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1807. 88. Containing
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and Domestick.

WITH A
Chronological Diary
OF ALL

The remarkable OCCURRENCES,
viz. Births, Marriages, Deaths, Removals,
Promotions, &c. that happen'd in this
Year: Together with the *Characters* and
Parentage of Persons deceased, of emi-
nent Rank.

VOLUME IX.

For the Year 1724.

LONDON,

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N. B. This Title is design'd for
such Persons as think fit, to bind the
four last *Registers* in one Volume.
And, for the same Reason, a Table
is added at the End of the Thirty-
sixth *Register*, of all the principal
Matters contain'd in them.



THE

76 SEP. 92

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Historical Register.

NUMBER XXXIII.

GREAT BRITAIN.



Having been oblig'd for Want of Room in our last Register to omit the Tryal of the Bishop of Rochester, we will begin this Register by supplying that Omission.

Trial of Dr. Francis Atterbury, Lord Bishop of Rochester, at the Bar of the House of Lords.

ON Monday the 6th of May, 1723, about Eleven of the Clock in the Morning, the Bishop of Rochester was brought to the Bar of the Lords House, in Order to make his Defence against the Bill to inflict certain Pains and Penalties upon him, with the Assistance of his Counsel, Sir Constantine Phipps and Mr. Wynne. After the Reading of the Bill, the King's Counsel open'd the Nature of it, display'd the Heinousness of the Conspiracy, and in particular, aggravated the Crime of the Prisoner at the Bar, who, as the Preamble suggested, was principally concern'd in forming, directing, and carrying on the said wicked, and detestable Plot. This done in Order to prove the Conspiracy in general, they offer'd to read several Extracts of Letters, which the Government had receiv'd from abroad: But this was oppos'd by the Bishop and his Counsel, who alledg'd, that Extracts of Letters, some of them from Anonymous, or at least, from unknown Persons, ought not to be admitted as Evidence, and that according to the Method of legal Proceedings,

Proceedings, the Originals themselves ought to be produc'd. After the Counsel on both Sides, had canvass'd that Matter to and fro, they and the Prisoner were order'd to withdraw, and then a Motion was made, and the Question put, that the Extract offer'd by the Counsel for the Bill, of the Letter from Sir Luke Schaub to the Lord Cretaret, be read as Evidence; which being carry'd in the Affirmative by 95 Voices against 37, another Motion was made, and the Question put, Whether the Advice inclos'd in the Letter from Sir Luke Schaub, be read, tho' this House be not acquainted with the Person who gave that Advice?

This Question being also resolv'd in the Affirmative, the following Lords enter'd the Dissent, viz.

Stratford,	Masham,	Foley,
Osborn,	Anglesey,	Exeter,
Craven,	Cowper,	Mantjoy,
Salisbury,	Brook,	Wesson,
Northampton,	Litchfield,	Windsor de Br.
Saxford,	Brace,	Compton,
Aylesford,	Denbigh,	Cardigan,
Gower,	Guilford,	Hugley,
Buckett,	Dartmouth,	Athburnham.
Francis Cecil,	Trevelyan,	

Then the Counsel for the Bill offer'd to produce Copies of Letters intercepted at the Post-Office, Part of them written in Cypher, and afterwards decypher'd; But this too, was strenuously oppos'd by the Bishop and his Counsel, who put several puzzling Questions to Mr. Willes, one of the Decyphers, about the Nature and Certainty of their Art. This Disquisition lasted till about Nine of the Clock in the Evening, when the Prisoner and the Counsel on both Sides being withdrawn, a Motion was made, and the Question put, that Willes be oblig'd to produce this Key of the Cypher? This Question being resolv'd in the Negative by 80 Voices against 43, another Motion was made, and the Question put, that the said Letters intercepted at the Post-Office, and decypher'd, be read as Evidence, which was carry'd in the Affirmative, and then the further Hearing of that Affair was put off to the next Day, and the Bishop remanded to the Tower.

The next Morning, (Tuesday May 9) he was brought again to the Bar of the Lords House, where the Counsel

fel for the Bill going on with their Evidence, offer'd to read the Examinations and Confessions of *Philip Noyce*, deceased; which was strongly oppos'd by the Bishop and his Counsel; but most of their Objections having already been over-ruled in the Cases of *Plunket* and *Kelly*, and the Lord Viscount *Townshend* having affirm'd, and Mr. *Robert Walpole* attested the said Examinations, it was resolv'd by a Majority of 85 Voices against 41, that they should be admitted as Evidence; upon which, the said Examinations were read. Then the Counsel for the Bill offer'd to read several Letters intercepted at the Post-Office: Upon which the Bishop desir'd and insisted, that the Clerks of the Post-Office be examin'd, to these two Questions, *First*, Whether they had a sufficient Warrant and Authority, to stop and open the said Letters, and from whom they had such Warrant and Authority? *2^{dly}*, Whether the Clerks of the Post-Office who copied the Letters, whose Originals had been forwarded, had intercepted the said Letters themselves, or receiv'd them from somebody else? The Bishop and the Counsel on both Sides being withdrawn, the Courtiers put the following Question, *viz.*

That it is the Opinion of this House, that it is inconsistent with the publick Safety, as well as unnecessary for the Prisoner's Defence, to suffer any further Enquiry to be made upon this Occasion, into the Warrants which have been granted by the Secretary of State for the stopping and opening of Letters which should come on or go by the Post, or into the Methods that have been taken by the proper Officers at the Post-Office, in Obedience to such Warrants?

After a long Debate that lasted 'till near Eleven of the Clock at Night, the said Question was carried in the Affirmative, by a Majority of 82 Voices against 40; upon which several Lords enter'd the following Protestation, *viz.*

Dissentient

1. Because we apprehend, that in all criminal Prosecutions, the Cross-examining of Witnesses is necessary for the Defence of the Prisoner, and for the Satisfaction of those who are to judge of the Facts alledg'd against him, in Order to the discovering of Truth, and detecting any fraudulent Evidence which should be offer'd; and the Resolution above recited, does, in our Opinions, debar the Bishop of *Rochester*, and every other Person concern'd, from asking any Questions of the Clerks of

the Post-Office, who are brought as Witnesses to the Bar, relating to the stopping and opening of Post Letters tho' Letters pretended to be stopp'd and open'd at the Post-Office, are read as Evidence against the Prisoner. And we conceive, that the preventing any further Enquiry on these Heads, must lay this House under great Difficulties, when they come to form a judgment on those Letters, the Validity of which will in a great Measure, depend on the Proof given of their having been truly stopp'd and open'd, as asserted.

We apprehend it to be impossible for this House to determine, that the Enquiry which is desir'd, is unnecessary to the Defence of the Prisoner, till he shall come to make his Application; and we conceive, he should have the Liberty of asking what Questions he or his Counsel think proper of the Clerks of the Post-Office, relating to the stopping and opening of Letters, without acquainting the House, what Use he intends to make of their Answers; And this appears to us to be highly reasonable, essential to Justice, and warranted by the Methods which this House hath hitherto allow'd the Counsel for the Support of the Bill to proceed in, who have, during the whole Course of this Examination, reserv'd the Application of the Evidence they have offer'd, till they should judge convenient to make it.

Scarfsdale,
Trower,
Compton,
Wesson,
Unbrid,
Gower,
Stafford,
Foley,
Pomfret,
Brook,

Wharton,
Craven,
Northampton,
Bingley,
Wiltoughby de Br.
Exeter,
Ashburnham,
Hay,
Denbigh,
Poulet,

Masham,
Aggersford,
Bathurst,
Litchfield,
Osborn,
Bruce,
Cardigan,
Anglesey.

The next Mornin^g (Wednesday May 8.) the Bishop of *Recheſter* being brought again to the Bar of the Lords House, the Counsel for the Bill went on with the rest of their Evidence, with less Interruption than the two preceding Days. The most remarkable Passage in this Day's Proceeding, was, that *William Wood* late Coachman to the Bishop, being produc'd as a Witness, that Prelate ask'd him, What Reward he had receiv'd, or been promis'd, to depose against his Master? Which being represented

presented as a Brow-beating of the King's Evidence, the Lord Chancellor rebuked the Prisoner for it. The Counsel for the Bill having summ'd up their Evidence, about Four a-Clock in the Afternoon, the Lords adjourn'd to the next Day.

Accordingly, on Thursday the 9th of May, the House of Peers being sat, and the Bishop brought to their Bar, his Counsel made Remarks and Observations on the Evidence produc'd on the other Side, and open'd the Evidence they had to offer, in Defence of their Client. Their cheif Business being to invalidate Neynoe's Examination, on which, great Stress was laid by the Counsel for the Bill, they observ'd, that what he pretended to know of the Bishop of Rochester, was only by Hearsay from Mr. George Kelly: But that as Hearsay was never admitted as legal Proof, much less ought it to have any Weight in this Case, where a dead Man's, Neynoe's, Hearsay, was deny'd, and contradicted by Kelly, now alive. That Neynoe's Examinations were neither sworn to, nor sign'd, by him: But were he still living, and offer'd to confirm them by Oath, they could hardly be of any Force, since they were ready to prove, that he was drawn in to say and unsay, to affirm or deny any thing. To this Purpose, they offer'd to examine three Witnesses, viz. Mr. Bingley, Mr. Stene, and Mr. Stewart, who were in the Custody of a State Messenger, at the same Time with Neynoe, and had an Opportunity to converse, or communicate together; but before they enter'd upon that Examination, the Bishop taking Notice, that Mr. Chancellor of the Exchequer was at the Bar, he said, 'It was not proper he should hear Depositions that affected him.' Whereupon Mr. Walpole withdrew.

