

vants, that no Stranger came near me about that Time, and for some Time before and after, and the full Evidence of the School at *Westminster*, hath enabled my several Servants to recollect the Time, and to furnish such a Proof of my Innocence in this Matter, as is not to be mistaken, and shews the Clearness of the Impossibility of it.

The Clerks of the Post-Office swear, they believe, these three Letters to have been in the Hand-writing of Mr. *Kelly*, my suppos'd Amanuensis. Your Lordships will remember, that their Oaths were at four Months Distance from the Time of seeing those Letters; during the whole Series of which Time, it never hath appear'd, that they have compar'd one Original with another, and the only Original, as a Specimen, hath been prov'd at your Lordships Bar, not to be the Hand-writing of Mr. *Kelly*; and be pleas'd to remember the very Supposition of Mr. *Kelly*'s being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, Who then writ these Letters, and with what View were they writ? The Answer to this is obvious; my being here at your Lordships Bar, sufficiently explains it. It is enough to prove that I did not write or dictate them, and I have prov'd it abundantly. Let but any momentous Part of the Charge against me be made out with Half the Evidence, and I will submit without any Dispute. Eight or nine such Witnesses would have born down the Evidence of one or two that had sworn: But where there is none on the one Side, but all on the other Side, who appear, and that give direct positive Evidence, can your Lordships deliberate a Moment for the Reason of giving your Judgment, which in doubtful Cases, ought always to lean to the doubtful Side? And so taking this Point, as it stands, there is an End of the whole Matter, for all other Insinuations, feign'd Names, and obscure Passages in Letters depending upon this, must fall together.

As to the other Part of the Accusation, when it is said, the Letter to *Jackson* was a Letter to the Pretender, I have nothing to do with it; he that writ the Letter, when known, will best be able, and most concern'd, to disprove it.

Since this Objection carries a very odd Sound, I shall briefly shew your Lordships how that stands: *Jackson*,

In a Cypher of *Plunket's*, is said to denote the Pretender: That Cypher consists of one hundred and fifty Names, of which not one is us'd in any of the Letters attributed to Mr. *Kelly*: Three or four of these Names are us'd by Persons suppos'd to have writ to Mr. *Kelly* from abroad, but not one of them is us'd by him; nor doth *Jackson* ever, in his Part of the Correspondence, stand for the Pretender, but he is always under other Appellations: May, *Plunket* himself, in all his Letters writ in decypher'd Names, never stiles the Pretender *Jackson*, but either *Joseph* or *Jephson*. — Why should a Name, us'd in *Kelly's* Correspondence, be explain'd by *Plunket's* Cypher, when *Kelly* appears to be no ways acquainted with him, and *Plunket* himself did never dictate to him? I forbear Repetition; I only add, that at this Rate, there is nothing that may not be prov'd.

The Letter to *Dubois*, there is little said of, because there is no Use made of it; it is charg'd in the Report as a Letter which I had receiv'd from abroad. The Tables are now turn'd, and I myself design'd to have sent this Letter to a feign'd Correspondent, but keep it among my Papers, under my Seal: For what End? the Letter itself, is an errant Delusion; Why, to furnish Proof, which is much wanted, of my receiving Letters that were directed to *Jones* and *Illington*; and 'tis very strange, that I who am represented as being so very cautious, should be so negligent in this, and preserve something that is of no Use, and yet might hurt me so much when discover'd.

It is absurd to think, that I should by that Means mention the Name of my Correspondent, and mention the Name of *Johnson*, which the Committee of the Lower House observe, was constantly with me.

I know not what farther can be said for this Matter, 'till the Council have further explain'd it, and shew'd what Use they make of this Letter, which hath given your Lordships so much Trouble, and which I own, I do not comprehend.

There is still a fifth Letter, which I have acknowledged to be my Hand; that which was taken on my Servant. Mr. *Recever* hath made some uncharitable Observations upon it, which, for ought I know, may be allow'd as the Form of Law, in the ordinary Courts; but I am sure, in a Court of Equity, the most favourable Construction ought to take Place. I have taken Minutes of

of his Observations, and I think, they are these: He observes, that the Bishop doth not in his Letter insist on his Innocence in general, but considers only what Evidence doth affect him.

It comes out, at last, for whom my Letter was design'd, and I think that an Answer to Mr. Reeve's first Observation, and I shall explain it no further. He observes next, though I clear myself from the Knowledge of *Layer*, *Neynoe*, &c. there I say nothing of *Kelly*.

The Gentleman I design'd the Letter for, knows it was in Answer to one wrote to me about *Layer*, and will swear it himself, if there was Room for it.

The third Observation is, where speaking of myself, I say, 'If I cannot ward the Blow, I must be a Prisoner some Years without Remedy.' From which he is pleas'd to infer, not in that good-natur'd Way he generally did, my Meaning must be, that I was conscious of Guilt.

I apprehended an Impeachment would have been lodg'd and never prosecuted, as in the Case of my Lord *Danby*, and the Earl of *Oxford*, and then I should have lain without Tryal, and without Bread.

The second Article of my Charge, is the two Letters from *Marr* and *Dillon*, under the feign'd Names of *Motfield* and *Digby*, which were intercepted.

One of these they have dropt.

That I receiv'd them, is not pretended; both Letters, though without a criminal Expression or Word of Business in either of them, would yet have affected me in some Degree, if receiv'd by me; and I was the Person as is suppos'd to have writ the Letters to which they are Answers. That I used to have any Correspondence, is that prov'd? Is not one and the same necessary, in order to ascertain the Charge?

Any Man that pleases may write to me, and take those Names upon him; I am not to answer for that, unless I have appear'd to receive them, and kept up the Correspondence.

The Letter from *Motfield*, dated May 11, cannot be reasonably thought to have been wrote with any other View, than that of being intercepted, and of fixing upon me the Letter of April 20.

This Letter is committed to the common Post-Office, and sent upon this Errand; one may doubt who writ it, but

one can't doubt with what Design it was writ: Your Lordships Wisdom will see thro' those malicious Disguises, and not make me account for Letters which have been banded to and fro between unknown Correspondents, on a Design to raise a Suspicion of a third Person, altogether a Stranger to what is writ. And here I desire, that the Observation made by one of my Counsel may not be forgot; that is, all the intercepted Letters from abroad, mention Persons that lay hid under secret Names, and are discover'd by doing of such Deeds, and by such Circumstances, as will fasten those Names upon them: Tho' the Committee were not at a Guess, yet they were often at a Loss.

In my Case, the fictitious Names apply'd to me, are often attended with such Descriptions and Circumstances, as very naturally lead those that offer these Letters to fix them on me; the Writers of them use all their Art not to disguise, but to open the Thing, and seem to be in Pain, lest they should not be well enough understood.

This being contrary to the Method of Reserves in all other Cases, smells strong of a malicious Design.

The Letter of July 25, from Digby to Weston, is not so well contriv'd as it should have been; yet I am to be understood by it, because of the Circumstances I was then under, which the Writer was apprised of.

These are the only two Instances of Letters suppos'd to be writ from abroad: They are not consistent: Shall they affect me in so high a Manner?

It remains to be consider'd in the third Place, whether there was a supported Correspondence between the Pretender and his Agents, and Mr. Kelly here? Whether I was at the Head of it, and am justly to answer for it? Mr. Kelly, I hear, hath own'd at your Bar, and declar'd, which I also declare, I never knew a Line of any Letter he wrote to foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Present of the Dog, the Account of that is in a Letter to *Hafield*, dated May 5, not sign'd; in which are these Words, 'The little Dog was sent ten Days ago, and order'd to be deliver'd to you.' But there is no Intimation in this, or any other Letter from abroad, that this Present was intended for me.

In two Letters from hence, by whom writ, it doth not appear, somebody is meant under the different Names of Mr. Jones and Mr. Illington, in such Manner as design'd for the same Person; but the Circumstances are neither applicable to myself or my Wife, or me particularly. The Letter dated *May 7*, from *Hatfield* to *Musgrave*, being five Days after the Burial of my Wife, cannot mean her; and being but five Days after, it can as little mean me: So that the Writer of this Letter must either have known nothing of my Family-Affairs; or if he did, must dissemble his Knowledge of them, to raise a Suspicion; and in either Case, what he says is not to be regarded. The Surgeon and Mr. Kelly, only knew any thing of this Matter, and they can best clear it.

Mrs. Barnes, she varies, and sometimes the Dog is for me, and sometimes for her.

As for myself, I never ask'd for, receiv'd, or saw this Present, nor know any thing of it, but from common Fame; nor have I, to this Day, had any Message or Letter whatsoever concerning it. The End of this Design seems to be, to point me out by the Name of Jones and Illington, subscrib'd to the Letters of *April* the 20th, by using them again, in Relation to this Present.

And perhaps they are not much in the Wrong to think, that one intercepted Dog should be of as much Use as ten intercepted Letters. Both Contrivances then must have succeeded, had I not been able to prove that those Letters were not writ with my Order or Knowledge; and therefore the Use of those Names, in subsequent Letters, is a Continuance of the Fraud, and this obviously runs through the Whole of the Correspondence; for wherever the Names of Jones and Illington are, they are us'd in applying them to me, because they are the same.

These Points have not only been deny'd, but disprov'd with all Manner of Credence and Clearness.

My Counsel have shew'd that all these suspicious Correspondences are to the last Degree absurd, to apply to me, and no one would apply them: That I could not order the Letters of the 20th of *April*, to which the Names of Jones, &c. are subscrib'd, I think, is plain, and then the Evidence falls or depends upon it.

As to the Journeys to and from *Bromley*, where the Prisoner Kelly had frequent Access to me, and therefore I

might probably dictate those Letters, the Counsel for the Bill have not open'd themselves on that Head; but your Lordships have heard it made out, and because it is material I shall repeat it.

(Here Wood's Examination was read.)

By all these Accounts, nothing could have been easier for the Persons themselves to manage here, than getting an Account of my Neighbours in order to render the Contrivance more plausible.

