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*A Word at Parting.*



[PRICE ONE SHILLING.]

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# *A Word at Parting:*

BEING A FEW

## OBSERVATIONS

ON

A *mutilated* SERMON and an EPISTLE DEDICATORY  
to the *Worthy* Inhabitants of TEWKESBURY, &c.

Lately published by EDWARD EVANSON, M. A.

To which are added

The ARGUMENTS of COUNSEL  
In the Court of Delegates touching Mr. EVANSON'S  
Prosecution.

By NEAST HARWARD, Gent.

TOWN CLERK of the Borough of TEWKESBURY.

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*“ Qualis ab incepto.”*

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LONDON, Printed.

Sold by G. ROBINSON, Pater-noster Row; and S.  
HARWARD, Bookseller in Tewkesbury.

MDCCLXXVIII.



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## OBSERVATIONS, &c.

**T**HE publication of a *mutilated* Sermon, by way of answer to my Narrative, obliges me (however reluctantly) to resume the subject of the late prosecution against Mr. Edward Evanfon. For tho' I cannot doubt but that every attentive reader of that *ingenious* gentleman's Defence will have discovered the many fallacies contained in it, yet, lest *my* silence may be misconstrued into an acquiescence with a futile, weak (not to say *wicked*) attempt to impeach, by mere assertion and gross misrepresentation, the credit of many respectable persons, whose testimony has been adduced in the course of this suit; I hold it a *duty* to their characters, to myself, and the public, to assert the dignity of truth, and strip off the false clothing from this *holy hypocrite*. Had I not been urged by motives so irresistible, I should have contented myself with having driven this *wolf* from the fold, and have permitted him to retire *unmolested, and soon to be forgotten*.

Before I enter fully upon the subject, let me call the reader's attention for a moment to the *solemn affidavit* with which this gentleman *affects* to usher in his Defence. And when I say *affects*, I consider myself as therein admitting a *justifica-*

tion of his conduct, which otherwise would have demanded the most *serious reprobation*. If Mr. Evanfon had imposed upon the public by *really* sanctifying his publication with *an oath* to the truth of its contents, I should have pursued with horror the detection and exposure of the many glaring falsehoods that *disgrace* it. But as the gentleman has not condescended to tell us where that *pretended affidavit* was sworn, before whom, or where filed, or deposited, I consider it a *declaration merely positive*, dressed up in false colours to mislead the reader by an affectation of sincerity and truth, which as ill suits the work it precedes as its author.

Under this impression Mr. Evanfon must excuse me, if I treat his performance with the same freedom of argument as if he had totally omitted this *solemn* test of its originality, which I must beg leave to compare to those affidavits that daily appear in the News Papers as testimonials to the character and wonderful efficacy of some *quack medicine*, with this difference *only*, that he who *poisons the mind* is by far the most dangerous *empirick*.

The pleasantry with which Mr. Evanfon treats my Narrative proceeds from a perfect *inability* to give it a satisfactory answer; he is not the only person who has been driven to substitute *ribaldry* in the place of argument, with a view to *confound* those truths he is unable to *confute*. I own I expected a very different publication; for if he had not *ventured* publicly to *avow* his *new-fan-*  
gled



gled doctrines, I thought he would at least have favoured us with some sort of answer to the *only* charge that was ever intended to be made against him. When a man undertakes to controvert facts which are established by the *oaths* of *many* witnesses, it is generally expected that he brings at least an *equal* weight of testimony for the purpose.

Does Mr. Evanson think that a discerning reader will pay him the compliment of taking all his *assertions* for granted, when they are directly contradicted by *many* witnesses? He cannot, surely, be so weak and absurd.

It is difficult then to conjecture what this *reforming priest* wishes to insinuate by the *Epistle Dedicatory*, which he has prefixed to what, in direct violation of truth, he dares to call *The Sermon really preached in the parish church of Tewkesbury on Easter day 1771.* He thought, perhaps, that the *solemn* appearance of something *in the shape of an oath* might prevent all further enquiries on the subject, and induce his readers to give implicit credit to whatever he asserted under such a sanction. I trust that he is mistaken. For however it may at first render the way to truth in this business a little more difficult, yet, I do not despair of finding it out; and of convincing the public, that I am not *malicious* but *just*; not an *intolerant bigot*, but a *faithful member of the established church.* To obtain this end, I shall not take upon me the drudgery of following him page by page through this masterpiece of jesuif-

try, but make a few observations on the most striking parts of it.

I might with great propriety give a complete answer by referring to my Narrative, which (however, this ingenious casuist may endeavour to torture from its obvious meaning) contains a plain unsophisticated recital of facts, which clearly point out the truth of this transaction, UNANSWERED by Mr. Evanston; his endeavours therefore on this occasion I trust will avail him as little as those he has artfully exerted to maintain and scatter abroad his *apostate doctrines*. How easy would it have been for him at once boldly to *deny* the charge, or vindicate his *conscience* by avowing it? Such a conduct would have rendered him as amiable as he must now appear *despicable* in the eyes of every man of sound and upright principles: because mankind will expect that *he* who presumes, in defiance of the establishment of ages, to introduce a new system of thinking (particularly in *religious* concerns) should be himself a person of consummate *wisdom* and *integrity*, superior to *hypocrisy*, and the contemptible artifices of a sophist. How far Mr. Evanston lays claim to these qualities, let the impartial reader judge!

In the second page of his epistle, Mr. Evanston says, that *having occasion to mention in his printed Letter to the Bishop of Litchfield the late singular prosecution, he did not name me or any other person*. Admitted: But can he have the confidence to suppose so *shallow* a subterfuge can deceive?

ceive? No man who knew the circumstances of the case could possibly entertain a doubt against *whom* his letter was levelled. And though I do not intend to make any apology for my publication, yet, had not *that* letter made its *public* appearance, the Narrative would certainly have been suppressed by Mr. *Town Clerk*; an *Appellation* by which (greatly, I dare say, to Mr. *Evanson's* astonishment) I consider myself as *much honored*. I give him credit, however, for his *satirical* hint, nor wish to rob him of a tittle of that merit, as a *wit*, which the reader may think him intitled to on the occasion.

The obscurity with which Mr. *Evanson* (in p. 3.) speaks of my malicious rancour against those who only in the *honest* discharge of their *official* duty happened to be instrumental in frustrating the purpose of the prosecution, puts it out of my power to give such an answer to that part of his Epistle as I should have done, had he been more clear and explicit. If Mr. *Rudge* is the person alluded to, (and I can see no other) though I disavow, and have ever done, through the whole of this business, any degree of *malice* or *persecution*, I own *that honest official* has my hearty and sincere resentment. And however Mr. *Evanson* may congratulate *himself* on his *narrow* escape from the *justice* of his country through *such means*, I do not envy *him* his *success*, nor the author of it his reflections. It has been said,

“ He

“ He that has but *impudence*  
To all things has a fair *pretence*.”

It is impossible to read the 4th page of Mr. Evanſon's Epistle without being struck with the truth of these lines. This complete disciple of *Ignatius* affects to spare, out of *pure charity and pity*, one of the greatest men of the age. The Bishop of Gloucester, I'll answer for him, does not wish, even in the *present situation of his health*, to screen himself from any thing *such an opponent can truly urge* to arraign his *judgment, abilities, or integrity*. The transactions of the 16th of January 1775, may be seen in p. 78. and the following pages of my Narrative; and are the best proofs that the Bishop on that day evinced himself as much a man of ability and learning as in the vigor of his life. I have not the vanity to presume that *my testimony* can do him much *credit*, but I will be bold to say, that the artful insinuations of an *apostate priest* will do him no *disponour*.

The *additions* which I have annexed to Mr. Evanſon's *kind and liberal-minded benefactors*, I find give the gentleman offence. Is he ashamed to have the public informed how *nobly*, and by what *respectable* persons he is supported? Or is he afraid that he may receive from some of his readers a gentle *admonition* to restore the money he has received to such of his supporters as could ill afford to bestow it?

It is obvious, that the one or other of these reasons must have worked up *the mild minister* to the pitch of spleen with which he comments on that part of my Narrative. I will tell him, That if to *discharge all just demands*; if to be able and willing to extend favors to many, *even of Mr. Evanfon's benefactors*; if to open my purse to supply *their* necessities, be marks of a purse-proud spirit, *I am purse-proud*. I again thank him for his hint respecting the relation in which I stand to the corporation of Tewkesbury, with a view only of *again* assuring him, that I consider that relation as *an honor*, nor would I exchange it for the *highest* preferment Mr. Evanfon's *principles* or *patronage* may procure him.

To follow his own mode of calculation, let us from his *respectable* list of friends strike off those who have *only* favored him with their *names*; those who, totally ignorant of the subject of dispute, were deluded into a persuasion that it was only *mere matter of form*; those from whom any person of *conscience* or *charity* would not have condescended to have received the *mite* that could ill be spared. What will be the complexion of those who remain? *Some*, I fear, not incapable of countenancing the *vilest* negotiations. Few, by whom *any* cause can be honored, and still fewer from whose support the reader will be able to draw any conclusions favorable to the idol of *their* association, or disreputable to those who thought it right to call upon him to make *atonement* for a gross violation  
of

of the laws of his country. That the reader might make *these*, or any other observations he thought fit, I published *the additions* complained of. And such readers as are acquainted with Tewkesbury well know, that my *arithmetic* is neither *mysterious* nor *incomprehensible*.

As to my *creed*, I know of no right that Mr. Evanston has to impeach it. And as things are circumstanced, I gave Mr. Evanston credit for more discretion than to have thus *publicly* called it in question. But the most *cautious* and *crafty* are sometimes caught tripping. The *cloven foot* will appear in spite of the utmost efforts to conceal it. Actuated by the same *zeal* which first led Mr. Evanston to labour in the work of *reformation*, he embraces even *this* opportunity (injurious as it is) to take a parting blow, hoping, I presume, to set me *and my creed* together by the ears. How he is interested in such a disunion, I own I am at a loss to conjecture. Be it as it may, he must indulge me with still insisting on retaining it. Nor would it ever have been in his power, even by the most *persuasive, insinuating* arguments peculiar to *that sect*, in which one would think *he* had been *educated*, to stagger *my faith*, or induce me to become *an apostate*.

Mr. Evanston in p. 9, 10. *confesses* what is charged upon him as to the alteration of the words, "*resurrection of the body*," to those of "*resurrection of the dead*:" and likewise the omission in *the blessing*, with a paltry quibble only as to the *commencement* of those offences. As to that point,

point, I will refer the reader to the 19th and 20th articles, and some depositions thereon, in which he will find, and indeed it is a fact *notorious* in Tewkesbury, that these alterations were made so early as 1770. The articles are as follow, *viz.*

*Also* we article and object to you, the said Edward Evanston, that notwithstanding the premises in the first twelve of the foregoing articles mentioned, you, the said Edward Evanston, at divers and sundry times, or at least once in the several years 1770, 1771, and 1772; and in the several months therein respectively happening, and in the several months of January, February, March, April, May, June, and July, in the present year of our Lord 1773, or in some or one of them, have made several alterations and omissions in the Creeds, Prayers, Exhortations, and Blessings, respectively set forth, and contained, and prescribed, and directed to be used in and by the Book of Common Prayer by law established, in your public prayers and ministration, in the parish church of Tewkesbury aforesaid; and this was and is true, public, and notorious, and thereof there was and is a public voice, fame, and report; and we article and object as before.

*Also* we article and object to you, the said Edward Evanston, that several times, or at least once within the several years and months in the last preceding article mentioned, and particularly on the first Sunday in October, 1772, in repeating that part of the Apostles Creed here following, (that is to say) *I believe in the Holy Ghost,*

*the holy catholic church, the communion of saints, the forgiveness of sins, the resurrection of the body, and the life everlasting*; instead of these words, *the resurrection of the Body*, you said and used these words, *the resurrection of the Dead*: and we article and object of any other time or times, and as before.

Mr. *John Kingbury*, of *Tewkesbury*, *Hofier*, to the 16th, 19th, 20th, 21st, and 22d of the said articles deposes (amongst other things), that within the several years 1770, 1771, and 1772, and months of January, February, March, April, May, June, and July, in the year 1773, or in many of them, this deponent has frequently observed and taken notice, that the said *Edward Evanfon*, the defendant herein, in repeating (in the parish church of *Tewkesbury* aforesaid) that part of the Apostles Creed contained in these words, to wit, " I believe in  
 " the Holy Ghost, the holy catholic church, the  
 " communion of saints, the forgiveness of sins,  
 " the resurrection of the body, and the life  
 " everlasting," instead of making use of the said words, " the resurrection of the *Body*," he, the said defendant, made use of or expressed himself in the following words, " the resurrec-  
 " tion of the *Dead*." And further says, that during all the time aforesaid, whenever this deponent went to attend divine service at his parish church of *Tewkesbury* aforesaid, which was very frequently, he particularly took notice, that the said defendant, in giving the *bleffing* at the end of his sermon, after the service of the church,  
 constant y



*constantly and repeatedly*, when he was to have read that part of the said blessing comprized in these words, “ and the blessing of God Almighty, *the Father, the Son, and the Holy Ghost*; be amongst you and remain with you always,” the said defendant did *omit and entirely leave out* these words of the said blessing, (to wit) *the Father, the Son, and the Holy Ghost*.

Mr. *John Pitt*, of Tewkesbury, Tanner, to the 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 24th, and 25th articles deposes, (amongst other things), that the defendant has *several times*, both in the year 1770, and also in the months of January and February 1771, in repeating of the Apostles Creed, said and made use of the words, “ the resurrection of the *Dead*,” instead of the words inserted in the Apostles Creed, namely, “ the resurrection of the *Body*.”

*Waterworth Collet*, of Tewkesbury, Gent. to the 19th, 20th, and 22d articles deposes, (amongst other things), that he generally attended divine service in the parish church of Tewkesbury, in the county and diocese of Gloucester, articulate in the several years 1770 and 1771, and to the first Sunday in the month of October, 1772, *and that during all that time*, and particularly on the said first Sunday in October, 1772, Edward Evanson, Clerk, the defendant herein, constantly in repeating that part of the Apostles Creed articulate here following, to wit, “ I believe in the Holy Ghost, the holy

“ catholic church, the communion of saints, the  
 “ forgiveness of sins, the resurrection of the  
 “ body, and the life everlasting,” the said de-  
 fendant, instead of the words “ the resurrection  
 “ of the *Body*,” said and used these words,  
 “ the resurrection of the *Dead*.”

Mr. *Thomas Williams*, of *Tewkesbury*, Currier, to the 19th and 20th articles deposes, (amongst other things) that the defendant, the said Mr. *Evanston*, did, *almost constantly in the years and months articulate*, make several alterations and omissions in the Apostles Creed, and the blessing directed to be used in the Book of Common Prayer by law established, and *particularly* in the Apostles Creed, the said defendant in saying and repeating that part thereof, namely, “ the resurrection of the *Body*,” *did say and make use of the words following*, namely, “ The  
 “ resurrection of the *Dead* ;” that the said *defendant*, in saying and repeating the blessing after *Sermon*, instead of saying and repeating it as in the Book of Common Prayer articulate is set forth and directed, namely, “ the blessing of  
 “ God Almighty, the Father, the Son, and the  
 “ Holy Ghost, be amongst you and remain with  
 “ you always,” he, the said defendant, *did constantly and always entirely leave out and not read the words following*, namely, *the Father, the Son, and the Holy Ghost*.

Even these depositions, I dare say, Mr. *Evanston* will dare to falsify with his *usual* coolness and effrontery, but with the reader they will receive

receive a very different treatment. In short, Mr. Evanfon would be glad at any rate to get rid of the facts mentioned in the conversation alluded to above; but they are *facts*, and too stubborn to be so easily disposed of. For the sake of satisfying the reader's curiosity, however, I will give a particular account how my memory on the subject is so perfect. Part of that conversation having been communicated to some of Mr. Evanfon's friends, I found a very unfair construction on some of my words, industriously propagated by a *busy and officious* dissenter\*, whose little regard to truth I had experienced. This induced me, for my own security and satisfaction, to make soon afterwards a memorandum of what passed in that conversation, that I might always have it in my power to contradict so gross a misrepresentation of the *plain sense* of a few *plain words*†. And it has not only answered the purpose

\* In the year 1769 this good Christian, moved by the *pure warnings of a tender conscience*, applied to me for my interest with the magistrates of Tewkesbury, that he might be excused serving on the grand jury, alleging, that the *profanation of the Sabbath day* by shopkeepers gave him inexpressible uneasiness, on account of the grand juror's oath. I stated *his Scruples*, and he has been excused to this day. But mark the consequence!—A few Sundays after a prying brother in trade, suspecting that *tender conscience*, kept a sharp watch—and he! horrid to tell! made the fatal discovery, that though his *conscientious neighbour's front doors and shop windows* were closely shut, his own customers were furnished with his worldly goods and chattels at the *back door*, in profanation of that Sabbath he was so *anxious to keep holy*.

† See Narrative, p. 10.

purpose for which it was made, but enables me, even at this distance of time, to testify on oath, (if necessary), that my account of that interview is *faithful, just, and true.*

Mr. Evanston's idea, that my charges against him are in such *general terms*, that he thinks it sufficient to give them a *general negation*, favours too much of the *absurd* to deserve a *serious* answer. I refer him to my Narrative, page 13, where he will see charges sufficiently *particular*, with reference to the depositions given in support of them. And more particularly I refer to his Letter of the 1st of October, 1772, (p. 22, and the following pages of my Narrative), wherein the reader will find a pretty clear *avowal* of many parts of what has been charged against him; and whatever *formal* and *legal* objections may have been made in the course of this prosecution against its authenticity, I here challenge Mr. Evanston to deny it upon oath if he can. He knows it is *his* own production, and will not venture to disavow it so solemnly\*.

Perhaps Mr. Evanston thinks the reader would be better pleased with a *transcript* of every *deposition* to every *charge* mentioned in the course of the Narrative. I trust the reader will require no such proofs, but will with me take them *to be true*, unless Mr. Evanston will give them a very different answer than a *flat denial*. If the depositions

\* Six witnesses have proved this letter (Exhibit C.) to be of Mr. Evanston's hand-writing, who were examined on the original articles and that exhibit."

sitions will not bear me out in what I allege, it will be a fine opportunity for Mr. Evanfon to triumph at my expence; but he prudently declines making such an attempt, because he knows to *search them* would be inevitably to *convict himself*.

Let me here once for all intreat the reader to observe, with how little compunction this gentleman directly charges those who have given evidence against him with perjury. What advantage he expects to derive from *such* accusations, I profess it is out of my power to imagine. The credit of witnesses cannot be so easily invalidated: and those *two*, on whom Mr. Evanfon, in the note, page 11 of his Epistle, has the *assurance* most positively to make this charge, are in every respect persons of the fairest character and strictest veracity, out of the reach of Mr. Evanfon's malice; nor would even *his oath*, I believe, impeach their testimony.