Mr. Bingley being sworn, related what he knew concerning Philip Neynoe, with whom he had a great Intimacy, and was stopp'd with him at Deal, as they endeavour'd to go over into France, particularly, that Neynoe having been taken up, some Time before, upon Account of several scurrilous Libels he had writ against the Government, and publish'd in the *Free-holder's Journal*, and being under an Apprehension of being treated with the utmost Severity of the Law, on the one Hand, and tempted with large Promises of Reward, on the other, he consented to be employ'd by the Ministers, and to accuse the Earl of Orrery, the Bishop of Rochester, and several other innocent Persons, of having form'd

a Conspiracy against the Government; That the Lord T——d had declar'd a Prejudice, upon some private Account to the Bishop, and was resolv'd to pull down the *Pride of that haughty Prelate*. That Mr. Walpole instructed him (*Neynor*) in private, what he should say in his Examinations before the Lords of the Council, and at divers Times, gave him great Sums of Money. That *Neynor*, who all this while had nothing in View, but to impose on those who oblig'd him to act so villainous a Part, and to get out of their Reach, propos'd to the Ministers his going over to *France*, in order to gain further Intelligence of the Conspiracy, by narrowly observing the Steps of the Earl of *Marr*, Lord *Lansdown*, and other Persons suspected of being Agents for the Pretender in *France*; That Mr. Walpole seem'd at first, to approve his Overture, but whatever was the Reason, he afterwards chang'd his Opinion, and suspecting *Neynor's* true Intention to cheat him, and give him the Slip, he caus'd him to be watch'd, and stopp'd at *Deal*.

This Deponent (*Mr. Bingley*) added, that he himself had been tamper'd with, and offer'd a Reward of 300*l*. if he would turn Evidence against the Bishop of *Rockefter*, which he refus'd to do.

The Lord Viscount *Townshend*, who, as well as the Chancellor of the Exchequer, was charg'd by this Deposition, in his own Vindication observ'd, that no Regard ought to be had to the Evidence of a notorious and zealous Jacobite, who had been convicted, whipt, pillory'd, and imprison'd at *Dublin*, upon two Indictments, one for publishing a treasonable Book call'd *Nero*, the other for speaking seditious Words, and this, after having taken the Oaths to the Government; all which make him a less credible Witness in the present Case, than if he had, in a common Tryal, been prov'd a perjur'd Witness.

Whatever Weight was laid on this Objection, Mr. *Steele* confirm'd upon Oath, a great Part of Mr. *Bingley's* Deposition, adding, That *Neynor*, pursuant to his Instructions from the Minister who employ'd him, had propos'd to him to be Evidence against the Lord *Orrery*, and the Bishop of *Rockefter*: But that having rejected his Proposal, he confess'd to him, and to Mr. *Stewart*, that all he had done was only to amuse the Ministers till he could get out of their Power, but that he had rather be torn to Pieces by wild Horses, than be an Evidence, and confirm by Oath, before a Court of Judicature,

ature, what he had been oblig'd to say before the Lords of the Council; that being one Day in private with the Minister abovemention'd, he was struck with such Remorse and Indignation at the infamous Part he forc'd him to act, that he was upon the Point of seizing on a Sword that lay on the Table, and running him through, in order to put an End to the Conspiracy. And that this Deponent having ask'd *Neynoe*, Whether he knew any thing of a Plot? He answer'd, he knew of Two, one of Mr. *Walpole's* against some great Men, the other of his own, which was only to get eighteen or twenty thousand Pounds from Mr. *Walpole*; and whatever became of the first, he doubted not, but he would have brought the other to bear. Had he but once set Foot on the French Shore, and had not *Bingley's* Blundering marr'd all. Moreover, Mr. *Skeene* endeavour'd wholly to destroy Capt. *Pancier's* Deposition, by saying, that he never told him any thing, but what he had himself out of the publick News-Papers.

Mr. *Stewart* being also examin'd upon Oath, confirm'd what had been depos'd by Mr. *Bingley*, and Mr. *Skeene*, adding, That *Neynoe* had endeavour'd to engage him to turn Evidence against the Earl of *Orrery*, which he refus'd to do, having never spoke but once with his Lordship, to whom he was introduc'd by a Gentleman, upon Occasion of some Book which he was to get for him.

Most of these Particulars were confirm'd by *Corbet Kynaston*, Esq; who depos'd, that he had them from Mr. *Bingley*, Mr. *Skeene*, or Mr. *Stewart*, before Mr. *Neynoe* was drown'd: But little Stress was laid by the Majority of the House of Peers, on these Depositions, the three first Witnesses being known to have been deeply engag'd in the Pretender's Cause.

This being over, the Counsel for the Bishop labour'd to clear him from the most material Part of the Charge against him, viz. That he did dictate to Mr. *George Kelly*, the three Letters dated April 20, 1722, to General *Dillon*, the late Earl of *Marry*, and the Pretender; suggesting, that it could not be possible he should at that Time, dictate those Letters being disabled in his Chamber, and constantly attended by some of his Servants, who were examin'd, and depos'd, That no Stranger came near him about that Time, and for some Time before and after; and that they never knew of Mr. *Kelly's* being the Bishop's Secretary, or being intimate with him, which,

had he been so, could not have escap'd their Knowledge. The Counsel for the Bishop read also an Affidavit from Mr. Gordon, Banker at Boulogne, importing, That he never receiv'd, nor forwarded any Packets from Mr. George Kely, nor ever had any Dealings or Correspondence with him; and they likewise examin'd Witnesses; and among the rest, Erasmus Lewis, Esq; to prove how easily Hand-Writing may be counterfeited.

Then Sir *Constantine Phipps*, one of the Bishop's Counsel, spake in his Defence, as follows:

My Lords,

BY the Appointment of this Honourable House, I have the Honour to attend your Lordships, as Counsel for the Reverend Prelate, the unfortunate Prisoner at the Bar; and persuade myself, it will not be difficult to defend his Lordship from the heavy Pains and Penalties of this Bill; since the Counsel for it confess, that it is supported only by Circumstantial Evidence.

Bills passing into Laws for taking away Mens Liberties and Estates by Circumstances only, are new. Convictions by Circumstances, were never heard of in Ages past; and I hope, will never be known in this, or any which is to come: And though one of the Gentlemen said that circumstantial Evidence is sufficient at this Time of Day; I hope, the Law is the same at this Time of Day, as ever; and that the Lives and Fortunes of English Subjects will be as well protected and defended by your Lordships, as they were by your Predecessors.

The Securities which the Laws have provided for our Liberties and Estates, and the Happiness, that we cannot be depriv'd of them, but by full and legal Proof, are, Advantages which were obtain'd at great Expence of Blood and Treasure, by your Lordships Noble Ancestors; and we doubt not but you will transmit them to Posterity, as entire, as they have been continu'd down to your Lordships.

The Law is the Rule of Mens Actions; and Persons accus'd as Criminals for Facts committed by them, ought to be try'd by the Laws that were in Force at the Time of the Facts committed, *secundum Allegata & Probata*. But Laws made *ex post facto*, to punish Men for Facts which were not Offences when they were committed, render

render all Things that are dear to *Englishmen* precarious; and for that Reason have been as often condemn'd, as they have been made.

The Charge against the Bishop and Mr. Kelly, are so interwoven; that I beg you will excuse me, if in my Vindication of him, I urge any thing, which I offer'd in Behalf of Mr. Kelly, when I had the Honour to attend your Lordships as his Counsel: But I shall take Care to repeat no more than is necessary.

I am very far from denying or contesting the Power of Parliaments as to Bills of Attainder: But I hope, I may observe, that such a Power hath been very rarely exerted, unless upon extraordinary Occasions, and in Cases of Necessity: I hope too, I may be permitted to shew, that the Case of my Lord Bishop is not within either of those Reasons.

He never withdrew himself out of the Kingdom; never fled from Justice, but was always amenable and forth-coming, ready to be try'd according to the usual Methods of Justice. And the Attainders of *Mortimer*, and the Earl of *Arundel*, in *Edward III's* Time, of Sir *Thomas Haxey* in *Richard II's* Time, and others afterwards, were revers'd, because the Persons accus'd were forth-coming, and might have been brought to a Tryal according to the usual Course of Justice. Wherefore I hope, the same Reasons, which prevail'd with those Parliaments to reverse those Attainders, will have Weight enough with your Lordships to prevent this Bill's passing into a Law.

The Parliament, at the Restoration, did not think fit to interpose their legislative Authority, even in the Case of the Regicides; but, left such of them, as were alive, and forth-coming, to the ordinary Methods of Justice, and gave them a fair Tryal for their Lives and Estates. The only remarkable Bill of Attainder, which hath been in some Ages (except of such, as were in actual Rebellion, or fled from Justice) was that of Sir *John Fenwick*. I own, I mention'd this Case on Behalf of Mr. Kelly; and it being a Case so material for my Lord Bishop's Defence, I cannot in Justice to his Lordship, omit making some Observations upon it: From which it will appear, that the Reasons given for passing that Bill, are the strongest Arguments in the World against this.

The Preamble of Sir *John Fenwick's* Attainder, shew'd the Necessity of it: For the Preamble set forth, ———
Tha:

That Sir *John Fenwick* was, upon the Oaths of *George Porter*, and *Cardel Goodman* indicted of High Treason; that he obtain'd his Majesty's Favour to have his Tryal delay'd from Time to Time, upon his repeated Promises of making an ingenuous and full Confession. That several Times were appointed for his Tryal; at one of which, he had been actually try'd, had it not been for the Expectation of the Discoveries so often promis'd; That since the Times appointed for his Tryal, *Cardel Goodman*, one of the Witnesses, was withdrawn, so that he could not be had to give Evidence. And it appear'd upon the Tryal, that *Porter* had been tamper'd with, and had 300 *l.* paid him, and 200 *l.* more promis'd him to go beyond Sea. This made the Presumption very strong, that *Goodman* was sent away by some of Sir *John's* Friends. So that there was an Indictment against him; Two Witnesses were sworn upon it, and prov'd the Treason; and he promis'd from Time to Time, to make Discoveries.