That Mr. Kelly is no Stranger to me, I own; but that he is in any Degree intimate with me, or frequently saw me, I deny: And what Evidence is there from them to the contrary? Or how is this solemn Denial at your Bar contradicted?

The Chairman says, he carry'd him twice or thrice to the Deanary three or four Years ago; and this Brown, the Chairman, he swears, he carry'd me once in three or four Years Time. I believe he may. The Porter, he says, that he brought a Letter, and some Stockings from Kelly to me. The Foundation of this Story is true, for Mr. Kelly us'd to furnish me with Beaver Stockings, and Gloves; not but that the Circumstance of the Porter coming up to my Bedchamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never sent by me to him.

Now, on the other Side, there is the Evidence of almost all my Servants, who have upon Oath attested, that they do not know either the Name, or the Face of Mr. Kelly; which could not possibly be, did he use frequently to resort to me. Such a slight Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him of such a dangerous Consequence as these are, which the Report insinuates to have pass'd between us: However, Suspicion is not now the Business. They that prove some Things, may be allow'd to suppose more; they that prove nothing, have no Right to indulge their Suspicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be such, are not equal to any one Matter of Fact well attested; it may strengthen the Fact, but cannot support it. They cannot be Evidence themselves, because one Probability may be set against another.

I use this Distinction between Evidence in Law, and reasonable Evidence, because the Counsel for the Bill have asserted something like it.

I own

I own, I always thought the publick Law of the State, the publick Reason of the State; and whatever it is in another Country, yet in this Country, no Evidence can be reasonable that is not legal: But I ask, What Sort of Evidence, either in Reason or Law, is brought against me? How am I prov'd to consult and correspond, to raise an Insurrection against his Majesty, and his Kingdom, and to procure a foreign Force to invade the same in Favour of the Pretender?

How am I prov'd in the second Place, to have corresponded with the said Pretender, and with Persons employ'd by him? Is one Article of these Charges made out against me with any Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shew'd to be vain, and unjust.

If the Proof in these Cases wants Strength, can the Hearsay of *Neynoe* supply the Want of Proof, and render it valid; since *Neynoe* pretends, for ought that appears, not to have known any thing of me; he only heard *Kelly* say so, and Mr. *Kelly* denies it; and there is, I think, no Reason why such a dead Evidence should affect me or *Kelly* himself, much less me through him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contradicting what *Neynoe* said, I believe what *Neynoe* said would not be of any Weight; besides, what *Neynoe* dead, says, and *Kelly* now alive, denies, ought not to have any Force.

Concerning hearsay Evidence in General, and concerning the due Regard to it, I humbly desire your Lordships, that a Passage may be read out of Sir *John Fenwick's* Bill of Attainder. (The whole Preamble read.)

My Lords, I humbly desir'd to have this read, because I thought it would take away a Distinction between legal and Parliamentary Evidence; that what was not legal, might be Parliamentary. I believe, here is a Condemnation of him by Parliament; therefore I think, the Condemnation of him must be by Parliamentary Evidence. It is recited in this Act as one of the Inducements that mov'd the King, Lords, and Commons to pass that Act, that Sir *John Fenwick* had contriv'd and fram'd several Papers, &c. only by Hearsay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attainting a Man in another? If 'twas judg'd hard in Sir *John*

Fenwick's

Fenwick's Case, to charge a Man by Hearsay, can the being thus charg'd, be any Proof against me? Sure the House of Commons in 96, that brought that in, would have so thought, nor would those of your Lordships consented here, or elsewhere, to have pass'd it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose Sir *John Fenwick*, but favour'd his Case, and are yet against me. Is the Guilt objected to me, if prov'd, in any Measure like his? Or is there any Comparison between the Proof against him and me?

As to the Paper and Information given in by *Neynoe*, and printed in the Appendix, it is plain, he was drawn in to have sworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council that gave me Notice of my being taken up some Days before it happen'd. He knew what Uses and Purposes the Protests of your Lordships were chiefly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to ask or receive such a Sum of Money.

'Tis said, he was the late Earl *Marischal's* Bedfellow for several Months, and had drawn up Heads for Memorials to be deliver'd to the Regent; but he had kept no Copies of these Heads, or foul Draughts, which would have shewn, whether they were given in to promote it, or discover it; in either Case, the Evidence of being then employ'd, would have been of Service; but they have not been able to produce a Line of such Heads or Memorials; yet the Report of the House of Commons, upon the Basis of these Memorials, build the whole Fabrick. He knew that I went under the Names of *Jones* and *Langton*, and undoubtedly he knew Mr. *Dubois*: If the Scheme of writing that Letter myself, had been seen, he would have found out a Reason for the Correspondence; and 500 *L.* would have made him affirm, that he carry'd the Letter himself. He knew the Pretender's particular Opinion of me, or of any Body else, and that he rely'd on Advices from me: How did he know that? He told him so. Who told him? It is not suppos'd Mr. *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretender.

Let

Let me speak, my Lords, as always I hope I shall, with that Modesty as becomes Justice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transactions? Is it possible to believe this Pretender to Secrecy, could have had, or shall he still have any Degree of Weight, that threw away his Life, rather than venture to stand to the Truth of what he said before his Death? Then, he could have been contradicted, or Pangs of Conscience might have made him unsay what he had said? But a dead Man can retract nothing; what he hath writ, he hath writ; the Accusation must stand just as it did, so far as it concerns him; and we are depriv'd of the Advantage which Truth and Remorse once extorted, and would have again extorted from him. However, I would have been glad to have had all that ever this Wretch said, and would hope, that by comparing the several Stories which he several Times told, some Light might have been gain'd, which is now wanted: — Particularly by the Knowledge of what he said freely and voluntarily, when he was in good Humour, and before his rough Usage, on his Return from *Rome*, had frighted him; But I think we have the Evidence only of a few of the last Days of his Life, all the preceding Time is Blank. He underwent frequent Examinations, but they were not, it seems, so maturely weigh'd and digested, as to be thought worth the Committing to Writing; but he is gone to his Place, and hath answer'd for what he hath said at another Tribunal. I desire not to disturb his Ashes farther than what is necessary for my Defence.

Your Lordships will observe, first, the Inconsistency of some Part of the Charge. Secondly, the Improbability of it. The Report takes Notice of three several Periods, or Stages of Time; which by Consequence of some Informations from the Regent, the Design did not take Place; the first was, during the Election; the 2d was, the King's going to *Hanover*; and the third was, the breaking up of the Camp; there is not the least Hint as to the last of these three Designs, in any of the Papers; tho' in the Recital of the Bill it is mention'd as the third Part of the Plot, and the most detestable Part of the Design, to lay violent Hands on his Majesty and his Royal Highness.

There

There is not the least Colour of Proof as to the first Part of the Conspiracy, which was to take Place at the Election; their only Reason for that, is from a Passage, where 'tis said, that the present Opportunity is elaps'd, that is, the Opportunity of the Election.

I shall recite the Passage, as it lies in the intercepted Letter, and make some Reflections on it: 'Notwithstanding the Opportunity is elaps'd, (says the Writer to *Jackson*) I agree with you, another may offer before the End of the Year, tho' not perhaps every Way so favourable.

The Committee suppose this Letter to be from *Kelly*, and dictated by me, and they suppose the Words to refer to the Time of the Election, and from those Suppositions, infer, that I knew something of it. On the contrary, I shall, on the two first Suppositions, shew the Impossibility of it; if this was a Letter from me or from any other Person, dictated by me to the Pretender, I must write as in Answer to some Letter sent from them to me, in repeating the Expression; and his Opinion in the Letter, must have been founded on Intelligence before receiv'd: This Intelligence, considering the Distance between *London* and *Rome*, must have been communicated two Months if not longer, before the Date of this Letter; if we go back two Months, and talk of the Election being elaps'd, it was not begun; consequently that Opportunity in the Letter, could not possibly mean the Time of the Election; and if so, it is impossible that it should be a Letter to the Pretender, that can consist with the Charge of the Person's writing in *April*, 1720.

If it be a Letter writ in good Earnest, it appears, they had given over all Thoughts at that Time: 'I agree with you, says he, another may offer before the End of the Year;' and yet he finds some Words in a Letter he writ ten Days after, wherein under the Name of *Jones*, I am made to be deeply concern'd in a Conspiracy.

How can this be consistent, if I writ and directed that Letter, and was engag'd in the second Part of the Conspiracy?

Both cannot be true, both may be false; and I hope, I have satisfied your Lordships, that as I did not dictate the one, so I was in no ways concern'd in the other.

Can any one believe, that under the sad Circumstance of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man, unless under the Power of Prejudice, to believe such an Improbability, or that I had such a Conjecture: I forbear former Instances.

I shall now consider the Improbability as well as Inconsistency of the Charge brought against me without positive Proof. You will allow me to answer the Indictment in the same Manner as it is laid.

Is it probable, that if I were engag'd in any such Design, no Footsteps should be seen of any Correspondence I had with the late Duke of *Ormond*, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is consistent with my Duty to my King and Country?

Is it probable, that I would chuse rather to engage in such Design with Mr. *Dillon*, a Military Man I never saw, and with the Earl of *Marr*, whom I never convers'd with, except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender several Years, and had a Pension abroad? Is this a Season for me to enter into Conferences with him about restoring the Pretender, and do this not by Messages but by Letters, not sent by Messengers, but by the common Post? That by thus writing to him by the Post, I should advise him after the same Manner to write to me, and by these Means furnish Opportunities, towards detecting the Persons and bring myself into Danger? How doth that consist with the Caution and Secrecy which are said to belong to me? Must not I have been rash to have laid myself open in such a Manner? This is an inconsistent Scheme, the other a bold Assertion. Is it probable, when attending the sick Bed of my Wife, and expecting her Death not daily but hourly, that I should enter into Negotiations of this Kind?

