

702

No. 2.

A

MEMORIAL,
OR
HUMBLE PETITION
PRESENTED

To the JUDGE in the High Court of
the TOURNELLE, in *PARIS*,

BY THE HONOURABLE

EDWARD WORTLEY MONTAGU, Esq;

Member of Parliament for the County of HUNTINGDON.

AND

THEOBALD TAAFFE, Esq;

Member of Parliament for ARUNDEL;

AGAINST

ABRAHAM PAYBA alias JAMES ROBERTS,

AND

LOUIS PIERRE, Jeweller;

Appealing from the SENTENCE given in favour of the said
ROBERTS and PIERRE, the 14th JUNE, 1752.

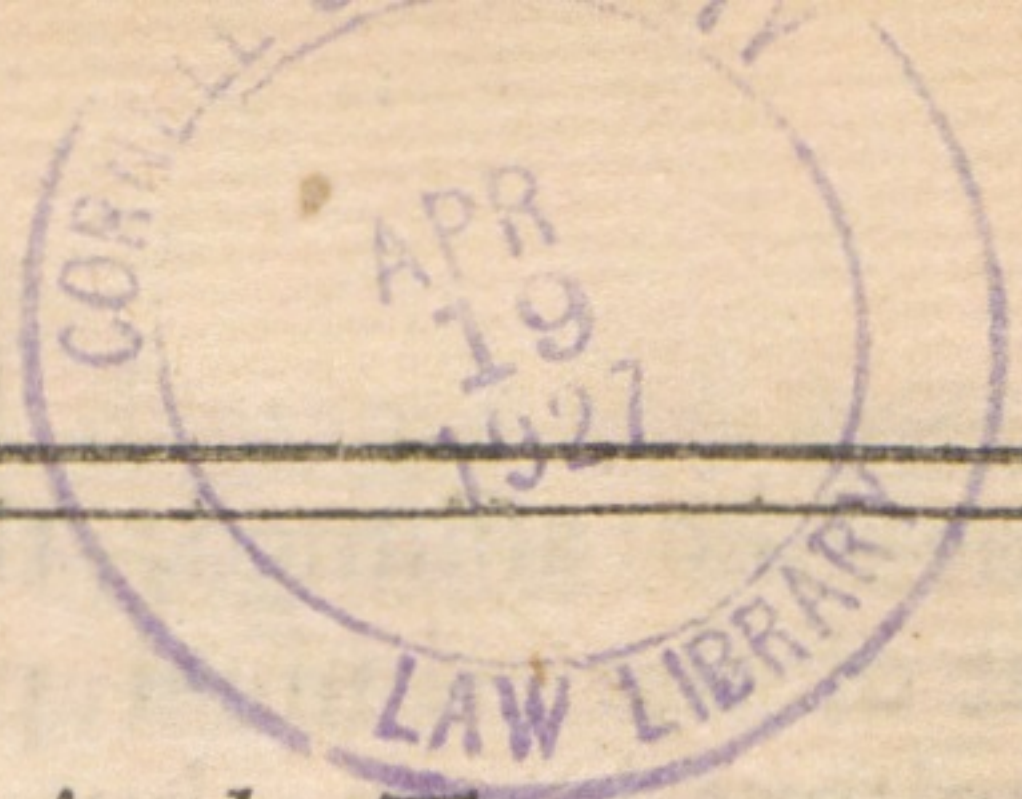
In which all the PROCEEDINGS from the Month of October last
are re-capitulated, and all the Allegations and Accusations of
JAMES ROBERTS against the said MEMBERS OF THE
BRITISH PARLIAMENT, are particularly answered and
fully refuted, and Cause shewn why the MEMORIALISTS
should have a new Trial, and the Sentence of the 14th of
June be repealed.

Translated from the ORIGINAL printed at *PARIS*.