Hath my Lord Bishop been indicted? Hath there been any Oath made against him? Did he ever impose upon his Majesty or the Ministry, by promising to make any Discoveries? Hath he sent away one that was Witness against him? Since these Circumstances were thought necessary by the Parliament at that Time to induce them to pass that Act; and the present Case is not attended with any one of these Circumstances: This, we humbly conceive, is a Reason, why your Lordships should not pass this Bill.

The greater the Offence is of which any Person is accus'd, the plainer and clearer the Proof ought to be: And the Lord *Coke*, in his 4th Institute, Page 37, speaking of the Attainder of *Cromwell*, Earl of *Essex*, by Parliament, says, 'The more high and absolute the Jurisdiction of the Court is, the more just and honourable it ought to be in its Proceedings, to give Example of Justice to inferior Courts.'

The Offence charg'd on my Lord Bishop is of the highest Nature; and this Jurisdiction the most high and absolute: therefore the Proceedings, without Doubt, ought to be the most just and honourable.

The Punishment inflicted by this Bill, is the greatest that can be, next to Death itself: For what can be worse, than for a Reverend Prelate of such advanc'd Years, and of so infirm a Body, to be banished into another Country,

Country, and be forc'd to seek his Bread in desolate Places.

The Punishment is still much severer to his Lordship, who hath sav'd nothing to support himself: For his eminent Hospitality, and his extensive Charity, tho' they have fitted and prepar'd him to live in another World, yet have disabled him from subsisting in another Country: There will he himself want that Charity, which he so liberally bestow'd upon others, and must beg upon his Crutches, or starve.

As to the Evidence offer'd against his Lordship, I humbly apprehend, the Proof would not be sufficient at Law to support an Indictment for the lowest Misdemeanour. And will your Lordships, in your great Wisdom and Justice, convict a Lord of Parliament, a Member of your own Body, and subject him to such severe Punishment, upon Evidence, that at Law, would not be sufficient to convict the meanest Subject of the most minute Trespas?

This, I humbly apprehend, will appear to be the Case, when the Charge against my Lord Bishop, and the Evidence to support it have been considered.

The Bill recites, That there was a detestable and horrid Conspiracy for invading his Majesty's Kingdoms with foreign Forces; for raising a Rebellion; for seizing the Tower, and City of London; and for laying violent Hands upon his Majesty's most Sacred Person, and upon his Royal Highness.

As to the seizing the Tower, and the City, and laying violent Hands on the King and Prince; neither of these Crimes is charg'd upon the Lord Bishop. But the Charge against his Lordship is, That he hath been deeply concern'd in forming, directing, and carrying on the wicked and detestable Conspiracy, by traiterously consulting and corresponding with divers Persons to raise an Insurrection within this Realm, and to procure foreign Forces to invade this Kingdom; and intending to raise a Rebellion at the Time of the Elections; and when the King went to Hanover; and at the breaking up of the Camp.

As to the 1st, viz. The sending for foreign Forces: The Bishop is not charg'd with being privy to any one of the three Memorials: For *Neyroe* says, he wrote them, and they were dictated to him by *Kelly* and *Watson*, whom he suppos'd to be the Earl's *Marischal*.

As to the Charge of raising a Rebellion at the Time of the Elections, 'tis founded on a Letter, sign'd 1378, and directed to Mr. Jackson; which, the Report says, the Committee have good Reason to believe, was from the Bishop of Rochester to the Pretender.

The Letter says, 'Notwithstanding this Opportunity is elaps'd, I agree with you, another may offer before the End of the Year.' And the Observation made upon it is, That it was wrote the 10th of April, when most of the Elections were over; so consequently the Opportunity was elaps'd.

The Letter of the 10th of April is suppos'd to have been wrote to the Pretender at Rome; it supposes a Letter to the Pretender had been wrote, taking Notice that an Opportunity was elaps'd at the Elections; and that an Answer had been made to that Letter by the Pretender, that another may offer before the End of the Year; which must be at least two Months before the Date of the Letter; and that was before the Elections were begun.

As for raising a Rebellion, when the King went to Hanover; it is inferr'd from dark Passages in Letters of the 20th of May, 1722, N. S. 9th of May, O. S. and 10th of May, O. S. which are said to have pass'd between Dillon, or his Secretary, and Kelly. And by comparing those Passages, you will observe, what Foundation there is for such a Charge.

In the Letter of the 9th of May, O. S. 20th N. S. Quitwell, suppos'd to be Dillon's Secretary, writes to Baker, suppos'd to be Kelly, 'That if this Post hath not brought an Addition of three to the Six, formerly come from Repey, it is time for Mrs. Jones to see, what is still wanting for the Purchase she intends to make.'

In the Letter of the 10th of May, O. S. Hatfield, who is suppos'd to be Kelly, writes to Howell, who is suppos'd to be Dillon's Secretary, 'That the King intends to set out early next Month, if they could then compass Barrels enough, the sooner the Wine comes, the better, your promises to be a good Customer.'

From hence, and from what Papier said Skene told him, 'tis insinuated, that great foreign Forces were to be brought in for the Pretender; That great Sums of Money were contributed for that Purpose; and that those Sums were under the Management of the Bishop of Rochester; and all this, because Quitwell tells Baker, 'If the last Post did not bring an Addition of three to six

fix, Mrs. Jones may see what is still wanting for the Purchase she intends to make.

Now, suppose, by *Quitwell* and *Howell*, are meant *Dillon's* Secretary; and by *Baker* and *Hatfield*, *Kelly* is intended: And suppose, that by the Addition of three to six, is meant a Remittance of Money; by Wine, are meant Soldiers, and by Mrs. Jones, is meant my Lord Bishop of *Rocheſter*: Yet can what *Dillon's* Secretary writes to *Kelly*, or what *Kelly* writes to *Dillon's* Secretary, affect the Bishop of *Rocheſter*? If it can; it is in the Power of any two Men, one reſiding here, and the other, beyond Sea, to take away the Life of any Man breathing. But ſuppoſe, we can make it appear, as moſt certainly we ſhall, that by Mrs. Jones, cannot be meant the Bishop; then what becomes of this Part of the Charge?

The next Thing to ſupport this Charge, is, a Paſſage in an Extract of a Letter, dated the Firſt of May, written from *Quitwell* to *James Baker*; in which 'tis ſaid, 'That Mrs. Jones, cannot take a better Time to have 'himſelf fitted with an eaſy Saddle, &c.' If an Extract of a Letter can be of any Weight, and the Conſtruction put upon it is to be allow'd; then the Bishop is turn'd General, or at leaſt a Colonel. For by *Neynoe's* Information and *Plunket's* Cypher, Saddlers and Saddles are *Iriſh* Soldiers and Regiments: So the Bishop is represented as undertaking to raiſe a Regiment of *Iriſh* Soldiers, and to mount on Horſeback himſelf to command them.

As to the third Thing charg'd, which was to raiſe a Rebellion at the breaking up of the Camp, there is no Pretence of Evidence. So that, upon the whole, there does not appear to be any Pretence for that Part of the Preamble to the Bill, which charges the Bishop with having been deeply concern'd in forming, directing, and carrying on the Conſpiracy.

The next Thing charg'd againſt his Lordſhip, is, that he was concern'd in a Correſpondence abroad, and ſome Tranſactions at Home, for bringing in the Pretender.

Now, as to this, I would obſerve, that there is not one Witneſs againſt his Lordſhip of any criminal Act; that tho' all his Papers have been ſeiz'd, yet there appears not any Letter, or Paper, under his Hand, of a criminal Nature; nor any Letter prov'd to be written or receiv'd by him, which is criminal: Neither is there any Charge of any Meeting or Conſultation with any Perſons for carrying on this Conſpiracy. Indeed he is mention'd, as a Member of a Club, call'd the *Barford* Club.

Club, of which the Earl of *Orrery* was said to be Chairman: Which *Club* (as I apprehend) was never heard of 'till *Lacy's* Tryal. This Accusation, I know to be false; and never met with any one that believ'd it. Therefore shall not trouble your Lordships with any farther Observations upon it, than just to take Notice, that tho' he who made the List, hath join'd me with Persons of great Quality and Honour; yet I presume to say, that my Profession in the Law, as well as my Religion, has given me such a Sense of my Duty, that no Persons whatsoever are great enough to draw me into a Plot against his Majesty and the Government.

I beg Leave to observe, that this Charge is founded partly upon the Hearsay of *Pancier* and *Neynot*, and partly upon the three Letters, dated the 20th of April, 1722.

As to the Hearsay Evidence, *Pancier* deposes, that *Skene* told him, that the Bishop of *Rochester* and Lord *North* and *Grey*, had the principal Direction of the Conspiracy, that 200,000 *l.* had been rais'd by Contribution, and was put into the Management of the Bishop; and that it was call'd the *Military Chest*. Now can this be Evidence in an Indictment, or Action, for the most minute Trespass, or in any Case? Can it be imagin'd, that so much Money could be rais'd among the Jacobites? Or that such a Sum could be rais'd, and not one Contributor discover'd? Can it be imagin'd that such a Sum should be entrusted with one Man? Or that my Lord Bishop would be that Man, who would have the Care and Trouble; and run the Hazard of such a Sum? To which it may be added, that *Skene*, the only Person living, who, by any Person living, is said to have said this, is now in Custody, ready to be examin'd upon Oath, and denies every Word of it.

As to *Nysson's* Examinations, he speaks only what *Kelly* told him. And can what *Kelly* told him, affect the Bishop? Besides, none of his Examinations are upon Oath, or so much as sign'd by him; (whereas the Examination of *Goodman*, that was given in Evidence against Sir *John Fenwick*, was upon Oath.) All of them appear to be taken after he was in Custody; under great Apprehension and Terror; Nay, it appears that one of them was taken the Day before he drown'd himself: And moreover, that only one of them was read, which was extracted out of three Examinations, mark'd, *A*, *B*, *C*, and said to contain the Substance. We desire all the three

three Examinations may be produc'd, and read; and then it will appear, whether that one contains the whole Substance, or whether there be not some Things very material omitted: And it will likewise appear, that there are such Inconsistencies in them, as will take off their Credit. For in one Place, he says, he saw *Kelly* make Use of the Cyphers; and that *Kelly* own'd with great Freedom, they were for carrying on a Correspondence with the Pretender and his Agents; and yet in another Place, he says, that *Kelly* never open'd himself as to the Plot now on Foot; that indeed he had seen several Letters from *Paris*, and other Places, but they contain'd nothing material: So that it must be suppos'd, either that there was no treasonable Correspondence carry'd on by *Kelly*; or that *Neynoe* was not so great a Confident of *Kelly's* as he pretended.

