was the first Shot or not, the Deponent cannot tell for there was three or four fired much about the same time; but that the Pannel fired, he is sure, for he saw Fire and Smoak issue from his Piece. That upon these Shots already mentioned, he saw a Man fall down upon his Back on the Street: That after this he saw the Pannel raise his Muffket, and put his Hand to his Cartrage Box, as if he intended to load again; but does not know what followed upon this, because he immediately lost Sight of him. Deponed, That when the Pannel fired his Piece as above, he was standing towards the South-east Corner of the Scaffold, and pointed his Piece towards the South-west: That the Pannel's Fire with the Shots that went off at the same Time, were the first that were made on that Occasion. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*George Campbell.*  
*Gilb. Eliot.*

*James Bald*, Merchant in *Edinburgh*, aged Thirty two Years, or thereby, Widower, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent stood in the same Window with the immediate preceding Witnes, or at least in a Window in the same Room: That a little after *Wilson* was cut down from the Gibbet, he saw the Pannel advance a little Westward from the *Corn-mercate*, towards

the South-side of the Gibbet, and fire off his Piece West-ward, toward the *Muse Well*: That at this Time he saw none of the Soldiers near him, nor observed any other fire but his; and before there was any more firing, when the Multitude fell back, he saw a Man lying dead, towards the Place that the Pannel pointed his Piece; that he is sure the Captain fired, since he saw the Fire and Smoak issue from his Piece. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*James Bald.*  
*Gilb. Eliot.*

*Andrew Davw*, Servant to *James Montgomery*, Brewar in *Potteraw*, aged Twenty-two Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent was standing at the foot of *Robertson* the Stabler's Clofs, when *Wilson* was cut down from the Gibbet; immediately after which, the Pannel, who was standing in the middle of the Street, between the Deponent and the *Corn-mercate*, fired his Piece toward the Place where the Deponent was standing; upon which a Baxter in the *Abbey*, called *Charles Husband*, dropt just by the Deponent; and his the Deponent's Coat was torne in the Shoulder with the same Shot; that he heard the Report of the Captain's Piece, tho' he neither saw the Fire nor the Smoak, yet he is sure the Pannel fired, because he saw no other Piece presented at the same time: That the Pannel when he fired as above, was as near to the Deponent, as the End of the Table where he now stands, is to the West-end of this Room. Deponed, That the Shot mentioned to be made by the Pannel, was the first he heard that Day. Deponed, That during the whole time of the Execution he never came nearer the Scaffold than *Robertson's* Clofs-foot (by *Robertson's* Clofs-foot is meant the end nearest the *Grass-mercate*). *Causa Scientiæ patet.* And this is the Truth as he should answer to God, and declaired he cannot write. *Sic sub.*

*Gilb. Eliot.*

*Walter Sheargold* Indweller in *Edinburgh*, aged Twenty eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present the Time and Place libelled; and after the Criminal *Wilson* was cut down, he saw Captain *Porteous* fire his Gun, holding the same streight out at the Multitude; and that the Deponent was then within three Yards of the Captain, when he saw him fire, and that after he had fired, he heard him call, Fire; then heard some Shots, but does not know from what Hands they came, for he immediately retired to the *Lawn-mercate*. Deponed, That when the Pannel fired, his left Hand was towards the Scaffold, and he fired towards the West-port. Deponed, That the Scaffold was nearer to the West-port than the Pannel was when he fired, that is, the Pannel was nearer to the *Corn-mercate*: Deponed, That this Shot by the Pannel, was the first that he heard at that time, and that he was present all the time of the Execution; that he was so near as to see the Fire and the Colfine fly out of the Pannel's Gun, *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

*Walter Sheargold.*  
*Wa. Pringle.*

*John*



*John Ritchie* Servant to *Mr. Archibald Murray*, Advocate, aged Seventeen Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, the Deponent was present at the Execution of *Andrew Wilson*; and after the Criminal was cut down, he saw and heard about Three Shots fired, and then he heard a Fourth Shot, which was by Captain *Porteous*; and that he saw a Man fall down, but the Deponent imagined it was from the Pressure of the Croud, that there was very short time betwixt the Shots, but that which was by Captain *Porteous* was the last in order. That after the Criminal was cut down, the Guard drew towards the North-side of the Scaffold, that the Deponent was standing within Two or Three Yards of the Foot of *Robertson's* Clofs, when he saw and heard the firing: Deponed, he heard the Pannel mention the Word, Fire, before the firing, deponed, That the Pannel was, to the best of the Deponent's Remembrance, standing as far West as the Gallows; but he cannot be very positive; the Mob and Crowd was such, that he could not very distinctly discern: Deponed, That the Shots mentioned by the Deponent, first Three, and then a Fourth, was the first he heard that time. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

*John Ritchie.*  
*Wa. Pringle.*

*Thomas Crooksbank*, Servant to *Thomas Trotter* Brewar in *Edinburgh*, aged Twenty two Years or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, the Deponent being upon the Causey on the South-side of the Scaffold, saw the Pannel, who was then standing upon the North-side of the Scaffold, fire the Gun that was in his Hand upon the Multitude; the Point of the Piece being directed Westward, and saw the Fire and Smoak issue out of the Muzzle of the Gun, that was in the Pannel's Hand. And further deponed, That the Pannel was standing at the North-side of the Scaffold, and at that end of it, which is next the *Bow*. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur* *Thomas Crooksbank.* And being further interrogate, If the said Shot that the Pannel fired, was the first Shot, Deponed, That it was the first Shot; but that several other Shots followed immediately thereafter. And this is likewise the Truth as he shall answer to God. *Sic subscribitur* *Thomas Crooksbank.*  
*Andr. Fletcher.*

*James Neilson* Gardiner in the *Bull Clofs* of *Edinburgh*, aged Thirty one Years or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, the Deponent being standing within the Foot of a Turnpike near the *Muse Well*, saw the Pannel who was then standing upon the North-side of the Scaffold, a little to the East-ward, where the Gallows was; and saw the Pannel advance West-ward, towards the Multitude, with his Firelock in his Hand, moving it to and again, as if he had been beating

back the People; and at the Third or Fourth Motion, saw the Pannel fire the Piece that was in his Hand upon the Multitude, pointing it Westward, and saw the Smoak issue out at the Muzzle of the said Piece. That this was the first Shot which the Deponent heard, which was soon followed by others; for the Deponent observed the Pannel after he had fired his Piece retire some Yards to the Soldiers, and saw Five or Six of these Soldiers advance and fire upon the Multitude; and soon thereafter when the Multitude were beat off, the Deponent saw a Boy with black Hair lying within ten Yards of the Turnpike where the Deponent was standing, and saw Four other Persons lying at different Places upon the Street; and saw the first mentioned Boy bleeding at the Ear. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

*James Neilson.*  
*Andr. Fletcher.*

*William Gordon*, Baxter, and servant in the common Bakehouse in *Hasties Clofs* in *Edinburgh*, aged Twenty-one Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, The Deponent being at the Head of the Turnpike at the back of the *Muse Well*, did from thence see Captain *Porteous* Pannel, who was then upon the North-west Corner of the Gibbet, waved his Firelock to and again; and thereafter saw the said Firelock while in his Hand, go off, and saw the Fire and Smoak go out at the Muzzle of it; and this was the first Shot which the Deponent heard that Day, but heard several Shots thereafter; and that the Shot which the Pannel fired, was soon after the deceast *Andrew Wilson* was cut down. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

*William Gordon.*  
*Andr. Fletcher.*

*James Nasmyth*, Servant to *Colin Alison*, Wright in *Edinburgh*, aged Twenty six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogate, Deponed, That Time and Place libelled, and soon after the deceast *Andrew Wilson* was cut down from the Gibbet; the Deponent being upon the Causey of the North-east end of the Scaffold, beginning to take down the Scaffold: and did then hear the Pannel who was towards the North-end of the Scaffold, say several Times to the Soldiers under his Command, Fire and be damn'd! and at the same time saw the Pannel advancing West-ward, with his Piece presented in his Hand; and immediatly after hearing the forsaid Words, he heard several Shots go off; and when the forsaid Words were spoken by the Pannel, he was passing by the Deponent West-ward, about a Yard or two distant from him. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

*James Nasmyth.*  
*Andr. Fletcher.*

*David Brown* Servant to *Colin Alison*, Wright in *Edinburgh*, aged Twenty eight Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed



Deponed, That Time and Place libelled, and after the decessit *Andrew Wilson* was cutt down from the Gibbet, the Deponent being standing at the East End of the Scaffold, assisting to pull it down; and then saw the Pannel going along the North-side of the Scaffold Westward, and heard him give Orders to the Soldiers under his Command to fire, but does not remember the particular Expression; and immediatly upon the Orders being given as aforesaid, he heard several Shots; and when the Deponent heard the Pannel give the said Orders, he was about the Distance of the Breadth of the Scaffold from him. *Causa Scientie patet.* And this is the Truth as he should answer to God. *Sic sub.*

*David Brown.*  
*Andr. Fletcher.*

*Matthew Kid*, Servant to *Thomas Milln*, Deacon of the Measons in *Edinburgh*, aged thirty-three Years, or thereby, married, solemnly sworn, purged of Malice, and partial Council, examined and interrogated, Deponed, Time and Place libelled, and soon after the decessit *Andrew Wilson* was cutt down from the Gibbet, the Deponent being standing upon the plain Stones near *Capt. Todd's* Shoppe, he saw the Pannel going from the Well at the *Boze-foot* Westward, and saw him here the Gun that was in his Hand, and thereafter give Orders to the Soldiers under his Command to fire; thereafter heard him call to the said Soldiers to level their Pieces; and saw the said Soldiers fire; and that the Shot fired by the Pannel as aforesaid, was either the first or second Shot; which Shot he fired standing to the North-east of the Scaffold, half way 'twixt that and the *Boze-foot* Well; and that when the Pannel ordered the Soldiers to level their Pieces, he was some Yards nearer the Foot of the *Boze*. *Causa Scientie patet.* And this is the Truth as he should answer to God. *Sic subscribitur.*