Mr. Evanfon, page 10 of his Epistle, says, that *I falsely* assert, that in his first sermon, after reading the thirty-nine articles, he fully discovered his present objections to them. This is the constant practice of the gentleman: but is it such a conduct or such an answer as will satisfy any man of reason or sense? It is an insult to them both. Will Mr. Evanfon support his *general negations* by an oath? Will he venture to swear, that he did not at the time mentioned use expressions in his sermon to that or the like effect? This might have some weight: but

but every man must join in reprobating the *falsity* and *cunning* with which he studiously avoids giving a satisfactory answer to the charges made against him\*.

### The

\* As Mr. Evanſon has thought fit to publiſh part of his ſermons on Chriſtmas-day, 1774, and January the 1ſt, 1775, I beg leave to inſert, for the reader's inſpection, ſome notes taken of the former of thoſe ſermons, ſubjoined to what *he* has publiſhed in his Epiſtle, page 11: from whence the reader will be convinced what regard is to be paid to any thing publiſhed by Mr. Evanſon touching this diſpute. Mr. Evanſon's copy at page 11 is as follows.

“ Luke, 2, 8. *And there were in the ſame country Shepherds, &c.*”

“ The diſcourſe which I am going to offer to your conſideration, from theſe words of the evangelical hiſtorian, is the very ſame that I delivered from this place two years ago, on occaſion of the ſame anniversary feſtival that we now celebrate. And as the inſtruction it contains is more eſpecially calculated for the particular circumſtances of this *ſacred* ſeaſon, and I perſuade myſelf is of no ſmall importance, (if duly weighed and conſidered) to the cauſe of rational and true religion, I have reſolved to propoſe it once more to be the ſubject of your attention and ſerious meditations, for the following reaſons: 1ſt. Becauſe there are many perſons now in this audience who were not preſent when it was preached before. 2dly. Becauſe few people are capable of apprehending the whole ſcope and meaning of an argument (*eſpecially if it be out of the common road*) at once hearing; and laſtly, becauſe I find ſome parts of this very diſcourſe have been either groſſly miſunderſtood, or elſe wilfully as well as falſely miſrepreſented, in the courſe of the proſecution now carrying on againſt me. I am perfectly well acquainted with the principles in which my adverſaries have been *unhappily* educated, and knowing the powerful and inveterate  
force

The justification Mr. Evanfon offers for not reading the whole of the *Nicene Creed*, is of a piece

force of early-rooted and long-established prejudices, am very ready both to admit and make apologies for their unbenevolent conduct towards me ; but surely religious zeal, whether it be real or pretended, should not induce any person (as it hath done several in their evidence concerning me) to be guilty of the crimes of rashly swearing to untruths, and bearing false witness against their neighbour."

The following, which are *other* parts of the discourse, Mr. Evanfon *artfully* suppresses, because they would explain what he now thinks *his* interest to conceal.

"That the custom of celebrating Christ's nativity was not known till about the third century. That the bishops and teachers of those times, finding the heathen idolaters strongly attached to festivals annually held in honour of Bacchus, Saturn, and other of their deities, in order to remove their prejudices against Christianity, which they looked upon as unso- cial and forbidding, and to encrease the number of their converts, Christianity met Paganism half way ; and instead of the Bacchanalia and Saturnalia held at this season of the year by the heathen world, instituted Christmas, as they did likewise by the festival held in honour of Ceres and Flora on the 1st of May ; on which, for the same reasons, was fixed the feast of Philip and James, as times of public rejoicing and festivity. That evergreens were always used by the Hea- thens as emblematical of youth, particularly ivy, which they held sacred to Bacchus ; from whence arose the custom of dressing our churches with boughs. That the Roman Catho- licks endeavoured to keep the people in ignorance, envelop- ing their doctrines in mysteries ; (here he drew a simile be- tween their conduct and that of our church, but cannot pre- cisely remember what.) That it was highly improbable the birth of our Saviour should happen at this season of the year, as shepherds did not keep their flocks in winter, the incle-  
D mency

piece with the rest of his performance, sheltering himself under the strict letter of the Rubrick, which he says (p. 15.) only requires that the whole *should* be read. This *jesuitical* distinction

mency of the weather, and the increased rapacity of the wild beasts, rendering the precaution of folding them absolutely necessary. He allowed Judea was situated more southerly than we are, but there was not so great a difference in the rigour of their winter as in the heat of their summer. Observed, that so late in the year as the Jewish Passover, a fire of coals was necessary; and as a proof of the coldness of the climate, observed, that the Royal Psalmist, who had himself followed the occupation of a shepherd, had said, "He giveth snow like wool, and scattereth the hoar frost like ashes; he casteth forth his ice like morsels; who is able to abide his frost?" Another reason he assigned was the taxation of the Romans, which obliged every one to go to his own city to be taxed. That the Virgin Mary had about an hundred miles to travel, and many others might have much farther; therefore it was very improbable that the Romans would chuse to do it at that season of the year, when the badness of the roads and inclemency of the weather rendered their going almost impracticable, and that it might be expected each city would be so full as to render accommodations very scarce, as we find they were, the Virgin finding no other than a stable. That the common people were so attached to old customs, that any alteration gave offence. An instance of which we had seen in our time, when the legislature altered the stile eleven days, they were much displeas'd, imagining they had altered the day of the birth of our Saviour to a day on which he was not born: whereas in truth if they had altered it six months they would have been much nearer the time. But, since the New Testament is totally silent as to the time of his birth, we must for ever remain in ignorance. That as the precise day cannot be ascertained, if *any* festivals are to be kept, it was immaterial what days are observed; but had they been necessary, our Saviour would have left some command."



is what the authors of the Rubrick had not in contemplation, nor did they think it necessary to provide against such a construction, by particularly naming the *officiating* priest. I believe, however, the reader will be of opinion with me, that the Rubrick intended the minister officiating should comply with all the rules of worship prescribed in general terms to the whole congregation.

I thank Mr. Evanfon for his readiness in correcting the errors of the press or *my pen*; but I still stick to the word; for however Mr. Evanfon's *consummate assurance* might operate as a *surprize only* on such of his *friends* as were in the *secret*, the rest of the congregation were thrown into *confusion*. I will be bold to tell Mr. Evanfon, that however he may reconcile such a conduct in the house of his God, every man (be his principles what they may) must consider it as a *disgrace* to the name of *religion*.

Is Mr. Evanfon so much at a loss to apprehend the meaning of his *determined conduct*, that he applies to me for an explanation? He argues with his *usual* judgment to endeavour to confine my opinion of his conduct to *the omissions in the Creed*, but let me undeceive him. I did not allude to *that offence only*, when I made use of the words he wishes to misunderstand. I meant his settled determination *to alter the legal service of the church of England, and introduce a new system of religion totally repugnant to that established in this kingdom by the laws, the reason and approba-*

*tion of ages.* This was the charge such his *determined conduct* made necessary; this is the charge I have *completely substantiated*.

If Mr. Evanfon was fortunate enough to be able to give as good an answer to my Narrative as I can to his complaint of injustice, by my concealing his note to Mr. Collet, his Epistle would make a much more reputable appearance than it does at present. That note (if Mr. Collet ever received such a one) *was never communicated to me*; nor did I ever hear a syllable about it till I read Mr. Evanfon's Epistle. The reason why Mr. Collet did not shew it to me, I presume, was, because he thought it deserved to be treated with silent contempt. And after Mr. Evanfon's Letter of the 1st of October 1772, he had no right to expect from Mr. Collet a different treatment\*.

The information I am going to give the reader on the circumstance which is the subject of Mr. Evanfon's insolent and gross reflections in p. 16, 17, and 18, does not proceed from the smallest apprehension lest any impartial person should suspect me either of being guilty of perjury myself, or of prevailing on another to

\* Mr. Collet, I presume, perceived the *artful ingenuity* of Mr. Evanfon's conduct, by a proposal *not to preach in a morning*. There is but one church at Tewkesbury, and as the servants and inferior people attend mostly in the afternoon, the congregation is much more numerous. This will likewise fully account for Mr. Evanfon's observation in p. 7, of his Epistle, touching the secession of auditors that his *offensive* behaviour had occasioned.

support

support any cause in which I am concerned, by such infamous means. But however conscious a man may be of the rectitude of his own heart, matters of so serious a nature ought not to pass by in silence.

After having conversed with many witnesses previous to the execution of the commission, who *unanimously* declared, that Mr. Evanston read no further than the word *invisible* on the first Sunday in October 1772. I was told that the clerk had said he read further. I sent for the clerk, from whom I received the following account, which I reduced to writing in his presence: " That on the first Sunday in October 1772, previous to Mr. Evanston's going into the reading-desk, Ann Blanch, the sexton's wife, told him, (the clerk) that Mr. Evanston wanted to speak with him; and that he waited upon Mr. Evanston, who expressed himself to him as follows: " If I *should* leave off in the *Nicene Creed*, do you go on in the same voice and " time as usual." That Mr. Evanston had read the words, " only Son of God," which he had made a memorandum of when he *returned home* from church, and relying on that, if he was called upon he should declare the same. I told him many people said Mr. Evanston had left off at the word *invisible*. This was the substance of that conversation, which has given rise to Mr. Evanston's *base* insinuations. I mentioned this intelligence of the clerk to the three gentlemen concerned with me in the prosecution, and to a great number

number of other persons, all of whom concurred with the five witnesses, (who were examined, and positively deposed upon oath) that Mr. Evanston left off at the word *invisible*, and that the clerk was *mistaken*. And I had the strongest proof that he was so, for I was myself at church that day; paid the closest attention, and observed that Mr. Evanston read *no further* than the word *invisible*, and I made a memorandum of it before I left the church. Indeed, it was a matter of general observation, that at the word *invisible* Mr. Evanston made a pause. The clerk turned, and looked stedfastly at him, and then proceeded in reading the rest of the Creed. Would Mr. Evanston have had the promoters resist this conviction, and omit the testimony of those witnesses out of compliment to the clerk's opinion? If Mr. Evanston was clear that the clerk was right, why did he not examine him as a witness? Why did he not examine some of his *converts*, and *liberal-minded benefactors*, in support of the clerk's declaration? The reason is obvious, and I am so thoroughly convinced of the truth of the depositions of those five witnesses, that I will venture to give their names \* to the public, that those who know them best may determine whether the weight of credit ought to be given to their *oaths*, or the *declaration* of the parish clerk, who, for *obvious* reasons to those acquainted with the parish, was as *unlikely* a person in the

\* Mrs. Jones, Mrs. Taylor, Mrs. Hadson, Mr. Nash, and Mr. Thomas Williams.

congregation to retain the fact with certainty upon his memory as any person present, and much more so than those *who immediately minuted* that transaction, not choosing, in that confused state the church was thrown into by Mr. Evan-son's unjustifiable behaviour, *to rely* on their memory *till* they returned home.

Mr. Evanston can scarcely be so absurd as to imagine, that this man's *single* account could induce any person of common sense to discredit the uniform testimony of so many witnesses on this point. What then does he mean by asserting, that his prosecutors were clearly convinced of its falsehood? I deny, in the most positive terms, that the clerk's information had any such effect on *my* opinion, and may venture very safely to say the same for the rest of the promoters. And it must be *remembered*, that to this material fact, Mr. Evanston himself has not so much as offered *even the shape of an affidavit* to confirm the clerk's opinion.

If Mr. Evanston had substantial proofs to lay before the public, that any of us had *tampered* with this man, or used any means to persuade him to depose on behalf of the prosecution, contrary to his belief, there would have been good reason for a serious charge against us; but as the insinuation is *groundless, base, and infamous*, the author of it is intitled to no other notice than the severest *discipline* of a cane, or a horse-pond. I am happy in not being *singular* in this opinion; and more so, that I have an opportunity of asserting

asserting with confidence, that many, even of Mr. *Evanson's* friends, have, since Mr. *Evanson's* last publication, expressed to me, *unsolicited*, their detestation and abhorrence of *so vile* and *groundless* an aspersion. And I here beg leave to return them a public acknowledgment, as well for their *just* indignation at such a violation of truth and justice, as for their candor, in voluntarily confessing to me, that it has ever been a *fact admitted amongst them*, that Mr. *Evanson* really read no *further* than the word *invisible*. If then, his converts make such a confession, how ought this *pastor* to hide his face with shame for so profligate and wanton an attack on my integrity and reputation.

Notwithstanding the positive manner in which Mr. *Evanson* (p. 18.) denies his having read the *whole* Liturgy in the parishes of *Tredington, Longdon, and Busbley*, at the time he made the alterations charged against him in *Tewkesbury*, I still persist in asserting, that it is a *notorious fact*, which I can prove by many respectable witnesses. Here, as in many other parts of this gentleman's Defence, we are (what the lawyers call) at issue. And as I look upon the public to be totally disinterested between us, I trust they will, like other impartial judges, form their opinion to which side the balance of evidence appears. Has Mr. *Evanson* adduced any proofs to convince us that his assertion is true? Certainly not. He has pursued his customary and favourite system of refutation, a *flat negative*. If he had shortly  
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given this answer to my Narrative, and said in plain terms, "*You lie,*" it would have spared him some pains and expence; and, perhaps, have answered his purpose full as well as that mode he has adopted; for, I confess, I should in *that case* have troubled the public no further on the subject; but I have full *evidence* in support of *this* as well as every other charge against him:

I have in my possession letters from two substantial and respectable inhabitants of Tredington, and one from an inhabitant of Bushley; directly and in express terms testifying what Mr. Evanston says I have *falsely* accused him of. Perhaps he will complain that I do not give up the names of the *authors*: if I thought the *reader* required it, I would do so for *his* satisfaction; but as Mr. Evanston has set me the example, I think myself justified in publishing the *anonymous* letters subjoined, and refer him to p. 5. and 6. of his Epistle for any apology that may be deemed necessary\*.

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\* L E T T E R I.

During the time Mr. Evanston read prayers and preached at Tredington, before the prosecution was commenced against him at Tewkesbury, he neither made alteration or omission in divine service. We are, &c.

18 Feb. 1778.

L E T T E R II.

On the 7th of February, and on the 7th of March, 1773, Mr. Evanston did service at Bushley church, in the county of Worcester, without alteration or omission. I am, &c.

18 March, 1778.

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The note Mr. Evanfon has treated us with on this head at page 18. is fuch a jumble of *hearsay, belief, and fufpicion*, that it is fcarcely worthy notice; but as I am difpofed to make every thing in this bufinefs as intelligible as poffible, I will explain what Mr. Evanfon has enveloped in his wonted obfcurity. The parifh he alludes to is Longdon, in which I am fteward of the manor courts. At one of the courts I asked the clerk of the parifh, (who was the cryer of the court) whether Mr. Evanfon had made any alterations in the *Apostles Creed* or the *bleffing*, he immediately and *positively* answered, that *he had not*. This is a plain fact; and whatever Mr. Evanfon may have been *informed* or *believes* touching the *fufpicions* that *might by chance* have entered into honeft *Amen's head*, I believe the reader will not give him much credit for fuch *incoherent* fagacity; and when he recollects that I never attended divine fervice in that parifh, and that it was daily expected from the declarations of his converts, that he would resign his preferment there, he muft himfelf be convinced of the abfurdity of his conjectures.

The *folemn* manner in which Mr. Evanfon labours to perfuade the public that the promoters were guilty of great injufice towards him by *printing the articles*, may perhaps miflead fome into an idea, that his complaint is juft. I beg therefore to refer the reader to the fair account I have given at page 80. of my Narrative. A fpecious relation may deceive *at firft*: but if inquired into, and confidered maturely, *Truth* will be found  
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In spite of any arts to confound or conceal her. I deny positively, that any *unjust* or *illiberal* use was ever made of the copies with my knowledge or approbation, nor have I any other authority to know they were so *numerous*, than the information Mr. Evanfon and Mr. Jenner are pleased to favor us with. Be it, however, as it may, every one acquainted with the nature of printing need not be told, that after the press is once set, the expence of printing off three or four hundred copies is very trifling.

But let us for a moment admit the dismal tale in its fullest extent: how could Mr. E. or his cause be prejudiced? His judges were men of abilities and uprightness. Can he suspect, that there has been any *one* before whom this cause has been heard, on whose judgment partiality, or any extraneous circumstances, could materially operate? *The promoters* have found none such in their behalf, and if Mr. E. has been *so fortunate*, it is ungrateful to arraign a conduct from which *he* has derived advantage. If this cause had been tried before a *jury* selected from the *lower* ranks of the people, (whose sentiments are easily prejudiced, and whose passions are soon inflamed), and copies of the *evidence* on which they were to found their verdict had been insidiously put into their hands, to bias their opinions, I should have joined in the condemnation of those who were the instruments of such injustice: but who would object to a jury or a judge, seeing or attentively perusing,

rusing, if he pleased, the *record of the complaint*, in any stage of a cause? What impression or conviction could they derive from it, or what influence could it have on their judgment? Men in the seat of justice are neither so weak or so wicked, as to take a *charge* for granted without *evidence* to support it. If thousands of *the articles* (or in other words *the record*) had been circulated, no prejudice on earth could have been done to Mr. Evanston's cause, or its true merits rendered less useful, without circulating likewise *the depositions* by which that record is *verified*. If Mr. E. is not totally ignorant of the administration of justice, he must therefore be satisfied, that his complaint on this head is without a rational foundation,

The *singular complacency* with which Mr. E. reflects on *the fate* that afterwards attended *those articles*, must surprize even *that honest official* we have heretofore had occasion to mention; but *Mr. E.* may fortunately be of a disposition, that can look with unimpassioned indifference on the most profligate breach of duty and good faith. I cannot compliment him on *such moderation*; nor would on any account have had the cause determined in my favour by the *dishonourable* means by which he glories to have succeeded.

The consolation Mr. E. administers to *the Feathers-Tavern society*, that society (if it still exists) will not thank him for; as it is too farcical to suppose men of the most ordinary understandings would seriously associate themselves,  
for

for the purpose of effectuating an important reformation, and conduct their plan in such a manner, as could be defeated by the publication of a few articles against an individual, whom by this time, no doubt, they consider as a *contemptible* champion of their favourite faith.

The cause Mr. E. assigns for his *pacific* inclinations, after Mr. Joseph Martin's negotiation, is as false, as the means he made use of were ill calculated to produce the effects he pretends to have had in view. I call upon the inhabitants of Tewkesbury, and defy the warmest *bigot* in Mr. Evanson's party to accuse me *justly* of any acts of *inhuman* or *illiberal* resentment to the *lower*, or of *indecent rage* to the *higher* ranks of the people. And if Mr. Evanson's *new tenets* have not entirely extinguished every spark of *justice* and *gratitude*, even *they* must acknowledge, that *my office* has been the constant refuge of the needy and oppressed. I might appeal to Mr. *Bayzand*, who must confess, if he has candour, that during this dispute, *many* have found me their protector against his *ignorance* and *brutish behaviour*.