There was no Need of dispatching any of those Letters, merely to excuse my not writing: The Circumstances of my Family had been a sufficient Apology, and more effectual.

Is it probable, that when I was carrying on publick Buildings of various Kinds, at *Westminster*, and at *Bromley*, consulting all the Books from the *Westminster Foundation*,

Foundation, engaged in a Correspondence with learned Men, about settling an important Point of Divinity; that at that very Time, I should be carrying on a Conspiracy? Those that entertain such Thoughts without Reason, may also condemn me without Argument.

Is it probable, that I should meet and consult, in order to carry on and forward this Correspondence with no Body, and no Where?

That I who always liv'd at Home, and except at Dinner-Time, never stirr'd out of my Chamber; receiv'd all Persons that visited me, and was deny'd to none, should have an Opportunity to be so engag'd? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing? No Evidence among my Papers, tho' they were all seiz'd at both my Houses and confining all my Servants but one, for about ten or eleven Weeks, searching him twice in the Tower, and searching myself, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

Is it probable, that I should form and direct a Conspiracy, and carry it on with any Success, that am not us'd to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions? My Way of Life hath not led me to converse with such Men and such Matters, except on the Occasion of meeting in Parliament, but in a Council of War, I never was. Have I yet in any Instance of my Life meddled remarkably out of my own Sphere, in Affairs foreign to my Business and Character? I might have been thought to have been too active in my proper Station and Business; but I was never charg'd with War, nor any ways inform'd in the Art of it.

Is it probable, that Persons concern'd in such Military Scheme, (if any such be form'd by Men of the Sword that apply to such Business) should be punish'd without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concern'd with them, suffer all the Pains and Penalties, short of Death, which the Parliament can inflict for a suppos'd I know not what, and what I don't to this Day apprehend.

Here is a Plot of a Year or two standing to subvert the Government with an arm'd Force; an Invasion from abroad;

abroad; an Insurrection at Home; just when ripe for Execution, it is discover'd; and twelve Months after the Contrivance of this Scheme, no Consultation appears, no Men corresponding together, no Provision of Money, Arms, or Officers — not a Man in Arms — And yet the poor Bishop hath done all this.

*L*ayer and *Plunket* carry on a treasonable Correspondence; they go to *Rome*, and receive Directions from the Pretender himself, to promote his Cause — It does no where appear, that the Bishop has the least Share in, nor is any way privy to their Practices — And yet the Bishop has done all; he is principally concern'd in forming, directing, and carrying on this detestable Conspiracy.

What could tempt me to step thus out of my Way? Was it Ambition and a Desire of climbing into a higher Station in the Church? There is not a Man in my Office, farther remov'd from this than I am; I have a hundred Times said, and sincerely resolv'd, I would have been nothing more than I was, at a Time when I little thought of being any thing before; and I could give an Instance of this Kind if I thought proper.

Was Money my Aim? I always despis'd it, too much perhaps, considering what Occasion I am now like to have for it: For out of a poor Bishoprick of 500*l. per Annum*, I have laid out no less 2000*l.* towards Repairs of of the Church and Episcopal Palace; nor did I take one Shilling for Dilapidations. The rest of my little Income has been spent as is necessary, as I am a Bishop. Nor do I repent of those Expences now, (tho' since my long Confinement, I have not receiv'd the least Part of the Income of my Deanry) not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I securely rely.

Was I influenc'd by any Dislike of the Establish'd Religion, and secretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords, ever since I knew what Popery was, oppos'd it; and the better I knew it, the more I dislike'd it.

I begun my Study in Divinity, when the Popish Controversy grew hot about that Immortal Book of *Tillotson's*, when he undertook the Defence of the Protestant Cause in general, and as such, I esteem'd him above all.

You will pardon me, my Lords, if I mention one Thing :

Thirty Years ago, I writ in Defence of *Martin Luther*, and have preach'd, and writ to that Purpose, from my Infancy ; and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Protestant Religion, as profess'd in the Church of *England*.

Once more : Can I be suppos'd to favour Arbitrary Power ? The whole Tenor of my Life hath been otherwise : I was always a Friend of the Liberty of the Subject, and to the best of my Power constantly maintain'd it : I may have been thought mistaken in the Measures I took to support it.

It matters not by what Party I was call'd, so my Actions are uniform.

To return to the Point : The Charge brought against me in the Manner it is brought, is improbable : If I could be guilty of it, I must have acted under a Spirit of Insatiation ; yet I have never been thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contain'd in this Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, my Lords, and have been expecting an immediate Tryal. I have, my Lords, declin'd no Impeachment. The Correspondence with the Earl of *Glarndon*, was made Treason, but with me 'tis only Felony. He was allow'd the Conversion of his Children, by the express Words of the Act : Mine are not so much as to write, so as to be sent to me.

What is most particular in my Case, I will repeat distinctly, that my Reverend Brethren may hear it. I am render'd incapable of using or exercising any Office, Function, Authority, or Power Ecclesiastical, not only in his Majesty's Dominions, but any where else : Very hard ! That such Spiritual Power as is not deriv'd from Men, but God himself, should be taken from me !

And I am not only depriv'd of all Offices, Dignities, and Benefices Ecclesiastical, and for ever banish'd the Realm, but likewise precluded from the Benefit of Royal Clemency, and made utterly incapable of any Pardon by his Majesty, his Heir and Successors.

My

My Lords, I insist on my Innocence; that I am not guilty; that if I am not prov'd so, your Lordships will thus judge; if otherwise, I perswade myself, I shall find some Degree of Mercy.

You will not strip a Man of his Substance, and then send him where he cannot subsist; you will not send him among Strangers, and then hinder others from performing Humanity to him; you will not give him less Time to order his Affairs and depart the Kingdom, than the Bill hath taken in passing through both Houses.

The Great Man I last mention'd, carry'd a great Fortune with him into foreign Parts, and had the Languages; was well acquainted abroad: The Reverse of all this is my Case; I indeed am like him in nothing but his Innocence, and his Punishment. It is in no Man's Power to make us differ in the one, but 'tis in your Lordships Power to make us differ widely in the other, and I hope your Lordships will do it.

But to sum up the Arguments: It hath been frequently observ'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High Treason brought against me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made so by any Power on Earth; for the Law that requir'd the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjust to declare any Proof legal, because of my Prosecution: As extraordinary would it be, to declare the Acts themselves, *ex post facto*.

Never was there a Charge of so high a Nature, and so weakly prov'd.

A Person dead, so that there is not an Opportunity to falsify him by contradicting him; a Charge not supported by any one Evidence, nor by any one Proof of any thing that hath been writ or receiv'd by me, not even by any one criminal Word prov'd to have been spoken by me; but by intercepted Letters and Correspondence, in which appears not the least Certainty.

Some of those Letters shewn to Persons, with a Design to fasten something on them; others writ in Cyphers, and fictitious Names, throwing out dark and abstruse Hints of what Persons went by those Names, sometimes true and sometimes doubtful, and often false, who continue all the while Strangers to the whole Transaction, and never make the Discovery, till they feel and find it
advancing

advancing itself towards them: My Lords, this is my Case, in short.

I have a hard Task to prove my Innocence: Shall I stand convicted before your Lordships on such an Evidence as this? The Hearsay of an Hearsay; a Party dead, and that deny'd what he said; by strange and obscure Passages and fictitious Names in Letters; by the Conjectures of Decyphers, without any Opportunity given me of examining and looking into the Truth of their Decyphering; by the Depositions of Post-Office Clerks about the Similitude of Hands; their Depositions made at distant Times, and without comparing any one of the Originals, by a strange Interpretation of them; for nothing more, I am perswaded, can be made of the Arguments, than what is call'd the intercepted Correspondence.

Shall I, my Lords, be depriv'd of all that is dear to me, and in the Circumstances I am in, scarce able to bear up, and by such an Evidence as would not be admitted in any other Cause or any other Court; and would hardly affect a Jew in the Inquisition of Spain?

And shall it be receiv'd against a Bishop of this Church, and a Member of this House? God forbid. Give me Leave to make Mention of a Text in Holy Writ: *Against an Elder receive not an Accusation, but before two or three Witnesses.* It is not said, Condemn him not upon an Accusation, &c. But Receive it not; I am something more than an Elder, and shall an Accusation against me be countenanc'd; without any one Instance of Proof to support it?

This is not directly Matter of Ecclesiastical Constitution: There you read, one Witness should not rise up against an Elder; but here, at the Mouth of two Witnesses, or three Witnesses, shall the Matter be establish'd: And as this Rule was translated in the State of the Church, People always thought fit to follow it.

Shall I be the first Bishop in this Church, condemn'd upon Conjecture, on fictitious Names and obscure Passages in Letters, instead of two or three Witnesses?

Will not others endeavour to make the same Precedent and desire the same Influence of it to succeeding Ages, and even concur in such an Act, in order to render me incapable of using or exercising any Power or Authority, &c. Is this good Divinity or good Policy?

As to the Justice of the Legislature, in some Respects it hath a greater Power than the Sovereign Legislature of the Universe; for he can do nothing unjust. But tho' there are no Limits to be set to a Parliament, yet they are generally thought to restrain themselves, to guide their Proceedings in criminal Cases, according to the known Law.

The Parliament may order a Criminal to be tortur'd; Who can say they cannot? But they never did, nor ever will, I hope; because Torture, tho' used in other Countries, is not known here.

Is it not torturing to inflict Pains and Penalties on Persons not suspected of Guilt, nor plainly prov'd guilty? It is not much unlike it. The Parliament may, if they please, as well as upon the Bill of perpetual Imprisonments, upon a Bill of perpetual Exile, reserve to the Crown a Power to determine the one as well as the other. They have so enacted it in the one Case, but they have not enacted it in the other. The Law knows nothing of such absolute perpetual Imprisonments.