Neynoe says, he drew three Memorials; and the last was in *December*, 1721, to the Regent for five thousand Men; that all the Memorials were drawn by the Order of, and dictat'd by one *Henry Watson*, whom he did not know, but took to be the late Earl *Marischal*; that *Henry Watson* was in *England*, all last Spring, and that he lay with him several Nights.

'Tis very extraordinary that the Earl *Marischal* should trust a meer Stranger to draw three Memorials, and one of them for five thousand Men to invade the Kingdom; and that afterwards he should lie with him several Nights, and not know who he was.

In one of his Examinations he says, the Heads of the Memorials were given him by *Kelly* and *Watson*: In another he says, they were all drawn by *Watson*: And 'tis observable, that the rough Draught, or a Copy of any of them is not produc'd; which certainly, he that intended to turn Evidence, and so soon after became an Informer, would have done, if there had been any such.

The Committee, in their Report, Page 38, are pleas'd to take Notice, that *Neynoe* said, *Kelly* told him, that a Lord of the Council gave the Bishop Notice of his being to be taken up, some Days before it happen'd; and are pleas'd likewise to say, that he afterwards confess'd, (as they were inform'd) and in that, and other his Examinations, he endeavour'd all he could to create Diffidence and Suspensions among his Majesty's Servants. And what Credit can be given, after this, to one, who had so little Regard to Truth, as to say any thing, tho'

NEVER

never so false, to so wicked a Purpose, as to create a Misunderstanding among his Majesty's Servants? Especially if one considers how probable it is, that the Remorse he had upon his Conscience, occasion'd by the Evidence he had given, and his Dread or the Shame of being forc'd, when he came upon his Oath, to deny what he had said when he was not upon his Oath, were the Reasons of his making away with himself? And we shall call some Witnesses, who will give a full Account of him.

We shall call one, who but lately depos'd before your Lordships, that *Neynse* told him, he had said several Things to a Great Man, which he neither would nor could swear without being perjur'd. I beg your Lordships Pardon for being so particular in a Matter, which I had so lately an Occasion to mention: But this is the Hinge, upon which the Weight of the whole Charge against the Bishop turns.

The next Charge against my Lord Bishop, ariseth from three Letters, dated the 20th of April, 1722. One sign'd *J. Jones*, innuendo the Bishop; to *Chivers*, innuendo *Dillon*: The second sign'd *Illington*, innuendo the Bishop; to *Musgrave*, innuendo Lord *Marr*: The third to *Jackson*, innuendo the Pretender: and sign'd 1378, innuendo the Bishop. These Letters are said to be wrote by *Kelly*, and dictated by the Bishop.

Now, as to these Letters, I beg Leave to observe, there is nothing criminal appears to be in any one of them: But then 'tis objected, that two of the Persons are attainted of Treason, and are Agents of the Pretender; and 'tis High Treason to write to them: And the third is the Pretender himself. Supposing *Chivers* were *Dillon*, and *Musgrave* were *Marr*, yet writing to them in private Matters, not criminal in themselves, nor relating to the Pretender, is not Treason. But how comes the Lord *Marr* to be an Agent for the Pretender? He quitted the Pretender's Service many Years before; and from the Time of quitting his Service, till after the Date of those Letters, had a Pension from his present Majesty. I believe, the Counsel for the Bill, and all Mankind, will be at a Loss to tell, by what Law writing to one who hath quitted the Pretender's Service so many Years, and who hath subsisted ever since by a Pension from his Majesty, can be an Offence?

Indeed, If it be prov'd that *Jackson* is the Pretender; I admit, writing to him is Treason: But if it be prov'd

(as it will beyond all Dispute) that by *Jackson*, neither is, nor can be meant the Pretender; and that my Lord Bishop neither did, nor could write or dictate any one of those Letters; then the whole Charge against my Lord Bishop, founded upon those Letters, falls to the Ground.

The next Thing I observe, as to those Letters, is from the Report, *Page 42*, where the Committee are pleas'd to observe, that the Letter to *Chivers*, is, great Part of it, out of Cypher; which seems to allow, that the other Part was in Cypher. Therefore it was very necessary, I think, to have printed the Letters in the Cyphers and Characters in which they were written; and also as they are decypher'd: Then the Persons accus'd would have had an Opportunity of employing Men skill'd that Way, to see if they were rightly decypher'd: This was done in *Coleman's Case*.

The *French Papers*, in the Appendix, are printed first in that Language, and then as they are translated; which was not so necessary as printing the Letters in Cypher, in this Case. Because almost every one understands *French* enough to tell, at first Sight, whether a *French* Letter be rightly translated; but 'tis impossible for a Man of the greatest Skill in the Art of decyphering, to tell upon a sudden at the Bar, whether a Letter be rightly decypher'd: So that all a Man hath in the World is to depend upon the Skill and Integrity of the Decyphers: Nor are they infallible; for the Witnesses who decypher'd the Letters, admit, that there are some Words in them which they could not decypher; and those Words may give a Turn to the whole Sense of the Letters. Nay Mr. *Wills* said, that one of the Numbers he could not decypher, stood for two Words: He was likewise pleas'd to say, it was impossible that the Number he could not decypher, could make an Alteration in the Sense; which is very extraordinary for a Man to swear: But if one Word could not make an Alteration in the Sense, surely two might.

The writing these Letters is charg'd upon *Kelly*; which cannot affect my Lord Bishop, unless they were dictated by him, or written by his Direction, or Privy; of which there is no Pretence of Proof. And therefore I shall offer to your Lordships some Observations upon the Arguments and Circumstances alledg'd to support this Charge.

It is observ'd in the Report, that the Person who wrote these Letters, speaks of himself as being in ill Health, in great Pain, under some sad and melancholy Circumstances, which he expects will soon blow over; and from thence it is inferr'd, it must be the Bishop, because his Wife was then ill, and dy'd in six Days after; and that he himself was at that Time afflicted with the Gout: One of the Counsel for the Bill said, these were Circumstances that did not happen to any two Men in the World at that Time: And give me Leave to instance one other Circumstance, which, I believe, did not happen to any one Man in the World; which is, Writing a Letter of Politicks, when his Wife was dying.

Why these Circumstances must necessarily intend the Bishop more than any other Person that was sick, and under Misfortunes, I cannot apprehend. That ill Health must necessarily imply the Gout; and that it must be intended, that no Man had the Gout the 20th of April, but the Bishop; that melancholy Circumstances necessarily imply a Man's Wife being sick or dying; and that no man had a Wife sick or dying, but the Bishop, is, in my humble Apprehension, a new Way of arguing.

Another Way of proving these Letters to be wrote by the Bishop, is, by the Names and Figures subscrib'd. For one Letter is subscrib'd, *T. Jones*, and another Letter is subscrib'd, *T. Illington*: And the Report observes, that wherever *Jones* and *Illington* are nam'd, the Bishop is to be understood. But why the Bishop is to be understood by those Names, *non constat*. (doth not appear.) Nor is there any Pretence of Evidence: And if we shew (as we infallibly shall) that by those Names the Bishop could not be meant, and that he could not write or dictate those Letters; then the Inferences against the Bishop, from those Letters, and from the subsequent Correspondence under those Names, become of no Force.

A third Letter is subscrib'd, 1378; which the Decyphers say, denotes a Person, whose proper Name begins with an R. And the Report is pleas'd to infer, that it must be the Bishop of *Rochester*. Now, why 1378 denotes a Person whose Name begins with an R, the Decyphers only know: And we are as much at a Loss to know why by a Name beginning with R, must be intended the Bishop of *Rochester*. If that Number appear'd

appear'd to denote a Name beginning with *R*, and if no Name began with that Letter, but the Bishop of *Rochester's*; there would then, I confess, be some Weight in the Observation.

That *Jones* and *Illington* are not the same Person, appears from the Letter of the 10th of May, from *Hatfield* or *Howell*; where, within the Compass of two Lines, they are distinguish'd. For in one Line, he saith, *Jones* promiseth to be a good Customer, and in the next Line but one, he saith, *Illington* is gone into the Country; which plainly shews them to be distinct Persons. Besides, in the Papers mention'd concerning the Duke of *Norfolk*, his Grace is several Times denoted by the Name of *Jones*: In *Layer's* List, *Sir William Ellis* is describ'd by that Name; and in *Plunket's* List, *Jones* stands for the *Germans*.

The Evidence to prove *Jones* and *Illington* to denote the Bishop, and the Intimacy between the Bishop and *Kelly*, is the Present of a Dog, call'd *Harlequin*.

The Evidence stands thus, ——— *Rep. 40, E. 35.* *Hatfield*, who is suppos'd to be *Kelly*, in his Letter of the 30th of April to *Howell*, who is suppos'd to be *Dillon's* Secretary, writes thus. 'Mrs. *Jones* y'd last Week; pray present my Respects to Mr. *Musgrave* (meaning *Marr*) and let him know, I receiv'd the Present, sent by the young Lady; that he had a Leg broken in the Journey: However, I will take all the Care imaginable of him, and inform Mr. *Jones* of it, to whom I know any thing from that Quarter will be very acceptable.

Hatfield, in his Letter to *Musgrave* of the 9th of May, 1722, says, 'Mrs. *Illington* is in great Tribulation for poor *Harlequin*: However, his Obligations to the Lady, are as great as if he had come safe.