If any acts of violence have been committed, of which I never received any intelligence but by Mr. Evanson's Epistle, I condemn them as foreign to my nature, conscious that there were none such, or that they never received any encouragement *from me*; and as I do not condemn Mr. Evanson for any but his own *personal* misconducts, I claim *equal* justice; which, however

ever *he* may feel himself disinclined to bestow, the public will impartially administer to both.

I am obliged to Mr. Evanfon for reminding me of those *friendships* and *obligations*, he says, I had otherwise buried in oblivion, and am sorry his *good-will* fails of its *due* reward, by the inexplicit manner in which he conveys the hint. For my own part, I know of no *obligations* that remain unrequited to the utmost of my ability, nor any *friendships*, the loss of which I have *any reason* to lament. If Mr. Evanfon had carried his *benevolence* a little farther, and pointed them out to me *particularly*, I might have derived *some benefit* from this part of his Epistle.

Surely he cannot allude to the *two Esquires*, who stand the first *ornaments* of his *respectable* list of *liberal-minded* benefactors! I am clear they will not charge me with any obligations that have not been *amply* satisfied: and I feel no attachment to that *sort* of friendship, which is actuated by *religious zeal* to requite the unrewarded services of *twenty years* with the most *insolent* and *unmannerly* behaviour.

I am rejoiced to find *the price* of rejecting Mr. Martin's proposals affords Mr. E. matter of consolation, and should be sorry to rob him of any portion of comfort he may derive from the contemplation of it; but I must undeceive him, if he thinks it gives me the smallest *uneasiness* or dissatisfaction. Had the price been much greater, *the effect* it has purchased is a full compensation.

penfation. But if Mr. E. can *forget* the punifhment juftly inflicted on him, in a chimerical confidence of *my sufferings* on the occafion, he is heartily welcome to magnify them as he thinks fit; and I will frankly confefs, fuch a happy difpofition is the only thing on earth for which I envy him.

Mr. Evanfon's genius is fo peculiarly adapted to *quibble* and *fophiftry*, that it is a pity fuch *uſeful* and *amiable* qualities ſhould be exhausted on ſubjects that ſerve to render him *contemptible*. Will any man but himſelf ſuppoſe, that by the uſe of the word "Ceffion" I meant to confine myſelf precisely to its technical meaning? If I had been penning an *eccleſiaſtical dictionary*, I ſhould have thanked him for his correction; but in this place, I truſt the reader will indulge me with conforming his interpretation of the word to my obvious intention, namely, that when it was unequivocally evident that we had *got rid* of Mr. E. from Tewkeſbury, *the joy* of his friends was turned *into mourning*; and if that phraſeology pleaſe the gentleman, I will *compliment* him by adopting it. I am *now* of opinion it is moſt to the purpoſe; for from the whole demeanour of himſelf and friends, I had too much reaſon to expect every ſpecies of artifice; and until our preſent worthy incumbent had *actual* and *irremoveable* poſſeſſion of the vicarage, it was by no means certain that Mr. E. would not *return* to Tewkeſbury, when the ſtorm was blown over, to labour more *artfully*,

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in hopes of better success in the work of reformation.

To what I have already mentioned, let me add another congratulation at the fortunate discovery he pretends to have made: what pity it is he did not hit upon it *sooner!* it would completely have done my business without further trouble. But from the *manner* and the *time* of introducing it, I suspect he has but little reliance on the reception it will receive from the public. He would be glad, however, to induce us to believe, that I have in *one* page confessed what in ninety preceding I have endeavoured to acquit myself of. Am I, indeed, so weak and injudicious? Can he so *easily* triumph at my expence? It must be a strange infatuation, for I *still* insist, that *the purposes of our prosecution were fully answered, by the removal of Mr. E. from his personal incumbency, by the induction of another vicar.* It must not be forgot, that with *the apostate, the doctrines of apostacy* were driven away. He could not depart without carrying along with him his *holy poisons*; the treason and the traitor were inseparable, and *Tewkesbury rejoiced* at their united expulsion.

If Mr. E. had never been resident amongst us, we had been strangers to his *religious principles*; and when *he* left us, we were in no further danger from their promulgation. Those converts he has made may *in his absence* be reclaimed: as we have the happy consolation of seeing the legal ceremonies of *our church* restored,

restored; and may once more perform *our public duties* to God without fear of having our religious sentiments *insulted*, the minds of the multitude puzzled with controversial divinity, and the *established* religion of this country *shaken* to its very foundation.

*These effects* have resulted from Mr. Evanston's *personal* departure, and were such as the promoters had always in contemplation. As a man, *Mr. E.* would have passed in peace and silence; but an *apostate* priest, who dared, in defiance of all ties, (whether as a *citizen* or a *christian minister*), to attack the established faith, and *insult* it in the house of God, required a different treatment: we felt our *religious rights* boldly invaded: in their just defence, we appealed to the laws of our country, and are doubly happy in having *those rights* again restored, and the *insolent vi. lator* of them *punished* for the attempt.

Mr. E. (p. 27.) says, that I am ashamed of that part of the libel which relates to the *pamphlet*; and he affects to quarrel with my expressing myself in the form of "Belief," instead of *positively* relating what I knew concerning it, and that (as he confesses) with a view to avoid a *direct falsehood*. I thank him for an acknowledgment so much to my honour. There are many facts, of which a person may have such proofs as amount almost to conviction, but which it would be highly indiscreet to bear witness to with confidence. My *caution* I leave,

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therefore,

therefore, with the impartial reader, though Mr. E. is so much dissatisfied with it; and to convince him how much more *confident* I might have been on this point, will state a few facts.

In the latter end of September, or in the beginning of October 1772, the magistrates of Tewkesbury met at the White-Hart on business. Mr. *Bayzand* (one of Mr. Evanfon's *sincere* advocates) introduced the subject of this very pamphlet, and *boasted* that Mr. E. was the *author*, that it was a masterly performance, and that Mr. E. would put his name to the second *edition*. A prosecution was threatened by one of the company; and I earnestly requested Mr. Bayzand to drop a conversation, from whence disagreeable effects might follow: he still persisted in it, and concluded with this very *singular* piece of comfort to those who disapproved Mr. Evanfon's conduct as a minister, "that as soon as a curate in priest's orders could be procured, the *idolatrous* part of the service would be consigned over to *him*."

Perhaps Mr. E. will say, he is not *responsible* for Mr. Bayzand: I admit he is not: but an advertisement in the Gloucester Journal, for the sale of this pamphlet, appearing soon afterwards, it requires a very small share of *credulity* to believe, that Mr. Bayzand would not have avowed his *friend* as the author of it without good authority. He mentioned it as a work from whence Mr. Evanfon derived honour, entertaining no suspicions at that moment that it would



would soon be *his interest* to disclaim it. And since that discovery has been made, they are willing to get rid of it by *finesse*.

It is lucky for that purpose, that *the Printer* departed from his engagement with me to give his testimony. The motives that induced him to it are, without doubt, *perfectly well known* to Mr. Evanston and his friends. He had, however, once promised me to be examined, and to depose the truth concerning it, and by the loss of his testimony that truth has, *fortunately* for Mr. Evanston, been concealed; and as to that part of the libel, he has thereby *escaped* conviction.

After these negotiations, and these facts within my own knowledge, will any dispassionate or discerning man wonder, that I have a *fixed belief* on the subject? Surely, I might have gone much farther without censure. For whether the work travelled *by way of blind* from Gloucester to London, and from thence to Tewkesbury, or not, is totally immaterial. My opinion cannot be shaken or diverted by such shallow artifices. And I trust the reader, by this time, has as little doubt as myself, touching the *author* of this ingenious pamphlet, or the *end* purposed by its publication.

The artful method Mr. E. (p. 28, 29.) has adopted to wound the reputation of a very respectable inhabitant of Tewkesbury, is *ingenious*, tho' *infamous*. The shafts of calumny are never so dangerous or effectual in their operation, as

when sent forth under the cloak of *praise*. Men are inclined to give too implicit credit to a mode of reprobation, which *seems* to be conducted with candor and benevolence.

Mr. *E.* will not mention the gentleman's name. I marvel not at such secrecy. Darkness best suits the designs of an *assassin*, who ever hopes by such means to render his malice successful, without danger of answering for its consequences. The witness Mr. *E.* has alluded to is Mr. John Pitt, a person of veracity and honesty; and I am authorized by him to tell Mr. *E.* that the conversation he mentions was neither *private* nor *confidential*. It was never wished or intended; but Mr. *E.* *impertinently* intruded himself, and introduced his *favorite* topic of religious controversy much against the inclinations of the parties present, who were not dissatisfied with the established religion, nor desirous of hearing Mr. *E.*'s objections to, or *irreverend ridicule* of it. If any ill effects have ensued, Mr. *E.* may blame himself for it.

There was no necessity to confine ourselves to any *single time or place*, his *whole conduct* furnished us daily with ample field to choose in, whether we searched his *conversations*, his *letters*, or his *sermons*. He is pleased to call *this* our *fairest* hopes of success; but *all were equally fair*, though I confess *some* of them were defeated by that *honest official*, to whom Mr. *E.* never can be *too* grateful,

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If I was addressing myself to a *conscientious minister of the church of England*, I should hold another language. I would be bold to say, that *even Mr. E. in that character* would be heartily shocked and ashamed whenever he reflects on the means by which the most substantial and unanswerable evidence was *rendered* irrelevant and useless. The *new* religion may favor different and *more convenient* principles, by which a breach of the most important duties in society may be reconciled, and *he* who avails himself of it fully justified.

Whether Mr. E. intends in this part of his Epistle to make atonement for what he has advanced in a *former*, I cannot tell, but he is mistaken in my character, if he thinks I am either capable of *taking* credit for benefits I *never* conferred, or of burying those in oblivion which I have *received*. The account therefore of my friendships and obligations cannot be *thus balanced*.

I disclaim all demands on Mr. Pitt's *gratitude*, as there never was between us any communication, but *mutual* good neighbourhood. But admitting there *had* been obligations of the most *serious* kind, will Mr. E. dare to insinuate that Mr. Pitt would discharge them by the *blackest* crimes? Oh shame, where is thy blush? Mr. E. owes an apology to Mr. Pitt's *injured* character. Let him then confess that his *intemperate zeal* hurried him beyond the bounds of justice; let him then declare that he had no grounds for branding

Mr. Pitt with *perjury*, however his Epistle may insinuate so vile an aspersion. Such a conduct might *redeem* him from the just indignation that ought otherwise to light upon him from every *candid* and impartial mind.

The *conjectural* intelligence Mr. E. gives us at p. 30. deserves but little attention. I shall only say, that his information was false; for the opinion of the only counsel I consulted on the occasion he alludes to was directly the contrary of what he asserts. As to a consultation, I never had any upon the subject, unless Mr. E. wishes to have me call by that name the asking a *single* counsel's opinion †. I have ever been taught to consider a *consultation* as the communing together of several learned men, from whence the person applying may be furnished with their *joint* opinion. Such an application never was made by me or on my behalf. As soon as I learnt that the new Vicar was *inducted*, (for I still adhere to that word, as the only security against *jockeyship*) I never wished to take any further steps in the cause. If I had followed my civilian's opinion, I might have had *ecclesiastical censures* inflicted on Mr. Evanfon, though he was dispossessed of his *ecclesiastical preferment*; and notwithstanding he

† The opinion was given the 29th of July, 1777.—The present Vicar was *inducted* on the 29th of September following.—The proxy of renunciation of the appeal, which had been made and entered for me, is dated the 8th of October, 1777; and on the 15th of that month Mr. Jenner was informed I declined further proceeding in the suit, as the new Vicar had been *inducted*.

plumes himself upon discovering the result of a *consultation*, which had never any existence, I am still *bold* enough to maintain, in spite of his *discoveries*, that the reason assigned in my proxy \* is the only one that induced me to abandon the prosecution.

Thus have I laid before the public a few observations on Mr. Evanston's *Epistle Dedicatory*, and as *that* contains the only matters of any importance, I might here lay down my pen; for whether the sermon *annexed* is orthodox or heterodox, whether Mr. E. intends to avow his religious sentiments, by publishing it or not, is now totally unimportant and indifferent; but as he has thought fit to pledge himself to the public, *apparently* in a serious stile, to be answerable even for *verbal* accuracy, I must hope the reader will indulge me with his patience, while I point out such *omissions* and *variances* as I have *detected*; as the most convincing proof that this part of Mr. E.'s Defence is equally fallacious and jesuitical, and intitles the author of it to as little credit or indulgence as the Epistle I have already examined.

When Mr. E. preached on Easter day, 1771, he graced his Sermon with an *exordium*, which he has entirely omitted to *publish*; perhaps it was *extempore*, and he avails himself of that *subterfuge* to suppress it, considering *that* only as part of his Sermon, which he had previously *written*

\* See Narrative, p. 91.

in his closet. He called forth the attention of his congregation, as he said, "*he was then going to insist on a doctrine very different, as he believed, to what they had been instructed in from that place, but that what he was about to deliver was in discharge of his duty, and what his conscience told him was right, though it was possible he might give offence to some of his weak brethren.*"

It is impossible to remember precisely the words at such a distance of time, but I venture to assert, that the *above* is the *substance* of his *exordium*, and that in the course of that very Sermon he denied the *pre-existence* of our *Saviour*. In this I am confirmed by the depositions of some of the witnesses, who (upon their cross-examination, on interrogatories exhibited by Mr. E.) testified, that the *Sermon then produced to them*, and *that which was preached*, differed very materially. In truth, I dare say, upon a close scrutiny, (provided it was worth while) an infinite number of such instances might be discovered. Those that have occurred to me shall be faithfully remarked. It is not very wonderful that the Sermon given into the Consistory Court by Mr. E. should differ from that he *actually preached*, but it is very extraordinary, that he should have the *audacity* (to say no worse) to *publish a third* unlike either of the former.

At p. 3. l. 25, for "*Saviour will come again in person upon the earth,*" it should be, "*Saviour will miraculously descend from heaven.*"

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At p. 5. l. 23. after "*many of our Christian brethren,*" should have been inserted these words, being a paragraph perfectly well recollected and remembered by several persons of credit and of the strictest veracity; "*It is not much more than two hundred years since all the people of this country, and, indeed, of all Christendom, paid so implicit an obedience and assent to the traditions of fallible men, the decrees of popes and councils, that, like the Scribes and Pharisees of old, they actually made the word of God of none effect; and as it is too certain that some degree of the same leaven of the Scribes and Pharisees still remains amongst us, I most devoutly wish it would please God to give the present generation such a knowledge of the divine Truths of his Holy Gospel, and such a rational and virtuous courage, as might enable them to perfect that reformation so well and gloriously begun by their ancestors.*"

And here it may not be amiss to make an observation on a piece of *art* that Mr. E. has played off, with a view, I suppose, either to *confound* the witnesses, or as a *subterfuge*, provided our prosecution had not been *successful* enough to occasion his removal.

He has made several *crosses*, apparently with a view to *obliterate* many parts of the Sermon filed in the Consistory Court, particularly at p. 5, 6. and 9. of the Sermon now published, and has so *judiciously* penned his work, that the sense may be equally preserved with or without those respective paragraphs.

At the same pages, 5, 6, 9. of the Sermon now published, he has thought proper to introduce paragraphs which appear in *like* manner obliterated in the *office copy*. Whatever were his intentions, they do little credit to his candor or veracity\*.

At p. 9. l. 27. these words are omitted, "*It is the observation of a very distinguished writer of our own nation.*"

At p. 15. l. 26, 27. for "*resurrection of the body,*" it should be, "*any resurrection of the same body.*"

At p. 16. l. 1. for "*there is still one other expression of St. Paul,*" it should be "*there is a particular expression which St. Paul makes use of.*"

In the same page, l. 19, 20. for "*none of all this audience are so absurdly ignorant,*" it should be "*none in this audience are so extremely ignorant.*"

At p. 18. l. 10. for "*Ottomans,*" it should be "*Turks.*"

In the same page, l. 28. for "*valuable,*" it should be "*inestimable.*"

\* The paragraph above, stated to be omitted, and also the paragraphs at p. 5. of the printed Sermon, line 20. beginning with these words, "*I am aware, &c.*" and ending at p. 6. line 21. with these words, "*The Holy Scriptures,*" and at p. 9. line 15. beginning with these words, "*Notwithstanding which, &c.*" and ending at line 27. with these words, "*by a Bishop of our ~~own~~ church only, for observing,*" are the paragraphs which appear crossed in the office copy.

These



These remarks bring me to an end of this controversy on *my part*. But before I entirely take my leave of the reader, I repeat in the most solemn manner, that *malice or persecution* never made any part of my inducements to engage in this cause. In my Narrative, I have faithfully stated my reasons for *instituting*, as well as those for *abandoning* the prosecution, all of which I have candidly imparted, and trust with an impartial public.

I have always considered the *religion* of this country as the bulwark of our liberties, for the establishment and preservation of which our forefathers fought: and I hold it the indispensable duty of every good citizen to stand forth as its champion, whenever it is either wantonly or maliciously attacked. If *reformation* be expedient, let the *legislature* (the only proper, because the only adequate power) begin the work. But God forbid that the form of worship established in our church should be *deformed and mutilated* by every forward and assuming *innovator*; or that our faith should lie at the mercy of every *self-conceited dogmatist*, whose *caprice or vanity* may have induced him to abandon *his own*.

To those who favour *such tenets* as were the foundation of this controversy, I am not inclined to make any apology for the trouble I have occasioned; and those who are attached to *that faith which I have defended*, will require none. Here, therefore, I *finally* dismiss the subject, with a sincere and hearty wish, that no in-  
fidious

fidious or daring violator of that faith may escape unpunished; that the insolent efforts of *vanity* and *ignorance* may be vigorously and effectually repelled; and that *the present established religion* may stand unshaken amongst us, and become the united faith of the *whole earth*.

Tewkesbury, August  
5, 1778.

NEAST HAVARD,

E R R A T A.

Page 25. line 11. dele *one from*—

38. line 26. after *ecclesiastical preferment*, add at *Tewkesbury*.

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A R G U M E N T S

O F

C O U N S E L

F O R

Mr. *Evanson* the RESPONDENT.

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## ARGUMENTS, &c.

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### *Dr. Calvert's Argument.*

I AM to trouble your Lordships in behalf of Mr. *Evanson*, who is called upon to answer certain Articles exhibited against him in a *criminal* way; and as such, I apprehend any irregularity will be taken advantage of in favour of a person to be made *criminal*; though we contend that our objections here stated would determine your Lordships, even in a common *civil* question, to proceed no farther in the cause.

Articles have been given in, issue joined, and the cause stood for information and sentence: at this time there arose such difficulties and objections as induced the Judge, before whom the cause came by appeal, to dismiss Mr. *Evanson* from any farther observance of justice. And though the learned Judge gave his opinion upon *one* only, he said that *all* the objections were taken at a proper time.—And it appears to me, my Lords, that if the parties had studied to pre-

clude themselves from obtaining the sentence they were about to pray, the manner in which this cause has been conducted was the most effectual for that purpose.