The Law may in like Manner, condemn a Man on a Charge of accumulated and constructive Treason. They did so in the Case of the Great Lord *Strafford*, and that by accumulated and constructive Proof of such Treason, that is, by such Proofs so well interpreted, as plainly to communicate Light and Strength to each other, and so to have all Force, without the Formality of Evidence. Was such Proof ever admitted by any one, to deprive his Fellow Subject of his Fortune, of his Estate, his Friends, and Country, and send him in his old Age, without Language or Hope, without Employment to get the Necessaries of Life, to starve: I say again, God forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or own to seem to violate their Constitution in any Degree, which they ought to preserve against any Attempts whatsoever.

But where once such extraordinary Steps as these are taken, and we depart from the fix'd Rules and Forms of Justice, and try untrodden Paths, no Man knows where this shall stop.

Though I am worthy of no Regard, though whatsoever is done to me, may for that Reason be look'd upon

to be just; yet your Lordships will have some Regard to your own lasting Interest, and that of Posterity.

This is a Proceeding with which the Constitution is not acquainted, which, under the Pretence of supporting it, will at last effectually destroy it.

For God's sake lay aside these extraordinary Proceedings, set not up those new and dangerous Precedents; I for my Part will voluntarily and cheerfully go into perpetual Banishment, and please myself that I am in some Measure, the Occasion of putting a Stop to such Precedents, and doing some Good to my Country; and will live, wherever I am, praying for its Prosperity; and do, with the Word of Father Paul to the State of Venice, say, *Esto perpetuo*: It is not my departing from it I am concern'd for: Let me depart, and let my Country be fix'd upon the immovable Foundation of Law and Justice, and stand for ever.

I have, my Lords, taken much of your Lordships Time, yet I must beg your Attention a little longer.

Some Part of my Charge hath been disprov'd by direct and full Evidence, particularly that of writing the Letters of the 30th of April, or that I knew who wrote them; which I utterly deny that I ever did, or as yet do know. Other Parts of the Charge there are, which are not capable of such Disproof, nor indeed require it; there I rest. But my Lords, there is a Way allow'd of vindicating myself. It is generally negative; that is, by protesting and declaring my Innocence to your Lordships, in the most deliberate, serious, and solemn Manner; and appealing to God, the Searcher of Hearts, as to the Truth of what I say, as I do it in what follows: I am charg'd in the Report with directing a Correspondence to Mr. Kelly; but I solemnly deny, that I ever, directly or indirectly, saw a single Line of any of their Letters till I met with them in Print. Nor was the Contents of any of them communicated to me. I do in the next Place deny, that I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent. Nor was I ever acquainted with any Attempt to be made on the King's going to *Hanover*, or at the Time of the Election. Nor did I hear the least Rumour of the Plot to take Place, after the breaking up of the Camp, till some Time after Mr. Lyster's Commitment. I do with the same Solemnity declare, that I never collected, requitt'd, receiv'd, or ask'd any Money of
any

any Man to facilitate these Designs; nor was I ever acquainted with, or had any Remittances whatsoever from any of those Persons. I never drew any Declaration, Minutes, or Paper, in the Name of the Pretender, as is expressly charg'd upon me; and that I never knew of any Commission issu'd, Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raise an Insurrection in these Kingdoms. All this I declare to be true, and will so declare to the last Gasps of my Breath.

And I am sure, the further your Lordships examine into this Affair, the more you will be convinc'd of my Innocency. These contain all the Capital Articles of which I am accus'd in the Report of the House of Commons.

Had the Charge been as fully prov'd as ascertain'd, it had been vain to make Proteftations of my Innocency, tho' never so solemn.

But as the Charge is only supported by the slightest Probabilities, and which cannot be disprov'd in any Instance, without proving a Negative; Allow the solemn Affeuerations of a Man in Behalf of his own Innocence to have their due Weight, and I ask no more, than that they may have as much Influence with your Lordships as they have Truth.

If on any Account there shall still be thought by your Lordships to be any seeming Strength in the Proofs against me: If by your Lordships Judgments, springing from unknown Motives, I shall be thought to be guilty, if for any Reasons, or Necessity of State, in the Wisdom and Justice of which I am no competent Judge; if your Lordships shall proceed to pass this Bill against me, God's Will be done: *Naked came I out of my Mother's Womb, and naked shall I return; and whether he gives or takes away, blessed be the Name of the Lord.*

The Bishop having done speaking, and being with his Counsel withdrawn, the Lord Lechmere took Notice, that the most material Part of the Charge against that Prelate, was his Dictating the treasonable Letter to Mr. Kelly; and since he was the only legal Witness they could have in this doubtful Case, he therefore mov'd, That *George Kelly* alias *Johnson*, now a Prisoner in the Tower of London, be brought to the Bar of this House on Monday Morning next, to be examin'd upon Oath, on the Bill intituled, *An Act to inflict Pains and Penalties on Francis*

Lord Bishop of Rochester. He was seconded by the Earl of *Carlisle*, but oppos'd by the Court Lords; so that the Question being put upon his Motion, it was resolv'd in the Negative, by 80 Voices against forty; Whereupon several Lords enter'd and sign'd the following Protestation.

Dissentient

1. Because we think it unquestionable, that the said *Kelly* is a competent legal Witness to the Matters charg'd by the Bill against the Bishop, and could not be legally refus'd to be sworn as such, if the Bishop were on his Tryal for the same in the ordinary Course of Justice; and that, whether the said *Kelly* was produc'd for or against the Bishop. And we conceive, that if the Counsel for the Bill had thought fit to have produc'd him in Support of the Bill, that even no legal Objection could have been made by the Bishop's Counsel against his being so produc'd and sworn; the Bill pass'd this House against the said *Kelly* not having receiv'd the Royal Assent, and there not being in the said Bill, in our Opinions, any thing that can destroy even his legal Testimony, when the same is pass'd into a Law.

2. Because the three Letters dated *April* 20, 1722, suppos'd to contain treasonable Correspondences with the Pretender and some of his Agents, have been made the principal Charge against the Bishop, and have been endeavour'd to be prov'd to have been dictated to the said *Kelly* by the Bishop, at or about the Time of their Date; but this not being as yet done, as we think, by direct or positive Proof, by any living Witness of the Fact, but by Circumstances only; we think it most proper, and most safe and just, to endeavour to discover the Truth of that material Fact by the best Evidence the Nature of the Thing can admit of; and that this House should not be left under the Difficulties of judging on this extraordinary Occasion, from doubtful Circumstances, if the Fact may be clear'd by certain positive Proof, and the Examination of a competent and a living Witness, upon Oath, at the Bar of this House.

3. Because several living Witnesses have been examin'd on Oath, at the Bar of this House, on Behalf of the Bishop, in order to prove by their positive Testimony, and other Circumstances, that the Bishop did not dictate

or direct, or was any way privy to the writing the said Letters, or any of them, which has, in our Judgments, render'd it yet of greater Importance, that the suppos'd Writer of those Letters should be brought under the most strict and solemn Examination, before the Bill has pass'd this House.

4. Because the said *Kelly*, tho' examin'd before Committees of both Houses of parliament, and elsewhere, hath not, to our Knowledge, been yet examin'd on Oath, to the Matters contain'd in this Bill, and it having appear'd to us, in other Instances on this Occasion, particularly of *Mrs. Barnes* examin'd for the Bill, and of *Bingley* against it, who have materially varied their Examinations at the Bar of this House, from their former Examinations, at the same Time, declaring, that their former Examinations were not taken and sworn to by them; we think it may be both dangerous and derogatory to the Honour and Justice of the House, not to examine on Oath, a Person capable of discovering the Matters of Fact, on which the Justice of the Bill against the Bishop must depend; and especially after the said *Kelly* hath declar'd in the most solemn Manner, next to that of his being upon Oath, that the Bishop did not dictate, or was privy to the writing the said Letters, or any of them; and the Bishop himself, in his Defence, having also, in the most solemn Manner of Affelevation, declar'd his Innocence in this Particular, and expressly referring to the former Affeervations of the said *Kelly*, as we conceive, as a Testimony in Confirmation of his own Affeervations.

5. Because we conceive, that the said *Kelly* was not only a legal Witness for or against the Bishop, in the strictest Construction of Courts of Judicature, but the Examination of him upon Oath, in this Bill, is in every Respect whatsoever, in our Judgments, less liable to Objection than many, and most other Evidences, which on this Occasion have been allow'd; because the Bill pass'd by this House against the said *Kelly*, if it obtains the Royal Assent, as is most probable, doth in Judgment of Law, as hath been declar'd by the Judges, acquit him of any future Prosecution for the said Treasons therein charg'd upon him: And there is no Judgment or Punishment inflict'd upon him in the said Bill, which can, when pass'd, destroy his Capacity of giving Evidence on any Occasion; and the same having pass'd this House, and not pass'd the Royal Assent,

leaves the said *Kelly*, in our Opinions, under less Influence either of Hopes or Fears, than such Witnesses which have been examin'd on this Occasion, under Commitments and Charge of High Treason; and, as we conceive, less liable to that Objection, than the Declaration of *Philip Neynec*, which has been read against the Bishop, tho' never sign'd or sworn to by him, and the said *Neynec*, some Months since drown'd in endeavouring his Escape; and which Declaration appears to us to have been made by him under the strongest Influences of Guilt and Terror.

6. We think, the Crimes charg'd in the Bill against the said *Kelly*, are in their Nature, distinct and independent on those charg'd on the Bishop, *Kelly's* Guilt in writing the said treasonable Letters prov'd upon him, being the same, altho' the Bishop be altogether innocent in Relation thereto, for which, as we conceive, this House did refuse to permit *Kelly*, on his Bill, to give Evidence that the Bishop did not dictate the said Letters; and for which Reason, we are of Opinion, that the Evidence which *Kelly* might have given, touching the Bishop's dictating the said Letters, or not, would have produc'd no Consequence at all with Regard to the Bill pass'd against himself, altho' it must necessarily have contributed to the Proof of the Guilt or Innocence of the Bishop.