*Matthew Kid.*  
*Andr. Fletcher.*

*James Maxwell*, Servant to *Colin Alison*, Wright in *Edinburgh*, aged thirty-two Years, or thereby, married, solemnly sworn, purged of Malice, purged of partial Council, examined and interrogated, deponed, That the Time and Place libelled, after *Wilson* was cutt down and put in his Coffine, there was some Stones thrown by the Mob amongst the Guard; upon which he heard the Pannel to order the Soldiers to turn in; and immediatly heard him give the Soldiers Orders to fire, and be damn'd; and then saw him advance two or three Paces, and saw his Gun cocked, and his Thumb upon the Doghead, and saw him fire the Gun; and immediatly before he heard any other Shot, he saw a Boy fall near a Copper-smith's Shop, to the North-west of the Place, from which the Pannel fired his Gun. There were six or seven more Shot after the Orders were given; and then he saw three Men and a Woman fall, one of which had a Wound in his Forehead, and another in the Side of his Head: That after the Soldiers fired as aforesaid, he heard the Pannel say to one of the Soldiers, That if he did not fire, he would take his Piece from him. Deponed, That he the Deponent was then standing on the South-side of the Scaffold, helping to pull it down, when he heard and saw what is above deponed upon; and that the Pannel was upon the North-side of the

Scaffold, about ten Yards from it, over-against the Middle of the Scaffold: And deponed, That the Pannel's Shot at that Time was the first he heard then shot. Deponed, That he was present at the Time from *Wilson's* coming down to his Execution, till after he was cutt down and carried away; during which Time he heard no Shot fired, until that fired by the Pannel. *Causa Scientie patet.* And this is the Truth as he should answer to God. *Sic subscribitur.*

*James Maxwell.*  
*Ja. Mackenzie.*

*William Douglas*, one of the Soldiers in the City Guard, *Edinburgh*, aged forty-seven Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined, and interrogated, Deponed, That the Time and Place libelled, as the Executioner was going up the Ladder to cutt down *Wilson*, there were several Stones thrown at him, which obliged him to come down the Ladder; at the same time there was several Stones thrown amongst the Guard, before *Wilson* was cutt down, at which time he heard the Pannel say to the Soldiers, Be damn'd to you, Bougars, Fire; after which he heard several Shots fired by the Men, but knows nothing of the Pannel's having fired; and that these were the first Shots he heard fired that Day, to the best of his Knowledge. Deponed, That the Pannel when he uttered the Words before-mentioned, was standing at the South-side of the Gallows. Deponed, That the first Shots were fired before *Wilson* was cutt down, and likewise some of them thereafter. *Causa Scientie patet.* And this is the Truth as he should answer to God; and declares he cannot write. *Sic subscribitur.*

*Ja. Mackenzie.*

*Archibald Yetts*, Lifter in the *Abbey* of *Holyrood-house*, aged forty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, a little after *Wilson* was cutt down from the Gallows, he saw the Pannel fire his Piece among the Multitude; and immediatly heard him say to his Men, Level your Pieces, and fire and be damn'd! Whereupon there were a great many Shots fired by them, and saw the Pannel take a Gun from one of the Men, which he the Pannel fired. Deponed, That he the Deponent was within six Yards of the Pannel when he fired, and spoke the Words before-mentioned. Deponed, That at the Time when the Pannel took the Gun from the Soldier, he laid his own upon the Scaffold, and that there were some Persons, but very few, then standing upon the Scaffold. Deponed, That betwixt the Time that the Pannel fired his own Piece, and his taking the Gun from the Soldier, as aforesaid, it might be about eight or nine Minutes: And deponed, That at the time he fired the second Gun, there were several other Guns fired at the same time. Depones, That there was no Shot fired before the first fired by the Pannel; and that the second Shot fired by the Pannel was near the same Place where he fired the first; and that he had not moved above six or seven Yards betwixt the first firing and the second; and that some of the Soldiers followed the Pannel in that Space, and returned with him again



again to the Place where he fired first. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*Archbald Yetts.  
Ja. Mackenzie.*

*William Murray*, Barrowman and Indweller in *Edinburgh*, aged twenty-seven Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, the Deponent being present at the Execution of *Andrew Wilson*, he did observe two of the Soldiers under the Pannel's Command, fire their Guns; but the Guns were fired up in the Air; thereafter he observed the Pannel fire his Gun amongst the Multitude; whereupon he observed a Boy drop down, and did hear the Pannel call out to the Soldiers, Damn them for Bougars, why did they not fire, even forward, and clean the Street? At which time the Deponent was standing about the South Pillar of the *Corn-mercate*, about twenty Yards Distance from the Pannel, as he apprehends: Furder deponed, That after the said first firing, he observed the Pannel take a Gun out of a Soldier's Hand, and fire again; directing it towards a Man he was pursuing; which he did thirty or forty Yards; and upon firing, he observed the Person so pursued, fall down: And being interrogated how long his present Dulness of Hearing remained with him; Deponed, he has been as dull of Hearing these seven Years past. Deponed, That the two Shots from the two Soldiers were the first firing he heard upon that Occasion. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*William Murray.  
Da. Erskine.*

*James Nicoll* Watch-maker in *Cannon-gate*, aged thirty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present, Time and Place libelled, at the Execution of *Andrew Wilson*; and then he did observe the Pannel fire his Gun, holding it out straight before him, amongst the Multitude there assembled; and as he heard the Report of the Gun, so he observed the Smoak of the Powder coming from the Gun; and this Shot was the first he heard upon that Occasion; and the Pannel when he thus fired, was standing betwixt the Gibbet and one Mr. *Cunyngbame's* Shope on the North-side of the Street, near the North-east-end of the Scaffold. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*James Nicoll.  
Da. Erskine.*

*William Jameson* Merchant in *Edinburgh*, aged twenty-four Years, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present Time and Place libelled, at the Execution of *Andrew Wilson*; and about the Time when they were cutting down the Criminal, the Deponent then standing within three or four Yards of the Pannel, did hear him give Orders to the Souldiers that were behind him to fire, and immediatly thereafter he did hear the Pannel fire the Gun that was in his own Hand; and upon his firing, observed the Smoak of the Powder come from it;

thereafter he observed the Pannel take a Gun from one of the Soldiers, but what Use he made thereof, he knowes not; and it was very short Time 'twixt the Pannel's Firing, and his taking the Gun from the Soldier, as also, a very short Distance betwixt the Place where he fired, and where he took the said Gun; the Place of his firing to the Deponent's Memory, being near to *Robertson's Closshead*; and where he took the Gun, was a very little way up the Street from it: And the Shot he heard from the Pannel's Gun, was the first he heard that Day. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*William Jameson.  
Da. Erskine.*

*John Moffat*, Baxter and Servant in the Common Bake-house in *Hasties Closs* in *Edinburgh*, aged twenty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was standing in Mr. *Orr's* Door, on the South-side of the *Grass Mercate*; and some short time after *Wilson* was cut down, he saw the Pannel take a Gun out of one of the Soldier's Hand, before Mr. *Todd's* Shope Door, which he immediatly fired off towards the North-west; a little before which, the Deponent saw him fire his own Gun from the same Place; that upon the Captain's Firing, the Deponent saw some of the Soldiers, who stood behind the *Corn-mercate*, fire their Guns up in the Air. *Causa scientiæ patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*John Moffat.  
Gilb. Elliot.*

*John Stewart*, Merchant in *Edinburgh*, aged thirty Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was standing in a Window of *Wine Garden's* House, on the South Side of the Scaffold: That some short Time before *Wilson* was cut down, upon some Stones being thrown at the Hangman, he observed the Pannel jump down from the South Side of the Scaffold, and walk up briskly towards the Place where the Disturbance was, but nothing in his Hand but a Cane; immediatly after this *Wilson* was cut down; upon which the Guard that attended the Execution, began to march up the *Bow*; and that at the North-West Corner of the Gallows, he observed the Pannel take a Gun out of a Soldier's Hand, with which he pushed back the Multitude; and that when the Pannel came the Length of the *Bow-Foot*, being upon the Rear of his Men, he saw him receive a Stroke with a Stone; upon which he suddenly turned about, and waved his Piece to and again, towards the Multitude, but without firing; but a very little after that, he turned about all at once, and steped some Steps forward, and fired off his Piece towards the Crowd Westward: That this was the first Shot which the Deponent either heard or saw made that Day. *Causa scientiæ patet.* And this is the Truth as he should answer to God. *Sic sub.*

*Jn<sup>o</sup>. Stewart.  
Gilb. Eliot.*



*John Gibb*, Cow-feeder in *Cannon-gate*, aged forty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, he was standing at *Mr. Robertson's* Clofs-head, in the *Grass-Market*; that a very little after the Hangman had been on the Ladder, as he thought, to cut down *Wilson*, he observed the Pannel with his Gun in his Hand, advance towards the Crowd, where the Disturbance was, and present his Piece three Times; the last of which Times, the Deponent thought he fired her off; for he saw the Primine burn in the Pan, but could not see the firey Smoak at the Muzzel, because of the Crowd; neither could he with Certainty distinguish the Report, because several other Pieces were fired off at the same Time: That upon these Pieces being so fired, he saw one *Mr. Niel* drop down at the *Muse Well*: That before the Firing above-mentioned, he neither heard nor saw a Shot made that Day. *Causa scientie patet.* And this is the Truth, as he shall answer to God. *Sic subr.*