The first step of the party prosecuting the cause is, to appoint a *proper* person to attend for him; which has not been done in this case. The Dean of the Arches thought *one* objection sufficient to ground his dismissal of the suit, the *whole* is open to your Lordships, you are competent to determine upon *every* objection taken in the cause before the Judge below; and though we trust your Lordships will think the *one* sufficient, yet it will be proper to make some observations on the other two objections.

The party promoting this suit in substituting a Proctor to carry it on, unfortunately pitched upon the only person incompetent to the purpose; for though he was a Proctor in the court, he was *Apparitor* of the Diocese; And can there be any thing more repugnant to Reason and Justice, than to admit that person to be the Proctor in a cause, who in his character of Apparitor *executes* every process and mandate? What delays might be occasioned! What favour might be shewn to the party in the returns of service! Suppose Evanson had been contumacious and had not appeared, the ground of excommunication would have been nothing but the proof of service of the process upon him: should the oath of *the Proctor* (who is employed by the party) be taken as proof of such contumacy? Or would it  
not

not have been good reason to reverse the judgment of excommunication?

It has been mentioned, I find on the other side, that it is not in evidence that Mr. Stock is *Apparitor*. I take it to be an indisputable rule of practice, that where the question comes upon an act of court, which *one party states*, and the other does *not contradict*, it is then taken for granted; it is so in this case. Stock is stated as *Apparitor* of the consistory court of Gloucester, to which no contradiction has been given. You will, therefore take it as a fact before the court, that he is *Apparitor*, and if my objection be well founded, the want of proof will not take away its force. In the 138th of the canons of 1603, it is said, "*that no Apparitor shall take upon him to be the Proctor or Promoter to the court.*"

It is not going a great way in arguing to contend that this canon applies to a person appearing as *Proctor for the Promoter*. It appears from the commission, that every witness in this cause was produced by this Stock, the *Apparitor*.— And if he could not act as *Proctor*, every thing he did is void, and the testimony of every witness a mere nullity.

If Stock had been a proper and admissible *Proctor* in this cause, the next step is, to proceed according to the rules of this court. The articles are to be conformable to the citation, and the sentence to those articles. If there is a discordancy between them, it will amount in a criminal cause to a nullity.

In the citation, Mr. Evanson is called Vicar of the vicarage of Tewkesbury, and Curate of the chapel of Tredington. In the Articles he is libelled against, only as Vicar of the vicarage of *Tewkesbury*: this is clearly a difference of description, and, in a criminal prosecution, the party may avail himself of it.

Suppose the party had succeeded in his prosecution, which is founded upon several different laws, acts of parliament, and canons. One is the 13th of *Eliz.* and is the ground of their prosecution, which declares he may and shall be deprived of his ecclesiastical preferment. I do not conceive, if this case went to a hearing, he would be convicted of coming within the act, that is, the object of the act. Allowing, for the sake of argument, every thing they have asserted as proof, and that you ought then to deprive Evanson of his ecclesiastical preferment; then I will ask you, What will you deprive him of? The vicarage of Tewkesbury? or the vicarage of Tewkesbury and curacy of Tredington? It is not for me to contend, that my client ought to be deprived of more than the articles mention; but what an uncertainty must the difference between the citation and articles produce? And if there is any uncertainty, it must be sufficient to ground a nullity.

I remember a prosecution against a clergyman; the articles at the beginning ran in the name of one person, and towards the conclusion the name of another was introduced by mistake.—

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The Judge of the Court of Arches was of opinion, it would produce an uncertainty at the end of the cause.—“ I cannot tell,” says he, “ whom “ I shall condemn in costs,” and the party was dismissed. The uncertainty in this case would be as material, if your Lordships do not grant the dismissal we pray for.

Besides these grounds to support the sentence of the Court of Arches, we apprehend *that* upon which the Judge below gave his opinion, will be found sufficient.

The objection is, when the articles were given in against this clergyman, and when a commission was granted to examine witnesses upon those articles, not one of them was examined upon the articles, but from a *printed paper*; which it is said, answered the same purpose, as it was a *true copy*, a position that cannot be maintained, if the whole of the evidence in the cause is to be taken upon a *printed paper*, and not upon those articles given by the prosecutor, and admitted before the court, nobody knows what it is, or what it contains. It was not *proved* to be a *copy of the articles*; all that the Register said was, that he took it for a copy. Can any person take a *printed copy* of the articles, *supposing* them to be authentic, and read the evidence examined from them in a court of justice? The objection does not apply particularly to this court, but to every court in the kingdom that proceeds by a plea and a proof upon that plea.

It has been observed, that it does not appear to the court, that the paper on which the witnesses were examined was of a *contrary* tenor to the articles. I contend, it is not incumbent on us to shew that they varied. If the gentlemen can shew them exactly the same, it would be more to the purpose, but it can never be maintained, that the examinations being bad, would not vary the cause.—Every paper upon which witnesses are examined is returned with the commission into the registry.—If the witnesses to be examined are at some distance from the Register, the *original articles* are not delivered out of the Registry, but an *authenticated copy* under seal is to be delivered to the commissioners, and therefore it is said to be true, when shewn that they have been examined by a copy.

It is not like finding a paper upon a table and examining upon it—the copy must be proved to be conformable to the *original articles*, and that copy must be returned again to the Registry.—I have seen great use made of those papers to explain the meaning of a sentence.—And as it is a clear *uncontradicted* fact, that the examination was upon a *printed paper*, and not upon the *original articles*, we apprehend it is a fatal objection, and if so, none of the evidence can be read. The Judge of the Arches did perfectly right; for what is the situation of a cause that is brought for information and sentence when there is no evidence? It is monstrous, and the  
articles

articles ought to be dismissed, and that for this reason ;—Can you with safety examine witnesses over again that have been produced before in a cause and their depositions published? Would it not be highly improper, when they know what the proofs are, to examine witnesses over again upon the *same articles*?—And, therefore, propriety justifies the sentence of the Judge below, who dismissed the cause for want of evidence.

I presume it will be contended, that though the depositions are bad, and cannot be read, yet there is a letter of Mr. Evanston's annexed to the articles which ought to be read, and the cause not to be dismissed.—It is impossible to guard a *criminal* prosecution when you proceed in such a manner by producing things that cannot be received.—Can you go into an exhibit which has been only brought to supply the proof? You can never do it without going into the proof of the charge itself; besides, what could the witness say to that? It is asserted in one of the articles, he maintained such a doctrine, and wrote such a letter; and in supply of proof of the articles that letter is produced.—Would you just read so much to shew it to be his hand-writing, as if the mere question was, Is it his hand writing or not?

I am sure it does not appear; on the contrary, the report of the examiner is, "No one witness was examined upon the *original articles*," and I humbly conceive your Lordships will think upon this

on this ground that the evidence of Mr. Evanson's letter ought not to be received.

It is said likewise, that though the depositions of the examination *in chief* cannot be read, yet that we have been administering interrogatories to their witnesses on their plea, and therefore they ought to have their depositions admitted. I deny that administering interrogatories is letting them into the evidence.—It is by way of reply to those depositions given in, it is contending two things together. First, taking it to be a separate plea, and examining, and then arguing, it may be received because we have examined upon interrogatories. Suppose we had known them at the time; we are not now upon *vivâ voce* examinations.—You then have an opportunity of knowing what questions are put to the witnesses. But we exhibited those interrogatories to meet what would come out from their articles.

But if none of the depositions can be read upon those articles, it is contrary, and our interrogatories are useless. We will not accept of *part* of their articles upon that ground; the answers to the interrogatories cannot be taken in part, the witness must take the whole or none, and I trust it is clear, as it was to the Judge below, that *all* the evidence in this cause was *improperly* received.—And, he was justified in saying, “*That Mr. Evanson should not be put to answer, but ought to be dismissed, and the prosecutor ought to pay costs.*”

Mr.

*Mr. Solicitor General's Argument.*

YOUR Lordship will please to favour me upon the part of Mr. Evanston—I had the misfortune not to be present when the case was opened to your Lordship, but I shall endeavour to follow those who have attended to them before I came.—The course of proceedings, as they now are, submits to your Lordship the true gravamen of, and sentence pronounced by, the Dean of the Arches—The words are, 1st, “*That he has sustained the objection made upon the behalf of the Rev. Mr. Evanston, to the evidence taken in the cause, from the manner in which that evidence is taken*”—and the other part is distinct and separate from it—“*That upon the foundation of that objection, which weighed with the Judge, he was of opinion, that the whole proceedings in this suit ought to be dismissed.*”

This suit was of that nature, that the Judge being of opinion the evidence was inadmissible, it followed, as necessary consequence, that the whole proceedings, from the beginning, must be dismissed, at the instance of the party praying it, as they would remain without any effect against the defendant.—The object of this suit is as *severe and punishable* as any that can possibly be carried on against a clergyman—I say, as severe  
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vere as any suit that neither attacks his moral conduct, the purity of his life and conversation, or in any degree affects the character and situation of the object of the suit, as a man.—As a beneficed clergyman, the object of the suit is, to take *from him every thing* \*—but the benefit of that character he is possessed of, and leaves him, (if the parties prevailed in the suit) the character of a *blameless, innocent*, and, upon their own confession, a *conscientious* man—It leaves him also in that state, that the object of the suit does not claim to take any right from him, or any thing belonging to him. But as matter of ecclesiastical cognizance, it takes from him every thing that an ecclesiastical court, proceeding *penally* can deprive him of—Your Lordships will therefore agree, it must be guided by strict Rules—Upon questions where the interest of the party promoting a suit, is to deprive the object of that suit of every thing that it can reach, it is not the same as a question of *civil* interest in agitation between parties upon rights, which one party loses, and the other will acquire. I do not enter into the *motives* that have conducted this suit, but the promoter, I cannot have a doubt, is instigated by an abundant zeal for a very exact observance of the discipline of the church; and therefore charges Mr. E. with acting in a way he may think exceedingly incorrect.

\* See note at p. 54 of the Narrative.

I say that this case is penal in the highest degree, as far as the jurisdiction of the court can extend; so it is therefore a different case from the interest between party and party, and if there are any mistakes in the proceedings from inadvertency or slips of the prosecutor, he is entitled to no relief; there is no *equitable* consideration to be as an indulgence upon the side of the prosecutor, for he must go by the most strict and exact forms; farther than that, I do not go into what instigated the prosecution, but the object of the prosecution is *extremely severe*, and it is not a case where the court will let the prosecutor correct a mistake.

It tends to the furtherance of justice in certain cases to let the party rectify a mistake he has committed; but whatever may have been the *ground* or *cause* of this prosecution, it is *such* the court will hold the prosecutor obliged to prosecute in the strict forms of law:—I should argue no otherwise if it was any *other clergyman*, or if my client stood less favourable than he does, and was the object of a *penal* prosecution by a party very much injured, and very justly carrying with him a *personal resentment*; for the impression the public had received from a very bad act, he would be bound in a less criminal judicature, in a temporal court, to a most exact and rigorous form of law in the prosecution: so for both considerations, the objections themselves, and the consequences that would result from them, the judgment given by the Dean of  
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the Arches will not be fet aside by any observations your Lordships may hear from the other side, or may probably have been stated to your Lordships, or from the little weight in the term that is given to one of the objections in the proceedings below, which is, "*That the objection is frivolous.*" That is a term applied to objections that parties may make to one another where they are prosecuting matters of *interest*, and where it is expected each party should not catch upon one another, and be very nice in adhering to those forms of law laid down for the observation of all parties; which is not in the least degree applicable to a case circumstanced as this is.

Having premised thus much upon the general observations made upon the nature of the several questions that occurred, I understand *three* objections were made to the suit, in the court of the Bishop; these objections were stated to the Dean of the Arches, who, upon *one*, was pleased to pronounce his opinion, and upon the whole, his sentence. — The *first* objection is upon error in the description of the party in the course of the proceedings instituted in the court below.

I do not know whether it will be expected of me, or whether any rule of law will require, that I should admit in this case, what I most undoubtedly would admit, if the question before your Lordship was upon the construction of a will, with respect to a legacy.) That the error in description is of no consequence, provided the person is certain.

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The description given the party who is the subject of this suit, is *first*, that he is called in the citation, *Edward Evanston, Vicar of the vicarage, and parish church of Tewkesbury, and also Curate of the perpetual curacy of Tredington in the county and diocese of Gloucester*—that is the description by which he is cited, and that is the description by which the libel is preferred against him—but that description so standing in the former part, in the subsequent proceedings in the cause is entirely dropped, and the cause is carried on against a person of the name of Edward Evanston, who is described as having no other qualification subsequent than the *Vicar* of the vicarage of Tewkesbury in the diocese of Gloucester, and province of Canterbury. The giving a less or a larger description of the parties, in many instances that may be put, or *varying* that description, would make no difference, but in this *criminal* prosecution, a person cited with all the qualifications that belong to him, as a person to be conducted through the course of all the proceedings to the end, the one thing, and the only one material, which I apprehend to be founded in point of law, is merely to allege, in point of fact, *there is a variance*—I allege, there is a variance between the articles and the citation—The citation and libel describe one person as the object of the suit, and the articles describe another to attend that dispute—It is like a case where the Sir-name and Christian-name are different in one, from what they are in the other; and it is not incumbent  
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upon me to state again to your Lordship this is a *criminal* prosecution, and the utmost precision is required. If it was an indictment, the misspelling of a name would be fatal in it, or if it was a question upon the prosecution of a libel, if there is false grammar in the original paper, putting in the plural for the singular (as was done in an instance that occurred lately, which was corrected in the record in court) it is clear inaccuracy of grammar, and is a fatal variance in a libel.—It would be tedious to one of the learned Judges, before whom I have the honour to speak, to state the number of instances that occur, in which the least or slightest variance upon earth of addition, or omission of a letter (not making the least difference whatever) is held to be fatal, merely for this reason; because it is a *criminal* prosecution, and in those proceedings the utmost mathematical exactness is necessary; otherwise you may vary in a point, you may vary in a letter, you may vary in a sentence; there is no knowing where to stop. The question therefore never is, whether the variance is material or not, but merely upon the fact.—Is there or not a variance? And your Lordship knows in *criminal* proceedings (which this is) every circumstance must be exactly conformed to—If in an indictment, on any written instrument, there are in the instrument blots that leave out, or that cut a word, and render the legibility difficult, or obscure a part of it, it is of course for the party that draws the indictment

dietment to copy the blot, and make it read with the instrument, exactly with the imperfection that accompanied the original.

The argument upon this is very short, and any diffusive observations would only perplex what I think perfectly clear in the criminal law of this country.—That any variance proved to exist in a *criminal* court, between the charge and proof given in support of that charge, and the instrument in court upon which the proof is to be given, is fatal, and will set it aside; and in this case, there is a variance, namely, the description in the articles upon which the witnesses were examined is different from the description in the citation.

The other objection which I shall now take notice of, is the third, which regards the rules of the courts of ecclesiastical jurisdiction, which the church has thought fit to lay down, by the canons, for the conduct of the officers of the court, who are not to deviate from the rules laid down for them in the employment in which they are engaged; if they do, I take the proceedings of those officers, acting in that manner, to be annulled. The objection is, The canon of the church requires apparitors, whose duty is described to be this—They shall execute all orders and mandates of the court themselves, and they shall not suffer their mandates to be executed by any other person, &c.—And they shall not take upon them the office of promoters or informers.—In the present case, the promoters were a Mr.

Collet and a Mr. Havard, the remaining promoter, by the death of Collet is Havard—They thought fit to employ as a proctor in the cause a Mr. Stock—That Mr. Stock is one of the apparitors general of the diocese.—I do not presume to talk with that knowledge of the course of the proceedings of the ecclesiastical courts so as to be able to state it: the learned Judge well knew the important uses of the office of apparitor—Such the law has laid down, an apparitor shall not be a promoter.—Does it mean he shall not be a promoter upon record, making himself answerable for the costs of the cause?—If that was the intention of the canon, it is a benefit to the apparitor and a privilege to him, it screens him from all danger that attends the office of a promoter.—I should conceive the canon would undergo a strange exposition if understood to mean, he may be a prosecutor (or if the comment upon it was this) “an apparitor may do any act for a prosecutor in the cause, except that act which makes the promoter liable for the costs of the cause.” It is a necessary discipline of the court, that an officer shall not take a part in any criminal prosecution—That I take to be the principle of the canon.—If there is not that good sense to support it, I do not know any reason for the canon enjoining that degree of discipline to be observed by the officer—If that is the intention of the canon, how absurd would it be, if it was like the comment I mentioned!—The principle of the law being it is dangerous to permit the officers of  
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the court to carry on prosecutions, because they might have an opportunity of promoting a great deal of vexation amongst those who were the subjects of the jurisdiction of the court—But according to the comment, they may be promoters, may carry on a *criminal* prosecution, may assist in conducting the suit, may do every thing but allow themselves to be promoters to a certain purpose, that is, do every thing but that which may make them liable, as promoters, to pay the costs of the parties. I do not understand Stock was promoter of the cause, but he was proctor to the promoters, if they join their names. If they could get any man, with or without shoes, worth 6d. or not worth it, to put his name upon record and be the John Doe in the ecclesiastical court to stand forth as the visible promoter of the suit, who, as a proctor might carry it on; of all the regulations that was ever made, this would be the most frivolous, and so far from answering the purposes of justice, it would be liable to great irregularities, and encourage the officer of the court to do every thing which it was the plain meaning of the canon to prevent.

If this objection is good (and I do not find the learned Judge of the Arches said any thing to the contrary, as he only determined upon the *second* objection) it will go to the present case, in which the promoters of the cause were Collet and Havard; but the proctor who carried on the cause was confessedly an officer of the court, who ought not to be concerned at all upon the be-

half of the party ; therefore the cause being carried on without regularity, it will necessarily be dismissed.

The other objection the learned Judge thought had more weight. I had the good fortune to see the opinion of that very learned Judge, who has always been admired for his good judgment and his great sagacity. He founded his sentence upon the second objection, as being the most weighty of the three, and the most material, which judgment he formed after a most candid hearing. He laid aside (as immaterial for him to consider or examine into the merits of) those *two other* objections which I have had the honour to state to your Lordships.