7. This House having with great Honour and Justice declar'd to several Persons produc'd as Witnesses on this Occasion, that it was not requir'd from them to depose to any thing which did, or might tend to their own Accusation; the Testimony of the said *Kelly*, if he had been examin'd upon Oath, we doubt not, would have been taken under the same just Indulgence; and if he had submitted to have been examin'd on Oath, to the Matters of this Bill, such Examination being in that Respect, voluntary, could not, in our Opinions, have been construd as forc'd from him by the Authority of the House; and such a Testimony as he might have given, would have remain'd under Consideration and Judgment of this House, as to its Credit and Influence, on all Circumstances, in the same Manner as the other Evidence for and against the Bill still does.

Cooper,
Sturford,
Scarfsdale,

Bathurst,
Salisbury,
Northampton,

Berkeley de Str.
Fran. Cestrien.
Willoughby de Br.
Dartmouth,

Dartmouth,
Lechmere,
Pomfret,
Ashburnham,
Cardigan,
Litchfield,
Guilford,
Aylesford,
Weston,

Bingley,
Foley,
Anglesey,
Eruce,
Gower,
Uxbridge,
Exeter,
Brook,
Craven,

Masham,
Foulet,
Compton,
Middleton,
Hereford,
Hay,
Denbigh,
Wharzon,

On Monday the 13th of May, the Bishop of Rochester being for the last Time brought to the Bar of the Lords House, Mr. Reeves, one of the Counsel for the Bill, made the following Reply to the Bishop's Defence :

Mr. Reeves's Reply to the Defence of the Bishop of Rochester.

May it please your Lordships,

TO permit me to offer something by Way of Reply to the Arguments that have been made Use of, and the Evidence that hath been given in Behalf of the Bishop of Rochester.

My Lords, I shall not trouble your Lordships with entering far into the Arguments insisted on by the other Side, concerning the Power of the Parliament to pass Bills of Attainder; Bills of Pains and Penalties, and Bills of Attainder have been treated by them as inconsistent with, and unknown to our Constitution, unless in a few Instances which afterwards have been condemn'd; and yet they have mention'd the Case of Sir John Fentwick, which is a Precedent of a Person attainted without legal Evidence, tho' he were forth-coming and amenable to Justice, and his Attainder remains still unrevers'd. And as to Bills of Pains and Penalties, they should, before they inveigh'd so much against them, have consider'd, that two such Bills have now already pass'd your Lordships House; and the Bills against Countess, Bernardi, and others, and against the late South-Sea Directors, are Precedents of Bills of this Kind.

They have mention'd many Instances, where Persons have been prosecuted according to the known Rules of Law, and the Parliament did not think fit to interpose. And doubtless, my Lords, generally speaking, where Evidence is to be had, and to be produc'd, and the Persons are forth-coming, it is right to proceed according to the known Rules of Law, in the ordinary Courts of Justice.

But

But where Conspirators are carrying on their Designs with Art, and contriving to shelter themselves from those known Rules of Law; we apprehend, my Lords, the ordinary Prosecutions at Law will be no Argument against the Legislature's making Use of their Authority, when the Circumstances of the Case, the Preservation of the publick Peace, the Safety of the Constitution, require it.

But I beg Leave to mention one Instance, in which they are mistaken: They have said, that in the Case of the Regicides (that horrid and detestable Treason!) they were all prosecuted according to the ordinary Course of Law; but if they had look'd into the Acts of Parliament, they would have found, that some of them were punish'd by Bills of Pains and Penalties. The Lord *Monson*, and others, who sat as Judges in the pretended High Court of Justice, were reserv'd by two Acts of Parliament that pass'd, to have Pains and Penalties inflicted upon them; and tho' there was Evidence in that Case to have attainted them according to the ordinary Course of Law, the Parliament did proceed to punish them by Pains and Penalties, and they were not try'd according to the ordinary Course of Law. This I observe in Relation to the Power and Usage of Parliaments, in passing Bills of this Kind.

My Lords, in the next Place I beg Leave to take Notice, that the Observations, that have been made, and the Evidence that hath been given by them, as to Facts mention'd in the Report and Appendix concerning which we have given no Evidence at all, ought to be laid out of this Case, as foreign to the Matter before your Lordships. The Matters we have given in Evidence, it was proper for them to answer; but they have gone into the Report and Appendix, in order to disprove Facts mention'd there, tho' we gave no Evidence concerning them; and we humbly apprehend, it is not necessary for us to follow them as to those Facts; for if we maintain the Charge we have given, it doth not concern us to make good every Article in the Report and Appendix, relating to this Reverend Prelate.

My Lords, we must admit the Evidence produc'd to charge the Reverend Prelate at your Lordships Bar, as Evidence not all of it strictly legal against him, if he was to be try'd according the ordinary Course of Justice in *Westminster-Hall*. But my Lords, we humbly apprehend, you are not ty'd to the Rules of *Westminster-Hall*;

for if your Lordships are satisfied that the Facts prov'd, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithstanding they do not amount to Evidence according to the ordinary Rules of *Westminster-Hall*, your Lordships will be of Opinion, that it is fit he should be punish'd.

My Lords, the Evidence that hath been given by us, as to Facts comitted by the Bishop of *Rocheſter*, hath been chiefly from three Letters, dated the 20th of *April*, 1722; each of these was written in the Hand of Mr. *Kelly*, and dictated by my Lord Bishop of *Rocheſter*. These Letters are writ some Part in Cyphers, and some Part not; they are sign'd by the Names of *T. Jones*, *T. Illington*, and the Figures 1378. My Lords, if these three Letters are prov'd to your Lordships Satisfaction, to be the Letters of my Lord Bishop of *Rocheſter*, we humbly apprehend, they do prove all the Allegations in the Bill, which my Lord Bishop of *Rocheſter* hath been pleas'd to call upon us to shew that he hath been guilty of. They do contain, as we say, and as plainly appears from the Letters themselves, Matters relating to consulting and conspiring to invite a foreign Force into this Kingdom, for an Invasion, and to promote an Insurrection. And if the Name of *Jackson* is the Name by which the Pretender is signified, that Letter will prove the other Part of the Bill, that the Bishop of *Rocheſter* hath held Correspondence with the Pretender himself.

I beg Leave to observe upon the Word *Jackson*; it hath been insisted upon, that tho' it is contain'd in *Plunket's* Cypher, yet *Jackson* may signifie in Mr. *Plunket's* Cypher one Thing, and in these Letters another; and these Letters are contriv'd in Figures, and not those cant Words and Names, as in Mr. *Plunket's*; but so far they go to admit, that in *Plunket's* Cypher, the Name of *Jackson* stands for the Pretender. My Lord Bishop of *Rocheſter* was pleas'd to observe, that in all the Correspondence between Mr. *Kelly* and the Persons with whom he corresponded abroad, there is no Name contain'd in Mr. *Plunket's* Cypher, which *Kelly* hath made Use in any of his Letters but this.

My Lords, it appears to your Lordships, that in the Correspondence between Mr. *Kelly* and the Persons abroad, several other Names mention'd in *Plunket's* Cypher, have been used; and it is not material, whether these Names are contain'd in the Letters writ by *Kelly* himself.

himself or in those of his Correspondents writing to him. When his Correspondents write to him, in Answer to his Letters, they use several other of the Names which are contain'd in *Plunket's* Cypher, which we humbly apprehend, is the same Thing as to this Purpose, as if they were used in *Mr. Kelly's* Letters; for he must be presum'd to know the Meaning of those fictitious Names, when they are contain'd in Letters that come in Answer to Letters from him, in the Correspondence which he carries on; and we humbly apprehend, my Lords, that is as strong an Evidence, as if they had been contain'd in the Letters writ by *Kelly* himself. Therefore my Lords, I beg Leave to take Notice of several Names that are in *Mr. Plunket's* Cypher, and us'd by *Mr. Kelly's* Correspondents, in their Letters to him.

There is the Name of *Xoland*, which stands for *Wagon*; the Name of *Lane*, which stands for *Lord Marr*; the Name of *Cane*, which stands for *Dillon*; and the Name of *Hoswell*, for *Glascock*. My Lords, all these Names are in *Mr. Plunket's* Cypher, and made Use of in the Letters that pass'd between *Mr. Kelly* and his Correspondents.

I beg Leave, to submit it to your Lordships, when among Persons concern'd in carrying on the same Conspiracy, Cyphers are made Use of, and in the Cyphers of some of the Conspirators, the Names compriz'd in Letters, writ by others of the Conspirators, are contain'd, whether it is not a reasonable Evidence, that those fictitious Names contain'd in the Cyphers of one of the Conspirators, and made Use of in the Letters of the other, signify the same Persons; unless there is something to distinguish the Case, and shew, that the same Names are made Use of to denote several Persons.

My Lords, we submit it to your Lordships, that it is plain from the Evidence we have given, that these three Letters are writ by the same Hand; and by the Circumstances in the Letters, they appear to be dictated by one and the very same Person. Therefore my Lords, the Enquiry will be, who is the Person describ'd by the Names of *T. Jones*, *T. Illington*, and the Figure 1378; for if we have prov'd the Bishop of *Rockester* to be denoted in this Correspondence by the Names of *Jones* and *Illington*, and that these Letters were written by *Kelly*, and dictated by *Jones* and *Illington*, then the Bishop of

of *Rochester* is the Person by whom these Letters were dictated.

This will appear to your Lordships, from other Facts contain'd in Letters intercepted in this Correspondence; Facts, that all of them together, can relate to no Person but the Bishop of *Rochester*. The Circumstances of the Bishop and his Family, are exactly describ'd in the three Letters of the 20th of *April*; and these Circumstances plainly shew, that all the three Letters were dictated by the same Person, and that the Figures, 1378, denote the same Person, that *Jones* and *Illington* do. There are several other Facts contain'd in the intercepted Letters, that denote *Jones* and *Illington* to be the Bishop of *Rochester*. One of them is the Fact relating to a Dog sent over to Mr. *Kelly*, which appears by the Evidence given, to have been design'd for the Bishop of *Rochester*.