*John Gibb.*  
*Gilb. Eliot.*

*Followes the Witnesses adduced for the Pannel.*

*George Smciton*, Writer in *Edinburgh*, aged thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, he was present at the Execution of *Wilson*: That when the Executioner was doing his Duty, he saw *Captain Porteous* come off the Scaffold, because the Mob was crowding upon the Guard; and while the Pannel was endeavouring to keep off the Mob, he saw a Man with a Silk Napkine about his Neck, press upon the Pannel, and seem to endeavour to grasp at; but that a young Gentleman there, in green Cloaths, kept him off; and then the Pannel returned to the Scaffold; but about the time the Criminal was cutting down, or to be cut down, the Pannel went off the Scaffold again; and about that Time there was Stones thrown by the Mob at the Hangman, and the Guard; and some of them fell amongst the Guard: That so far as the Deponent could observe, being upon a Bartizine, upon the South-side of the Scaffold, five Story high, the Stones seemed to be pretty large, but the Deponent cannot tell the Dementions; and then he soon observed a Shot, which was the first that he observed, and came from one of the Soldiers; and this Shot was after the Criminal was cut down; and after this Shot, in a very little followed three or four other Shots; and at this Time the Pannel had his Piece presented towards the Multitude; and that he saw the Flash of the Pan of the Soldier's Gun that fired the first Shot. Deponed, That the Pannel was pretty near the Soldier that fired the first Gun. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Geo. Smciton.*  
*Wa. Pringle.*

*Thomas Herton*, Doctor in the Regiment of *Welsh* Fuzieleers, in the *Cannon-gate*, aged thirty nine Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and

Place libelled, he was present at the Execution of *Wilson*, when he saw several Stones thrown by the Mob at the Guard, of such Bigness, that was sufficient to have killed them, in case they had hitt them in a proper Place; which continued some little Time. Deponed, That while the Criminal was hanging upon the Gallows, the Deponent saw a Man press towards the Pannel; and being come near him, he held up his Hand to him, in a threatening Manner; but the Deponent did not hear what Words he uttered. Deponed, That when the Pannel was upon the Scaffold, he had no Gun in his Hand; but when he came off again, he took a Gun from a Soldier. Deponed, That when the Pannel came off the Scaffold, he went about to the West-side, and turned about towards the North, endeavouring to get his Men together, which he could not weel do, they being so much interspersed with the Mob; and they continuing still to throw the Stones, the Pannel turned about with his Face towards the West; and having his Fuzie in such a Manner in his Hand, as if he had not designed to fire, but waving it from Side to Side, rather seeming to intimidate them: And at this Time there was a Soldier came upon his Right Hand, and fire cloe by the Pannel; and this was the first Shot the Deponent observed: And deponed, That he had his Eyes strictly upon the Pannel all this Time. Deponed, He did not see the Pannel fire; and he is very well assured, that he did not fire at that Time. Deponed, That this Shot was immediatly after the Criminal was cut down. Deponed, That after this, the Pannel endeavoured to carry off his Men. Deponed, That the Soldier that came up by the Pannel's Right-side, came up from behind him. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Tho. Herton.*  
*Wa. Pringle.*

*David Rannie*, Merchant in *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That after the first Firings were over, the Deponent from his own Window in the Land above *Baillie Dewars*, at the Foot of the *Bow*, saw the Pannel draw off his Men, and marching up the *Bow*, halt at *Baillie Crockett's* Shop, at which time the Deponent heard some Soldiers fire, which the Deponent apprehended was in the Rear; the Deponent looking upwards, and they that fired not being under his Eye. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*David Rannie.*  
*Andr. Fletcher.*

*John Clark*, Serjeant in the Regiment of *Welsh* Fuzieleers, aged Thirty-three Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time libelled, the Deponent was sent by the Captain who commanded the Detachment of the King's Forces in the *Lawn-mercate* to the Place of Execution, to get Orders from the Magistrates or the Pannel; and having gone up to the Scaffold, and while the Deponent was conversing with the Pannel, he saw a Stone thrown at the Executioner, which



cut him in the Nose so that he bled ; and about the same time there was a Stone, about the Bigness of the Deponent's two Fists, hit the Calf of the Deponent's Leg ; upon which the Deponent with the Pannel came down from the Scaffold, and thereafter saw the Pannel moving his Fuzie in order to keep off the Crowd, who had by that time pressed upon the Guard, and drove them about four or five Yards from the Place where they were posted at first ; and thereafter the Deponent saw Captain *Porteous* endeavouring to keep off the Mob with his Fuzie, waving it to and again, telling them to keep off, or he would fire, but that there was no Fire at that time : And the Deponent then walking towards the *West-bow*, saw four or five of the Soldiers presenting their Pieces, and saw one of them advance to the Right where the Deponent was standing, and fire upon the Crowd ; which was the first Shot the Deponent heard ; at which time the Deponent saw the Pannel upon his Left Hand, about seven Yards from him ; and then the Deponent saw two other of the Soldiers come up betwixt the Pannel and the Deponent, and fire in the Air ; and thereafter heard four or five more Shots, which the Deponent thinks was fired betwixt the Place where the Deponent was standing and the Pannel ; and the Deponent during that time had his Eye fixt upon those who fired, and did not observe Captain *Porteous* fire or give Orders to fire ; and upon the first Shot as aforesaid, the Deponent observed a Man drop at the Entry of *Robinson's Clofs*. *Causa scientie patet*. And this is the Truth as he shall answer to God. *Sic sub*.

*Jr. Clark.*

*Andr. Fletcher.*

*Colin Campbell* of *Ardonnick*, aged Forty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent in a Window from Mrs. *Carmickacells*, opposite to the Scaffold, observed no Disturbance till once the Executioner was going up the Ladder to cut down the Deceased *Wilson* ; and then saw some Stones thrown at the Executioner, upon which he retired ; and as he was passing the *Corn-mercate*, the Deponent observed one of the Stones hit him, and saw some Stones thrown at the Guard, who were upon the North-side of the Scaffold ; and saw the Pannel making Motion with his Fuzie to keep off the Mob ; and afterwards turned towards the Foot of the *Bow* very civilly ; and then saw a Stone hit one of the Soldiers ; and which Soldier, the Deponent saw present his Firelock ; and saw another Stone hit the same Soldier ; and thereupon the said Soldier pointed his Firelock West-ward, and fired immediately ; and another Soldier fired immediately after him ; which Firings took the Deponent's Eyes from off the Pannel ; and which two Firings, the Deponent thinks were the first that were fired by the said two Soldiers who had advanced among the Crowd from their Party. *Causa scientie patet*. And this is the Truth as he should answer to God. *Sic sub*.

*C. Campbell.*

*Andr. Fletcher.*

*William Meane*, Serjant in the City Guard of *Edinburgh* aged Forty-eight Years or thereby, mar-

ried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, the Time and Place libelled, and about the Time the deceased *Andrew Wilson* was cut down, there was Showers of Stones thrown at the Guard, and particularly one big Stone lighted betwixt the Deponent, and Serjant *Finlay*, above three Pound Weight ; and that the Drummer was cut in the Head with a Stone, and the Drum struck with a Stone ; and that *Alexander Muscheat* Centinell, one of the Guard, had his Shoulder Blade broke with a Stone ; and that before these Strokes were given, the Deponent, by Order of the Pannel, was drawing off, and forming his Men in the Foot of the *Bow* ; that the Pannel gave the Deponent his Fuzie, which was the Fuzie the Pannel ordinarily carried, to keep, while he attended the Execution, and the Prayers ; which the Deponent returned to the Pannel again, upon the Signe's being given to cut down *Wilson*, and before, the Pannel came down from the Scaffold. *Causa scientie patet*. And this is the Truth as he shall answer to God. *Sic sub*.

*William Meane.*

*Ja. Mackenzie.*

*Alexander Campbell*, Apprentice to *George Young*, Surgeon in *Edinburgh*, aged eighteen Years or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, he saw several Stones thrown among the Guard after *Wilson* was cut down ; and saw two of the Soldiers of the Guard step aside from among the rest and fire ; and these were the two first Shots that he heard. *Causa scientie patet*. And this is the Truth as he shall answer to God. *Sic sub*.

*Alexr. Campbell.*

*Ja. Mackenzie.*

*Matthew Howert*, Souldier in the City Guard of *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present at *Wilson's* Execution, at the Time libelled ; and that before, and after *Wilson* was cut down, there was a great many Stones, both great and small, thrown among the Guard by the Mob ; that after the Pannel came down from the Scaffold, he saw him wave his Piece he had in his Hand, but did not offer to present it ; then he saw a Soldier step out from the Rest, and fire his Piece in the Air ; as likewise Two or Three Soldiers that fired thereafter, did likewise fire their Pieces in the Air ; and that these, who fired first, were standing clofs by the Pannel, and the Deponent ; and these, were the first Shots he heard that Day ; and he heard the Soldiers say, one to another, Fire, or we shall all be knockt down ; and upon more Stones being thrown among them, several of them did fire ; but before that time he heard the Pannel say to the Soldiers twice, Do not fire. After these Shots were fired, the Captain marched up towards the *Bow*, and the Men followed him ; that at the Time, that the Shots were fired, as aforesaid, the Pannel was standing at the Foot of the Steps of the Scaffold, with his Face towards the Castle : And deponed, he was one of those that followed the Captain, nor did he see the Captain fire, as he was going up the *Bow* : That



when the Captain was marching on the Head o the Men, up the *Bow*, he heard a dropping Shot, or Two, fired from the Rear; nor did he see the Captain return again towards the Scaffold, but marched straight on up to the Town. *Causa scientie patet.* And this is the Truth as he shall answer to God. And declared he cannot write. *Sic subr.*