The other objection is ; here has been no examination which the court *can admit* in the cause— That is the general tendency of the objection— I do not mean to enter into any part of the history of the prosecution. Your Lordships, with great propriety, having precluded both parties from going into the considerations which do not strictly mingle themselves with the subject of the enquiry, but it is impossible not to observe the singularity which may have existed in prosecutions of this kind, but which I hope will very seldom be observed in judicial proceedings ; but some how or other, in this case, the press has been the means of conveying this cause to the public ; but why so is not for your Lordships to enquire at present, it being no part of the appeal.—It appears from the proceedings, and it is

is a fact in which we are agreed, that the articles in this case which contain the whole charge against the defendant have been committed to the press; why they were I know not, in what column, or form they were to be given to the public, your Lordships are not informed, whether they were printed handsomely, upon good, or white, or upon very clean paper, or well bound up with an elegant binding of blue morocco, with a little gilding upon it, to be sent from hand to hand, by a direction to a friend; or whether it was upon a rough, ill-coloured paper, like a common news-paper, to be sent out by news-carriers; of that your Lordships are not informed, but the fact is, the articles in this case are in print from *motives*\* of some persons. They did not come, I am sure from that party whom I condemn for acting as apparitor and proctor, if they did, it would be a reason for applying (and it would be your Lordships business to recommend it) to those that make canons to alter them. It may be the opinion of some, that printing them would be doing business much cheaper than clerks and hackney-writers could be found to make them, rather than make office-copies of them, to charge by the line and number of words in a line. But I do not think they were printed merely to save the expence of office-copies. Whether they came in a blue morocco binding, or a much less respectable form of a news-paper, without any cover at all, there is no certainty whatever; that the printed was *exactly a copy* of the written

\* See note at page 80, of the Narrative.

articles, it would be very dangerous, even for a moment, to entertain any idea that what was printed, as the proceedings of the court, could be correct. In the 1<sup>st</sup> place, if you was to allow it (I appeal to experience, I could appeal to all those that hear me, and, I suppose it may be a case in recollection of the respectable judges, whom I have the honour to address) they must know it is impossible to suppress, now and then, a view of the news-papers early in the day, and, for want of better materials, the news-papers frequently convey most erroneous accounts of proceedings in the courts of justice, likewise with respect to the house of lords, in giving an account of their proceedings. It happens very singular, the people employed to do this, find it very easy to earn the wages of doing it, for they never state the proceedings with any degree of exactness, but almost always the reverse. Sometimes they state the determination of a cause the very reverse of what it was; if a decree has been *affirmed*, they state it has been *reversed*, if a question is carried in a public assembly *one way*, they state it *another*, instead of stating it literally and precisely—This morning it occurred to me, the very reverse was stated of what had happened in a case where there could be no intention to deceive, but must be mere inadvertency: They are paid, in short, as people are paid for office-copies, but they do not make them with the correctness that an office-copy is made; for the transcriber of an office-copy, if he is incorrect, would not receive a reward for his daily labour.

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It is impossible to conceive, therefore, the degree of uncertainty in a composition put by means of the press upon paper, and exhibited as proof of the articles to which the witnesses were examined: and that fact cannot be controverted—The witnesses might just as well have been examined upon the last preceding *London Evening Post*, or any other printed paper; it was just as competent to turn to them *Baker's Chronicle* as that printed paper that was laid before them—If a similar proceeding could have been supposed to have happened in temporal proceedings in the court of chancery, if the witnesses, instead of interrogatories, had been examined upon some printed paper, supposed to have contained copies of the interrogatories, or if, upon interrogatories being exhibited to persons in a court of common law, those interrogatories had been printed, if they had got the *length* of being produced to the witnesses without the parties being committed, I should wonder: In short, without confining the proceedings to a court of justice, they had been printed previous to the examination of the witnesses, at a most dangerous part of the cause for them to be printed, if that irregularity could be so far overlooked, and that the witnesses had been examined upon it, the course of applying to a court of chancery would have been to suppress the deposition—that must have been upon the ground of suppressing the deposition, and there would not have been (for I speak with great submission, but perfect confidence at the same time) there

could not be the least hesitation, not a council, I believe, that ever attended that court, would have stood up and said, "Those depositions ought not to be suppressed;" and, I question whether the parties ought not to have paid the whole costs of all the proceedings. The depositions must have been quashed, there must have been an end of all that was done so irregularly, and it would stop the cause—for this plain reason; the court would order the party to be punished for what was done improperly, and order them to proceed *de novo*, and they would have gone upon a more regular examination.

There is no *criminal* jurisdiction in the court of Chancery—there is no possibility of imagining a criminal cause in the court of Chancery, much less a proceeding in Chancery to be at issue, and waiting for judgment in the forms of the ecclesiastical court; I speak with deference, it is for them to take their objection who were at the hearing of the objections at the time of hearing the cause below. I presume I am right. It may be said we came too late, that these objections were improperly prayed, that they should have made the objection sooner. I dare say it may be so. I venture a conjecture only, that they may say there was an opportunity to have applied *earlier* to the court. There may be such a thing in the ecclesiastical court analogous to the court of Chancery, to quash depositions as originally taken. I don't take it because the objections were not made in that stage of the cause, it is more incompetent to be made in a

more advanced stage of the cause. The cause stood for judgment, the consequence of which must have decided upon the fate, state, and interest of the party when these depositions were offered to be read, according to the forms of the court (comparing the depositions with the articles) it came out, upon the REPORT of the officer of the court itself, the witnesses had been examined in the manner the allegation opens to your Lordships. The objection very naturally struck the proctor. I presume the examinations are carried on by the examiner himself, without the intervention of the parties; the forms of both courts are the same, what passes at the examiner's office is not known to any of the parties, 'till the declaration of the officer himself, or by what appears upon the face of the depositions when published and produced.

In the shape in which the objection was offered, the proctor for Mr. *Evanson* states the depositions were taken in the manner the allegation expresses, *the witnesses were sworn upon the articles, upon the printed paper, and not upon the articles of the court\**; for those articles were

\* The witnesses were sworn in the church of Tewkesbury, upon the *original articles upon stamp annexed to the commission*, and were afterwards examined *privately* at the Plough in Tewkesbury, in the presence of the commissioners and notaries.—The depositions were then read over to and approved by each witness, who afterwards signed the deposition and acknowledged it to be true, or technically speaking, each witness was *repeated to his or her deposition* before the commissioners and notaries.

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laying upon the table that is stated precisely in the proceedings, What is the answer? admitting the fact, but contending in point of law, the objection was frivolous and not relevant; your Lordships therefore are possessed of the fact, many of the witnesses were not examined upon the articles: perhaps it may be said upon the other side, Upon what were they examined? It is not for me to answer, I don't know, I am not obliged to say they were examined upon a news-paper, or a paper different from the articles, it is enough for me to allege the witnesses were not examined *upon the proceedings of the court*, but they were examined upon something else. It is not so in the court of Chancery, the objection is of more consequence in the ecclesiastical courts than it would be in the proceedings in Chancery.—The courts of Chancery, borrowing their proceedings from this, have advanced one step farther, which perhaps lengthens them, though we conceive it makes them more precise. I understand in the ecclesiastical courts they read or state their propositions to the witnesses.

*Appellant's Counsel.* We never allow that, it is always the objection.

*Mr. Solicitor General.* I did not know it was an injunction to the officer. I am much obliged to the learned doctors for putting me right in the mode of objection, but I apprehend it will not vary the substance of it, because in the ecclesiastical court they deliver over to the examiner  
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the articles. The officer is put in possession of that article, that is, all that is transmitted for the intervention of the court by the party to the officer by whom the witness is to be examined—In the court of Chancery it is different, for upon the charge of a bill (which is strictly similar to articles exhibited to the party, as they form interrogatories which are to be settled by an officer of the court) they are examined upon interrogatories drawn and signed by counsel; and if there is no debate upon the interrogatories, passing through the medium of the officer of the court, the witnesses are examined upon questions pointedly put to them; The interrogatories are annexed to the commission. It is not a question whether the officer will hand over that to the witness and say, "*Here it is, what will you say to it?*" or whether he will exercise his own judgment and form them, but the interrogatory is pointedly drawn; in the first place they must be fairly stated to charge the party, and addressed to the witness. That guard and precaution does not exist in the ecclesiastical court, but the articles themselves are put in the examiners office, where the proceedings are private.

Upon the charge in the bill you form the interrogatories, they are signed, and they don't send the state of the charge as extracted from the pleadings with a commission for it to be examined to; but you state one, two, three, or four interrogatories, taken out of that part where the questions are pointed to arise. Upon a cross examination, you do the same thing;

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they exhibit interrogatories upon the cross examination of a witness.—All these guards are observed in the court of Chancery, and even there, where all this is done, instead of its being from *written articles*, or *the act of the court*, if it was to stand upon a *printed paper*, it would be liable to all the objections I have now stated. In the ecclesiastical court the examination being private, you do not know what the questions are that are to be put to the witnesses, or from what materials the questions were put. In short the whole of this examination, I am authorised to say, have gone upon matters totally foreign to the subject of the present case, and therefore the consequence is, no one deposition ought to be read. Upon that state of the case, I apprehend the Judge in the court of Arches could do no less than he has done, to pronounce against the whole proceedings, and dismiss Mr. Evanfon from this libel which has been brought against him.

I presume in point of form, if he had been of opinion upon the objection taken to part of the evidence, that that part of the evidence ought not to have been admitted, and the rest ought to have been admitted by the court below, the Judge would not have *remitted* the cause; but being possessed of the cause by appeal to him, he would have gone on to have done what belonged to justice. I presume that is the undoubted course of proceedings; but in this case the objection was to every tittle of evidence given in support of the libel; and there is but one part of the case which  
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they suppose not to rest upon *parole* testimony, and that is the exhibit, the letter, which I wish had not made its appearance at all in the cause. A *private* letter of Evanston's, from which certain inferences were drawn :— That there was such a letter is a fact alleged, and a fact to be proved ; the admissibility of that letter depends upon the articles, for they charge the copy set forth with the articles was a true copy of the letter sent, and that the letter was, and is, his hand-writing ; and to prove it, witnesses are to be examined upon that article.

There is a difference in proving exhibits without a special interrogatory for that purpose— You may, at any time, in any period of the cause, where proof depends merely upon testimony to be given of the hand-writing of the party, prove that ; for the hand-writing of the party is not a subject of cross-examination— You need not have interrogatories to it. In this case a different course has obtained. The whole of this is the subject of one article, the witness is incompetently examined, as well upon that, as upon any other part of the cause, and there remains no one piece of evidence to support this libel, as it is upon a *criminal* cause. I do not conceive there was any possibility for the Judge to remit that cause, it ~~was~~ competent for him to do what another Judge could do, and it was incumbent upon him to have done what belonged to justice ; and he has done what was incumbent upon him to do (upon a charge supported by no proof) to dismiss the defendant ;

defendant; he could not send him back, that the party might bring *new proof* in the cause—I am satisfied that is not the course of proceedings in any *criminal* judicature, or, I believe, in any court where there is no evidence upon which the party can be condemned—It follows as a necessary consequence, in a *criminal* court, he must be dismissed.

*[Faint, illegible text follows, likely bleed-through from the reverse side of the page.]*

**Doctor**



*Doctor Bever's Argument.*

**I**T is not now my business to trouble your Lordships with observations on the propriety of the *criminal* law, which in all cases gives to the party accused every advantage: I have no doubt your Lordships will apply that rule in its utmost extent in behalf of my client. In the court below this case was taken up upon another part of the objections. The Judge was so well satisfied upon the *second* article, he did not give any opinion upon the others; but I shall just beg leave to mention them in a summary way.

The first was the difference of description between the citation and the articles.

The citation and all the subsequent proceedings should bear a strict and close correspondence with each other, both *in form and matter*, and every informality, however trifling, will consequently be fatal to a prosecution; this is a principle not only of every common law-court or ecclesiastical court, but of common sense; It is not enough to say, that Mr. Evanfon has appeared before the court, he is cited in a *double* capacity, and it is to be presumed, that his prosecutors meant he should be punished *as Vicar of Tewkesbury and Curate of Tredington*, but in the articles,

articles, he is called only Vicar of Tewkesbury ; now, supposing the case before your Lordships on the merits, it would certainly create a doubt in your Lordships breasts, how the punishment was to be inflicted, whether as *a deprivation* of the Vicarage of Tewkesbury, or the Curacy of Tredington, or both. I must humbly submit, it is an objection to the whole of the proceedings, and the defendant cannot be properly proceeded against or punished.

As to Stock acting in the character of apparitor and proctor. The intent of the canon was to keep all our offices as distinct as possible ; and to permit them to be thus blended might produce great partiality and injustice. An apparitor is an officer in common to all parties, he is to execute every mandate he receives from the court, and if he acts in the capacity of a proctor, he may know that a witness who is to be produced against him would be fatal to the cause, and therefore, instead of compelling that witness to appear, he would evade the search, and the witness would never be brought before the court to give testimony against his client. We cannot always depend upon a person's integrity, and as none have so great an opportunity to be partial as an apparitor, that is an ample reason why he should never be permitted to act in *both* capacities.

I am sure no person was ever suffered to appear in the ecclesiastical court in both ; if the Gentle-

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men on the other side can produce a single instance, I will give up every advantage that can arise from this objection.

The next objection is to the witnesses having been examined upon the *printed* articles; It has been said, that witnesses were frequently examined upon *copies*. The case is, my Lords, the *original articles* being the foundation of the cause, are to be preserved with the utmost care, because if they were lost, there would be an end of the cause; and they are always upon that account kept in the office, except just at the time the witnesses are under examination; but when they go out upon a commission, the constant rule is, to have an *authentic office-copy* made upon stamp by the register of the court; they are annexed to the commission, and the register is to form all his questions to the witnesses upon *them only*; after which, the articles or copy, with the commission, are sealed up, authenticated and returned into court. And as this is the constant practice in our courts in all examinations, it is not possible that any witness can be examined upon any other, but what is really and identically the same as the *original*. But in this case, the register examined from the *original* articles, and others *printed*, which laid upon the table, referring sometimes to the one and sometimes to the other. And, as no return was made upon these very articles, that failure is of itself enough to annul all the proceedings; the defect will go to every

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part in their conduct ; to the exhibits which have been mentioned as containing the authentic and original letter in the hand-writing of the party, of which authenticity your Lordships must have full and ample satisfaction, and that they were shewn to the witnesses ; otherwise, it is impossible for them to say they were *original* and *the hand-writing* of the party ; there is no foundation for your Lordships to judge upon which of the *two* the depositions were taken, and, consequently, that is such a failure, as, in every view of the cause, destroys the validity of the depositions.

Sorry am I to see, in a case of so much consequence to the interest of my client (which aimed at his *livelibood*, which was *to deprive* him of his *living* \*, and turn him loose into the wide world) that the Gentlemen should undertake it and carry it on in so very careless, so negligent a manner, and so unbecoming a court of justice.

I am very sorry indeed, when I understand that at the head of that court presided a very venerable prelate, a man distinguished by every kind of learning, and one whom we might have hoped would have remembered some of those principles of justice and law, which he is said to have understood in his first setting out in the world.

In this case was certainly a total failure of every thing that looked like justice. It was thought

\* See note at p. 54 of the Narrative.

so by a very great and able judge, from whose sentence this appeal is brought, who was so exceedingly clear in his opinion, that *he determined without any difficulty* in favour of these objections, and dismissed the cause; and, we hope the propriety of that judgment will be affirmed by your Lordships\*.

\* Mr. Havard is sorry that he has it not in his power to publish the arguments of *all* Mr. Evanfon's counsel, but, as those he has laid before the public are *all* that have ever been in his possession, he trusts he shall not be charged with a want of candour.

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For the APPELLANT.

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*Mr. Attorney General's Argument.*

I AM to trouble your Lordships upon the Articles which you have just now been discussing; I take it to be true, that if the court below has been right in *all* particulars, the cause is to be remitted to them; and if wrong in *some, that part* will not be remitted, it must be discharged; but it does not follow that no more proceedings are to be had in the cause, for if the court below is found wrong in any interlocutory proceeding, which does not go to *the whole merits*, the court appealed to will proceed, I apprehend, to such effect in it as the court below ought to have done: but if the objections are fatal to *all* the proceedings, the cause will be finally discharged; there can be no remitter, there is nothing to remit; nor any retainer, for there is nothing to retain. The Court of Arches had its option, whether to proceed

ceed in the cause, or remit it *wholly or in part*, if they saw a ground to proceed upon, otherwise justice could not be done between the parties, as the appeal was on an objection to an *interlocutory* proceeding not in the least affecting the merits.

It appears to me that the Gentlemen meant to insist, that because the case could not be remitted, it ought not to be proceeded in. I take that to be contrary to the substantial requisition of justice; for if that be so, the slip of an iota, in the inferior court, however immaterial or informal, will put an end to all the justice of the cause: that I think cannot be contended for; and an appellant jurisdiction will proceed to do that justice in the cause which it requires, in the manner and form it appears before them. It comes before your Lordship in the manner it stood originally before the court of Gloucester, and you will proceed as it ought to have been done there.

The objections before that court were, First, To the citation stating the defendant as *Vicar of Tewkesbury, and Curate of Tredington*; the *Articles* they admit to be all right, and these describe him *only* as *Vicar of Tewkesbury*, charging him with a breach of duty in *that* character; and to that the judgment (whatever it may be) must apply; the character in which he is described in the *Articles* is the object to which those *Articles* must relate; but they say, "*this cause is fallen to the ground, because he is likewise described in the citation as Curate of Tredington,*

a character in which the *Articles* did *not* affect him; it produces uncertainty, they contend, as to the identity of the person of the *Vicar of Tewkesbury*; there cannot be *two* vicars, or if there were, the identity of the defendant is clear, by his having *appeared* to that description, and confessed many of the articles alleged against him, which he was *cited* to answer. I never heard in my life of an objection to a summons when the party is actually in court, and has confessed some part of the charge against him and pleaded to the rest.

The second objection is, that all the proceedings are void, because an apparitor of the diocese was employed as proctor to the promoter, and this nullity is said to originate from the 138th canon. No case is cited to your Lordships. It must mean by *promoter*, the man who is at the expence and responsible for the costs of the suit, as well as interested in the event. The *reading* the canon is the most definitive answer that can be given: and as no case has been mentioned by the Gentlemen on the other side, I trust this objection will avail them nothing, or allowing it could, they ought to have objected to the competency of the accuser in the very articles of making the allegation, instead of running through it; and when *in danger* from the proceedings, *then* for the first time to start the objection. There is certainly no *positive institution* on the subject, and it cannot be extended beyond the letter of the law to support such an objection.

The third objection is that on which the learned judge below pronounced his opinion.