The next Circumstance observable in the intercepted Correspondence between Mr. *Kelly* and his Friends abroad, is the Letter dated the 30th of *April*, 1722, E. 35. which says, *Mrs. Jones dy'd last Week, and when the Days of Mourning are over, he will, I hope, be fit for Business.*

My Lords, it hath been given in Evidence, his own Witnesses as well as ours, have given an Account, that the Bishop's Lady dy'd the 26th of *April*: This Letter is dated the 30th of the same *April*, consequently his suits exactly with the Bishop's Circumstances as to his Lady being dead.

That *Jones* and *Illington* are the same, appears likewise by the Answer given to this Letter, dated the 20th of *May*, 1722, E. 43, which says, 'Mrs. *Chivers* gives you her kind Services, and prays you will condole in his Name on the Death of Mrs. *Illington*.' My Lords, this Letter is in Answer to that of the 30th of *April*; for it begins, 'Yours of the 30th of *April*, which should have come by the last Post, is come to Hand.' And this Letter condoles on the Death of Mrs. *Illington*, whereas the Letter of the 30th of *April*, gave an Account that Mrs. *Jones* was dead: So that *Jones* and *Illington* appear by these Letters to denote the same Person.

My Lords, these are Letters writ by Correspondents, concern'd one with another, in carrying on this Conspiracy. It hath been objected on the Behalf of my Lord Bishop of *Rochester*, that he is not concern'd in writing

of these Letters, nor did any of them come to his Hands, nor were they writ by his Directions, but that they pass'd between Mr. Kelly and his Correspondents abroad. Your Lordships, we hope, will be of Opinion, in a Correspondence of this Nature, (unless they shew something to induce your Lordships to believe, that there hath been a malicious Design in the Parties between whom these Letters pass'd, to denote the Bishop of Rochester in order to charge him) that these are Facts which amount to a certain Proof who the Person is, that us'd to go by the Names of *Jones* and *Illington*.

Your Lordships observe how the Matter stands: Mr. *Jones* and *Illington* is a Person, describ'd by the Letters of the 20th of *April*, to be in great Pain himself, to be in Melancholy Circumstances in other Respects: He appears by the Evidence at that Time to have been ill of the Gout, his Lady appears to have been ill, and dying; Mrs. *Jones* and Mr. *Illington* is a Person to whom a Dog was sent, and it appears by the Evidence, that this Dog was design'd for the Bishop of Rochester. Mrs. *Jones*, in one Letter, 'tis said, dy'd last Week; and in another Letter they condole the Death of Mrs. *Illington*; and it appears, the Bishop's Lady dy'd the Week before the 30th of *April*.

There are other Circumstances which I should mention in Relation to the Times when the Bishop was in London, and when in the Country; which we apprehend, is an additional Proof who was meant by the Names of *Jones* and *Illington*. Therefore in Letter E. 41. a. Kelly says, *Mr. Illington is now in Town, and presents his kind Service to you; he is glad to hear you receiv'd his Letters by Crow, and wishes his next may be more to your Satisfaction.*

This Letter is dated the 7th of May; there it is said, *Mr. Jones is now in Town.* It appears by the Examination of *Wood*, the Coachman, that on the 7th of May, my Lord Bishop of Rochester was in Town.

There is another Letter dated the 7th of May, 1722, directed to *Musgrave*, E. 42. which I beg Leave to make some Observations on. There it is said, *I had the Favour of yours, which I communicated to Mr. Jones, who is come to Town only for a Day.*

My Lords, this Letter shows, that the Person denoted by the Name of *Jones* was come to Town; but they object that this Letter cannot be apply'd to denote the Bishop of Rochester, because it appears by the Deposition

tion of *Wood*, that the Bishop of *Rochester* staid in Town till the 10th of May; so consequently he did not come to Town only for a Day, and consequently can't be the Person meant in that Letter.

My Lords, as to that, it appears, that the Fact concerning Mr. *Jones*, applying it to the Bishop of *Rochester*, of his being come to Town, is true; as to the Bishop's being come to Town only for a Day, that is not Matter of Fact, but of the Apprehension of the Writer: He apprehended, he was only come to Town for a Day, but he might be mistaken in that; but the Fact of his being come to Town is true, the Apprehension of the Writer that he came only for a Day, is false. But we must submit it to your Lordships; the Apprehension of the Writer is not sufficient to avoid the Truth of the Fact contain'd in that Letter, when we have prov'd, that my Lord Bishop of *Rochester* was in Town on the Day when Mr. *Jones* is mention'd to have been in Town in that Letter.

Another Letter, dated Thursday the 10th of May, 1722, E. 44, says, *Illington is gone into the Country, and sent me Word he would be in Town on Tuesday Night, when he hath desir'd to see me at a particular Hour, by which I conclude, it may be about Business. and the Tuesday following that Thursday, happen'd to be the 15th of May.*

Another Letter E. 45, and dated the 14th of May, 1722, says, *Mr. Jones is still in the Country, but he hath sent me Word he will be in Town to-morrow.* My Lords, upon the Examination of the Coachman *Wood*, it doth appear, that the Bishop of *Rochester* was out of Town the 10th of May, out of Town the 14th of May, but that he came to Town the 15th of May, which is the Day mention'd in these Letters that he had promis'd to come to Town: So that here are additional Circumstances, all agreeing to prove, that the Bishop of *Rochester* was denoted by the Names of *Jones* and *Illington*. My Lords, this is not probable conjectural Evidence only, as has been objected.

These Letters contain Facts, and the Consequence from them is, that *Jones* and *Illington* is the Bishop of *Rochester*, in whom all these Facts agree. It is almost morally impossible, that all these Facts should agree in the Case of any other Person, as they do in the Case of the Bishop of *Rochester*.

It hath been argu'd, as to the Letters of the 20th of April, Was he the only Person that was in Pain and me-

lancholy Circumstances at that Time? A great many might be so. They go thro' the Particulars of his being in Town and in the Country; a great many Persons might be in Town and in the Country on those Days besides him. It is true, it might be so. Was there no Body whose Lady dy'd the Week before the 30th of April, but the Bishop of *Rochester*? Certainly there are a great many to whom that Circumstance may be apply'd. But my Lords, taking the Circumstances together, they cannot all of them concur in the Case of any other Person, as they do in the Case of my Lord Bishop of *Rochester*.

It may not be improper here to take Notice of some other of the intercepted Letters, that have been given in Evidence to your Lordships, which mention the Names of *Jones* and *Illington*.

In Mr. *Kelly's* Letters, giving an Account of his being taken up, and his Examination before the Council, he takes Notice of his being examin'd concerning the Persons that were meant by several fictitious Names, and among the rest, *Jones* and *Illington*, who, he says, are chiefly struck at. This is to give an Intimation to his Correspondents abroad, that there had been a Discovery that the fictitious Names, concerning which he had been examin'd, were made Use of in their Correspondence. He comes afterwards and writes a Letter, after such Time as he was bail'd (he was taken the 19th of May, and bail'd the 7th of June) wherein he says, *It is absolutely necessary now, that there should be a new Book of Accounts; says he, They must use no more their present Book of Accounts, since those who have got Part, may have got the Whole.*

My Lords, we humbly submit it, that it is a plain Owing of *Kelly*, by this Letter, that the Names inquir'd after, were the Names made Use of in the Correspondence, and therefore he says, *It is necessary to have a new Book of Accounts*, that is, other Cyphers, and fictitious Names, by which to carry on their Correspondence: He owns they have got Part, and fears they may have got the Whole. From that Time the Names of *Jones* and *Illington* are no more met with in the Correspondence that follows. We have gone no farther in our Evidence to fix any other Names to mean the Bishop of *Rochester*, but only the Names of *Jones* and *Illington*. But there are other Names which in the Letters that follow, probably are design'd to mean the Bishop of *Rochester*; but they will be out of the Case, because we have given no Evidence concerning them; and the plain

plain Reason why *Jones* and *Illington* are not made Use of any longer, is because it appears on the Examination of Mr. *Kelly*, that those Names were mention'd; therefore they were afraid, by making Use of those Names, the Correspondence might be discover'd, and it might prejudice the Persons who went by those fictitious Names.

This is the Substance of the Letters writ to and from Mr. *Kelly* and his Correspondents, concerning the Person that goes by the Names of *Jones* and *Illington*. Tho' my Lord Bishop of *Rocheſter* insists, that he is not prov'd to be the Person concern'd in writing these Letters, and that he had no Notice of them, and therefore they ought not to be look'd upon as Evidence against him: We submit it to your Lordships, in a Correspondence of this Nature, when we pursue Facts and Circumstances that are stated, and arise from the intercepted Letters, which when they come to be apply'd together, are a plain Indication of the Person that is meant by them; when these Circumstances and Facts can fit none but the Bishop of *Rocheſter*, we hope, tho' it is not legal Evidence in *Westminster-Hall*, yet it is satisfactory Evidence to induce your Lordships to believe, and be convinc'd, that no Person can be denoted by these Names but the Bishop of *Rocheſter*. This is a Matter that the Bishop of *Rocheſter* could not, with all his Care, be aware of; he takes Care that the Letters of the 20th of *April* are in Cyphers, and not writ with his own Hand; fictitious Names are made Use of, and he thinks, he shall be shelter'd by this Means from being found out to be the Person. The other Facts could not be suppos'd would come out to explain the Person. But, my Lords, very often there is a Providence in detesting Things of this Nature, and where the greatest Caution and Care is us'd, Circumstances (that human Prudence could not guard against) are so strong and convincing, that they discover such secret Correspondence, and plainly prove who is the Person carrying it on. Since Texts of Scripture have been cited on the other Side, my Lords, I beg Leave to use one on this Occasion? and that is, *Curſe not the King, no, not in thy Thought, for a Bird of the Air ſhall carry the Voice, and that which hath Wings ſhall tell the Matter.*

In these treasonable Conspiracies and Correspondences against the King and Government, (notwithstanding they are carry'd on so secretly, that the Conspirators think nothing can discover them) there happen sometimes,

times, through Providence, such Circumstances which the Persons cannot be aware of, that bring those Things of Darkneſs to Light; and we hope, this may be an Example, that may deter any Perſon from going in the moſt ſecret and conceal'd Way to engage in any thing of this Nature.