From these Letters, 'tis inferr'd, that by *Jones* and *Illington*, the Bishop is meant; and that a young Lady sent the Dog to *Kelly*, as a Present for the Bishop: And 'tis urg'd, that Mrs. *Barnes*, in her Examination of the 23d of May, says, the Dog was not design'd for her, but for the Bishop of *Rochester*; that *Kelly* told her, the Dog was for the Bishop; and that *Kelly* promis'd to get the Dog for her, from the Bishop, in Case it did not recover its Lameness.

It is admitted, that Mr. *Kelly* brought such a Dog from *France*; that Mrs. *Barnes* had it; and that its Leg

was broken: But that it was design'd for the Bishop, or that the Bishop ever had, or saw it, there is no Pretence of Proof; and my Lord Bishop utterly denies it; and Mr. Kelly hath solemnly deny'd it to your Lordships; and instead of its being a Present from a young Lady to the Bishop, Mr. Kelly says, he bought it of a Surgeon at *Paris*, to give it to Mrs. Barnes.

There is one Expression in the Letter of the 7th of May, which is remarkable, and in my Opinion, enervates and destroys the Force of all those Letters relating to the Dog; for it was written four or five Days after the Bishop's Lady was bury'd; and it says, 'Mrs. *Stington* is in great Tribulation for poor *Harlequin*.' Mr. Kelly was suppos'd to write that Letter, and was suppos'd to be a Friend of the Bishop's; and could a Friend, could any Man of common Sense, be guilty of such a foolish and ridiculous Expression? Could any Man say of one of my Lord Bishop's Character, who was in the utmost Affliction for his Lady, that he was in great Tribulation for the breaking of a Dog's Leg? 'Tis evident, he who wrote that Letter, did not know the Bishop's melancholy Circumstances: 'Tis likewise well known, that the Bishop never lov'd a Dog, nor ever had one.

The next Method of proving Letters upon the Bishop, is by Similitude, and by Comparison of Hands; not by comparing any Paper written by him, with any other Writing; but by producing a Letter suppos'd to be written by Mr. Kelly in *August*, and by proving that the three Letters written in *April*, were open'd, and copy'd, and sent forward; and that those Letters were of the same Hand with that produc'd.

It was to be hop'd, that since Mr. *Sidney's* Case, the Evidence by Similitude of Hands in criminal Prosecutions would never have been offer'd: He was convicted upon such Evidence, and for that Reason his Attainder was revers'd in Parliament; and therefore, I hope, your Lordships will not in your Legislative Capacity, admit that to be Evidence in this Case, which, in the same Capacity, you were pleas'd to condemn in Mr. *Sidney's*.

In 1695, *Crosby* was indicted for writing treasonable Letters; and the Evidence, Similitude of Hands; which Evidence was disallow'd by the Chief Justice *Holt*, and *Crosby* was acquitted.

In *Francia's* Case, my Lord Chief Baron *Bury* declar'd, Similitude of Hands to be no Evidence: And if it was not admitted in those Cases, where Papers were produc'd, and prov'd to be of their own Hand-writing, and the Papers with which they were charg'd, were produc'd and compar'd with those other Papers; we presume, your Lordships will not allow it in this Case, where it is carry'd farther than ever it was attempted before.

The Proof, as to this Point, stands thus — Three Clerks of the Post-Office swear, that the 20th of *April*, 1720, these three Letters were open'd; that they took Copies of them, and seal'd them up again, and sent them forward; that four Months after, another Letter came to the Office, which is stopp'd: That is produc'd; and they all swear, they believe the three Letters were the same Hand-writing with the Letter produc'd. Now, that a Man who never saw a Hand but once, and thro' whose Hands so many Letters pass in a Month, should be able to swear, that three Letters which were sent in *April*, 1720, were of the same Hand-writing with a Letter which was stopp'd four Months after, is strange and incredible.

I beg Leave farther to observe, that the Clerks of the Post-Office own, they did not compare the Copies of the three Letters with the Originals: And was ever a Copy allow'd to be read, unless the Person who produc'd it, swore that he compar'd it with the Original, and that it was a true Copy?

It is remarkable, that *Clark*, one of the Post-Office, said, it was impossible to write a Hand, that had any Resemblance to those Letters; but yet, he said, the Figures bore a Similitude to the Hand-writing: So that one Hand cannot be like another; but Figures may be like a Hand-writing.

It is also observable, that the Letter produc'd is prov'd to be *Kelly's* Hand-writing, only by *Hutchins*, the Messenger; who says, he had him in his Custody a Week, and saw him write several Letters: And by *Malone*; who proves Mr. *Kelly's* Hand by a Supercription in *French*, and yet owns he cannot read *French*: Whereas, we shall prove by three positive Witnesses, that this is not his Hand: Besides, they might have produc'd the Letter which he wrote to my Lord *Townshend*, which is admitted to be his Hand.

We shall likewise prove, that at the Time when the three Letters are said to be written, the Bishop was at *Bromley*, and so lame with the Gout, that he could not stir Hand or Foot; that his Lady was dying; that no Person was admitted to him, but two or three Servants; and that Mr. Kelly was not at *Bromley* at that Time, nor for three or four Months before or after. And therefore 'tis impossible, those Letters should be written or dictated by the Bishop.

The Evidence of *Wood*, the Coachman, confirms this. For he swore, that he never saw Mr. Kelly, 'till he was carry'd to see him in the Tower; and that Kelly was not at *Bromley*; that no Stranger was at *Bromley* from the 12th of *April*, 'till after the 26th, when the Bishop's Lady dy'd; and that he must have known it, if there had; that the Bishop never sent the Coach for Kelly, or any other Person in *Bury-street*, or any Place near *Pall-Mall*; So that by this, the Examinations of *Elizabeth Levet* and *Neynot*, are quite destroy'd.

But 'tis objected, that a Man might put his Horse at an Inn, and come to see the Bishop, and *Wood* not know it. Can it be imagin'd, that Kelly, who is suppos'd to be so particular a Friend of the Bishop's, would leave his Horse at an Inn? But we shall examine other Witnesses to this.

It was objected, that on the 10th of *June*, the Bells rang; and the Servants had Roses. But it appears, most of them were red Roses: And if it should be criminal to ring the Bells on the 10th of *June*, we shall shew, that the Bishop knew nothing of the ringing of the Bells, or of the Roses.

In the Report, Page 50, the Committee of the Commons take Notice, That on the 11th of *June*, Kelly sends his Friends at *Paris* an Account of his late Misfortunes; and after complaining of the Neglect in not bailing him out sooner, says, 'Your old Friend *Rig*, indeed, offer'd all that could be expected from the poor Man.' And infer, 'That by *Rig*, is meant the Bishop of *Rocheſter*.'

Can it be imagin'd, that Kelly would call the Bishop *Gerrard's* old Friend, who, 'tis not pretended, ever knew him, or saw him? And if poor *Man* be taken by Way of Contempt, Can it be imagin'd, that Mr. Kelly, a Gentleman of that good Sense and Breeding, would use such an Expression of my Lord Bishop? If these Words are taken in the literal Sense, 'tis as improbable; for

for the Bishop was not taken for a poor Man: Besides, how could he who had 200,000 l. Contribution Money, and had the Command of the *Military Chest*, be said to be poor? And I dare say, there is nobody but believes, that if my Lord Bishop would have inter-meddled on Mr. Kelly's Behalf, he had Interest enough to procure whatever Bail Kelly wanted: And therefore I apprehend, that *Rig* cannot be intended to be the Bishop.

Indeed, no Credit can be given to Cant Names; for the same Names are us'd for several Persons; as *Laws* in *Plunket's* Cypher, stands for *Marr*; and in the Cypher found on *Dennis Kelly*, it signifies Mr. *Cesar*. *Hawksby* in *Plunket's* Cypher, stands for King *George*: And in the Report, Page 62, there are Complements from the Pretender and his Spouse, to *Hawksby*; which I presume, they did not mean for his Majesty. *Jones* is us'd many Times for the Duke of *Norfolk*. It is us'd for Sir *William Ellis*; and it is also us'd for the *Germans*, as I before observ'd.

That *Jackson* cannot mean the Pretender, is plain. App. E. 30. Postscript in the Letter from *Quitwell* to *Vernon*, says, Mr. *Chivers* advises, that the Money you mention, in *Clinton's* Hands, should be equally divided between *Medley* (meaning the late Duke of *Ormond*) and *Jackson*, (meaning the Pretender.) Now, would any one devoted to the Pretender's Interest, put *Ormond* before the Pretender? *Jackson* is put for the Pretender only, in *Plunket's* List: And yet 'tis observable, that *Plunket*, in all his Correspondence, never calls him *Jackson*, but *Joseph*, or *Jephson*: And in the voluminous Correspondence charg'd on *Kelly*, he is not once call'd *Jackson*; but the usual Names are *Jephson* and *Joseph*.

As for the Letter to *Dubois*, it seem'd at first to be a Letter written from *France* TO the Bishop, by the Name of *Dubois*; and after a Month's Time they find it to be a Letter written BY the Bishop. If so, writing a Letter, and not sending it, can be no Offence. But how comes the Bishop to keep that Letter seal'd, which he had written seven Months before? The Writer of that Letter owns, he had receiv'd one from *Dubois* two Months before, by Mr. *Johnson*; which was the Name *Kelly* went by: And 'tis very strange, that the Bishop should be so weak, as to mention the Name of the very Person, who 'tis said, us'd to write his Letters, and

and by whom he was suppos'd to carry on his Correspondence. If it be presum'd that he wrote this Letter; it must also be presum'd, he was out of his Senses, when he did it.

That Letter was not sign'd, and was dated the 16th of *December*, but no Year, tho' they have put the Year 1721 to it. For a Month together they never thought the Letter to *Dubois* to be the Bishop's Hand; though they had several of his Letters. As to the Observation made by one of the Counsel, that the Letter to *Dubois* was seal'd by a particular Seal, and not the Seal with which he seal'd such Letters, as he intended all the World should see; that Gentleman would do well to let us know what Letters were written by the Bishop, which he intended all the World should see.