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To our Lords of Parliament in the TOURNELLE *,

T H E

HUMBLE PETITION

O F

EDWARD WORTLEY MONTAGU,

A N D

T H E O B A L D T A A F F E :

S H E W I N G,

TH A T the most reprehensible conspiracy, and the most criminal machinations, are the object of the just pursuits of the petitioners.

Attacked in their Honour, informed against as guilty of the most flagrant offences, scandalously dragged to prison, loaded with the blackest calumnies, without having deserved any reproach, can the petitioners obtain too ample a reparation, when one considers the outrage offered to innocence, the gravity of the injury, and the atrocity of the persecution ?

It is a rash accuser, stigmatized by a fraudulent bankruptcy, and sold to falsehood even in the very

* TOURNELLE is a chamber of the parliament, consisting of a certain number of judges, alternately taken into other chambers for the decision of criminal causes. There is also a civil *Tournelle*, chamber of the *Tournelle*, president of the *Tournelle*, counsellor of the *Tournelle*.

name * he assumed, that has taken upon him the eclat of the criminal process : he was sensible how iniquitous it was ; but being determined by a person, who gloried in being his accomplice, in hopes of making a market of the honour of the petitioners, he was not frightened at the horrid step he was taking ; being blinded by sordid self-interest, he could not see the dangerous consequences of it.

The Sieur Pierre, jeweller, is that accomplice, who has been artful enough not to appear openly in this affair, though he did concert it with the accuser, and put in motion all the springs that were proper to procure it success : with amazement it will be seen, that this Pierre boasted of having witnesses *ready to depose against the petitioners* ; that he has made them the butt of a *shocking defamation* ; that, in fine, he has advanced of his own money to Abraham Payba, under the fictitious name of James Roberts, *towards the charges of the criminal procedure* : so that this calumnious accuser was vested with the title of the prosecution, while the Sieur Pierre, his accomplice, was making the utmost efforts to render it fatal to the petitioners.

'Tis the knowledge of this criminal combination that has been the principle of the complaints lodged by the petitioners, as well against Abraham Payba, alias James Roberts, as against the Sieur Pierre, fautor of his calumnious accusation : those complaints, presented in the course of the extraordinary procedure, have occasioned a second process distinct and separate from that which had been commenced at the request of the pretended James Roberts. In the first process, where he acted the part of informer or accuser, the judges, by their definitive sentence, cleared the petitioners of the accusa-

* His name is Abraham Payba, a Jew by birth, and in the whole course of the proceedings he has assumed the name of James Roberts, a native of England.

tion, with reparation, costs, damages and interest, and they were permitted to bring informations of the facts in their complaints, with the circumstances and appendages. In the second process, absolutely distinct from the former, as the petitioners prosecuted in quality of accusers, a supposititious name, a punishable combination, a scandalous defamation, and rash machinations, the judges have given sentence in favour of one of the accused parties, and discharged the other from the accusation: but this second decision, as repugnant to justice as the former was agreeable to it, will never stand against the proofs that evince at once both the vileness of the attempts of the accused and the legality of the complaints of the accusers.

Such is the general view of this affair: it presents two distinct objects, each of which requires details and particular arguments.

The first object concerns the appeal of the pretended Roberts from the Sentence of the 25th of January 1752; in regard to which it shall be demonstrated, that so far is he from having a right to impugn that sentence, that if it can be any way complained of, such complaint must result only from its not having proportioned the penalties to the heinousness of the offence and the blackness of the accusation.

The second concerns the appeal which the petitioners have made from the sentence of the 14th of June 1752; in regard to which they shall demonstrate, that this sentence ought to be invalidated and repealed, because in contempt of the proofs which left no doubts concerning the crimes presented to the court, the criminals have not been rigorously dealt with, impunity of his enterprizes having been granted to the one, and to the other the glory of having inspired and supported them, instead of the

punishment and ignominy due to their odious combination.

Facts and proceedings, relative to the calumnious accusation of the pretended Roberts.