*Ja. Mackenzie.*

*David Martine*, Souldier in the City Guard of *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he the Deponent was one of the Party of the City Guard, who attended the Execution of *Andrew Wilson*; and before there was any firing he did hear the Pannel call to them, Not to fire; and before that the Deponent had his Shoulder-blade dis-jointed with a Stroke he received upon it with a Stone. *Causa scientie patet.* And this is the Truth as he should answer to God. And declared he cannot write. *Sic subr.*

*Da. Erskine.*

*William Byres*, Soldier in the City Guard of *Edinburgh*, aged Fifty one Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was one of the City Guard, who attended the Execution of *Andrew Wilson*; and that he did not hear Captain *Porteous* give any Orders to fire; but when the firing happened, he was at some distance from the Pannel; after the firing of several Shots, the Pannel called unto the Soldiers, To fall into their Ranks, and follow him; which accordingly the Deponent, and the rest did; falling in gradually as they were able; and followed him to the Guard-house, till they were dismissed; and in their march up the *Bow*, did hear one Shot that came from the Rear, but by whom he knows not. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*William Byres.*  
*Da. Erskine.*

*James Armour*, Writer to the Signet, aged Fifty Years and upwards, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was looking over a Window, to see the Execution of *Andrew Wilson*; after the Criminal was thrown over, and cut down, he observed the Croud of People throwing Stones of considerable bigness, but against whom they were directed, he knew not, but they fell among the Soldiers; upon which he heard Two or Three Shots, but from whose Hands he did not observe: Thereupon there was an Intermission for Two or Three Minutes; but thereafter, when the Pannel with his Party were retiring, which they did in great Confusion and Disorder, the Croud pursued after them, renewed the throwing of great Stones, and in great Number; upon which, some of the Soldiers turned about, and marched back, some Eight or Ten Paces, still in disorder; and then heard a good Number of more Shots fired, which to his Grief he saw did great Execution. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*James Armour.*  
*Da. Erskine.*

*John Robertson*, Stabler in the *Grass-mercat* of *Edinburgh*, aged Thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, as he stood in his own Window, in the *Grass-mercat*, he saw the Pannel with his Piece in his Hand, moving it to and again, keeping off the Mob; and heard him say, Fire, or I will fire, does not know which of the Two: That immediatly after this, he saw a single Man step out, three or four Paces before Captain *Porteous*, and fire his Piece; and the Deponent verily believed, that the People who fell near his *Closs*, got their Wounds by that Shot; because they were lying that Place towards which the Man seem to point. Deponed, That he heard some firing towards the Foot of the *Bow*, before the last mentioned Shot. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Job Robertson.*  
*Gilb. Eliot.*

*George Vint* Coal Grieve to Sir *William Baird* of *Newbyth*, aged Fourty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, he was in *John Robertson's* Window in the *Grass-mercat*; when he observed the Pannel moving his Piece to and again, as if keeping off the Mob; and at the same Time he saw one of the Soldiers, a black-haired Man, step forward before the Pannel and fire his Piece; upon which the Pannel turned about to him and pushed him into his Rank: Deponed, That he did not see the Pannel fire at that time, or any other; and that the mentioned Shot was the first he heard or saw that Day. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic subr.*

*George Vint.*  
*Gilb. Eliot.*

*Alexander Thomson* Town Officer in *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That being upon the Scaffold on the Fourteenth of *April* last, when *Wilson* was executed; the Pannel sent him to the Magistrates, who were in *William Orr's* House, to know of them how long the Criminal should yet hang upon the Gallows; that he returned to the Pannel with the Magistrates Direction; which was that he should still hang a quarter of an Hour; but before the half of that Time was expired, *Wilson* was cut down. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Alex. Thomson.*  
*Gilb. Eliot.*

*Peter Coulston*, Merchant in *Edinburgh*, aged Twenty five Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the first firing the Deponent being standing under the North-west Corner of the *Corn-mercate*, saw the Pannel march the Guard under his Command up the *West-Bow*; and saw several of the Rear of that Guard fire upon the People assembled at the Execution; and at the same time observed, That the



the Pannel was within the first Turn of the *West Bow*, and so out of the Deponent's view. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Pet. Coulstoun.  
Andr. Fletcher.*

*John Kennedy* Surgeon in *Edinburgh*, aged Fifty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That some short Time after the Execution of *Andrew Wilson*, in *April* last, The Deponent attended the Persons of the Town Guard after mentioned, *viz. Alexander Musbet* Soldier, the Spine of whose Shoulderbone was crushed, and *Alexander Braid* Soldier, who had a Contusion in his right Foot; both which Persons informed the Deponent, that they received these Hurts at the Execution of the said *Andrew Wilson*; and that the last mentioned Person is lame to this Day. *Causa scientie.* The Deponent was employed to wait upon the said Persons. And this is the Truth as he should answer to God. *Sic subr.*

*John Kennedy.  
Andr. Fletcher.*

The Lords Justice Clerk and Commissioners of Justiciary, Ordained the Assize to inclose instantly in a Room prepared for them in the *Exchequer*, and return their Verdict in the *Old Court-House* to Morrow at Four a Clock at Night; and the haill Fifteen to be then present; each Person under the Pain of Law; and the Pannel to be carried back to Prison.

*Curia Jusciariæ, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, Vigesimo Die Mensis Julii, Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Jusciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newhall, et Gilbertum Eliet de Minto, Commissionarios Jusciarii, dict. S. D. N. Regis.*

*Curia legitime affirmata.*

Intran.

**J**OHAN PORTEOUS lately one of the Captain Lieutenants of the City Guard, Pannel, INDICTED and ACCUSED as in the former *Sedcrants.*

The Persons who pass upon the Assize of the said *John Porteous*, returned their Verdict in Presence of the said Lords; Whereof the Tenor followes.

*Edinburgh, July, 20th, 1736.*

The above Assize having inclosed, did choice Sir *John Inglis* of *Cramond*, to be their Chancellor; and *James Davidson* Bookseller in *Edinburgh*, to be their Clerk: And having considered the Indictment at the Instance of *Duncan Forbes* of *Collodden*, Esq; his Majesty's Advocat for his Highness Interest, against *John Porteous*, late one of the Captain Lieutenants of the City Guard of *Edinburgh*, Pannel; with the Lord Justice Clerk, and Lord Commissioners of Justiciary, their *Int:roquitor* thereupon; and Depositions of

the Witnesses adduced for proving thereof; the Pannels own judicial Confession, and Depositions of the Witnesses adduced for the said *John Porteous* Pannel, his Exculpation. They all in one voice fand it proven, That the said *John Porteous* Pannel, fired a Gun among the People, assembled, at the Place of Execution; and time libelled. As also, That he gave Orders to the Soldiers under his Command, to fire; and upon his and their so firing, the Persons mentioned in the Indictment were killed and wounded. And fand it proven, That the Pannel and his Guard were attacked and beat by several Stones of a considerable bigness, thrown amongst them by the Multitude; whereby several of the Soldiers were bruised and wounded. In Witness whereof our said Chancellor and Clerk, in our Name, have subscribed their Presents, Day, and Place for said. *Sic subr.*

*Jo. Inglis Chanr.  
James Davidson Clerk.*

**T**HE Lord Justice Clerk and Lord Commissioners of Justiciary, having considered the Verdict of Assize returned against *John Porteous* Pannel of this Date, They in respect thereof, by the Mouth of *John Dalgleish* Dempster of Court, DECERNED and ADJUDGED the said *John Porteous*, To be taken from the *Tolbooth* of *Edinburgh*, upon *Wednesday* the Eighth Day of *September* next to come, to the *Grass-mercate* of *Edinburgh*, the common Place of Execution of the said Burgh, betwixt the Hours of Two and Four of the Clock of the Afternoon of the said Day, and there to be hanged by the Neck upon a Gibbet, by the Hands of the Executioner, until he be dead; and ordained all his Moveable Goods and Gear to be Escheat and Inbrought to His Majesty's Use, which was pronounced for Doom. *Sic subr.*

*And. Fletcher.  
Ja. Mackenzie.  
Da. Erskine.  
Wa. Pringle.  
Gilb. Eliot.*

The Prisoner being thus ordered for Execution, presented the following Petition to her Majesty,

To Her Most Excellent MAJESTY,

QUEEN CAROLINE,  
GUARDIAN of these REALMS;

The most humble PETITION of JOHN PORTEOUS late Captain-Lieutenant of the City-Guard of *Edinburgh*; now under Sentence of Death:

SHEWETH,

**T**HAT a certain Person named *Andrew Wilson*, being convicted in the High Court of Justiciary of *Scotland*, for a Robbery of the Publick Money, committed on the High-Way, was sentenced to Death for that Offence; and it being apprehended, the Populace would rescue the said Offender, or commit some Outrage at his Execution, your Petitioner was appointed by the Magistrates of the said City, to attend such Execution with a Detachment of the City-Guard, with



when the Captain was marching on the Head o the Men, up the *Bow*, he heard a dropping Shot, or Two, fired from the Rear; nor did he see the Captain return again towards the Scaffold, but marched straight on up to the Town. *Causa scientie patet.* And this is the Truth as he shall answer to God. And declared he cannot write. *Sic sub.*

*Ja. Mackenzie.*

*David Martine*, Souldier in the City Guard of *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he the Deponent was one of the Party of the City Guard, who attended the Execution of *Andrew Wilson*; and before there was any firing he did hear the Pannel call to them, Not to fire; and before that the Deponent had his Shoulder-blade dis-jointed with a Stroke he received upon it with a Stone. *Causa scientie patet.* And this is the Truth as he should answer to God. And declared he cannot write. *Sic sub.*