That so many Letters were written before 1712, and so few since, was occasion'd by his Lordships great Correspondence about Matters of Learning at that Time, and his being from that Time often afflicted with the Gout, so that he could not write many Letters, and consequently receiv'd but few. Besides, he was made Bishop in 1713, and Dean of *Westminster*: So had not Time to write much himself, but kept a Secretary.

As the Matters before mention'd to be charg'd against my Lord Bishop, arose from Letters suppos'd to be written by him; I shall next consider the Charge against him, which arises from Letters suppos'd to be written to him. There are two Letters mention'd in the Report as written to him; one of the 11th, by *Motfield*, interpreted to be Lord *Marr*, wrote to *Illington*; the other, of the 25th of *July*, from *Digby*, interpreted *Dillon*, to Mrs. *Weston*. Now, I observe, that it is not pretended, that either of those Letters was ever receiv'd by the Bishop, so consequently must be intercepted: Therefore it would have been proper to have produc'd the Letters, and to have prov'd the Hands. As to the Letter from *Motfield*, 'tis only a Complement of Condolence: And 'tis inferr'd, that it must be the Bishop; because his Lady dy'd a little before. The Letter says, 'We must submit with Resignation, to what the just and great God thinks fit to order; but you know such Things so much better than I do; that I will not trouble you with my Tag any more upon it.' From these last Words, it is inferr'd that this Letter

was written to a Clergyman, and consequently the Bishop. What Weight this Way of reasoning will have with your Lordships in criminal Prosecutions, is humbly submitted: But it must be observ'd, that this Letter is said to be an Answer to the Letter said to be written the 20th of April, to *Musgrave*: And as we have shew'd, that it was impossible the Bishop should write or dictate either of the Letters of the 20th of April, the Answer must fall with the Letter. But from hence the Observation is natural, and undeniably true; that if *Jones*, who wrote the Letter to *Musgrave*, of the 20th of April, could not be the Bishop; and *Illington*, to whom *Motfield* wrote, be the same as *Jones*; then neither *Jones* nor *Illington* can denote the Bishop.

As to the Letter from *Digby* to Mrs. *Weston*, who is interpreted the Bishop; it was written the 25th of July, N. S. wherein *Digby* says, 'I cannot on any reasonable Grounds complain of your Silence, because I am inform'd of the Situation of your Health, and the Concern your Family are in by Bankrupts, and Law-Suits.' It must be observ'd, that on the 7th of July, O. S. G. W. in his Letter to *Digby*, says, 'I saw Mrs. *Weston* yesterday; she never was better in her Life than now.' It is strange, that *Digby*, the Week following, should take Notice of the ill Situation of Mrs. *Weston's* Health; 'tis plain both these Letters can't be genuine, and therefore no Credit can be given to such a Correspondence.

One Way of fixing the intercepted Correspondence, and the cant Names upon the Bishop, is by the Coincidence of Times, and other Circumstances; as of his Lordship being in Town, and out of Town: And there are several Mistakes in them. For in *Hatfield's* Letter to *Musgrave* of the 7th of May, he says, Mr. *Jones* is come to Town only for a Day: If that be to be understood of the Bishop, it is not true; for he came to Town the 5th of May, and did not go out of Town till the 10th. In the Letter from *R. H.* to *Dixwell*, of the 18th of June, 'tis said, 'Mr. H. *Rig.* and *Rep.* are, I hear, in the Country.' And 'tis said, by *Rig.* is meant the Bishop; which cannot be, for the Bishop was then in Town. So in a Letter to *Maisonnewe*, of July 19, 'tis said, '*Rig.* is in the Country.' Whereas the Bishop was then in Town. This is the more observable, because the Report taking Notice of the Bishop's being ill of the Gout, says, Page 41, 'This Particularity, as also sever-

ral others, which will be taken Notice of as to the Bishop's being in Town, or in the Country, at the respective Times mention'd in the intercepted Letters, have been carefully enquir'd into.' And in the next Paragraph, the Report taking Notice of the Letter to *Musgrave* of the 7th of May, which says, *Mrs. Jones* is come to Town, says, *This agrees with the Enquiry.* And yet it will plainly appear, that there are such Mistakes, as to those Times, as I have before-mention'd. I hope, I may observe, that these Mistakes escap'd the Observation of the Honourable Committee, and that tho' the Letter of the 7th of May, in the Appendix, says, '*Mrs. Jones* is come to Town only for a Day.' Yet in the Report, the Words, *only for a Day*, are left out.

All the Circumstances before-mention'd are made Use of to fix the Names of *Jones* and *Illington* upon my Lord Bishop; and therefore the next Paragraph but one in the Report, is very observable; which is this. 'These several Circumstances, join'd to *Neynoe's* Declaration, that *Kelly* had told him, the Bishop went sometimes by the Name of *Jones*, and that *Carte* had told him, the Bishop went by the Name of *Illington*, &c., that wherever *Jones* and *Illington*, are nam'd in *Kelly's* Correspondence, the Bishop of *Rochester* is to be understood by those Names.' So that the whole Proof of the Correspondence charg'd to be carry'd on by my Lord Bishop under the Names of *Jones* and *Illington*, is resolv'd into this, that *Neynoe* declar'd, that *Kelly* and *Carte* told him, the Bishop went by those Names.

I beseech your Lordships, Is this Proof? Is this Evidence sufficient to deprive a Reverend Prelate of all his Ecclesiastical Preferments? And to send him into perpetual Banishment? Do the Lives and Liberties of *Englishmen* stand upon so weak a Foundation? If they do, I presume to say, they are very precarious, and the most innocent Man alive cannot say he is safe.

I beg your Lordships Indulgence to observe farther, that this heavy Charge against my Lord Bishop, is supported only by *Insinuations*: And with what an Eye *Insinuations* have been always look'd upon in criminal Cases, many Instances may be given. I shall trouble your Lordships but with one, which is full to this Purpose, and of the greatest Authority: I mean the Resolution of your Lordships in the Case of *Sir Samuel Barnardiston*, in 1683. He was prosecuted for writing Letters, alledg'd to be seditious, and highly reflecting on the Government, and

and the publick Justice of the Nation; and was found guilty, and fin'd 10,000*l*. He brought a Writ of Error in this most Honourable House, and your Lordships were pleas'd to reverse that Judgment; for that the Information being grounded on Letters, which in themselves were not criminal, but made so by *Innuendo's*; your Lordships were pleas'd to declare, that *Innuendo's* and forc'd Construitions ought not to be allow'd; for all Accusations should be plain, and the Crimes ascertain'd. Now if it can be suppos'd, without any Evidence, that my Lord Bishop wrote the Letters charg'd to be written by him; even then this Case is the same with Sir Samuel Barnardiston's. For the Letters are not criminal in themselves, nor can be made so, but by *Innuendo's*, and strain'd, forc'd Construitions. Nay, I presume to say, there is not one Part of the Charge but subsists purely by *Innuendo's* and strain'd Construitions.

I will trouble your Lordships with instancing only one Letter; which is that of the 20th of April, written to Mr. Jackson, and subscrib'd 1378. With the *Innuendo's*, it is thus. 1378, *Innuendo* a Person whose proper Name begins with an R, *Innuendo* the Bishop of Rochester, did write to Mr. Jackson, *Innuendo* the Pretender; that notwithstanding this Opportunity, *Innuendo* an Opportunity of raising a Rebellion in England, at the Time of Elections of Members of Parliament, had elaps'd; I, *Innuendo* the Bishop, agree with you, *Innuendo* the Pretender, that another, *Innuendo* another Opportunity of raising a Rebellion in England, may offer before the End of the Year, *Innuendo* at the breaking up of the Camp. Your Lordships will please to observe, what a Superfetation of *Innuendo's* (If I may so say) there must be to support this Charge! And without *Innuendo's*, no Part of the Charge against the Bishop, can be maintain'd: And therefore, I hope that the same Reasons which induc'd your Lordships to reverse the Judgment against Sir Samuel Barnardiston, will prevail upon you to reject this Bill.

To what I have objected, I imagine, it will be answer'd, that your Lordships are now acting in your legislative Capacity, and that in your legislative Capacity, you are not bound by the Forms of Law; but I humbly submit it, whether you will not think fit to proceed according to the Rules of Law, tho' not according to the Forms of it. Mens Lives and Properties, are to be try'd and determin'd *secundum Allegata & Probata*;

and the Proof in such Cases, must be legal Proof. And I apprehend, with great Deference, that when your Lordships proceed in your legislative Capacity in other Instances, you proceed according to the Rules of Law: As in Bills for enabling Persons to sell or settle Estates; or for making Rivers navigable, if the Time or Property of any Person come in Question, your Lordships are pleas'd to hold the Parties to strict legal Proof: And why not in Bills of Attainder? Are Bills of Attainder (whereby Mens Lives are forfeited, their Estates confiscated, and their Blood corrupted) of less Moment than Bills to enable Persons to settle their Estates for the Benefit of their Families? I apprehend, that your legislative and judicial Capacities are here so united, that they cannot be separated. For a Bill of Attainder is a Condemnation by Parliament; and your Lordships always hear and judge, whether a Party be guilty, before you condemn him. Will you then be pleas'd to judge and determine, upon less Proof in one Case than in another? Can it be conceiv'd, that your Lordships will not act by the same Rule in both your Capacities? Or that you will not have an equal Tenderness and Regard for the Lives, Liberties, and Estates of the Subject, in one Capacity, as in the other?

When a Man flies from Justice, he gives Judgment against himself; and when a Person accus'd, doth by corrupt or indirect Means, conceal or convey away the Witnesses against him; then he is the Cause, why strict and legal Proof cannot be had: And that it may be a Reason why less Proof should be admitted. But in Cases not attended with either of these Circumstances, to say, that less than legal Proof is sufficient for a Bill of Attainder, is to affirm, that private Opinion alone, without Proof, is a sufficient Foundation to pass a Bill of Attainder. And how harshly that would sound in the Ears of *England*, is humbly submitted to your Lordships.