TH E 25th of October 1751, Abraham Payba, a Jew, preferred a complaint against the petitioners, under the false name of James Roberts, an Englishman.

This complaint, which has not been a mysterious work since the confinement and examination of the petitioners, must be carefully analyzed: the absurdities it contains afford the first proof of the calumny on which it was grounded.

The pretended Roberts sets forth, that having departed from England with Miss Rose, in order to travel together into France and Italy, he provided himself with bills for considerable sums, as well on the bank of England as on several bankers in London.

That on Monday the 20th of September, Mr. Montagu, likewise an Englishman, (one of the petitioners) affected to come to see him, though he did not know him; that on the 23d of the same month, at his coming back from the country, he found a card at home, by which Mr. Montagu invited him to dine at his lodgings at the Hotel de Saxe on Friday the 24th; that he accepted the invitation, and found there a large company of English; that while they were at dinner Mr. Montagu continually plied him with divers sorts of wines and liquors, and at last made him drunk.

That after dinner, which was over about six in the evening, the guests went up to Mr. Montagu's apartment, where they drank coffee, and then they all retired, except Mr. Taaffe (one of the petitioners) and the Lord Southwell.

That Mr. Taaffe took up dice, and asked whether any body would play ; that the pretended Roberts at first declined it, because he had no more than two crowns about him ; that he was answered, he might play upon his parole, and he declined it again, declaring that he had need of money for a journey, being to set out the Wednesday following for Italy ; but the Sieurs Taaffe, Montagu and Southwell pressed him so earnestly, that being fuddled, and not knowing what he was doing, he complied with their intreaties.

That each play'd on his own account, and taking advantage of the condition he was in, the Sieurs Taaffe, Montagu and Southwell cheated him at such a rate, that in less than an hour they made him lose 870 Louis d'ors, 400 of which to Mr. Taaffe, 120 to Mr. Montagu, and 350 to the Sieur Southwell ; after which they let him depart.

That the next day Mr. Taaffe sent him a card, inviting him to supper ; to which he answered, that he was sick, and so excused himself.

That on Sunday September 26, Mr. Taaffe wrote to him, desiring him to send the 400 Louis d'ors he had won of him* ; and he made answer, that he would call upon Mr. Taaffe the Tuesday following.

That on Monday the 27th, being in bed, the Sieurs Taaffe, Montagu and Southwell came and rapped violently at his door, with menaces and execrations, between eleven and twelve o'clock at night ; that they forced admittance, and told him, that if he did not give them bills for what he had lost at play, they would get him carried directly to the Bastile by some archers, who were waiting below, and whom they had brought for this purpose,

* It would have been very proper to have annexed this letter to the complaint, but it never existed ; this is another of the suppositions so usual with the pretended Roberts.

with the governor of the Bastile: that they gave him to understand it was the maxim of France to imprison those who refused to pay, after twenty-four hours elapsed, what they had lost at gaming: that they threatened to cut him across the face with their swords, if he did not give them those bills; that being intimidated by their menaces, he gave to each of them a draught upon the *Sieur Waters*, banker in Paris, though he had none of his money in his hands; and as they could not be paid for want of funds, he resolved, apprehending his life to be in danger, to set out the next day, the 28th, for Lyons, and left Miss Rose in possession of his effects.

That during his abode at Lyons he heard by different letters, and it has been confirmed to him this very day (that is to say, the 25th of October, the date of this complaint) at his arrival, that on the day of his departure the *Sieurs Taaffe*, *Montagu* and *Southwell* came in the morning to his lodgings, and having found no body but Miss Rose and her Sister, Mr. Taaffe persuaded Miss Rose to abandon him, and retire to his lodgings at the *Hotel de Peru*, promising to send her over shortly to England; after which he searched the mails, portmantles and drawers of the plaintiff, the keys of which were in the locks, and of his private authority took away a bag containing near 400 Louis d'ors, a bag of English and Portugal coins worth about 300 Louis d'ors, a bag of 1200 livres in crown pieces, a pair of girandoles of brilliants, bought of the *Sieur Pierre*, jeweller in Paris, for 8200 livres, a picture set with diamonds worth 1200 livres, a shirt-buckle of diamonds, rubies and emeralds, worth 650 livres, also bought of the *Sieur Pierre*, lace to the amount of 3000 livres, several gowns for women worth about 4000 livres, two diamond rings, several gold snuff-boxes, a travelling case furnished with cups of porcelain and silver,