*Da. Erskine.*

*William Byres*, Soldier in the City Guard of *Edinburgh*, aged Fifty one Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was one of the City Guard, who attended the Execution of *Andrew Wilson*; and that he did not hear Captain *Porteous* give any Orders to fire; but when the firing happened, he was at some distance from the Pannel; after the firing of several Shots, the Pannel called unto the Soldiers, To fall into their Ranks, and follow him; which accordingly the Deponent, and the rest did; falling in gradually as they were able; and followed him to the Guard-house, till they were dismissed; and in their march up the *Bow*, did hear one Shot that came from the Rear, but by whom he knows not. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic sub.*

*William Byres.*  
*Da. Erskine.*

*James Armour*, Writer to the Signet, aged Fifty Years and upwards, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was looking over a Window, to see the Execution of *Andrew Wilson*; after the Criminal was thrown over, and cut down, he observed the Croud of People throwing Stones of considerable bigness, but against whom they were directed, he knew not, but they fell among the Soldiers; upon which he heard Two or Three Shots, but from whose Hands he did not observe: Thereupon there was an Intermission for Two or Three Minutes; but thereafter, when the Pannel with his Party were retiring, which they did in great Confusion and Disorder, the Croud pursued after them, renewed the throwing of great Stones, and in great Number; upon which, some of the Soldiers turned about, and marched back, some Eight or Ten Paces, still in disorder; and then heard a good Number of more Shots fired, which to his Grief he saw did great Execution. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic sub.*

*James Armour.*  
*Da. Erskine.*

*John Robertson*, Stabler in the *Grass-mercat* of *Edinburgh*, aged Thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, as he stood in his own Window, in the *Grass-mercat*, he saw the Pannel with his Piece in his Hand, moving it to and again, keeping off the Mob; and heard him say, Fire, or I will fire, does not know which of the Two: That immediatly after this, he saw a single Man step out, three or four Paces before Captain *Porteous*, and fire his Piece; and the Deponent verily believed, that the People who fell near his *Closs*, got their Wounds by that Shot; because they were lying that Place towards which the Man seem to point. Deponed, That he heard some firing towards the Foot of the *Bow*, before the last mentioned Shot. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic sub.*

*Job Robertson.*  
*Gilb. Eliot.*

*George Vint* Coal Grieve to Sir *William Baird* of *Newbyth*, aged Fourty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, he was in *John Robertson's* Window in the *Grass-mercate*; when he observed the Pannel moving his Piece to and again, as if keeping off the Mob; and at the same Time he saw one of the Soldiers, a black-haired Man, step forward before the Pannel and fire his Piece; upon which the Pannel turned about to him and pushed him into his Rank: Deponed, That he did not see the Pannel fire at that time, or any other; and that the mentioned Shot was the first he heard or saw that Day. *Causa scientie patet.* And this is the Truth as he shall answer to God. *Sic sub.*

*George Vint.*  
*Gilb. Eliot.*

*Alexander Thomson* Town Officer in *Edinburgh*, aged Fourty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That being upon the Scaffold on the Fourteenth of *April* last, when *Wilson* was executed; the Pannel sent him to the Magistrats, who were in *William Orr's* House, to know of them how long the Criminal should yet hang upon the Gallows; that he returned to the Pannel with the Magistrats Direction; which was that he should still hang a quarter of an Hour; but before the half of that Time was expired, *Wilson* was cut down. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic sub.*

*Alex. Thomson.*  
*Gilb. Eliot.*

*Peter Coulston*, Merchant in *Edinburgh*, aged Twenty five Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the first firing the Deponent being standing under the North-west Corner of the *Corn-mercate*, saw the Pannel march the Guard under his Command up the *West-Bow*; and saw several of the Rear of that Guard fire upon the People assembled at the Execution; and at the same time observed, That the



the Pannel was within the first Turn of the *West Bow*, and so out of the Deponent's view. *Causa scientie patet.* And this is the Truth as he should answer to God. *Sic subr.*

*Pet. Coulstoun.  
Andr. Fletcher.*

*John Kennedy* Surgeon in *Edinburgh*, aged Fifty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That some short Time after the Execution of *Andrew Wilson*, in *April* last, The Deponent attended the Persons of the Town Guard after mentioned, *viz. Alexander Musbet* Soldier, the Spine of whose Shoulderbone was crushed, and *Alexander Braid* Soldier, who had a Contusion in his right Foot; both which Persons informed the Deponent, that they received these Hurts at the Execution of the said *Andrew Wilson*; and that the last mentioned Person is lame to this Day. *Causa scientie.* The Deponent was employed to wait upon the said Persons. And this is the Truth as he should answer to God. *Sic subr.*

*John Kennedy.  
Andr. Fletcher.*

The Lords Justice Clerk and Commissioners of Justiciary, Ordained the Assize to inclose instantly in a Room prepared for them in the *Exchequer*, and return their Verdict in the *Old Court-House* to Morrow at Four a Clock at Night; and the hail Fifteen to be then present; each Person under the Pain of Law; and the Pannel to be carried back to Prison.

*Curia Justiciaræ, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, Vigesimo Die Mensis Julii, Milleesimo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominum Jacobum Mackenzie de Roystoun, Magistrum Davidem Erskine de Dun, Dominos Gualterum Pringle de Newhall, et Gilbertum Elic de Minto, Commissionarios Justiciarum, dict. S. D. N. Regis.*

*Curia legitime affirmata.*

Intran.

**JOHN PORTEOUS** lately one of the Captain Lieutenants of the City Guard, Pannel, INDICTED and ACCUSED as in the former *Sedernts.*

The Persons who past upon the Assize of the said *John Porteous*, returned their Verdict in Presence of the saids Lords; Whereof the Tenor follows.

*Edinburgh, July, 20th, 1736.*

The above Assize having inclosed, did choice Sir *John Inglis* of *Cramond*, to be their Chancellor; and *James Davidson* Bookfeller in *Edinburgh*, to be their Clerk: And having considered the Indictment at the Instance of *Duncan Forbes* of *Collodden*, Esq; his Majesty's Advocat for his Highness Interest, against *John Porteous*, late one of the Captain Lieutenants of the City Guard of *Edinburgh*, Pannel; with the Lord Justice Clerk, and Lord Commissioners of Justiciary, their *Interloquitor* thereupon; and Depositions of

the Witnesses adduced for proving thereof; the Pannels own judicial Confession, and Depositions of the Witnesses adduced for the said *John Porteous* Pannel, his Exculpation. They all in one voice fand it proven, That the said *John Porteous* Pannel, fired a Gun among the People, assembled, at the Place of Execution; and time libelled. As also, That he gave Orders to the Soldiers under his Command, to fire; and upon his and their so firing, the Persons mentioned in the Indictment were killed and wounded. And fand it proven, That the Pannel and his Guard were attacked and beat by several Stones of a considerable bigness, thrown amongst them by the Multitude; whereby several of the Soldiers were bruised and wounded. In Witness whereof our said Chancellor and Clerk, in our Name, have subscribed their Presents, Day, and Place for; said. *Sic subr.*

*Jo. Inglis Chan'.  
James Davidson Clerk.*

**T**HE Lord Justice Clerk and Lord Commissioners of Justiciary, having considered the Verdict of Assize returned against *John Porteous* Pannel of this Date, They in respect thereof, by the Mouth of *John Dalgleish* Dempster of Court, DECERNED and ADJUDGED the said *John Porteous*, To be taken from the *Tolbooth* of *Edinburgh*, upon *Wednesday* the Eighth Day of *September* next to come, to the *Grass-mercate* of *Edinburgh*, the common Place of Execution of the said Burgh, betwixt the Hours of Two and Four of the Clock of the Afternoon of the said Day, and there to be hanged by the Neck upon a Gibbet, by the Hands of the Executioner, until he be dead; and ordained all his Moveable Goods and Gear to be Escheat and Inbrought to His Majesty's Use, which was pronounced for Doom. *Sic subr.*

*And. Fletcher.  
Ja. Mackenzie.  
Da. Erskine.  
Wa. Pringle.  
Gilb. Eliot.*

The Prisoner being thus ordered for Execution, presented the following Petition to her Majesty,

To Her Most Excellent MAJESTY.

QUEEN CAROLINE,  
GUARDIAN of these REALMS;

The most humble PETITION of JOHN PORTEOUS late Captain-Lieutenant of the City-Guard of *Edinburgh*; now under Sentence of Death:

SHEWETH,

**T**HAT a certain Person named *Andrew Wilson*, being convicted in the High Court of Justiciary of *Scotland*, for a Robbery of the Publick Money, committed on the High-Way, was sentenced to Death for that Offence; and it being apprehended, the Populace would rescue the said Offender, or commit some Outrage at his Execution, your Petitioner was appointed by the Magistrates of the said City, to attend such Execution with a Detachment of the City-Guard,

with-



with Orders to see the same duly executed, and to suppress any Tumults that might happen upon that Occasion: And, for that End, the said Detachment had Powder and Ball delivered to them out of the City Magazine.

That, while the said Offender was hanging upon the Gibbet, the Populace began to insist to have his Body cut down, before the Magistrates had given Orders for that Purpose; and your Petitioner having no Authority to consent thereto, without such Orders, they threatened to cut him down by Force; and, in order so to do, crowded in great Numbers upon your Petitioner and his Men, and did actually assault them with large Stones, by which several of the Detachment were hurt and wounded.

That, during this Tumult, divers of the said Detachment, without Order from your Petitioner, unfortunately fired upon the Multitude, whereby several Persons were killed, and others wounded.

That your Petitioner, after having used his utmost Endeavours to restrain such Firing by his Men, perceiving them to run into Confusion, and to act without Orders, drew them off as fast as possible to the Guard; and committed such as he suspected to have fired, to the Custody of the Guard, together with their Pieces, which he ordered to be kept for Inspection, in the same Condition as they were then in.