My Lords, by our Law, a Judge cannot go according to his own private Opinion, but must be govern'd by the Evidence given before him in Court. For the Rule is, *Nil refert quod notum sit Judici, si non notum sit in forma judicii.* (I. e. What's known to the Judge is of no Weight, unless it appears in the Course of the Trial.) And if Mens Rights and Liberties were to be determin'd by private Opinion, how precarious would the Lives and Estates of *England* be? The most innocent Man could not be safe; The wicked Man could not foresee where

where it would end; and *England* must no longer boast of the Excellency of her Constitution.

It is a Rule, both in Law and Reason, that *nemo bis puniri debet pro eodem delicto*: No Man ought to be punish'd twice for the same Offence: And yet that may happen to be the Bishop's Case. For the Charge in the Bill is general; intending to raise a Rebellion, and holding treasonable Correspondence, in order to bring in foreign Forces; but there is no particular Fact charg'd upon him. Now if he should be indicted for either of those Species of Treason, and particular Overt-Acts of such Treason should be alledg'd, as buying Arms, and listing Men for the Pretender, and the Overt-Acts should be prov'd by two Witnesses, he might be condemn'd, and executed for it. For he could not plead this Bill in Bar to such Indictment; because the Indictment would not be for the same Facts, there being no particular ones charg'd in the Bill. And yet it may happen, that my Lord Bishop may be indicted and try'd for the Treason mention'd in this Bill: As in the Case of *Hampden* and *Fitzharris*, which I lately mention'd. For Mr. *Hampden* was try'd for meeting and consulting to raise a Rebellion, was fin'd 40,000 *l.* and was afterwards try'd for High Treason for the same Fact: And tho' he insisted on his having been try'd for the same Fact, and desir'd to plead it, yet the Court would not allow it. And in *Fitzharris's* Case, he was indicted for High Treason, and pleaded an Impeachment; and averr'd, it was for the same Fact: But the Plea was over-rul'd; for there being no particular Article, the Averment could not be supported, because he could not aver any thing that was out of Record.

I hope, your Lordships will excuse me for taking up so much of your Time. But the Multifariousness of the Matters of which the Accusation consists, and the Weight of the Subject, drew into it. I humbly thank your Lordships for your great Indulgence and Patience in hearing me: And if, as a Lawyer, thro' my Zeal for my Client's Service, or as an *Englishman*, asserting those Laws, which I apprehend, are the Security of *British* Liberties, I have let drop any Expression, which may be thought improper, I must humbly beg your Lordships Pardon. And if there be a Difference between your legislative and judicial Capacity, I submit it, whether your Lordships will be pleas'd to give that Judgment in your legislative Capacity, which the

Counsel

Counsel for the Bill do, in my Apprehension, admit you could not give in your Judicial. And therefore I hope, your Lordships will be pleas'd to reject this Bill.

The Bishop being the next Morning (Friday *May 10*) brought again the Bar of the Lords House, his Counsel endeavour'd to take off the Weight of the Testimony and Judgment of Mr. *R*—— an Engraver, who having been produc'd and examin'd by the Counsel for the Bill, had sworn to the Similitude of the Seal of a Letter found among the Bishop's Papers, with the Seals of some of the intercepted Letters: In Opposition to which, Mr. *Johnson*, and some other eminent Engravers, gave their Opinions upon Oath, that a Seal may as easily be counterfeited as Writing, or which is the same, that a Seal engrav'd from the Impression of another Seal, may be so perfect, as to render it impossible to distinguish the Impression of the Original from that of the Counterfeit: An Experiment of which was made by a Lord, who produc'd Impressions of two different Seals, so exactly like one another, that one of the Engravers was deceiv'd by them, and judg'd them to be of one and the same Seal. This Affair occasion'd great Altercations between the Counsel on both Sides, and warm Debates afterwards in the House, 'till Four a-Clock in the Afternoon, when the Lords having adjourn'd during Pleasure, the Courtiers refresh'd themselves in the Prince's Chamber, and the others in the adjacent Coffee-houses.

The House being resum'd, the Bishop of *Rochester* examin'd Witnesses to falsify the Deposition of *John Lawson*, Baker, at *Bromley*, (inserted in the Appendix to the Report of the House of Commons) who, very critically swore to all the Days and Times the Bishop went to and from *London* and *Bromley*, from the 1st of *April* to the 10th of *August*, 1722: And further depos'd, that he was told by *James Day* and *Thomas Farnden*, two Servants of the Bishop, that he had a Fit of the Gout, which lasted all or most Part of the Time between his going to *Bromley*, next before his Lady's Death, and his coming to Town after she was bury'd: and that the said *Thomas Farnden* also told him, that among those who frequented the said Bishop at *Bromley* last Summer, were the Lord *North* and *Grey*, who came very often, the Lord *Bathurst*, Sir *Constantine Phipps*, Mr. *Aldridge*, a Clergy.

Clergyman, and Mr. Wynne, a Counsellor at Law. Among the rest, the Helper to *William Wood*, the Bishop's late Coachman, depos'd, that he had been kept in close Custody for above two Months, he knew not for what.

Being ask'd, if ever he saw Mr. Kelly alias *Johnson* at the Bishop's House in Town or at *Bromley*, he answer'd in the Negative; adding, that if he had been there, he could not have miss'd seeing or hearing of him, because he was always about the House and Stables, and as he convers'd with all the other Servants, so he knew of all the Comers and Goers: And that when he was at *Bromley*, one *Lawson*, a Baker, came to him, and offer'd him a Reward of two hundred Pounds, (one Half in Hand) if he would turn Evidence against the Bishop, and swear, that Mr. Kelly, Lord North and Grey, and some other Lords and Gentlemen, whom he should name to him, often came to the Bishop's House at *Bromley*; which Proposal he reject'd with Scorn. This was partly confirm'd by two or three more of the Bishop's Servants, and other Witnesses, whose Examinations having lasted 'till Nine of the Clock in the Evening, the Lords adjourn'd to the next Day.

On Saturday the 11th of May, the Bishop being again brought to the Bar of their Lordships House, Sir *Constantine Phipps* made a short Recapitulation of the Evidence for his Client, as follows:

My Lord.

WE have done with our Evidence, and hope we have fully answer'd every Part of the Charge contain'd in the Bill, and apprehend, there is no one Circumstance left unanswer'd. Particularly, that we have totally destroy'd the Credit of *Neyroe's* Hearsay Evidence: For when the Improbabilities, Inconsistencies, and Contradictions of his Examinations are consider'd, and the Testimony of the Witnesses is duly weigh'd; no Person can give the least Credit to what he hath said, without offering the greatest Violence imaginable to his Reason.

And it is wonderful, that the Counsel for the Bill should insist he should be credited in any thing; when we have prov'd, he had the Confidence to declare, that a Right Honourable Person had endeavour'd to persuade him to excuse Persons of Quality of Things he knew nothing of.

Hath

Hath he not said, that when he was to be examin'd, That *Right Honourable Person* had him first in private, and told him, what Questions would be ask'd him, and what Answers he should give? Did he not say, that the very same Gentleman gave him five Questions, or Enquiries, and told him what he should reply to each of them? Hath he not said, that refusing to give Evidence, he was threaten'd with *Newgate*; and that thereupon, he gave them Informations against my Lord Bishop, and others? Nay, had he not the Impudence to say, that the same *Right Honourable Person* offer'd him 2000*l.* 500*l.* per Annum, and a Place, to accuse the protesting Lords, the Earl of *Orrery*, and this Reverend Prelate? And that being ask'd, Whether he knew any thing of the Plot? He swore, No: Nor any body else; but that he knew of two other Plots, viz. one of Mr. *Walpole* against the protesting Lords; the other, of himself, upon Mr. *Walpole*, to get 2000*l.* of him? Nay, it is prov'd, he declar'd, that the same Gentleman press'd him so hard to accuse some Persons; that he had it once in his Mind to take up that *Right Honourable Person's* Sword, and run him thro' with it; and so make an End of the Plot.

These are Things which have been prov'd upon *Neymour*: And all these Things being consider'd, I believe, the Counsel for the Bill will readily agree with me, that no Credit ought to be given to one Word he has said: And if his Evidence be laid aside, the greatest Part of the Charge against my Lord Bishop falls to the Ground.

My Lords, the Evidence Mr. *Lewis* gave, was very material. For he shew'd your Lordships, that *Bracket*, who was of the Post-Office, was so skilful in counterfeiting Hands and Seals; that he wrote the Supercription of a Letter, and took the Impression of a Seal, and seal'd it again, and did it so well, and gave it such a Lustre, that Mr. *Lewis* could not distinguish it from the Original.

The Engravers likewise said, they could take off the Impressions of Seals so well, that they could not be distinguish'd: Nay, though the Wax were broken, yet if no Part of the Wax were lost, it might be done.

Your Lordships observe how the Engravers themselves were mistaken in Relation to some Impressions, which were produc'd to them: And you further observe,

serve, that the Seal in Question, was a *Cicero's* Head, which all the Engravers agree to be a very common one; and they had many of them: So that no Objection can be made against my Lord on Account of that Seal. Nay, one of the Engravers said, it appear'd to him, that the Seals of the two Letters were not the same.

As to the Dog; there is *Mr. Crawford's* Certificate, and *Birmingham's* Affidavit.

As to *Mrs. Barnes's* Evidence; she hath found out now, that there were two Dogs, though nobody else ever heard of two. She said, the first was for the Bishop of *Rocheſter*. Now it is plain, the First was sent in *March*; and it was his Leg that was broken: And *Birmingham* swears, and *Mr. Kelly* solemnly affirms, that it was for *Mrs. Barnes*, and not for the Bishop.

As to the three Letters of the 20th of *April*; we have prov'd it impossible that the Bishop should write, or dictate those Letters to *Mr. Kelly*. And your Lordships take Notice, how the Butler came to observe, those Letters could not be written by the Bishop; and the Servants, though under Confinement, and not permitted to see any Body, agree in their Evidence. There is *Gordon's* Affidavit, that he never had such a Pacquet: And *James Talbot* was here in Town the 29th of *April*.