silver, and other effects which he cannot remember ; all which things were put by Mr. Taaffe in a chest, which he caused to be carried to his apartment, having ordered it to be put into a hackney-coach that waited for him at the end of Petits Augustins street with his valets de chambre ; then he carried in another coach Miss Rose and her sister to his lodgings, where they staid three days, after which he sent them off for London, with a friend of his who was returning home.

And as Mr. Montagu, says the pretended Roberts, came to see him merely to entice him to his lodgings, and make him lose at play ; as the Sieurs Taaffe, Montagu and Southwell did not engage him to play till after they had forced him to drink, and rendered him incapable of coping with them ; as the money they made him lose was not lawfully won, suspecting the dice they play'd with to be loaded ; as he gave them draughts only through force, menaces and fear, which are moreover null and of no value, the plaintiff, who is but twenty-one years old, being a minor ; and as the carrying off of his effects by Mr. Taaffe, who is of ill repute, is a downright robbery and deserving of severe punishment, the pretended Roberts prefers his complaint, protesting that his bills cannot prejudice him ; of all which he requires informations.

The date of this complaint, preferred a month after the date of the pretended incidents it contains ; the improbability of the criminal association of three known persons, who are supposed to have united in order to rush scandalously into a house in the heart of Paris and in the night, to get the doors opened to them by violence, and to extort bills from a man terrified by their menaces ; in fine, the little stress that ought to be laid on the assertions of a capture, or theft, as incredible in its circumstances as it must needs appear repugnant to the condition and the sentiments

timents of him that was audaciously suspected of it, and of those who were pretended to have been present at it: all these considerations, which reason and truth offered against a complaint suspicious and rash in the very terms of its allegations, warned the former judges to distrust a declamation which had been hazarded with no other view than to impose upon them under favour of a deceitful appearance wickedly substituted to the reality.

Upon this complaint an information was taken from three domestics of this Roberts, falsely so called, from the master and the porter of the furnished house where he lived at the time of the pretended facts set down in his complaint; and notwithstanding the suspicion attending the testimony of those men, who were reproachable by their condition, their dependance on and devotion to the accuser, a writ of arrest was ordered the 30th of October, five days after the complaint, against each of the petitioners.

The next day, October 31st, those writs were put in execution, and the petitioners were taken out of their lodgings in the middle of the night; Mr. Montagu was carried to the Chatelet, and Mr. Taaffe to Fort-l'Eveque, and they were close confined with a harshness and such expressions as ought not to have been lavished even on the greatest criminals; but there were some reasons for endeavouring to intimidate them.

The 2d of November the petitioners were examined, and acquainted with the motives of the accusation, the falsity of which they exposed by the rectitude and simplicity of their answers, and unveiled the iniquity of the pretended Roberts, by informing the examiners of his bankruptcy in England, and then shewing his name and his origin, his true name being Abraham Payba, a Jew, and not James Roberts, an Englishman: so that a man
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of this character, who deserved to be accused himself, and ought from that very instant to have been prosecuted by the ministers of justice, very far from still acting the part of accuser, which he had usurped in order to persecute innocency, became the first witness that deposed against the facts in his own accusation.

Nevertheless the self-called Roberts, who could not but know by the inspection of the interrogatories that are delivered to the civil parties *, that his supposititious name was discovered, persevered in all the acts of the process to stile himself James Roberts, an Englishman; thus he wilfully deceived the court, and with a premeditated design acted the part of a forger, by persisting in usurping a name that did not belong to him.