If your Lordships will not permit us to *prove* it as a fact, I must at least assume, for argument's sake, as a clear proposition, that there is in the cause matter sufficient, over and above *the depositions*, upon which to found the sentence. Your Lordships say, "Let us try first whether the objection as taken has any foundation in law."—Be it so, but while that is in trial I must *assume*, unless I am permitted to *prove*, that we have matter enough, independent of *the depositions*, for the purpose I have mentioned; and the question for your Lordships to decide is, Whether the objection ought to have the effect not only of suppressing *the depositions* (supposing it competent for *that* purpose) but likewise of demolishing the whole cause from beginning to end? If I am permitted to argue to that point, there is no doubt but that there will be found sufficient evidence to support the charge *without the depositions*. I do not mean to go into a detail of evidence, or make it out in the shape of a charge against the defendant at this time, nor have I a wish to state the case at large, or any aggravations that belong to it, but merely to mention it in the abstract, upon a supposition that nothing more is *now* to be decided upon, but the *sentence* of the Dean of the Arches: for the sake of *that* question, and in order to decide it, I am to assume that there is in the case sufficient matter upon which to found a sentence, not calling for your Lordships sentence now. But observing that the Dean of the Arches did not go upon the rest of the case,

but merely upon *the depositions*, which, I say, is an objection to his proceeding, because the *rest* ought to have been examined, and when I say that, I am at liberty to assume, for the purposes of the argument, that if the rest had been examined, they would have furnished material ground for the sentence we pray. I have no intention to argue the point whether the depositions support the charge, but I mean to assume that the rest of the cause if heard, would have afforded a ground for the sentence we pray, and this for the purpose of considering the good sense, the justice, the wisdom, the propriety of that decision, which dismissed the cause upon hearing *no other* point than an objection to the *manner of taking* the depositions upon the articles. The effect of that sentence is no more than this: it being *suggested* that an irregularity had been used in the manner of taking the depositions, the judge dismisses the cause. The questions therefore we are to argue before your Lordships are, First of all, *Whether the objection of irregularity was competently and formally urged?* In the next place, supposing that to be the case, *Whether the answer made to it was a confession of the fact?* On the other hand, *Whether, according to the proceedings of their courts, the relevancy ought not to have been first examined, and consequently, if they proceeded informally, then the truth of the fact inquired into?*

The first ground I shall take is, that in the very manner of stating the objection they were  
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irregular and informal: The second is, that, allowing it was regular and formal, they made an undue conclusion to the relevancy of it: In the third place, they injured us in not admitting proofs of the fact, if deemed a relevant objection; and it was not till all those had been gone through that they had a right to draw any conclusions. The next thing I shall insist upon before your Lordships is, that, supposing the fact to be established in the most regular manner, the conclusion drawn is monstrous; for it is not that *those depositions*, which the allegation offers to affect as irregularly taken, should be suppressed, but that the *whole cause* should be dismissed. In regard to the manner of taking the objection, it is a clear proposition, that this is not considered as part of *the acts* in the cause. The manner in which the objection is taken is this: "*It appearing by the report of the register,*" not *averring* a fact, but merely *reciting* in this sort of way. It appearing in that manner, that Branch and Jenner (the proctors for defendant) allege—it is impossible to make language of it—there is no connection, no averment from beginning to end. The sentence begins thus: "*Branch and Jenner allege the citation returned in the cause is different from the articles given in, and accordingly the proceedings are null and void.*" It goes on thus: "*It appearing from the report of the register, that the original articles and exhibits were annexed to the commission, for the examination of the witnesses, issued under seal, &c. and it still appearing*

*appearing they were, together with the said commission, &c. carried by him to the commissioners, who exhibited the said commission; and that during the whole examination (still under the word appearing) we examined by virtue of the said articles which laid upon the table; but that during the time I was present the witnesses were chiefly examined upon printed copies of articles which laid upon the table likewise; and the said original articles and exhibits were referred to by me, and the other examiner now and then: (a good familiar phrase, it may mean the whole time.) And to the best of his remembrance (that is, it appearing upon the part of the register, to the best of his remembrance) no one witness was examined upon, or from, the original articles. And said Branch and Jenner further allege, &c."* Now bating all the nonsense and want of grammar, and taking it as if it stated *something*, supposing that to be the allegation which is contended for, it is certainly matter collateral to the cause. Why does not the same course of justice that governs the proceedings in matters more formally pleaded apply to this? and why is not the meaning of such a sentence as this, the relevancy and the pertinency first to be discussed? The objection we made was, that it was *impertinent, frivolous, and irrelevant*; if it had been said *insensible*, it would have been very plain and much to the purpose; but it was said it was *irrelevant*. Why was not *that* first discussed before they proceeded to see whether there was any truth in

it? and then, if they had found all the allegations substantially true, what is the consequence? What is the course of the ecclesiastical court, where the whole compass of the objection points only to the irregularity of evidence? Is there no such thing as *suppressing* depositions irregularly taken? Was there never a *petition* presented to an ecclesiastical court for that purpose? I am informed there is such a practice. I am sure it ought to have been applied to this case, and the irregularity not made as an objection to the *whole cause*. If there is *not* such a practice, the contrary principle is founded, my Lords, in gross enormity. Shall the party lose his suit because an officer of the court does not act as he ought? The fault of the officer is the fault of the court, not of *the party*, and shall the party for *his* fault be punished with a loss of his cause? and what is still more *enormous* in this case, *shall he be taxed with costs* for no earthly reason? Unless there is a case to prove this to be the practice of any court under heaven, it is impossible to give credit to it; and it is still more impossible for me to suppose that if there be no case to govern your Lordships, that you will *institute* such a practice.

But such is the manner in which the present decision has been given; for the objection was taken to the irregularity of these depositions. My argument is, Ought they to have been struck out and the whole cause dismissed with costs, though the party was not to blame, though it was never argued whether they were relevant or

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not, never decided upon, never taken as proof, and consequently impossible it should ever appear to the court whether they were true or false? Upon this view I submit to your Lordships it is impossible to affirm this judgment with any possibility of doing justice. It is not a question whether it is a *criminal* or *civil* proceeding, if the court ought not to do a *Criminal* justice, in God's name abolish and strike it out of the constitution of this country; do not let it be known or heard of. It is mockery to say such a court shall exist in which it is possible to disappoint any judicial proceeding, whether civil or criminal, to turn it round and reduce it to dust and ashes, *not* on the fault of the party, but merely because an officer of the court has not done his duty. What is the duty of an examiner? Will your Lordships now pronounce that he ought to read the articles over article by article? if he does he informs the party what he means to examine to. It is his duty to *extract* the questions from the articles to put them to the witnesses. If so, they must go further than merely stating there was a *printed* copy or any other copy, which was often referred to as an *original*. Such an objection would not stand at common law; to qualify an *objection* you must qualify the *injury*, and state the party *absolutely* wrong, by having *false and foul copies* of an examination taken, and questions improperly made and applied; instead of saying, there may be a *possible* injury done if you use copies. It is not enough to say what the proceedings are; the  
officers

**Officers** of the court returned them under seal and under the faith of their office, in consequence of a commission sealed and delivered to them, with the articles they were to examine to. *The officer* has therefore made himself criminal, if he has not behaved properly and fairly in obedience to the commission, but it is without any crime in *the party*: what has the party to do with the crime of the officer? The officers have returned *these depositions* as fairly taken by a notorial act and seal in the most solemn manner, which is *primâ facie* evidence that they were rightly taken; but the party comes to complain, notwithstanding the officer is charged with *an oath*, as I believe (but if not so, his duty is as solemn as an oath.) Has there been in point of fact any corruption, wickedness, or partiality? Is any thing of that sort suggested? Not a word of it; but it has been suggested, that whether he behaved honestly or not, the officer *might* have done some injury to the party, and God knows whether those things which he took *for copies*, and used as such, lay upon the table; whether he did not sometimes refer to them and sometimes not—they might be the most imperfect copies imaginable of those originals;—and upon this supposition the court is to act against the return as being informal, though under the hand and seal of their officer. If there be any thing to complain of against the officer, he ought to be heard for himself and for the public; for the

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court should punish him if he has behaved ill in the course of his office. It is not enough to say, he has behaved *carelessly*, they should prove he has behaved badly, and injured the party he was concerned for. But they do not think it necessary to punish the officer, but to punish the party for *his* misconduct ! which is the misconduct of the court, for *he* does not pay costs, but *the party* is to pay them for the court having behaved ill. The *sentence* goes these lengths ; and the whole suit is reprobated, because of some objections to the depositions being taken in the cause. Now, taking it upon all these grounds, I cannot help flattering myself with much confidence, that it is absolutely impossible to state any principle of common sense or natural justice in support of a conclusion so wild, and drawn from premises so narrow, so ill established by evidence, brought into the field *so suddenly*, and by such surprize upon the parties. I think this sentence will be reversed, as I conceive your Lordships will entertain an opinion at least, though the cause be not right *in the whole extent* of it, that the time shall be preserved to us (carrying on the cause as we shall be advised ; ) and whether our charges are good or bad, I will not state now. It does not appear to me that *the prosecution* deserves to be *discountenanced by any ecclesiastical court in this kingdom*.

Mr.



*Mr. Price's Argument.*

I AM concerned, my Lords, that one of my learned friends should treat this prosecution as one carried on by *resentment*. Another of the Gentlemen who spoke this day ascribed it to the spirited conduct of the *Attorney* against the *Minister* of his Parish. I beg, my Lords, that *neither* may be considered to be the ground or motives of this prosecution.

For the charge is much too serious to be so answered, it depends upon the force and existence of every one of the Statutes of Uniformity. And I can appeal, *with truth*, to one of my learned friends, if he has consulted his client upon it, and to the *client himself*, if *within bearing*, that so far from *malice* or *resentment* in my client, when the prayer of the original articles stood to *deprive* the defendant of his livings, the Gentleman who stands now as the promoter said, “ *I will never be concerned in a case of resentment. It is the cause of justice;*” and he himself struck it out. And now, my Lords, as to the *three* objections that have been made, the first is, what we should call in our courts a plea in abatement. The *citation*, I apprehend, is only a *monition* to appear to certain charges exhibited; when that appearance is produced,

it has answered every end for which the law designed it; and if the objection is at all available, it is now too late: Where are we in this case? Before appearance? Certainly not. But after a personal appearance of defendant, an appointment of a proctor; after a confession of some, and a plea to others of the articles. Nay more, my Lords; the commission is executed, the commission is returned; and though the depositions under it were published in *June 1774*, no objection was taken to them till the January following. There must be a *practice* in all courts; the practice of the law is the life of the law; and however available they might be, "in limine," as *dilatory* pleas, your Lordships will not endure that, after having laid by so long, these objections shall *now* be made. I will consider this, if the Gentlemen please, as a *penal* suit; *When* is an advantage of this sort to be taken? I will not give my own answer, but refer your Lordships to what Lord Chief Justice Hale says as to the time when, and *when* only, such dilatory objections as these are to be made. It is set forth in his second volume of his *History of Pleas of the Crown*, chap. 25. pages 174, 175. The title is, "Concerning the forms of indictments in particular, and the several parts thereof." So that it is much more penal than merely a deprivation, which, I beg leave to answer, is not (as one of the learned Gentlemen has contended) under the statute, a *total* deprivation,  
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even suppose the defendant found guilty of the several charges. My Lord, it is deprivation only till *repentance* and *renunciation*, and *restitution* thereupon by the Diocesan. It were enough to cite this authority; but, my Lords, there is a positive determination upon it in Cro. Eliz. 495. With respect to appearance and plea the rule is, if no advantage is taken, even in *capital* cases, before pleading, it can never be made use of in any subsequent step, even to avoid judgment of death. How then does this apply? Has this Gentleman pleaded? He has, and pleaded to issue; he has laid by and seen the return and publication of the depositions, and then, for the first time, takes that advantage which is *dilatory* in its nature, on which all courts look with a *jealous* eye. Tho' Edward Evanson is described in a *twofold* character, yet his identity is certain, he comes in under the name and title given him, and appears. With regard, therefore, to that objection, I rest satisfied in the firm hope and belief, that it cannot have weight with your Lordships.

The next objection is, that Mr. Stock being an apparitor and proctor in the cause, all his acts are void. Now, my Lords, I do conceive that the apparitor, which is the object of the canon, is not the apparitor *general*; but it is he who is the summoning officer in every deanery: the apparitor *general* never served a writ in the memory of man; and in this very case, all the summonses issued to one *Benjamin Mutlow*, who was the

real summoner, and no other person. Mr. Stock is not such an officer as is the object of the canon; he is not the apparitor of one district, but of the *whole* diocese; and it is his duty only to attend upon the bishop when he goes upon his visitations. He has no right to interfere with serving writs, if he did, he might be called to answer to the *local* officers; and unless it could be proved that this Mr. Stock did *absolutely* serve the summonses in the cause, it has no application to our case; the contrary is an established known fact. If the canon had intended proctors apparitors, it would have said so; but it is confined to *promoters*, that is, not *proctors*, but informers or parties litigating the cause, and differs as much from the attorney, or any other officer, as from the judge himself. It is a derogation from the common law of the land, and must be taken strictly; it cannot be carried beyond the letter; and I submit to your Lordships, that this objection cannot have any weight.

As to the next objection, I think the terms in which it is conveyed are the most loose, vague, and inconclusive. It admits that the *original articles and exhibits* were upon the table when the examinations were taken, to be referred to whenever they thought proper; it is admitted likewise, that part of the examination passed when he (the register) was not present. Does he say, the witnesses were not examined upon the *original articles*? No such thing, but he says they were examined *chiefly* from *printed copies*, which

they looked upon as copies of the *original articles*. The learned Gentlemen say, we ought to shew them *true* copies, I apprehend *copies* are "vi termini," *true* copies, which is the only meaning that can be given to the word *copies* by common sense, common language, or common law. But, my Lords, the *originals* themselves laid upon the table, and were often referred to, what can your Lordships infer from the account that is given, but that *some* are rightly taken; and the objector ought to separate *them* from the rest, and not suppress them all together.

My Lords, this very register who now objects, has given his regular testimony to these depositions. If this conduct is not reprobated, there is no solemnity on earth which may not be overturned. He gives his attestation in a most solemn manner to an act done under a regular authority, and after that, he is now to give what he calls his *report*. Where is it? I beg leave to assert there is no such thing in being, if there was, it is not admissible, no court of justice would tolerate such kind of evidence; the consequences of which would be most fatal. He was as actuary and notary public upon the commission, and when he had attested the depositions, his office was at an end; then, what are we doing? permitting this man *orally* to overturn that solemnity!

These objections, my Lords, go merely to the witnesses who were examined upon the *printed*  
 E 2 articles;

articles; now it is admitted that *some* were not so examined. The commission, my Lords, is an authority to admit, swear, and examine the witnesses; which means, that the commissioners shall admit, swear, and examine the witnesses in the behalf of the promoter, *upon the articles and exhibits*, and in the behalf of Evanson, on interrogatories to be administered; and it is as much their duty to take the *cross examination* as the examination *in chief*, in order to come at the whole truth. Interrogatories *have been* administered, and most of the witnesses examined upon them, as appears by the return of the commission.

I understand the articles to be nothing but general instructions to the examiner to form his questions upon. Suppose then, the examiner had *written* a paper of these articles, and held it in his hand, would that have been an objection? It might be a true copy of the *original*, but in this case there are not only examinations taken from *printed* articles (supposing them so) but here are others also, from interrogatories and exhibits, to which there has been no objection. The *original letter* itself is produced, and the only question was, as to whose hand-writing; therefore give the objection its full scope it cannot extend to those depositions taken on the interrogatories and exhibits, and therefore the *whole* ought not to be suppressed. If the learned Judge's opinion can be supported, there is an  
end

end of 19 out of 20 prosecutions, without any fault in the promoter, who is to be punished for the crime of the officer over whom he has no authority, and with whom he *ought* to have no connection. Can it be reasonable or just thus to dismiss the party, who has done nothing wrong, and punish him with costs? Your Lordships will acknowledge the inconsistency of it, and be of opinion, that the Judge ought either to have retained the cause, or remitted it to the court of Gloucester for further prosecution: it was no difference to the promoter, so that he had justice done him; and I am sure you will not suffer the party to be dismissed and punished with costs, for the fault of the officer, which it was not in his power to cure.

*Mr. Bearcroft's Argument.*

YOUR Lordships have heard many advocates in this cause, my great object will, therefore, be to do *some little* for my client, and not detain your Lordships too long; and the only way to obtain these ends is to consider the case with analogy to proceedings in the courts of common law. I am very ready to meet the Gentlemen on the ground they most affect (and on which they seem to bottom every one of their arguments) by admitting fully and fairly that this is a *penal* proceeding. I will admit it in the strongest terms; and to use those expressions I am most acquainted with, I will consider it in the nature of an *indictment for a misdemeanor*. I beg to leave out of the case some arguments on the other side; some there have been founded on the idea of *extreme severity* upon these proceedings; I remember one Gentleman was pleased to say these proceedings were to strip Mr. Evanson of *every thing* he could claim in the character of a clergyman; that Gentleman, with all the others, well know that these proceedings do not go so far as that, for that Gentleman's *chaplainship* may be better to him than both the Vicarage and Curacy. I will dismiss the consideration of other arguments; such as the ability and great character of the Judge below. There is no body  
more



more ready to subscribe to that than I am, but your Lordships sitting in a court of justice, as you are not acquainted with the parties, will be equally ignorant of the Judge below. I come then to the question, which is, Whether this sentence, which totally dismisses the suit and quashes all the proceedings, can be right upon those circumstances and facts which appear upon the acts of the court which appear upon record? Now, my Lords, those facts are, a suit instituted against Evanston for the correction of his manners, and the good of his soul, and for his punishment if he has done any thing wrong, and is liable to punishment upon the facts stated in *the articles*. The merits of the charge are not at all entered into, but they lay their finger upon a fault, in the manner of taking the evidence; they say, *Stop here, this is wrong, you cannot read the evidence, you can do nothing against the defendant.*

My Lords, there are three objections; the first they insist upon is *that* arising from the comparison between the *citation* and *the articles*, which has been dignified by the common lawyers, who have spoken upon the subject, by the name of a *variance*; because the citation calls Mr. Evanston by *two* descriptions, and the articles only speak of him by *one*. So far as the objection is confined to the *citation*, it seems to me to be of the nature of a plea in abatement, which is, “*You have called me by a wrong name, or at least given me a double title, and I am not the man*

you call upon to answer." Suppose a *Duke* is prosecuted *criminally* or *civilly*, and the titles of *John Duke of A. Marquis of B. Viscount C.* and so on, were all put into the writ, and when you go on to *declare* against him in a *civil*, or, to *the indictment*, in a *criminal* case, you are disposed to proceed Quakerlike, and call him plain *John, the said John*, it is perfectly correct, and no fault can be found with it; and even in an indictment for felony, if you omit a man's proper addition, or give him a wrong description, and the party cannot be found, you may proceed to outlawry; but if he *appears and pleads*, (though there is not one tittle of his description right) he will be bound in the consequences of the law, except he points it out in *abatement*. The citation is only the process to call the party to appear; the variance the Gentlemen object to does not appear till the articles are filed; the citation, it is plain, calls upon him by both his descriptions, and it mentions in general terms the nature of the offences; but it does not specify *where* they were committed, or *in what character*, and unless it did, it seems utterly impossible there can be a variance; there is nothing to vary from, unless when one crime is charged, another is attempted to be exhibited in the articles. But the truth is, the identity of this Gentleman is marked in *two* features, and they pretend not to know him, because he is described by more than *one*. In the case the learned Doctor mentioned, in which the names of *two* promoters were put  
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in by mistake, the determination was right; but it does not apply to this cause; there the *two* promoters might occasion confusion, but, is that this case? Is there a doubt as to who the person was before the court? Was there any confusion or difficulty produced? The learned Doctor says, that if a person mistakes in describing his complaint he shall suffer. Let us see what the uncertainty would be in this case. What they complain of would only be an uncertainty in point of *form*, not of *fact*, and therefore the argument don't apply to this case. The next objection, my Lords, shews the Gentlemens ingenuity and infinite versatility. In the first place you have the advocates contending for the *strictest law*, the very letter. No common justice can, say they, nor will the feelings of mankind admit a liberality of construction in a *penal* proceeding: and then the same Gentlemen construe the law in the most *liberal* manner I ever heard of, they totally forget they are in a *penal* proceeding, and want to make a word that is *definite* and *precise*, and points out a particular character, to take in another of a very opposite sort indeed. The objection is, that Mr. Stock is *apparitor* and *proctor*; there is a canon prohibiting an apparitor to be *promoter* in a cause; with great ingenuity they say a *proctor* and *promoter* mean the same thing; they resort to what just now they said, "God forbid you should resort to in *penal proceedings*," a liberality of construction, and say the same inconveniences would  
arise

arise to suffer an apparitor either to be *proctor* or *promoter*. I will argue by analogy: an under-sheriff is forbidden, by act of parliament, to act as an attorney in a cause. It is impossible two cases should be more exact or parallel than these are; the proctor is the same as the attorney; if the under-sheriff offends against this law he is punishable by a *penalty*; but it never entered into the head of man, much less will the court allow, because the under-sheriff acted as an attorney, that therefore all the proceedings in that cause are totally vacated. I may, therefore, venture to take the liberty of giving up my client's proctor to my client: if Mr. Stock has done wrong let him be punished; he may have done wrong, but that affects not the proceedings. A vast deal has been said about this being a *penal* proceeding, and deserving of favour from the court on the behalf of the party accused. I will not go farther into the case, than to shew what kind of favour is due to a clergyman charged with this sort of offence. It is a proceeding against Evanson for a contempt of the ceremonies of the church of England, and for contumacy in many respects. I cannot conceive a person under such a charge has any right to favour, when there is a canon expressly to the contrary, that is the 98th canon of 1603, by which a person who has acted like this defendant, cannot claim the benefit of the protection of the court appealed to, where the Judge has acted *judicially*; and by the opinion of those Gentlemen,

men, who understand this canon, I am warranted in saying, that the Judge has acted *judicially* when he opens his mouth. In this case it is an appeal, after the Judge had acted *judicially*, against an *obstinate, factious* person, who has conducted himself contumaciously against the ceremonies of the church of England. The only use I make of this canon is in answer to that abundant demand of favour, as it seems directly contrary to the intent of this canon, which is a very strict and severe one.