That your Petitioner being accused of having himself fired upon the Multitude on this Occasion, and also of having ordered the Detachment to fire, without any just or reasonable Cause, your Petitioner was put upon his Trial in the High Court of Jusiciary aforesaid, for the said supposed Offence, and the Jury empannell'd to try your Petitioner, by their Verdict, found, *That it was proved, that your Petitioner had fired a Gun, and also had given Orders to the Detachment and Guard under his Command, to fire upon the Multitude so assembled; from which firing, either of your Petitioner, or of the Detachment of Guard under his Command, by his Order, the several Persons specified in the Indictment against him, were respectively killed and wounded. And also found it proved, That the Mob assembled at the Execution aforesaid, did invade and attack your Petitioner, and the Detachment of Guard under his Command, with Stones, of a considerable Bigness, whereby several of the Men of the Guard were bruised and wounded.*

Upon which Verdict returned by the Jury, the Court decreed and adjudged your Petitioner to be hanged upon a Gibbet, upon the Eighth Day of September next.

That tho' your Petitioner is sensible of that Deference and Respect that's due to the Verdict of a *British* Jury, yet he humbly begs leave to represent to your most excellent Majesty, the following Circumstances as they appeared upon his Trial; *to wit*, That the Evidence against your Petitioner, as to his having fired, or given Orders to fire, was very contradictory and inconsistent; for tho' some of the Witnesses deposed, that your Petitioner fired the first Shot, yet they differed extremely as to your Petitioner's Situation, at the time he is alledged to have so fired, as well as in other Circumstances; some placing him at one Corner, and others at a quite opposite Corner of the Scaffold: Some alledging, that none of the Soldiers were then near your Peti-

tioner, and that no other Shots were fired at that time; while others describe your Petitioner as encompassed with Soldiers, and say, that several Shots were fired instantly upon your Petitioner's firing such first Shot; and some agree, that the first Shot was not fired by your Petitioner, but by a Centinel of the Guard, who was close by your Petitioner.

Whereas, a great many Persons, of undoubted Credit and Veracity, produced on the Part of your Petitioner, expressly swore, That, during the whole time of the Firing, (which continued about four or five Minutes) they took exact Notice of your Petitioner's Behaviour and Conduct, and could not observe that he fired at all; but that, upon the Mob's pressing severely upon your Petitioner and his Men, and pelting them with large Stones, your Petitioner called aloud to keep off, otherwise he would fire; and that upon your Petitioner's pointing his Piece, in order to intimidate the Mob, a Centinel of the Guard, (unknown to the Witnesses) advanced from behind your Petitioner, and fired the first Shot, upon which one of the Multitude fell to the Ground: From which Example, they supposed, several others fired; by means whereof, the several Persons in the Indictment mentioned, were either killed or wounded.

And as a farther Circumstance, to shew that your Petitioner did not fire, it was proved, that upon his Return from the Execution, your Petitioner went directly of his own Accord to the Magistrates, who examined his Piece, and found the same loaded, and in such Condition, that they agreed and were satisfied, it had not been fired; and the Sergeant of the Detachment attested, that your Petitioner having delivered his Piece to the Deponent to keep, while your Petitioner attended the Devotions at the Execution, the Deponent restored the same again to your Petitioner, just before your Petitioner descended from the Scaffold, which is a strong Circumstance to shew that your Petitioner must have fired his own Piece, if he had fired at all.

Your Petitioner also begs leave humbly to observe, that when a Band of armed Men are together, and some of them fire, it is very difficult, especially for those at a Distance, to discriminate the Persons that actually fired; and your Petitioner is in Charity led to believe, that the Circumstance of your Petitioner's levelling his Piece, and threatening to fire, attended with that of the Centinel's having fired just behind your Petitioner, may have induced some unwary Persons, in the heat of popular Fury and Resentment, to be too positive in the Assertion of Facts, in their nature dubious and uncertain.

And as to your Petitioner's having given Orders to the Men to fire, though two or three Persons gave Evidence against your Petitioner as to that Fact, yet neither did they agree touching the Place where your Petitioner was standing, nor in the Form of Words pretended to be used by your Petitioner in the giving thereof. Whereas it was deposed by a great Number, particularly of the Soldiers, who were close by your Petitioner during the whole Time of the Fray, that they could not observe that your Petitioner gave any such Orders; but on the contrary, that he called aloud to the Men, *Don't fire*, and that he push'd back the Man that fired the first Shot into his



his Rank, (which shews that your Petitioner did not approve thereof;) that he drew off the Men as fast as he could; and that being pursued and pelled by the Populace, divers in the Rear turned about and fired, when your Petitioner was at such Distance, that he could not possibly be privy or consenting thereto.

It was likewise observed at the Trial, and not contradicted, That upon many former Occasions of Tumults, when your Petitioner with the Guard hath been ordered to quell the same, your Petitioner had bore great Insults from the Populace, even to the Danger of his Life, without firing, or ordering his Men to fire, and that in Cases where he would have been well justified by the Law in doing either.

So that upon the whole, as your Petitioner hath the inward Satisfaction of being conscious to himself of his Innocence of the Facts charged against him, so he humbly apprehends, that the Evidence adduced to prove the same, when compared with your Petitioner's Defence, will not appear to be certain or conclusive.

But in case your Petitioner had been guilty either of firing, or ordering his Men to fire, upon the Occasion aforesaid, your Petitioner most humbly intreats your Majesty to consider, that your Petitioner was in the Exercise of a Trust delegated to him by the lawful civil Authority; that he and his Detachment were first unlawfully assaulted and invaded by the Populace, and divers of his Men bruised and hurt; and if, in the Case of such an Insult upon the Laws, your Petitioner had proceeded to repel Force by Force, your Petitioner humbly begs leave to observe, That tho' he should look back with the utmost Sorrow upon so fatal an Event, yet he humbly hopes, that the Provocation and Aggression aforesaid, would be considered by your most excellent Majesty, in your profound Wisdom, as a great Exacerbation of an Offence, which could not be supposed to be attended with any premeditated Malice of your Petitioner, against Persons of whom he had no Knowledge; and that your Petitioner would be deemed a proper Object of the Royal Clemency.

*Your Petitioner therefore most humbly prays your most excellent Majesty, to take your Petitioner's unfortunate Case into your Royal Consideration; and to extend that Mercy and Compassion to your Petitioner, by which your Majesty, adorned with all Excellent and Princely Qualities, is so remarkably distinguished; and that your Majesty will be graciously pleased to issue your Royal Warrant for your Petitioner's Pardon. And your Petitioner, whose Duty hath hitherto rendered him, on all Occasions, most zealously attached to his Majesty, and our happy Constitution, will, from the additional Bond of the most powerful Gratitude, devote that Life to the Service of His most excellent Majesty, and His Illustrious House, which he shall enjoy as the Fruit of Your Majesty's Clemency and Grace.*

Her Majesty was pleased so far to comply with this Petition, as to grant a Reprieve, which was signified as follows.

*Curia Justiciaria, S. D. N. Regis, tenta in Novo Sessionis Domo Burgi de Edinburgo, Tertio Die Mensis Septembris, Mill. simo septingentesimo trigesimo sexto, per Honorabiles Viros, Andream Fletcher de Milton, Justiciarium Clericum, Dominos Jacobum Mackenzie de Roystoun, Gualterum Pringle de Newhall, Commissionarios Justiciarum, dictos S. D. N. Regis.*

*Curia legitime affirmata.*

THE said Day the Lord Justice Clerk delivered a Letter from his Grace the Duke of Newcastle, one of His Majesty's Principal Secretaries of State, whereof the Tenor follows.

*Whitchall, August 26, 1736.*

My Lords, Application having been made to Her Majesty in the Behalf of *John Porteous*, late Captain Lieutenant of the City Guard of *Edinburgh*, a Prisoner under Sentence of Death in the Goal of that City; I am commanded to signify to your Lordships Her Majesty's Pleasure, That the Execution of the Sentence pronounced against the said *John Porteous*, be respited for six Weeks from the Time appointed for his Execution. I am my Lords, Your Lordships most Obedient Humble Servant. *Sic subscribitur.*

*Holles Newcastle.*

Directed on the Back thus,

*To the Right Hon. the Lord Justice General, Justice Clerk, and other Lords of the Justiciary at Edinburgh.*

HEREAFTER, the said Lords, gave their Warrant to the Magistrates of *Edinburgh*, for stopping the said Execution, whereof the Tenor follows. By the Right Honourable the Lord Justice Clerk, the Lords Commissioners of Justiciary: WHEREAS Her Majesty Guardian of the Kingdom, has been graciously pleased by a Letter signed by his Grace the Duke of Newcastle, one of His Majesty's principal Secretaries of State, to signify Her Pleasure to us, That the Sentence of Death pronounced against *John Porteous*, late Captain Lieutenant of the City Guard of *Edinburgh*, present Prisoner in the *Tolbooth* of *Edinburgh*, which was to have been execute upon him, upon the eight Day of *September* Instant, be respited for six Weeks from the Time appointed for his Execution. THESE THEREFORE, In Obedience to Her Majesty's Commands, discharge and prohibite the Magistrates of *Edinburgh*, and all other Officers of the Law, from putting the forsaid Sentence of Death in Execution, upon the said *John Porteous*, till the Twentieth of *October* next to come; on which Day, the said Magistrates of *Edinburgh*, are hereby required and ordained to put the former Sentence of Death in Execution, upon the said *John Porteous* in



in all Points, as they will be answerable. GIVEN at *Edinburgh*, the third Day of *September*, 1736 Years. *Sic subscribitur.*

*And. Fletcher.*

*Ja. Mackenzie.*

*Wa. Pringle.*

EXTRACTED furth of the Books of Adjournal, upon this, and the preceeding One hundred and twenty-four Pages. By me *John Davidson*, Clerk to the Court of Justiciary.