The 4th of November an ordinance intervened, importing, that the witnesses should be re-examined in their depositions, and in case of need confronted with the accused parties.

The 6th of the same month seals were affixed on the effects of the petitioners, at the request of the pretended Roberts.

The 11th of November the petitioners obtained their provisional enlargement, giving security for their personal appearance to all summonses.

The 13th and 15th of November the seals were viewed and taken off at the request of the pretended Roberts, then represented by one Bailly, impowered by letter of attorney to act for him, and after perquisition and inspection of the effects and papers that might help towards conviction, *none being found*, the petitioners were reinstated in possession thereof, by virtue of an order of the privy lieu-

* Art. 17. of the 14th title of the ordinance of 1670. *The interrogatories in all sorts of crimes shall also be communicated to the civil party.*

tenant, performing the functions of lieutenant criminal.

The 18th and 25th of November the petitioners were confronted with the five witnesses of the information, on which the writs of arrest had been issued.

In reading those depositions, though evidently suggested, the falshood of the allegations in the complaint began to be manifest, by giving attention to the contradiction of the witnesses, the difference of the dates, and the details of the facts, drawn nearer to the epochs, and the details of the facts in this complaint; but by the retraction of those witnesses, when re-examined, and by the confessions they were forced to make when confronted, all the ideas of delinquency entirely vanished: in effect, it remained clear that there had been no conspiracy for inebriating the pretended Roberts, that he did not even get himself fuddled; that no violent irruption was made at his lodgings, to constrain him to make bills or draughts; and that none of his effects had been taken away by the petitioners: the result of which was, that not only the facts in the complaint were false, but that after having been certified to be partly true by some witnesses, they themselves could not at last help acknowledging them to be rash and supposititious.

The agents of the pretended Roberts, who after thus imposing upon the court, durst no longer look it in the face, demanded an additional information*: it was granted, new evidences were heard, and on the 4th of December a judgment intervened, ordaining a re-examination, and, if needful, confrontation with the petitioners.

* The pretended Roberts was so little in haste to finish his affair, that the petitioners were obliged to advance all the charges to get themselves tried: so much dilatoriness fully proves Roberts's inward conviction of the falsity of his accusation; he doubtless foresaw the penalties that waited for him.

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The new evidences that were confronted with the petitioners, were three in number ; but these witnesses, whose deposition was known by the confrontation, give no account of any fact that can leave the least reproach against the petitioners.

The Sieur Collignon, who appears to have been intimately connected with Roberts, deposes concerning his pretended loss merely upon what he himself had told him ; so that he is an evidence that cannot furnish any proof, because having seen nothing with his own eyes, he is only the accuser's eccho.

The Sieur Waters, banker, deposes that he has no knowledge of the facts in the complaint, except that the pretended Roberts made three draughts upon him, which he did not pay ; but he adds, that he has still the same funds of this Roberts that he had then * ; and in this point he formally gives the lie to the complaint, in which the pretended Roberts did assure, that the Sieur Waters *had no money belonging to him* ; a proof of the falshood that dictated the declarations of this accuser.

One Pit, valet de chambre of Mr. Taaffe, one of the petitioners, does not mention any fact that can gain credit to the allegations in the complaint ; he does indeed give an account of the arrival of Miss Rose and her sister at the ready-furnish'd house of Mr. Taaffe, of the bringing in a box, in which were, according to the declaration of that girl, her laces and caps, as also of a portmanteau and some trunks containing her other effects ; but at the same time this witness deposes, 1. That he had always looked upon this Miss Rose as the wife of the pretended Roberts. 2. That she came to Mr. Taaffe's house without his knowledge, and that he

* These funds amounted to 26,200 livres, which have been since deposited by the Sieur Waters, by virtue of an arret of the court.

heard of this visit with some concern, when his valet de chambre told him of it at his coming in. 3. That Mr. Taaffe inquired whether Miss Rose and her sister had brought away any thing belonging to the pretended Roberts, and that Miss Rose opened the portmanteau she had brought, and took out some clothes that belonged to this Roberts, which were immediately sent back to the landlord of the house where he lived. 4. That Mr. Taaffe made but a short stay with those girls, having left them his apartment, where they went to bed, tarried the next day in his absence, and then set out with all their effects, Mr. Taaffe having been no way concerned, either in their arrival at his house, or in their departure.