Thus, your Lordships observe, that a Bill of the most extraordinary Nature that ever was seen, hath been supported by the most extraordinary Evidence that ever was heard: And we hope, we have set the dark Passages, of which the Charge is compounded, in such a Light, that every one may plainly see the Right Reverend Prelate is not guilty of any one Offence charg'd against him.

Sir Constantine Phipps having thus ended, *Mr. Wynne*, the other Counsel for the Bishop, more fully enlarg'd upon the Evidence given for his Client, and at the same Time, made some nice Observations on the Evidence given for the Bill; which being over exactly at Two of the Clock in the Afternoon, the Bishop then spoke in his own Defence, as follows:

*The Bishop of Rochester's Speech at the Bar of the House of Lords.**My Lords,*

I Have been under a very long and close Confinement, and have been treated with such Severity, and so great Indignity, as I believe, no Prisoner in the Tower, of my Age, and Function, and Rank, ever was. By which Means, what Strength and Use of my Limbs I had when I was first committed in *August* last, is now so far declin'd, that I am very unfit to make my Defence against a Bill of such an extraordinary Nature.

The great Weakness of Body and Mind, under which I labour, such Usage, such Hardships, such Insults, as I have undergone, might have broke a more resolute Spirit, and much stronger Constitution, than falls to my Share.

Your Lordships were pleas'd to permit me to appear before the House of Commons, if I thought fit, least my Silence should be turn'd to my Disadvantage, as in Fact, the Council for the Bill have done their utmost towards it.

I should not have thought to decline any Occasion of justifying myself; but I crave Leave to tell your Lordships some Reasons why I did not appear there, and make Use of the Leave your Lordships gave me.

After seven Months of close Imprisonment, I was not a little surpriz'd when I heard, that on the 11th of *March*, by the House of Commons, it was thus resolv'd, 'That it appears to this House, that *Francis* Lord Bishop of *Rochester*, was principally concern'd in forming, directing, and carrying on, a detestable Conspiracy, &c.'

Upon duly weighing which Resolution, and the Copy of the Bill, I found not any thing charg'd in the Bill, but what was fully contain'd, and previously resolv'd in this Vote; and therefore whatsoever should have been offer'd on my Behalf to that House, would have been an express Contradiction to it. And what Hopes I could have of Success in such an Attempt, I need not say; what they sent me was the Preamble of the Bill only, which they could not alter, consistent with what they had resolv'd.

The Bill itself was to inflict Pains and Penalties, which follow'd; but there was no Room to object against any of those which they had not then declar'd; they have since been added, and sent up to your Lordships in like Manner, without any Oath made, or any criminal Act prov'd against me by any living Witness. And is a Person, thus sentenc'd below, to be depriv'd of all his preferments, and his very Function, and to be a perpetual Exile, and to be render'd incapable of any Office and Employment? To be one whom no Man must correspond with, by Letters, Messages, or otherwise? And, my Lords, one who is a Bishop of the Church of England, and a Lord of Parliament?

It is the first Instance, wherein a Member of this House hath been so treated and prejudg'd, and (as I have once before said to your Lordships) I pray God it may be the last, and that such Presidents in this Kingdom may not be multiply'd in After-Times.

My Counsel have amply done their Part, by arguing the Points of Law, by explaining and enforcing the Evidence, and shewing the little Colour, Appearance, and Shadow of Proofs against me, (permit me to call them so) by answering what hath been offer'd against me, and by setting out the Consequence which such a Bill founded and carry'd on in such a Manner, and which enacts such severe Penalties, must and will be attended with.

Yet it becomes me to say something for myself, lest my Silence be constru'd Consciousness of Guilt, or at least, an Unwillingness to enter into Matters of so dark and perplex'd, so nice and tender a Nature, as if I was not able, or did not care to clear and explain myself, and rather chose to leave it to the Management of others; I thank God I am under no such Restraint, and can speak to your Lordships on this Subject with great Freedom and Plainness.

But before I proceed, I beg Leave that I may represent to your Lordships some particular Hardships under which I have labour'd.

The first is, reading Extracts of anonymous Letters, without suffering any other Parts of the same Letters; though relating to the same Subject, to be read. — Another is, — Excusing the Decyphers from answering Questions ask'd by me, and which I thought necessary for my Defense, lest they should reveal their

Art. — The next is, not suffering me to be answer'd by the Clerks of the Post-Office, lest the Secrets of that Office should be discover'd. Another was, not suffering a Person, who had been at least ten Years out of the Secretary's Office, to answer any Questions which came to his Knowledge by being some Years in that Office.

Another is, reading Examinations, neither dated, signed, nor sworn to.

Another is, reading Letters suppos'd to be criminal, writ in another Man's Hand, and suppos'd to be dictated by me, without offering any Proof, that I either dictated them, or was privy to them.

Another is, not allowing me Copies of the Decyphered Letters, tho' petition'd for, till the Tryal was so far advanc'd, and so employ'd and weaken'd by it, that I had not sufficient Time to consider them. Another is, not allowing me to read out of the Collection of Papers before the House, or any Part of them, in order to discharge myself, but what hath been read by Clerks — And all this in a Proceeding where the Counsel for the Bill profess they have no legal Evidence, and that they are not to be confin'd to the Rules of any Court of Law or Equity, though as often as it is for their Service, they constantly shelter themselves under it.

My Lords, these are the Hardships which I previously mention and humbly lay before your Lordships.

By your Lordships Leave, I proceed now to make that Defence, as well as I am able to make it in the Condition of Health I am now in, humbly praying your Lordships, if I find myself in any Degree sinking under it, that you will indulge me, and allow me a little Time to go on.

The general Charge of the Bill is, That I have been deeply concern'd in forming, directing, and carrying on a wicked and detestable Conspiracy, and was a principal Actor therein.

The Charge is divided into two Heads:

First, That I traiterously consulted and corresponded with divers Persons, to raise an Insurrection, &c. in this Kingdom, to procure foreign Forces to invade it, &c.

Secondly, That I traiterously corresponded with the same Intent with Persons employ'd, &c. But neither Part of this Charge hath been made good by the Coun-
sel

self for the Bill, nor have they prov'd, nor attempted to prove me at one Consultation; nor is there any thing tends towards such a Proof, except the exploded Story of the *Burford* Club, and two or three hearsay Informations, which were mention'd of my Lord *Strafford*, Lord *North* and *Grey*, Lord *Orrery*, and Sir *Henry Goring*, said to be concern'd in the Management of this Affair. I have met all these Lords I own it, but at different Times; and upon the best Recollection I can make, I never was in all my Life with any three of them at once, unless perhaps about some general Matters depending in Parliament. The Earl of *Strafford* hath visited me, and I have, when in Health, din'd with him once at his House. At my Lord *North's* Table I have not eat: Tho' I have great Honour for him, yet I never had any Intimacy with him, especially since the Affair of the Dormitory, wherein he appear'd so against me, that I certainly had lost the Cause, had not his Affairs call'd him to *Holland*.

Lawson hath sworn, that this Lord did often visit me at *Bromley*, but in Truth he never was there above twice or thrice in all his Life-Time.

I have not seen once these two Years with Lord *Orrery* on any Business whatsoever; we twice din'd together at the House of a Person, whose Name, if I should mention, your Lordships would not think there was any Harm at all in dining there. Sir *Henry Goring* I never saw in all my Life, till he saw me at *St. James's*, and he was but once at *Bromley*; and the Occasion of his coming to me, was his placing four Sons at *Westminster* School, and intending to breed up some of them to the Gospel: The last Time I saw Sir *Harry Goring*, was about twelve Months ago, when I promis'd to bring down one of his Sons to be upon the Foundation; and I shall be sorry if I cannot be as good as my Word.

Your Lordships will excuse me for being so particular, when you consider how dangerous the Charge is, and how fit it is to clear the Persons charg'd, from such mischievous Correspondence; especially since it is with these, and these only, that I have been speaking of; and it is insinuated, that I have held Consultations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy, without a Consultation. But how hath that too been made good? Your Lordships will observe, that there is not one

one Overt-Act, or Circumstance of Time or Place, mention'd, prov'd, or alledg'd. I have not therefore consulted or conspir'd at Home,

The next and the only material Part of the Charge, is corresponding abroad with the Pretender, &c.

A high and heinous Accusation, strongly asserted, much insisted upon, but how maintain'd, is the Question?

The true State of this Part of my Charge, as well and as fully as I can recollect, is this, (I will not in any Degree dissemble before you :) 1st, That I did the 20th of April, 1722, dictate three Letters to Mr. Dillon, the late Lord Marr, and to the Pretender himself, under the feign'd Names of *Chivers*, *Musgrave*, and *Jackson*; to which Letters, the Names of *Jones*, *Illington*, and 1378, were, by my Direction, subscrib'd.

Secondly, That afterwards two Letters in Answer to these two sent to Marr and Dillon, one dated May 11, and the other July, 25, under the feign'd Names of *Masfield*, and *Digby*, were intercepted.

Thirdly, That there is certain intercepted Correspondence between the Pretender's Agents abroad and Kelly here, carry'd on by him, and that I was at the Head of it, and am answerable for what it contains.

This is the Substance of my Charge; all other particular Circumstances are made Use of, as they thought would give Light and Strength to one or other of those Articles.

As to the first of these Points, *that I did dictate these Letters*.

That it could not be possible that I dictated these Letters, hath been made out to your Lordships by such a Concurrence of Evidence, so clear, so full, and legal, as I persuade myself can have left no Doubt remaining upon any candid and indifferent Person; a plain Matter of Fact, supported by such Testimony, cannot be overthrown by idle Guesses, and consequential Surmises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Case, that peculiar Circumstances attend it as to the Point of Time. My being disabled in my Chamber, and attended before and after that Time by some of Servants, and receiving frequent Messages from others: The agreeing Testimony of my Servants,