My Lords, there is a Matter I ſhall beg Leave to mention to your Lordſhips, becauſe my Lord Biſhop hath inſinuated, as if I made hard and harſh Application of the Letter taken upon his Servant. My Lords, he ſays, that the Conſtruction I put upon that Letter, was not a natural but an ill-natur'd Explication. The Letter mentions an Impeachment, and (ſays the Biſhop, in the Letter) *If the Impeachment cannot be ſtopp'd, I am priſoner for ſome Years without Remedy.* My Lords, I did obſerve on that Expreſſion in the Letter, that it ſeem'd to import a Senſe of my Lord Biſhop's Guilt, becauſe he ſaid, he was unavoidably a Priſoner for ſome Years. My Lord Biſhop ſays, ' This is by no Means a natural but a forc'd and ill-natur'd Explication; for in that Place he meant no more than if an Impeachment were lodg'd, it would not be proſecuted, but made Uſe of only that he might be detain'd a Priſoner for ſome Years.

My Lords, I muſt ſubmit it to your Lordſhips, which is the moſt genuine and natural Interpretation, that which I put upon the Word, or that which my Lord Biſhop of Rochefter doth; which ſo highly reflects on the Honour and Juſtice of your Lordſhips, and the Houſe of Commons.

My Lords, I beg Leave in the next Place to take Notice of the Evidence that hath been given on the Behalf of my Lord Biſhop of Rochefter, and to conſider, whether that is ſufficient Evidence to ſatisfy your Lordſhips, of his Innocence. My Lords, we did read the Examination of Mr. Neynoe, one of his Examinations, and the laſt that was taken; they on the other Side, call'd for three other Examinations, of which the laſt Examination, which we read, was an Abſtract; they read them all, and, my Lords, the Examination which we read, was conſiſtent with three other Examinations, with Relation to my Lord Biſhop of Rochefter; and I muſt own, that the Charge in the Examination of Neynoe, upon my Lord Biſhop of Rochefter, is only Hearsay from Kelly; that Mr. Kelly did tell Neynoe, that the Biſhop of Rochefter held Correſpondence with the Pretender and his Agents; and that he was employ'd by the Biſhop in writing

writing for him, and carrying on the said Correspondences : So far my Lords, it is Hearsay, what Mr. Kelly told *Neynoe*. Now, as to Mr. Kelly himself, it did affect him by charging that he had confess'd to *Neynoe*, that he did carry on such a Correspondence ; but as to my Lord Bishop, it cannot affect him but as Hearsay, and we must agree, that if there was nothing else in the Case but this, all the Arguments made Use of against such Evidence, would be of great Weight. My Lords, I can't say, that this Charge from *Neynoe's* Examination is of Weight to charge the Bishop of *Rocheſter*, so as to condemn him. My Lords, they have urg'd, that if this Charge is not to be believ'd, all comes to nothing : This, say they, is the Foundation, and if *Neynoe's* Examination is not sufficient to affect the Bishop of *Rocheſter*, then all the subsequent Evidence falls to the Ground.

I beg Leave to observe first, that if we had not *Neynoe's* Examination, the Proof against my Lord Bishop of *Rocheſter* is as strong without it as with it ; it is certainly Evidence of the Conspiracy in general, but as to the Bishop, it is only a Circumſtance to ſhew, that another Man had ſaid of the Bishop of *Rocheſter*, that he was carrying on a Correspondence with the Pretender, &c.

But taking the Examination of *Neynoe*, out of the Case, and conſidering the other Facts mention'd and prov'd to your Lordships, there is no Occaſion of *Neynoe's* Examination ; whether *Neynoe's* Examination be false or true, is not material : There is ſufficient to prove the Bishop of *Rocheſter* guilty, for they can't deſtroy the other Facts and Circumſtances ; and as long as they ſubſiſt, they prove the Bishop of *Rocheſter* to be the Perſon concern'd in carrying on this Correspondence.

I beg Leave to obſerve in *Neynoe's* Examination, there is ſomething more than Hearſay, there is a Fact in it, and we are able to ſupport that Fact by other Evidence. *Neynoe* ſays, that he hath gone ſeveral Times with Kelly to the Bishop of *Rocheſter's*, and hath ſtaid a conſiderable Time for him. My Lords, we ſhall prove by another Witneſs, that *Neynoe*, about that Time, came ſeveral Times to a Houſe, where he ſaid, he waited for a Friend of his that was gone to the Bishop of *Rocheſter's*, and he ſtaid and waited for him three or four Times, for an Hour, and an Hour and Half together. This will confirm what *Neynoe* ſaid in that Reſpect to be true.

They

They say there are several Improbabilities and Inconsistencies contain'd in *Neynoe's* Examination; to the Improbabilities, some of them are mention'd as if there was great Weight in them. That so much insisted on by my Lord Bishop himself, is, that *Neynoe* says, he was employ'd to write Memorials; and the last he wrote, was in *December*, and that was to desire the Regent of *France* to furnish a Body of 5000 Men, to come and invade these Kingdoms: The Observation made by the Bishop of *Rochester* is, where are these Memorials? Why did he not keep Copies of them? For he was at that Time concern'd in a Design to serve himself one Way or other; if he design'd to betray those Persons he corresponded with, it would have been of Service to have kept those Memorials, to have deliver'd them to the Government. If on the other Side, he had kept to his Friends, it would have been proper to have kept them, in order to create a Confidence in him, and to shew the Part he had in the Conspiracy. These Observations can have no Weight, when your Lordships come to consider this was in *December*, and there was never any Application by him to make any Discovery of this Conspiracy till *July* following. As to the Service it might be to keep them with Respect to his Party, my Lords, we humbly apprehend, that considering him a Man engag'd in a Correspondence of this Kind, a Memorial of this Nature drawn up by him can be of no Use, but to detect himself and injure his Party, if he happens to be taken up, and such a Memorial found upon him; therefore it was necessary to destroy it.

My Lords, there is another Thing mention'd with Relation to *Watson*, and the Improbability of his being the Earl *Marischal*; but *Neynoe* does not say that he was the Earl *Marischal*, but says, there was one *Henry Watson*, which he took to be a fictitious Name, and does not know who he really was, but he took him to be the Earl *Marischal*, and he gave him the Heads to draw up these Memorials. We apprehend, it is not material who *Watson* was; he is a Person that employ'd *Neynoe* to write these Memorials, and he might be the Earl *Marischal*; *Neynoe* says he took him to be so; say they, if it was the Earl *Marischal*, why should he lie several Nights with *Neynoe*, this, say they, is very improbable. If it was him, he was to conceal himself, and take the fittest Place for that Purpose; therefore conversing with *Neynoe*, and not owning himself who he was, is not improbable. It is probable,

bable, he would not discover himself to every Person? and tho' *Neynoe* was a Person engag'd in the Conspiracy, if *Neynoe* did not know him to be the Earl *Marischal*, it might not be proper for him to discover himself to *Neynoe*. I think these are the principal Things objected; there are some other little Matters, but I think, dwelling on such Objections as these, is but mispending your Lordships Time.

My Lords, that which we humbly insist upon, is, whether *Neynoe's* Examination is an Examination to be credited or not credited? We agree it is only Hearsay, as to the Bishop of *Rocheſter*, and if we had not other Matter, it would not be sufficient; so that we apprehend, its being true or false won't affect this Case. If your Lordships are of Opinion 'tis false, there is sufficient Evidence against the Bishop of *Rocheſter* without it.

In the next Place, they have produc'd in Evidence several Persons that come and give your Lordships an Account of *Neynoe's* Confessions to them. There is one Mr. *Bingley*, Mr. *Steward*, and Mr. *Skeene*; and two other Persons, that give an Account of what Mr. *Skeene* and *Steward* had told them, Mr. *Neynoe* had said. *Bingley* by his Evidence would have it believ'd, that *Neynoe* had told him, he was employ'd by some Person in Power, to fix several Things upon several Persons that they were innocent of; that he had said several Things that were false, and had impos'd upon a Great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this, for by what hath been insisted upon by my Lord Bishop of *Rocheſter* and his Counsel, it should seem as if they were labouring to shew from these Persons that they have call'd to be examin'd, that all the Letters relating to this Correspondence, the Letters of the 20th of *April*, and subsequent Letters, that relate to the particular Facts that denote *Jones* and *Illington* to be my Lord Bishop of *Rocheſter*, were contriv'd between *Neynoe* and some other Persons, in order to charge my Lord Bishop of *Rocheſter* with being concern'd in this Conspiracy. This seems to be what they are labouring at by this Evidence.

My Lords, as to *Neynoe's* being a Person employ'd in writing these Letters of the 20th of *April*, or any subsequent Letters, in Manner as is suggested, we shall

shew your Lordships that it's impossible to be true; we shall shew, that the Letter of the 20th of *April*, and all the other Letters that mention the Facts which denote the Bishop of *Rocheſter*, were all intercepted, and in the Hands of the Government, before ſuch Time as it was known among the Miniſtry that there was ſuch a Perſon as *Neynoe*: For *Neynoe* made Application to the Honourable Perſon mention'd by their Witneſſes, ſubſequent to all this Correſpondence, when theſe Letters were in the Hands of the Government, as a Perſon that could make Discoveries to the Government. Therefore that Inſinuation muſt vaniſh, that *Neynoe* was employ'd to forge Letters which contain Facts under the Names of *Jones* and *Illington*, to charge the Bishop of *Rocheſter*; and that even thoſe Letters of the 20th of *April* were forg'd by him.