*Jo. Davidson*, Clerk.

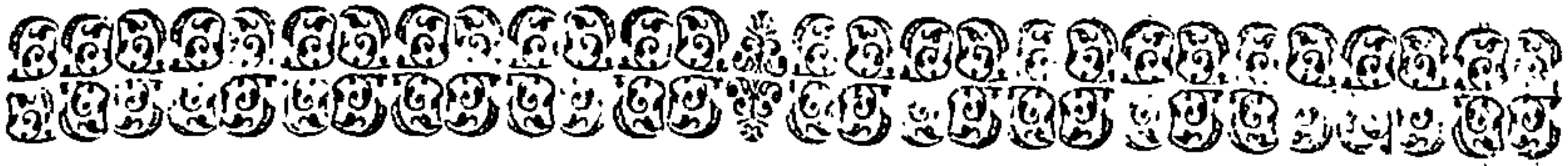
But the Populace being greatly displeas'd with this Favour shewn to Captain *Porteous*, against whom they were mightily incens'd, audaciously took upon them to execute the Sentence themselves. Accordingly on *Tuesday*, *September* the 7th, about Ten o'Clock at Night, (being the Night preceeding the Day, which had been appointed by the Court for his Execution,) some Men by Surprize, entered the City, seized all the Fire-arms, Battle-axes, and the Drums belonging to the City Guard. The Mob in a few Minutes lock'd and secur'd all the City Gates, and with Drums beat an Alarm, then attempted to force open with Hammers and other Instruments the Prison Door; but these failing, they set fire to it, and burnt it. When they entered the Prison, they called upon the Under-Keeper who was within, and made him open the double Locks of the Apartment where Captain *Porteous* was; it had also a Bolt within, but was not bolted, so they had ready Access. He beg'd they would spare him till next Afternoon; but they refus'd his Request, and immediately hurried him away, which was about Eleven o'Clock. When brought out of Prison, he was heard to cry. They then marched out with lighted Torches before them: In their Way to the *Grass-market*, passing by a Barber's Sign-post, some called out to hang him up there; but it was resolv'd to hang him where the Murder was committed; so they proceeded to the Place that the Gallows used to be fixed for Execution, where he was about a

Quarter of an Hour, till they opened a Shop and brought out a Rope, one End of which they threw over a Sign-post, about 20 Foot high, belonging to a Dyer in the *High-street*, near the ordinary Place of Execution. He desired some Time to prepare for Death; but they answered, They would allow him no more than those who were shot. They then pulled him up in the Dress in which they found him, *viz.* a Night-Gown and Cap. He having his Hands loos'd, fixed them 'twixt his Neck and the Rope, where-upon one with a Battle-ax struck towards his Hands. They then let him down, and having on two Shirts, they wrap'd one of them about his Face, and tied his Arms with his Night-Gown; then pulled him up again, where he hung next Morning till Day-light. When he was cut down, and carried to the *Grey-Friers* Church, upon inspecting his Body, it appeared his Left Shoulder was wounded, his Back discoloured, and his Neck broke.

It was observ'd, that this Mob was under a stricter Concert and better conducted than usual; for as marching along to the Execution, *Porteous* observing a Gentleman of his Acquaintance, he gave him a Purse of 23 Guineas, which he desir'd might be delivered to his Brother. They left the Prison Doors open, and Liberty to the Prisoners to make their Escape; and after the Execution was over, they left the Arms and Drums on the Place of Execution, where they were found the next Morning. During the Tumult, Parties of armed Men, with Drums, patrolled in the different Streets, to prevent any Surprize from the King's Forces, quarter'd in the Suburbs. After the Execution was over, they went to the Lord Provost's House, and told him, they were satisfi'd, and so dismiss'd, without offering any other Violence.

There is one further Circumstance, That in order to supply the Want of Clergymen, they order'd two of the gravest of their Number to exhort him, as he went to the Place of Execution.





CXCVII. *The Trials of Samuel Goodere, Esq; Matthew Mahony, and Charles White, for the Murder of Sir John Dineley Goodere, B<sup>t</sup>. (Brother to the said Samuel Goodere) on Board his Majesty's Ship the Ruby: At the Sessions of Peace, Oyer and Terminer, and General Goal-Delivery, held in and for the City of BRISTOL, and County of the same City, in the Guild-hall of the said City; before the Right Worshipful Henry Combe, Esq; Mayor of the said City, Michael Foster, Esq; Serjeant at Law, Recorder; and others his Majesty's Justices of Goal-Delivery. Begun on Tuesday, the 17<sup>th</sup> of March 1740. and continued by Adjournment to Thursday, the 26<sup>th</sup> of the same Month, 1741. Published with the Approbation of Mr. RECORDER.*

**O**N Wednesday, the 18th of March, 1740, a Bill of Indictment was found by the Grand Inquest for the City of Bristol, and County of the same City, against Matthew Mahony and Samuel Goodere, for the Murder of Sir John Dineley Goodere; when Dr. Middleton (Mr. Goodere's Physician) acquainted the Court, That, in his Opinion, Mr. Goodere was, through bodily Indisposition, unable to undergo the Fatigue of his Trial. But being ask'd by Mr. Vernon (of Counsel for the King) whether the Prisoner's Health would not permit him to be brought into Court and plead to his Indictment; and the Doctor declaring his Opinion, that he might be brought up, Mr. Recorder was pleased to order, that he should be brought up the next Day, in order to plead to his Indictment. Accordingly, on Thursday the 19th, Mr. Goodere and Matthew Mahony were brought to the Bar; when the Court proceeded thus:

*Clerk of the Arraignment.* Matthew Mahony, hold up thy Hand; Samuel Goodere, hold up thy Hand; (which they severally did.) You stand indicted by the Names of Matthew Mahony, late of the Parish of St. Stephen in the City of Bristol, and County of the same City, Labourer; and Samuel Goodere, late of the same Parish, City and County, Esq; for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 19th Day of January, in the 14th Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth; with Force and Arms, at the Parish aforesaid, in the City aforesaid, and County of the same City, in and upon one Sir John Dineley Goodere, in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice aforethought, did make an Assault; and that you, the aforesaid Matthew Mahony, a certain Cord,

of the Value of one Penny, about the Neck of the said Sir John Dineley Goodere then and there feloniously, voluntarily, and of thy Malice aforethought, did put and fasten; and that you the aforesaid Matthew Mahony, with the Cord aforesaid, (by you, the aforesaid Matthew Mahony, so about the Neck of the aforesaid Sir John Dineley Goodere put and fastened) then and there him the aforesaid Sir John Dineley Goodere feloniously, voluntarily, and of your Malice aforethought, did choak and strangle; of which said Choaking and Strangling of him the aforesaid Sir John Dineley Goodere, by you the aforesaid Matthew Mahony in manner and form aforesaid done and perpetrated, he the aforesaid Sir John Dineley Goodere then and there instantly died: And that you, the aforesaid Samuel Goodere, then and there feloniously, voluntarily, and of thy Malice aforethought, was present, aiding, abetting, comforting, and maintaining the aforesaid Matthew Mahony in manner and form aforesaid, feloniously, voluntarily, and of his Malice aforethought the aforesaid Sir John Dineley Goodere to kill and murder; and so you the said Matthew Mahony, and Samuel Goodere, in manner and form aforesaid, the aforesaid Sir John Dineley Goodere then and there, feloniously, voluntarily, and of your Malice aforethought did kill and murder, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

*Clerk of the Arraignment.* How sayest thou, Matthew Mahony, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

*Mahony.* Not guilty.

*Cl. of Arr.* Culprit, how wilt thou be tried?

*Mahony.* By God and my Country.

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

*Cl. of Arr.* How sayest thou, Samuel Goodere, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

*Samuel Goodere.* Not guilty.



*Cl. of Arr.* Culprit, how wilt thou be tried ?

*Samuel Goodere.* By God and my Country.

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

*Mr. Vernon.* Mr. Recorder, I attend as Counsel for the King on this melancholy Occasion, and it is with no small Regret and Concern I at any time act in this Station against my Fellow-Creatures, when under Circumstances like those of the Prisoners at the Bar ; and the rather, as knowing it almost impossible so to act, in a Business of this nature, as not to be thought on the one side to have done too much, and on the other too little : However, Sir, I shall, in the Course of this Prosecution, endeavour to observe that Mediocrity which is ever inseparable from humane Minds ; and if I can be so fortunate as to conduct myself to the Satisfaction of you, Mr. Recorder, and the Court, I shall readily give up the rest, and content myself with the Thoughts of having aimed at a just Discharge of my Duty.

Sir, the Prisoners, Mr. *Goodere* and *Mabony* have thought proper to plead in chief to their Indictment, and put themselves upon their Trial in the ordinary Course of Law ; and as far as may be judged from outward Appearance, Mr. *Goodere* seems able enough at present to take his Trial on the Merits or Demerits of his Case : And if so, we for the King are ready, on our Parts, to enter upon our Duty. On the other hand, if, in the Opinion of that learned Gentleman [Dr. *Middleton*] Mr. *Goodere* is not in a fit Condition (through bodily Weakness or Indisposition) to be brought upon his Trial, God forbid we should be for pressing it on with such Celerity, as to prejudice him in making of his Defence. But then, as we would not be for accelerating his Trial, so neither would we be for giving into any affected Delay. I therefore hope, Sir, such a Day will be fix'd for the coming on of this Business, as that the Sea-faring part of our Witnesses, whom at present publick Justice calls for abroad as well as at home, may be dispatched at due time for the other necessary Service of their King and Country.