I come now to the objection, founded on the irregularity of the testimony; this, my Lords, depends upon the report of the register; now, my Lords, the commission and the evidence taken under it is returned in a regular way, but some how or other a kind of excrescence has grown up from an *officious* report of the manner in which the proceedings on the examination were had. That was truly *ingenious* and *clever*.

The proceedings upon the commission and the examination of the witnesses are returned by a proper officer, every thing then is to be taken to be *right*, unless there is some allegation, something upon the acts of the court to shew they are *wrong*. What was said to be wrong here? The *printed* copies: if any thing was wrong, it was incumbent on the defendant to find fault with it by himself or his proctor, that fact must be made out, and most clearly, because it contradicts the ordinary proceeding of the court; it  
was

was necessary for him to have averred the ground of his complaint. Must he not have had the proceedings read to see the true gravamen, to find what is said of these men not being examined in a proper way? not upon the articles but upon something that were not copies of the articles? otherwise, I presume, your Lordships will never determine whether they were *true* copies or not. By a final decision, that they were *true* copies, all would be right; and I take upon me to say, they may be so. Does it appear by any *act of court*, conclusive and cogent, that they were not so? I know what the register has chosen to allege, but I assert that, as far as any thing appears, they were *true* copies of the articles; it is not necessary for us to *prove* them so, it is incumbent on them to shew they were *untrue*, after the return that has been made to the commission, and all must be presumed to be *right*, unless the contrary appears. I set out with saying I would consider this as a proceeding on an indictment for a misdemeanor, in which case, suppose a conviction on evidence that ought not to have been admitted, was it ever heard of that the court would quash the indictment and get rid of all the proceedings? It is constant practice to grant new trials. Let us suppose for a moment, that the evidence in this cause was wrongly obtained, that there is an irregularity, an impropriety, and as such, the court would be justified in saying, we will not proceed to give judgment on facts  
thus

thus proved. Does it follow in point of justice, because they are to pluck up the heads in the cause, that they are to pluck up *all* the proceedings by the roots? No such thing: it is by no means necessary; your Lordships know it is every day's practice in Chancery, if a witness is improperly examined, or the interrogatories are illegal, the party has a right to say, "*Do not let the cause be tried upon such testimony, and so obtained.*" The practice of that court, as well as of the ecclesiastical court, is founded on civil law; and I do not find the learned Gentlemen on the other side, in the practice of that court, have produced a case in which it ever was decided, that *because a testimony was irregularly given, the whole suit was put an end to*; and without a strong case to govern, reason and natural justice dictate a contrary doctrine. The practice of Chancery is a fair precedent for the practice of the *civil law*; and in that court, whenever evidence is improperly got at, it is suppressed, and every thing else in the cause made use of. Upon these grounds, I venture to say confidently, that whatever your Lordships may think, or however you may have done right in guessing (for it is no more) that these proceedings are irregularly got at, the sentence ought not to be that which the Judge of the Court of Arches has pronounced, *to quash the suit and (what is still more unjust) to condemn the party promovent in costs*, for no earthly reason but because an officer of the court has committed a blunder.

blunder. The words of the commission upon which your Lordships sit are, *You shall summarily and without the strict formalities of judicature, consider and attend only to the truth of the matter, and the mere equity of the case, and decree what shall be just and right.* The words are mandatory. If you admit, therefore, that there is an irregularity, *the equity* is, to get at the truth of it, to dismiss what is *wrong*, and let what is *right* remain, to do justice between the parties.

*Doctor*



*Doctor Harris's Argument.*

**I**T may seem extraordinary for a Counsel to take the liberty to say he is sorry for the situation of the Judges, but I shall take that liberty; for your Lordships have sat from day to day, over and over again, and have heard so many Gentlemen speak upon this barren subject, that those who follow can do little more than repeat what has gone before. I must endeavour however to do the little I can for my client: I must say Mr. Havard appears before this court in a very favourable light: I do not enter into any charge; but when plaintiff and defendant are both before the court, and the one endeavours to weary out the other, and thereby escape from the merits of the cause being heard, and the other wishes to bring them to a hearing, the latter must stand in the most favourable light, notwithstanding any little irregularities attributed to him. With respect to the exceptions, whether they think them good or not, they cannot introduce them without some kind of apology; they began with saying, there is a distinction to be made between what would be good and valid in cases of *meum and tuum*, and those of parties *accused criminally*. I have attended Doctors Commons many years, and never heard till this time, that there should be a different scrupulosity in Judges in those

those cases, and that in the one every little error and punctilio must be of such force as effectually to dismiss the suit, but not so in the other. The terms of the commission are, *that you shall not regard strict formalities, but the truth of the case*; if the objections the Gentlemen contend for were to be attended to, your Lordships must have a different commission, directing you *to attend to the forms of law, and let substantial justice go which way it pleases*. I should think that expression now in the commission directed the judges to do exactly the same in *criminal* cases as in *civil*; the Gentlemen have not quoted any ancient case of practice where a criminal cause had been dismissed for an exception, which would not have been held good in a civil suit. Many precedents have been mentioned from the common law, which have been very ably answered: but I protest I cannot see what the common law has to do on the present occasion. If there was more strictness in the common law it would not be applicable to the ecclesiastical or civil law; and if it was to be inquired into strictly, you would find the civil and ecclesiastical law always bear hardly against the party accused. I contend only for *equal* justice, for surely the accuser ought to stand at least in as favourable a light as the man accused. The law does not say that judges are upon all occasions to find a loop-hole for a criminal to escape; that can never be the case; it is not substantial justice.

The objections are the difference in description, that the witnesses were examined from

printed copies, and that the apparitor could not be a proctor or promoter. The first, the Judge prerogative must have overruled as frivolous, if he had thought *that* exception a good one, *willing as he was to annul the whole proceedings*, he would have destroyed them upon *that*. If he had thought the articles and citation both bad, there would have been an end of the whole cause, and his conclusion would have been right and proper. And if the *first* objection was of weight enough to destroy the whole fabrick, he would never have gone on to the *second*: he took no notice of the inconveniences that might arise from the difference of description. Mr. Evanson *appeared*, and allowed he was the person complained of; it is a strange thing for the Gentlemen on the other side to say, "You cannot punish Mr. Evanson as much as you might have done," but they have said so, and I own I should be very fearful of making such an objection. As to the objection that an apparitor cannot by any means be a proctor, the canon says, the man that is an *apparitor* shall not be a *promoter*, that is, a *proctor* in the cause, say the Gentlemen; so might the Solicitor General have said, if the Solicitor General employs a proctor, that the proctor is Solicitor General. Mr. Stock is only Apparitor General, he never serves those processes which is commonly understood to be the business of apparitors. The law intended to prevent *apparitors themselves* from being *pro-*

*moters*; they go about the country to serve pro-  
cess, and they threaten to become promoters,  
if people will not give them money: therefore  
the law says, *Do not let an apparitor be a promoter*;  
but no law ever said an *apparitor should not be a*  
*proctor*. If I was to use the argument of  
incompatibility of offices, I could destroy all  
Evanfon's proceedings, and all his defence. Mr.  
Jenner comes from Doctors Commons, he is Pro-  
curator General of the Arches. Can any thing  
be more incompatible than that he should like-  
wise be proctor of Gloucester at the same time?  
which I think clears away the whole of this ob-  
jection.

I come now to that objection on which the  
Gentlemen rested, and the only one they have  
argued seriously: it is liable to this answer,  
"There is only Mr. Jenner's assertion of the  
truth of the report." It may be said that the  
register himself has transmitted that report—  
so he has—he was the transcriber, the writer of  
it; What was the report? It is stated over and  
over again, says this reporter, *the witnesses were*  
*examined privately*. How came he to make his  
report so? It is a *strange story*, and carries im-  
probability with it. The report is, *They were*  
*examined from printed copies, which he (meaning*  
*Holland and himself) took to be true copies of the*  
*articles, looking now and then at the original ar-*  
*ticles, though no witness was wholly examined upon*  
*the original articles*. You will take notice of  
what

what follows: *And, says Rudge, I have that copy from whence the witnesses were examined in my possession.* So I understand it, that the printed paper (by which I mean a printed copy containing all the items) from which they were examined is now in his possession at Gloucester; he has it there, and he may transmit it. If your Lordships are of a different opinion, I must not argue with the court; but it strikes me fairly and honestly, that the very paper by which he examined is now in his possession, and the printed copy also; he may compare the one with the other; and he would be the most dishonest man in the world if he had compared them, and not told the court that he found there was a disagreement. He is now in court, and so is Holland, and you must presume them to be dishonest men, if they did not inform the court if there was such disagreement between the papers: but I will take upon me to say, that he has compared them by looking at them; *examining chiefly from the printed copies, now and then looking at the originals.* There was no necessity for its being done exactly at that time. It never was the practice in Doctors Commons for these 50 or 100 years to have a given time mentioned, that any copy, upon which witnesses were examined, was ever compared with the original before the witnesses were examined. There would be no end to proceedings in Doctors

Commons and Chancery, if you suffer little disputes and exceptions of this sort. The Gentlemen are aware of this, and say they would not do it in a *civil* case, but in a *criminal* one every thing is to be minutely attended to, notwithstanding the rule that is laid down in this commission. If what I have said is true, the Gentlemen cannot contradict me. I contend there never was a comparison of the copies with the originals before the witnesses were examined upon the commission in the country; the credit, the veracity, the livelihood of the proctor is trusted to it. We ought then to have this comparison, as it is a piece of justice to us, to see whether this is a true copy that was printed. Your Lordships should do us the justice to let us have a monition to discover whether this man has the paper in his possession; and if he has, you would be able to compare the two papers, and all the difficulties would vanish at once. It does not appear to me that justice can be done, if there is a doubt upon this point. If that man meant to say, he has now in his possession the printed paper upon which he examined the witnesses, I should humbly conceive it ought to be brought before the court. If your Lordships should be of another opinion, it does not become me to argue with the court. Let, then, those depositions be suppressed that were taken *improperly* (if any such

such there be); but will the suppression of those affect others to which they do not apply? Certainly not. Now it is impossible there could be any kind of art used or management in respect of those depositions which were made touching the exhibits. The questions to the witnesses were only these. *Is this letter the hand-writing of Evanston? Have you seen Evanston write? And is this his hand-writing?* Now is it possible to conceive any kind of inconvenience or injury can be done to Evanston? If there were printed copies, is it possible to conceive those printed papers could be any thing else but copies? From the beginning of the ecclesiastical courts to this time, I do not suppose your Lordships will find that commissioners who examine witnesses upon exhibits ever look at those exhibits during the time they are asking such questions as I mentioned before. No! they are looking, perhaps, at a news-paper, for they know very well what questions to ask. It would be absurd to say those printed papers can do any mischief whatever to Mr. Evanston. If that is the case, your Lordships will pursue substantial justice, and say, *the evidence of the witnesses examined to the exhibits ought not to be rejected.* And this holds more strongly in regard to the *interrogatories*; they are Mr. Evanston's defence; they cannot say the articles are destroyed, if they were, then the interrogatories would have gone, and the whole cause, but *they* remain; the original depositions only are destroyed.

stroyed. Suppose another plea had been given for Evanſon, and he undertook to defend himſelf, and examine upon that plea; and ſuppoſe our witneſſes to have ſaid nothing, could not we have gone to his evidence and rejected our own? Is not the evidence in every cauſe open to every body? Moſt undoubtedly it is. Are the answers to the interrogatories contradicted? that is the ſhort queſtion. They ſay here has been management and art, and the *depoſitions* were ſuppreſſed, or a great many of them. Now that don't ſuppreſs the *interrogatories*, nor the *answers* to them, *they* could not be printed, *there* was nothing to examine by but the true original interrogatories. I cannot enforce this more than I have done, and hope your Lordſhips will not attend to mere forms of law, but do ſubſtantial juſtice, not only to my client, but to Mr. Evanſon and the public, by reverſing the ſentence given by Sir George Hay, and ſend this cauſe where it ought to be ſent, which is, to Glouceſter.

Doctor



*Doctor Wynne's Argument.*

My Lords,

I AM of counsel for the Appellant, and the subjects of your Lordships consideration are, the sentence of the consistory court of Gloucester, which determined, *That the parties should be at liberty to proceed to the merits of the cause*; and that of the Dean of the Arches, which not only pronounced, *That the consistory court did wrong, but dismissed the parties, and condemned the promoter in costs*. This decree having been made only upon irregularities, without entering into the merits of the cause, such merits are not now under your Lordships consideration. But there are some proceedings in the cause necessary to be attended to. It is a fact stated, that Mr. Evanson personally appeared to the citation on the 4th of November 1773, and that the articles were then delivered to him; he appointed a proctor, my Lords, upon that occasion, who appeared for him; and, in the presence of this proctor, on the 16th of December following, the articles were admitted, after hearing the objections that were made to them. On the 27th of January 1774, the proctor confessed two of the articles, which alleged Mr. Evanson to be

a priest in orders, and the lawful incumbent of the Vicarge of Tewkesbury, and gave a negative issue to the rest; and then, upon the petition of the proctor for Mr. Evanfon, a term was assigned the promoter to prove the rest of the articles. Accordingly a commission was taken out upon the part of the promoter, and 34 witnesses were examined by commission and in the registry, to most of whom Mr. Evanfon administered interrogatories. On the 30th of June 1774, the proofs of the witnesses were completed, and the proctor for the promoters prayed publication, and then the proctor for Mr. Evanfon asserted he gave an allegation. On the 1st of September 1774, this allegation not having been given, the promoters prayed the depositions might be published, and copies decreed to each party, which were accordingly decreed, the proctor for Mr. Evanfon consenting. So that your Lordships see that Evanfon (who had been in possession of the charge from the moment of his appearance) was likewise in possession of the evidence more than four months before the hearing of the cause. On the 9th of November the Judge assigned the proctors for both parties to propound all acts, those for the defendant excepted to the depositions; which could be only a mere exception. The 22d of December, being the next court day, was appointed for hearing it upon the allegation; there was no new allegation, and the cause was finally assigned for information

information and sentence on the 26th of January 1775. That day was changed to the 16th of January 1775: then it was that the proctors for Evanfon propounded their objections. This act of Mr. Evanfon's, in this stage of the cause, I beg leave to contend, was absolutely irregular, and contrary to the proceedings of every ecclesiastical court. Petitions, of the nature of that delivered in by the proctors for Evanfon, are very common in the practice of those courts, and the method they always proceed in is this: If the proctor has a petition upon the proceedings in the cause, or a point previous to the assignation for information and sentence, he prays to be heard upon his petition, and the court assigns a day for that purpose; and in the mean time he is directed to deliver what is called his *Act* to the adverse proctor, which contains the petition extended, and the several facts he means to rely on, if he relies on the proceedings in the cause; if he does not, if there are any facts out of the cause, in order to establish those, he exhibits affidavits, and the adverse proctor has always time to reply, by affidavits contradictory to, or explanatory of, the facts alleged by the other side. This I assert, upon my reputation, my Lords, is the course of proceedings in the ecclesiastical courts, and take upon me to say, that if in a cause which had taken the same progress that this has done in the Court of Arches or Prerogative Court, on the day of information and

and sentence the proctor should make a petition, containing objections to the proceedings in the cause, the adverse proctor need give no other answer than, "*This is not the business of this day, and no attention ought to be paid to it.*" Your Lordships will observe the proctor did not pray to be heard upon the petition; he did not pray to be heard at a future time to prove them, nor to offer any kind of proof. He alleged nothing like time, but states his objections, and the orders of the court; and in my apprehension the order of the consistory court, overruling those objections made by the proctors for Evanfon, and directing the parties to proceed upon the cause, was right and just. I will now, my Lords, enter into the objections, and consider what weight they ought to have if they had been propounded in proper time.

The first is, a variance (as they call it) between the citation and the articles: the Gentlemen, I conceive, who drew up these objections, do not extremely value themselves upon the accuracy with which they have stated them. They can never intend to have it understood that the citation and articles mean *different* articles; no body ever knew a cause in which the citation and articles did not differ. Let the description of a person be ever so erroneous, the method to pursue is, he appears upon proclamation and says, *I am not the person described, and therefore pray to be dismissed*; and the court, on proof thereof,

thereof, of course will dismiss him. But Evan-son did not take an objection of that kind: he appeared, and articles were delivered to him; in which there is no mention of his being curate of Tredington. I protest I don't know whether he is so or not, your Lordships do not know it; and it is necessary you should, to support the present objection. Thus much I am sure of, it can never be attended with the consequences mentioned on the other side, and it is necessary for them to shew and maintain it.