We ſhall go into the Character of Mr. *Bingley*, who hath at your Lordships Bar, own'd, that he hath been whipt, pillory'd, and imprison'd; and as he hath taken his Degrees as he own'd at your Lordships Bar, conſequentially he hath taken the Oaths.

Mr. *Skeene* hath likewiſe been produc'd as a Witneſs, and he carries his Evidence farther than Mr. *Bingley*; for whereas Mr. *Bingley* ſays, that *Neynoe* confeſs'd he had impos'd upon that Honourable Perſon, and had mention'd Things that were falſe: yet he could not ſay, that after the Time of his Examinations, after *Neynoe* was brought from *Dover* to Town, he had confeſs'd to him that what he had ſaid on thoſe Examinations, was falſe: But *Skeene* ſays, that after his Examinations, he own'd that they were falſe. The laſt Examination was the 27th of *September*, and he was drown'd that Night; but as to the Examination, before the 27th of *September*, and out of which that is collected, Mr. *Skeene* ſays, *Neynoe* ſaid to him, that they were falſe.

My Lords, as to Mr. *Skeene*, we ſhall ſhew what Sort of a Man he is, a Man attainted of High Treason; and though he is pardoned, as to his having his Life and Liberty given him, he is, in all Reſpects an attainted Perſon: He was cry'd and condemn'd in the County of *Surrey*, for being concern'd in the *Preſton* Rebellion, and conſequentially a Man of no Credit. And as to what he and *Steward* ſwear, relating to a Converſation with *Neynoe*, when in Cuſtody, we ſhall ſhew, they never were together after the firſt Night, when they ſupp'd together.

He

He was ask'd, whether it was the first Night that he had this Conversation with *Neynoe*, and he did not pretend he had any Conversation of this Nature with *Neynoe* the first Night; and if it was not the first Night, we shall shew, it could not be afterwards, for *Neynoe* was kept in a Room by himself, *Skeene* and *Steward* by themselves in a Room underneath; and therefore this seems to be a Story contriv'd between *Skeene* and *Steward*.

We shall shew, it could not be possible for them to converse together, for *Skeene* and *Steward* were lock'd up in their Room; *Neynoe* was lock'd up in his Room separate and apart from theirs; so that they could never have Correspondence with him, nor come near him.

Another Thing is sworn by one of them, about a Message sent to him by *Neynoe*, and a Paper, while they were in Custody of the Messenger; and he says, this Paper was brought to him by the Messenger's Maid from *Neynoe*, and that this Paper contain'd a Justification of my Lord *Orrery*, expressing that he knew nothing of my Lord *Orrery*, but what he said of him was utterly false; that the Messenger finding he had some Paper, he, to conceal this Paper, burnt it: But that the Maid came to him with such a Message or Paper, is false, the Maid never did, nor did the Messenger know of the Paper, as we shall prove to your Lordships: And when we have prov'd this, we humbly apprehend, we have taken off any Credit that could be given to what these People have said, if they have said any thing material. My Lords, before I leave this Head, I beg Leave to observe another Thing as to *Skeene*. He, upon his Examination concerning a Discourse with *Pancier*, denies it entirely, but says, that what *Pancier* hath inform'd in Relation to him, is false. We shall call *Pancier*, who will inform your Lordships, that *Skeene* hath own'd, that he was privy to this Conspiracy, and knew who were concern'd in it.

Town, there are several noble Persons nam'd to be concern'd, that there is no Reason to say from what *Skeene* may have said of them, that they are guilty: But such as he may have us'd the Names of Great Persons, designedly to keep up the Spirit of their Party, by telling them such and such Persons were concern'd; and if there is no other Evidence but what such a Person

hath said, the noble Persons mention'd, will not be affected by it.

There is another Head I shall beg Leave to mention, that they would have it taken that there was a Design to forge Letters, in order to charge my Lord Bishop of *Rochester*, and several other Persons. Say they, it was easy to get Information of such Circumstances relating to the Bishop and his Family, as are mention'd in the intercepted Letters, and then to write such Letters with a Design falsely to charge the Bishop with having been concern'd in carrying on a treasonable Correspondence. Your Lordships will please to consider who this Charge must fall upon of forging the Letters of the 20th of *April*, or the Letters that shew *Jones* and *Illington* to be the Bishop of *Rochester*.

My Lords, we have prov'd them all to be Mr. *Kelly's* own Hand-writing, or Letters that have come in Answer to them. They have objected, we have not given sufficient Proof of *Kelly's* Hand; say they, it is prov'd by Clerks of the Post-Office, who never had compar'd one original Letter with another; but at last they stopp'd an original Letter, dated the 20th of *August*, after the Correspondence had been carry'd on several Months; and then come and swear, that the original Letters that were forwarded, were of the same Hand-writing with that of the 20th of *August*. Can this be look'd upon a sufficient Proof? But we submit it, their Evidence is much stronger than if they had only compar'd one Letter with another; for they not only had these Letters come every Week, but they were employ'd every Time these Letters came, to copy them; so that the Hand-writing of these Letters must by the constant stopping of these Letters, and their copying of them, be so imprinted on their Memory, that they are much better Judges of the Hand, than if they had two of these Letters to have only compar'd them together: And the Hand-writing was so well known to them, that they could, as they have inform'd your Lordships, when any of these Letters came, distinguish them by the Hand-writing of the Supercriptions, before they had open'd them, and they were never mistaken: And this we humbly apprehend, is as satisfactory an Evidence as can be given, that these Letters were the Hand-writing of Mr. *Kelly*, provided, the Letter of the 20th of *August*, which I shall take Notice of by and by, is sufficiently prov'd to be of his Hand-writing. Taking it, then, my Lords,
that

that these Letters are the Hand-writing of Mr. Kelly, and of his Correspondents in Answer to them, I don't find that my Lord Bishop of *Rochester* hath charg'd Mr. Kelly with having any Malice to him : And if he had no Malice to the Bishop of *Rochester*, what should induce him to write those Letters, on purpose to charge the Bishop of *Rochester* with being concern'd in this Conspiracy ?

My Lords, we humbly apprehend, the Pretence of these Letters being forg'd, must insinuate, that Kelly, a vile Fellow, intending to charge the Bishop of *Rochester* with being concern'd in this Conspiracy, and make him liable to forfeit every thing that was dear to him, hath contriv'd Letters containing Circumstances, in order to fix him to be the Person denoted by the Names of *Jones* and *Illington* ; he hath written Letters, and by Combination receiv'd others in Answer to them, for this Purpose ; and by these wicked and malicious Practices, hath furnish'd this Evidence against the Bishop, who is an innocent Man. This is the Substance of the Defence on this Head, and whether your Lordships will believe this, we must submit to your Lordships. Your Lordships have had Kelly before you, and by his Behaviour have had no Reason to think that he had any Malice against my Lord Bishop of *Rochester*, or any Intention to prejudice him.

The next Part of the Evidence I shall beg Leave to observe, is a Part very considerable, and so far from being a Defence, that the Defence attempted hath confirm'd and strengthen'd the Evidence against my Lord Bishop of *Rochester* ; that is, with Relation to the Letter taken among my Lord Bishop's Papers, directed to *Dubois* ; a Letter, which they observe, don't contain any Treason, or is of any treasonable Import ; but it seems to be a Letter of Indifference, and I believe, as such, it was not taken Care to be destroy'd, as it would have been, had there been any Apprehension that Use would have been made of it, as now, against the Bishop of *Rochester*. The Use we make of it is, to shew that Mr. *Johnson*, or Mr. Kelly, was a Person employ'd by my Lord Bishop of *Rochester* in writing Letters for him. My Lords, your Lordships will observe by the Letter, he says, *I have heard nothing from you since the Letter I had about two Months ago by Mr. Johnson, to which I immediately in his Hand returned my Answer.* If this is the Bishop of *Rochester*'s Letter, either in his

own Hand, or his Letter writ by another Person, it plainly proves what we infer from it, that *Johnson*, i. e. *Kelly*, writ for the Bishop. Your Lordships will observe, it is a Letter writ in a Hand which no Man writes, a stiff Hand almost like Print; and it is plain that it is writ to disguise the Hand of the Writer, whoever he was. At the latter End of the Letter, when the Person that writ it comes to be tired and off his Guard, there are several Letters which, compared with the writing of my Lord Bishop of *Rocheſter*, and what is own'd to be his, appears to be his writing. In the Date of the Letter, which is *December*, the D you frequently find in the Bishop's Hand-writing; your Lordships observe, the Letter E that frequently occurs in the Bishop's Writing; and your Lordships by comparing that with the Letter produc'd, will find that they exactly agree. Whether or no your Lordships won't think it on those Circumstances, to be the writing of my Lord Bishop of *Rocheſter* in a disguis'd Hand, we must submit to your Lordships. But, my Lords, suppose it was not his Hand-writing, here is Evidence that it was his Letter; and that is evident, because it is under his Seal, it is seal'd with his own Seal, a Seal that he had in his Custody, and made Use of no longer ago than the 26th of *February* last: I think that is the Day a Letter was taken from his Servant. This Matter hath been controverted by my Lord Bishop. He hath call'd Engravers, who believe Seals may be counterfeited, and Impressions may be taken off the Wax, and another Impression made, so as to make it difficult to know which is which: They were a little loose in answering the Question, Whether or no, if the Seal from whence the Impression was to be taken, was broken in the Middle, it could be done. But one said, the Seal might be mended, and it might pass unobserv'd; but I find it is extremely difficult. But they did say, Seals may be so counterfeited, that it may be difficult to discover one from the other. My Lords, this is to insinuate, that after such Time as the Letter was taken upon my Lord Bishop's Servant, the Person in whose Custody this other Letter of *Dubois* was (which is prov'd to have been taken the 24th of *August*, amongst the Bishop's Papers) hath caus'd an Impression to be taken off the Seal with which the Letter to *Dubois* was seal'd, (the Wax broken in two, as it was, in order to fix it upon the Letter that was taken upon my Lord Bishop's Servant,