*Mr. Recorder.* I think we ought to proceed to the Trial immediately, unless Cause be shewn to the contrary.

*Mr. Frederick,* Counsel for Mr. *Goodere.* I appeal, Sir, to the Doctor, whether Mr. *Goodere's* Case and Circumstances will at present admit of it.

*Mr. Recorder.* Let Dr. *Middleton* be sworn.

*Dr. Middleton* sworn.

*Mr. Vernon.* Dr. *Middleton,* I think, Sir, you have attended Mr. *Goodere* (the Prisoner at the Bar) during the Course of his Illness, will you please therefore to give the Court an Account of his present State of Health ?

*Dr. Middleton.* Mr. *Goodere* has been my Patient for some time in a malignant Fever, which left him last Sunday Evening, and since that time he has been growing better, and on the mending hand ; in his Fever his Head was very much disordered (as at present happens to be the Case of many that are seized with this Epidemical Fever, the Head being generally much affected in most of them) I think he will not be able to bear the Fatigue of his Trial at present. If he is put upon his Trial, it will be an hardship.

*Mr. Recorder.* If the Case be so, that his Head is disordered, whereby he is render'd less capable of making his Defence, I think it would

be a Piece of Inhumanity not to put off his Trial. What if we adjourn it to this Day seven-night ?

*Mr. Vernon.* I am heartily glad to find Mr. *Goodere* is on the mending hand, and hope he will continue to mend ; his Counsel seems to think he may now come upon his Trial ; yet, for the honour of Dr. *Middleton,* I would not press it on at this Juncture.

*Mr. Recorder.* What doth Mr. *Goodere* himself say to it ?

*Samuel Goodere.* I hope in eight or nine Days to be better, or dead.

*Mr. Recorder.* I have propos'd this Day seven-Night.

*Samuel Goodere.* Whatever you please I submit to.

*Mr. Vernon.* Dr. *Middleton,* Sir, as you are known to be a Gentleman of great Honour and Abilities, we may safely depend upon your Account ; therefore I should be glad to know how soon (humanly speaking) Mr. *Goodere's* bodily Health may admit of his taking his Trial. I know, Sir, you are a Gentleman that has a great Regard and Care for your Patients.

*Dr. Middleton.* I should rather choose to exceed in Care than fall short of it.

*Mr. Vernon.* But 'tis possible to have an over-care : Therefore, Sir, I would ask you, whether, upon your Oath, you do not think he will be able, in point of Health, to take his Trial in three or four Days ?

*Dr. Middleton.* The Captain may put himself on his Trial now, if he pleases ; but I don't think he's fit for it, upon my Oath. If it was left to me, I should desire the whole Time the Recorder has mentioned.

*Mr. Frederick.* That is to this Day seven-night, we shall not be able to attend the Court sooner. We hope the Trial will be put off till this Day seven-night ?

*Mr. Recorder.* Let it be so.

*Cl. of Arr.* *Matthew Mabony,* you stand charged likewise upon the Coroner's Inquest for the same Felony and Murder, art thou guilty, or not guilty ?

*Matthew Mabony.* Not guilty.

*Cl. of Arr.* *Samuel Goodere,* you likewise stand charged upon the Coroner's Inquest for the same Felony and Murder ; art thou guilty, or not guilty ?

*Samuel Goodere.* Not guilty.

*Mr. Recorder.* The Prisoners may withdraw.

On Thursday, the 26th of March 1741, the Court met according to Adjournment ; and, being open'd, the Prisoners *Matthew Mabony* and *Samuel Goodere,* were brought again to the Bar ; and the Court proceeded as follows :

*Mr. Shephard,* Counsel } *Mr. Recorder,* the  
for the Prisoner *Goodere.* } Prisoner *Goodere* has  
in a great degree lost his Hearing, therefore desires that he may be brought nearer the Witnesses, that he may be able to hear what they say.

*Mr. Recorder.* Let him come nearer. *Mabony,* are you willing to come forward to the Bar ?

*Mabony.* Yes, my Lord, I am hard of hearing.

*Mr. Shephard.* He desires the same Indulgence.

*Mr. Recorder.* If he desires it, let him come forward too.



Mr. *Vernon*. Mr. Recorder, by this Indulgence being moved for on the behalf of *Mahony* as well as Mr. *Goodere*, I presume these Gentlemen attend as Counsel for them both, if Matter of Law should arise.

Mr. *Frederick*. No, Sir, I do not.

Mr. *Shepherd*. No, Sir, I do not.

Cl. of Arr. Cryer, make a Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez; The King's Majesty's Justices strictly charge and command all Manner of Persons to keep silence, upon Pain of Imprisonment.

Cl. of Arr. You *Matthew Mahony* and *Samuel Goodere*, now Prisoners at the Bar, these Men which you shall hear called, and will personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; if you, or either of you, will challenge them, or any of them, you must speak unto them as they come to the Book to be sworn, before they be sworn. Cryer, make an Oyez, and call the petty Jury.

Cryer. Oyez; You good Men that are impannelled to try between our Sovereign Lord the King and the Prisoners at the Bar, answer to your Names, and save you Fines.

Mr. Recorder. Prisoners, you have each of you the Liberty of challenging twenty of the Jurors, without shewing Cause: But you must now declare whether you will challenge severally or not; for if you do not join in your Challenges, we must try you severally.

*Mahony*. I leave it to the Captain to challenge.

Cl. of Arr. *Christopher Bromadge*.

Cryer. He appears.

Cl. of Arr. Mr. *Bromadge*, to the Book.

Cryer. *Christopher Bromadge*, look upon the Prisoners; you Prisoners, look upon the Juror; you shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoners at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence: So help you GOD.

And the same Oath was administered to the rest, (which were sworn) and their Names are as follow:

- Christopher Bromadge*, - - - - - sworn.
- Isaac Brodrigg*, - - - - - sworn.
- John Merewether*, - - - - - sworn.
- Christopher Lilly*, - - - - - sworn.
- James Wimble*, - - - - - sworn.
- Joseph Gregory*, - - - - - sworn.
- John Scott*, - - - - - sworn.
- Isaac Bannister*, - - - - - sworn.
- William England*, Capt. *Goodere*, I challenge him.
- Francis Billoe*, Capt. *Goodere*, I challenge him.
- William Jones*, - - - - - sworn.
- Samuel Page*, - - - - - sworn.
- John Perks*, - - - - - sworn.
- William Dyer*, - - - - - sworn.

Clerk of Arr. Cryer, count these.

- Christopher Bromadge*, *John Scott*,
- Isaac Brodrigg*, *Isaac Bannister*,
- John Merewether*, *William Jones*,
- Christopher Lilly*, *Samuel Page*,
- James Wimble*, *John Perks*,
- Joseph Gregory*, *William Dyer*.

Cryer. Twelve good Men, and true: Gentlemen, are ye all sworn?

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform the King's Majesty's Justices, the King's Serjeants, the King's Attorney or Advocate, before this Inquest be taken between our Sovereign Lord the King and the Prisoners at the Bar, of any Treason, Murder, Felony, or other Misdemeanour, committed or done by the Prisoners at the Bar, or either of them, come forth, and you shall be heard, for the Prisoners stand at the Bar upon their Deliverance; and all Persons bound by Recognizance to prosecute them, or either of them, come forth, and prosecute, or you will forfeit your Recognizances.

Cl. of Arr. *Matthew Mahony*, hold up thy Hand; *Samuel Goodere*, hold up thy Hand. Gentlemen of the Jury, look upon the Prisoners, and hearken to their Charge; they stand indicted by the Names of *Matthew Mahony*, late of the Parish of *St. Stephen* in the City of *Bristol*, and County of the same City, Labourer; and *Samuel Goodere*, late of the same Parish, City and County, Esq; for that they not having, (as in the Indictment before set forth.) Upon this Indictment they have been lately arraigned, and thereupon have severally pleaded not guilty; and for their Trials have put themselves upon God and the Country, which Country you are: Your Charge is, to inquire whether they, or either of them, be guilty of the Felony and Murder in manner and form as they stand indicted, or not guilty. If you find them, or either of them, guilty, you shall inquire what Goods or Chattels, Lands or Tenements they, or either of them had, at the time of the Felony committed, or at any time since: If you find them, or either of them, not guilty, you shall inquire whether they, or either of them fled for the same: If you find that they, or either of them did fly for the same, you shall inquire of their, or either of their Goods, and Chattels, as if you had found them or either of them guilty: If you find them, or either of them not guilty, and that they or either of them did not fly for the same, say so, and no more; and hear your Evidence.

Mr. *Vernon*. May it please you, Mr. Recorder, and you Gentlemen that are sworn on this Jury, I am Counsel for the King against the Prisoners at the Bar, who stand indicted for the Murder of *Sir John Dineley Goodere*; they stand also charged on the Coroner's Inquest with the same Murder: And tho' it is impossible for human Nature not to feel some Emotions of Tenderness at so affecting a Sight as now presents itself at the Bar; yet, Gentlemen, should the Guilt of this black and frightful Murder be fixed upon the Prisoners (as from my Instructions I fear it will) Pity must then give way to Horror and Astonishment at the Baseness and Barbarity of the Fact and Circumstances; and our Sorrow ought to be, that through the Lenity of the Laws, the *Unnatural Author* and *Contriver* of so shocking a piece of Cruelty, and this his *Brutal Accomplice* in the Ruffianly Execution of it, should be to share the common Fate of *Ordinary Malefactors*. Gentlemen, you perceive it is laid in the Indictment that the Prisoner *Mahony* strangled the Deceased, and that the Prisoner *Goodere* was present, aiding and abetting him in that barbarous Action, and so