The case of the clergyman mentioned by one of the learned Doctors, is nothing to the present case. There was a set of articles promoted in the name of one person, and concluded in that of another. The Judge, when he came to give sentence, said, *There is confusion, I absolutely do not know what to do, I do not know who is promoter; the party don't know who is his accuser.* The first step is, that the party gives bond he will pay the expences if he does not prove the articles in that case; neither person had done it, which could not be got over. The Gentlemen say it was a mistake. The citation in the present case has done its office; there is no question before your Lordships whether Evan-son is curate of Tredington or not. He might be improperly called so, it is not alleged to the contrary, and what is not alleged cannot be proved. It is enough he has confessed himself Vicar of Tewkesbury; your Lordships know upon what ecclesiastical preferment

preferment the cause is to take effect; and therefore your Lordships will not pay any regard to this objection.

The second objection is, that Stock, one of the proctors for the promoter of this cause, is apparitor general to the bishop of Gloucester, and therefore the Gentlemen say every act done by him is illegal, (not a very *correct* expression) they lay it down most flatly, but leave it to prove and establish itself; they do not point out any particular law to support the doctrine; but to help it out, they have alluded to the 138th canon, which ordains, *That an apparitor shall not be a promoter*, to which I give this decisive, insurmountable answer, *That Mr. Stock is not promoter in this cause, and that the proctor and promoter are two different persons.* Suppose Mr. Stock had been proceeded against in a criminal way for offending against this canon, and on proof that he was the proctor only, and not the promoter, will the Gentlemen contend that he would have been punished? Most unquestionably not; it must appear to your Lordships, that it would be absurd to annul the proceedings upon this pretence. In truth, the apparitor is a mere officer for attending the bishop on his visitation, and it is not his business to serve process; for though he is apparitor general of the diocese, he is no more the summoner of this court than of any other, and we trust your Lordships will think this objection no better founded than the former.

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The third and main objection is that on which the Dean of the Arches founded his decree, and it is as to the manner in which the examinations were taken; and the whole of this depends, in point of fact, upon the report of the register, which your Lordships observe, was never made by the register, but is reported and referred to by the proctor who made the objection. For my Lords, so far is it from there being any report to this effect by the register, *the direct contrary* is over and over again reported in the most solemn manner; the depositions all purporting at the head of them to be taken *upon the articles*. Permit me, to read to your Lordships the way in which it is certified to your Lordships that the examinations were taken: the *authentication* of it is very solemn. The return is in these words, *And we the said Thomas Rudge and George Holland, Notaries Public, lawfully appointed, being in the business aforesaid assumed by your commissioners, by reason we were present at the presentation and acceptance of the commission hereunto annexed, &c.* Every thing was done under hand and seal; that is, the witnesses were examined upon the articles. Where is the return and report to shew that the witnesses were not examined upon the articles? It is not in the process, *most certainly there never was any affidavit made upon the fact*; it does not appear the report was ever made to any court. Was it made privately to the proctor? Was he drunk or sober when he made it? These are questions proper to be asked when it is barely asserted

by the proctor in a loose manner. Is it returned under hand and seal of the proctor, or certified by a notary? It is only returned by the proctor of his own knowledge, and I ask, Where is the report of the register? It is said, the proctors for the promoter having given no other answer to the objections made by Jenner for Defendant, *but alleging they are frivolous and inconclusive,* they say the facts are admitted, and therefore your Lordships are to take them as true. By the rules of law and practice I deny that, and maintain that the party upon petition has no right to call upon the adverse proctor to admit that, or answer to any thing but upon the authentic seal, the subscription of the notary or any other authentic person. If he does admit it, the court cannot take it to be true, he must have a special proxy from his party, for it is not such an admission as a proctor is authorized to make. If this is so in point of law and practice, how infinitely different it is where the party have not the least *suspicion* of any proposition of this kind! And when they were allowed to go into the merits, the party alleging these facts at that time to the court, what could the other side say, but, *This is trifling with the court, we know nothing of the matter?* With deference to your Lordships, I contend they were not bound to do more; and there was not the slightest colour to say that this was an admission of the facts before the court to found the objection. But allow me to go further,



to suppose they had been regularly heard upon the petition, that they produced an affidavit of a register to give an account of the manner in which the examination was taken, and which he certified was carried on properly; and that he had made that report which Respondent's proctor made for him, would not even that be proof of our examination of witnesses *upon articles*? Suppose he had ventured to come before this court and say, "*That is not true, the truth of the matter is, the examination was not upon articles, but on some other paper,*" would the court have attended to him? Would they have allowed an officer, whose duty it is to examine and see them properly taken, to come in this extraordinary way to disprove and contradict his own act, and throw a slur on the proceedings? I cannot conceive your Lordships, without serious consideration, will permit such conduct as this in an officer, which would open a door to such amazing frauds and practices as could never be endured. I hope examiners *in general* are honest; and God knows they ought to be so; for if this doctrine can be maintained, any one of them may keep a nullity in his pocket to produce at any *seasonable* time in the cause. When the day for hearing is appointed, he has only to whisper one of the parties, *that he has seen his proceedings, and knows the truth of the case, and that if he has a mind to ask whether these depositions were taken regularly, he will answer, NO.* Your Lordships will not endure such

such a practice, you cannot admit it. Evanson and his party had been in possession of the depositions for four months; the whole were taken upon the articles themselves above a twelvemonth before; they do not suggest a variance, nor assert that they are not as exactly taken as depositions ever were; but they put it on *this kind* of ground. Suppose the fact as they state, and leave it to operate, it is no more than this in substance, *that the depositions were not taken off-hand upon the original articles*; and, in order to make any thing of this objection, the Gentlemen were obliged to insinuate and suggest, that the way of taking depositions in the ecclesiastical court is, to read over the original articles to every witness in the cause, a representation, I think, the worst and most improper of all those proceedings. I have ever heard the Judges call examinations taken in this manner, "an echo." When witnesses have been made repeat their depositions in mere words of law, which they never heard of, I have seen the Judge in this court throw down his pen and say, *It is a mere echo, the echo of an echo*. Most undoubtedly it is the business of an examiner to read the articles over seriously to form interrogatories, from which to put the questions. To examine upon them immediately, he must read the articles. If he has a mind to be a cautious examiner he must reduce them to paper; and if he was to declare he never looked at the original articles during the examination, unless to satisfy

satisfy himself; yet if he formed his interrogatories and examined from them, so far from an objection to, it would be a recommendation of that examination, even though the articles had never been used at all during the business. Upon these grounds, I trust, it will appear that this objection amounts to nothing, or if it could be established; it can extend no further than it appears to go upon their own principle; and it cannot reach any part of the examination which is proper, for of that it can never be said we should be deprived. It happens there is an original letter written by Mr. Evanson to the Appellant and others, (some of whom are witnesses) which avows the whole of what this suit charges him with.

It is annexed to one of the articles. There are three witnesses more examined to that article *only*, who testify, *That they are acquainted with Evanson's hand-writing, have often seen him write, and, on looking at the exhibit, they know it, and firmly believe it to be his hand-writing, as firmly as any man can do the hand-writing of another.* Are we to be deprived of *this*? Is there any foundation to say they were not examined to *the original articles*? That can never extend to *those* witnesses; for though the letter was printed and annexed to these articles, yet a man could never have been examined to a *printed* letter to prove Mr. Evanson's hand-writing! He cannot say of *such* paper, *I know his hand-writing, or it is like it.* Your

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Lordships

Lordships will not endure that, and it cannot be said that the objection they have made should deprive us of our *whole* proof. We could almost rest our cause upon *this exhibit*, it is of so pointed a nature; and the Judge cannot have done right in destroying the *whole* of the proceedings, and dismissing the party, when this is clearly in evidence before the court. This is not all; besides this letter there are many interrogatories administered by Evanston, the answers to these may possibly go a great way to establish the intent of the cause. Cross examinations are very apt to produce, from fair and honest witnesses, a confirmation of the facts before stated. To this it has been said, that the examinations upon interrogatories must repel the examination *in chief*, and, if you can repel it, the interrogatories fall to the ground of course. But I say, *the whole* of the examination *in chief* cannot be repelled, because we have pleaded that Evanston wrote that letter, and *in chief* the witnesses are examined who prove it; and therefore, according to their own admission, if any part of the examination *in chief* is preserved, we can take their interrogatories along with it. But suppose the objection had been to *the persons* by whom the interrogatories were taken, or to the authority of the commissioners, that would go to *the whole* of the examinations; but it is not so at all with respect to the interrogatories. The only objection here is, whether they examined in a proper and regular way

way or not; and if they did so upon the interrogatories, though not upon the examinations in chief, I cannot see what objection the Gentlemen can possibly state. It is not at all uncommon for a witness to be examined upon interrogatories, and *not in chief at all*. If the other party are ready, they have a right to administer interrogatories. I take it there is no objection to affect the interrogatories in this case, and that we shall be at liberty to make use of them. I shall go a step farther; if the whole of the examination, if every thing done by those commissioners in this case was null and void, there can be no objection to admit *the articles* which were admitted by the court.

*If you save a part of your examination and not THE WHOLE, says one of the Gentlemen, there may be a very unfair advantage taken of the party; you are garbling the evidence, and may present it to the court in a different light from what it would appear, if the whole of the examination was before the court; there is no fear that any tittle of evidence in the cause will be omitted by the promoter; your Lordships will think there is not the least danger of his doing it. We contend, none of the objections are well founded: but if your Lordships should be of opinion that some of them deserve attention, but still that the Dean of the Arches has gone too far in pronouncing the sentence we complain of, you will think his decree in part at least erroneous, and will retain the*

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cause;

cause; Then we know what to do, we will not lose any part of our evidence, we could prove the very copies of the articles on which the witnesses were examined, they exist, and we could produce them, there is no variance which could signify in the least, *There is no doubt it is agreeable to the practice of the ecclesiastical court, and if your Lordships thought proper to retain the cause, and order us to give in a plea, we might annex to it a comparison to prove it agreed in every material instance.* An error of the press would no more vitiate the proceedings than an error of the pen. But admitting it should appear to your Lordships that the *whole* examinations must be lost, as well those in chief as the interrogatories, still *the articles* stand admitted, and upon these we conceive, as well by the practice of the ecclesiastical court as chancery, we shall have clearly a right to a *second* examination.

As to the distinction made by the Gentlemen, between a civil and criminal case. In Chancery it is admitted, that the court would quash examinations improperly taken, and direct others to be made. The practice is the same in the ecclesiastical court. I remember this was done in a testamentary case; a plea was given in and a commission taken to examine witnesses; on return of the commission the party prayed (as the party *ought* to have done in this case) to be heard upon his petition, the adverse party alleged that the person who was solicitor in Chancery,

was actually employed in conducting this very business in the ecclesiastical court, and likewise in conducting the bill in chancery. *Affidavits* of the facts were produced. The Judge was of opinion the objection was good, and declared the whole proceedings upon the commission null and void; and he decreed a *new* commission to examine witnesses upon the plea already admitted. The Gentlemen might have done so in this case; if it had been a civil case, and there is the point; they have laid their finger upon the determination of the Dean of the Arches, *That the depositions could not be read; unless this could be made appear to be a civil proceeding, you are not to proceed in a way as if it was so;* and every kind of averment or assertion of a nullity is to be admitted to found this objection. The nature of this case was set out to be for no other purpose but that of punishment. I beg leave to deny that to be a just representation. I conceive it should be meant by that and understood, that the sole intent and purpose it can have is to punish Evanson. *That is by no means the case, but the point in which the grievance exists is, that in which every sincere member of the church, and every inhabitant of this parish, who wish to go to this church is concerned. It is alleged, that the promoter and the rest of the parishioners cannot go to that church without bearing the liturgy abused.* This is a grievance to be removed for the *consolation and benefit of the parishioners,* and not merely for *the punishment*

of the person who gives this offence, an offence unquestionably *criminal*. No doubt it will be an intimation to your Lordships (if an intimation was necessary) to proceed with the utmost caution, to take nothing to be true that is not proved by strict legal evidence, and that you will suffer the party to avail himself of every legal defence that goes in the remotest degree to the *merits* of this business.

But in a case where you see the Respondent deserting *the merits* of the cause, avoiding to go into them, and endeavouring to avail himself of *artifice* and *quibble*, I conceive your Lordships will not be willing to go along with him. Your Lordships will expect some case in which you are bound by former determinations to adhere to strictness and nicety; the Gentlemen have not stated any thing like a determination, *that the mere error of an officer of the court in taking an examination* (without a suggestion that such error could affect the merits of the cause) *should quash the whole proceedings, and render it as if the suit had never been commenced.*

For these reasons, I hope it will appear to your Lordships, that the Judge of the consistory court of Gloucester had a true idea of the business in considering the objections, as taken by them then and at this time, to be truly *frivolous and inconclusive*. But if your Lordships should think these objections deserved greater attention, I trust you will still be of opinion, that the Dean



of the Arches went *too far in dismissing the cause, and condemning the promoter in costs.* I attended as nearly as I could, and I heard not a syllable from the Gentlemen in support of costs being paid by the promoter; and that I presume, because it was impossible to advance a plausible argument in defence of it.

The *sentence* was *extraordinary*, it should have condemned *the Judge* in costs, who was of opinion the promoter was right; the appeal is brought by the adverse party; in any event *the promoter* cannot be wrong, for according to the objection of the Defendant, the original error was in the officer of the court, and in a case in which he could not be concerned, in the remotest degree. I hope your Lordships will affirm the sentence of the court of Gloucester, or remit the cause there; or otherwise, that you will retain the cause and not reject *the whole* of the proceedings, though you should think *part* erroneous, and that you will reverse the decree of the Court of Arches.

*Mr. Kenyon's Argument.*

I Shall begin, my Lords, with that part which subjects the party to *costs*, and I think it is of the first impression to every body who looks at cases at common law. It seems an outrage to every idea of justice to suppose a party that comes up with a sentence in his favour is to be condemned in costs, because those who are the Judges make an error in judgment. In courts of error in the common law such things were never heard of. I will not impute it to a mistake of the officer, but to *something or other* that gives a *tinge* to the whole proceedings; these were disliked, and therefore to be reprobated; and the persons who had the *assurance* to complain of the laws being infringed *were to be punished*. It goes on no other or better ground than that; from that I borrow *the spirit* that has infus'd itself into all the objections: the first of which is, that Mr. Evanson, in some of the proceedings, has some additions given to his description. If you might suppose the proceedings of an ecclesiastical court correspondent with those of a court of common law, I am confident that objection would have no weight. Suppose a man changes his situation after some of the proceedings, it makes *no* difference; a man commences

mences a cause against another without a title, as soon as he assumes a title he is called by it. When a cause is against a feme sole at the head of the interrogatories, you meet with another description to shew she is married. No body ever supposes a nullity in the proceedings on that account. It is every day's practice. Incidents of this kind happen eternally; as soon as a party assumes a new character it is then annexed to him without any allegation whatever, he is the same person: May not this be the case here? The Defendant is the same individual brought to court to answer for an offence punishable by the court; he goes on with the proceedings; every stage is carried on by him. He must certainly be taken for the same individual, though he went by another description in the outset of the cause. It is supposed this variation in the description may some how or other affect the sentence to be given. That seems wonderfully approaching to absurdity. I should suppose if it was brought into a court of common law, and the offence of a nature to deserve it, a deprivation of his livings would be the sentence the court would pronounce, without minutely inquiring whether he was Vicar of this place, or Curate of the other, or this or the other dignitary; if he had committed the offence, he would be punished according to what is enacted by the law, which is a deprivation; and he might be that way punished without any description of *what* living he was to be removed from.

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The next objection was, that Stock, the proctor stood in a situation which rendered him improper to act in the cause, and therefore the proceedings are void. The canon has been read to your Lordships. I have been anticipated in my argument by Mr. Bearcroft in his answer to it, (in the comparison which respects under-sheriffs) that the act of parliament (which is almost in the language of a canon) says, *the party shall not do it*; it does not say, *the proceedings shall be null*. Every body knows there are ten thousand cases every year in that predicament; it never was imputed to the parties because they have mistaken the road, that therefore there is a nullity in the proceedings, and every thing must fall to the ground.

These two objections it is said were not decided upon in the court below, but that part upon which the court Christian proceeded upon was the objection to the evidence as being improperly taken; they say, because the articles themselves were not produced to the witnesses, but that they were examined upon *printed copies* of the articles. Now that is not the case, nothing of that kind has been proved, it is only *said* it appeared in the proceedings by the report of the register. Suppose he had said it appeared by the opinion of a Bishop, that a man and woman were not coupled in lawful matrimony, and suppose the parties alleged that, Would it avail? Certainly not. You must apply for proof, go

to the Bishop for his certificate, if he certifies it is all very well, but it is not sufficient as *allegation* only. If you go to the report of the register, if that is the proper mode of proof, the court will hear that, but it cannot be proof that the register has reported so—Non constat,—but he has *not* reported. A court of equity would have sent that fact to a jury, whether the register had reported. If the fact is so, why have they not alleged it? then we might answer it; but we shall not so idly employ our time as to state whether the register has reported it to the court, or the by-standers in or out of court. Suppose it had been (what it is not) an allegation that is a fact, what consequences are to follow from that fact alleged? Says the learned Judge below, *Because some of the examinations have been taken improperly, there is an end of the cause, the party is discharged. I will not look into any part of it to see whether there is any OTHER evidence to affect the parties, because there is a blunder in some part of the cause, the infection spreads so far, nothing is right in it.* Is he warranted in such a decision? You may go into our courts and see where the proceedings are slovenly conducted, it is not so determined.—Suppose, before your Lordships sitting in court, some affidavits were wrongfully taken by an attorney in the cause: You would reject them, and say, so far it is wrong: but I believe no objection of THIS KIND ever took place. Be-  
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cause those things were improper, Is nothing to be heard? You would hear so far as was *properly*, and reject what was *improperly* taken. You will, therefore, *in this case*, hear what was properly taken, and see whether it concludes upon the point. It is enough for me to say, that is all we ask, there is *something* properly taken; there is nothing wrong imputed to what appears upon the examination of their witnesses on their *interrogatories*. *Enough* will appear upon *those* examinations to substantiate the charge. *I say it will*, Nobody has a right to contradict me. Your Lordships cannot say whether there will or not. If it proves a tittle, if it squints at the cause, the Judge should exercise his judgment upon it, though it weighs not a feather when he puts it into the balance. This objection, in my opinion, is abundantly sufficient to shew *all is not right*. I don't know how so much wrong came to be done; it must be imputed, I suppose, to *inadvertency*. I will say a word as to the impropriety of the proceedings as it has been called. In this case, the party had a right to implead the Parson; and if courts Christian have a right to do any thing in a religious examination of proceedings in this country, *this case is very serious indeed*. Unfortunately we shall not know upon what grounds your Lordships give your judgment. In my own opinion, with respect to the judgment given below, I can only impute it to this, there has crept

crept into the cause a *warm aversion* to the cause, not to the parties. Nothing else I am sure could have operated to sadden the party with costs, because something was not done right, it could never be the case in any court of law, where common sense was mixt with justice.

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