But an important Fact, which it is essential to establish, is, that at the time of this event, the epoch of which is the end of September; almost a month before the complaint of the pretended Roberts, Miss Rose passed for the wife of this Roberts; she was called *Mrs. Roberts*; all the Witnesses agreed in this fact at the confrontation; *Mean*, master of the ready-furnish'd house where she lodged, declared that he got her entered in that quality in the commissary's book; Colon d'Yverdun, porter at the said house, though proved a prevaricator on the principal facts, said, when confronted, that he had always looked upon the young woman that lived with Roberts to be his wife, and that it was only at the commissary Levie's house, where stiling her sometimes Miss, and sometimes Madam, the commissary told him that her name was Rose*: the *Sieur Collignon*, linked with Roberts, at whose lodgings he often dined, deposed, that having de-

* It is pretty extraordinary that a commissary should take the liberty to instruct evidences that are to depose: a man must be very good-natured to turn prompter to them in facts that may be favourable to the accuser.

manded of this Roberts, since his return from Lyons to Paris, and consequently since the complaint, news of his wife, he made answer to him, that she, who passed for such, was not his wife; that her name was *Rose*, and that he shewed him several of her letters signed *Rose*; so that it was not at all extraordinary that this girl, who was looked upon as the wife of the pretended Roberts, should take upon her to dispose of his effects; he had entrusted her with them, she was in possession of them, and it was presumed she acted with his consent: she could therefore remove them whither she thought proper, and it was only a consequence of Mr. Taaffe's delicacy, who being surprized to find her at his house, was so cautious as to ask her whether she had any effects belonging to Roberts, and to require her to send them back to him, though there was room to presume that at the end of September, when Roberts had not yet been excited to commence his odious prosecutions, his departure and that of his pretended wife were the result of a joint determination.

The re-examinations and the confrontations being over, the petitioners gave in their petition of attenuation. They had preferred a complaint the 12th November, and another the 20th December 1751, against the pretended Roberts and the *Sieur Pierre*, who had not only assisted him with his purse and his counsels, but had also personally engaged in the most outrageous defamation against the petitioners: they gave in a new complaint by their petition of attenuation, and summing up their conclusions upon the whole, they demanded, 1. To be discharged from the accusation, which should be declared false and calumnious. 2. That Abraham Payba, who calls himself James Roberts, be condemned to make them reparation of honour in presence of twelve persons of their own chusing, and pay

pay 100,000 livres by way of civil reparation, besides all costs of suit. 3. That to the petitioners should be given an act of their complaints of the 12th November and 20th December 1751, and of that which they preferred in their petition, as well against James Roberts as against the persons named in their complaints, of the machination and fabrication of the accusation brought against them, of the prevarications made use of to support it, of the artifices employed to deprive them of their credit, and of the defamation that ensued ; that they be permitted to prove the same, leaving the king's attorney to take at present what course he shall think proper against Abraham Payba, who calls himself James Roberts, for the fictitious name by him assumed, and for the benefit of the public. 4. That the petitioners be allowed to print and publish the judgment, to be given wheresoever it may be needful.

In this way, the 25th of January last, was the definitive sentence given, by which the petitioners were cleared of the accusation brought against them by James Roberts, their names blotted out of the registers of the jails, James Roberts condemned to make them an honourable reparation in presence of any twelve persons they should please to chuse, and to pay to each of the petitioners, ten thousand livres for damages and interest, by way of civil reparation ; they are allowed to print and publish the Sentence wheresoever needful, and on their request to cause Informations to be taken of the facts contained in their complaints of the 12th November and 20th December 1751, and in their petition of the 5th January following : Ordered, that the mandates by them deposited with the clerk of the lieutenant criminal shall be delivered, that they may take such farther course at law as they shall think proper ; that the injurious terms inserted in
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the petitions of James Roberts be and shall remain suppressed ; and James Roberts condemned to pay all costs of the suit.

This judgment respects only the falshood of the accusation, which had reduced the petitioners to the mortifying condition of accused parties : they wanted the title of accusers, in order to prove the fictitious name, the criminal combination and machinations which formed a new delinquency independent of the very substance of the accusation : 'tis for this reason that the process was put into a new method, in order to strip the accuser of his quality, in pronouncing on his accusation, and granting the petitioners a course at law, which they could not have till after sentence pronounced. Without this form of proceeding, the petitioners would have had the irreconcilable title of accused and accusers, and the pretended Roberts that of accuser and accused in the same process : the judges themselves were so far persuaded that this double title was absolutely opposite to judicial order, that they left the accuser the name of James Roberts which he had usurped, because the public ministry not having objected against this false denomination, though it was laid open to the court by the examinations, and all the acts emanated from the petitioners, it was not thought lawful before the decision ; since they remained deprived till after the decision of all right to prosecute, to decree concerning their complaint, as to the false name assumed, which moreover was complicated with other heavy charges that stood in need of fresh proofs : Such was the motive that dictated the sentence of the 25th January, which on the one hand cleared the petitioners of a calumnious accusation, and on the other hand authorized them to pursue the effect of their several complaints. This judgment

ment is equally regular, both in the form and the substance.

Abraham Payba appealed from that sentence, under the name of James Roberts; and what is more astonishing, is, that having been arrested by the king's order in the month of December 1751, and consequently before the sentence, it became notorious, that in the examination he went through upon oath, he formally declared that his name was *Abraham Payba, born of a Jewish father*, and that *James Roberts* was a name he had assumed: thus this man all along persevered in playing the part of an impostor, by appearing in court, both before and after the sentence, under a fictitious name, which he had been obliged to disown. The examination he underwent lies before the court, who may find in it new proofs of the criminal conspiracies which the petitioners demand vengeance of, and which are so hard to be drawn out of the darkness in which they have been formed. It is in order to come at the discovery of these conspiracies, which include all the species of offences denounced in the complaints of the petitioners, that the last instruction has been drawn up; this object naturally leads to the exposition of the facts, and of the procedure, that have a connexion with the second criminal process; after which we shall come to the arguments arising from the force of the proofs and the combination of the circumstances, as to the respective appeals from the two sentences of the 25th January and the 14th June last.

Facts and Proceedings relative to the Second Criminal Process.

THE petitioners preferred on the 12th November, 20th December, 1751, and 5th January following, three complaints, which have been the basis of this second suit.

The

The first complaint was presented by the petitioners, as it were, at the instant that their conditional enlargement was granted them: it may be reduced to three principal facts. The first concerns the supposititious name of the pretended Roberts, who was far from being what he *affected to appear*, since he was a Jew, and his real name Abraham Payba, formerly an insurance broker at London, from whence he was obliged to withdraw, having been a bankrupt there for considerable sums.

The second fact regards the reprehensible conspiracy, and the trick put upon the court by the pretended Roberts and his accomplices, in misrepresenting the condition and quality of the petitioners, in order to charge them with the most heinous injuries, to present them as robbers, who by force had made this Roberts give them bills for sums which they had cheated him of at play, and, in fine, to make Mr. Taaffe, one of the petitioners, pass for an accomplice with Miss Rose in stealing, as he pretended, the effects he had left in her charge.

The third fact concerns the reticence of the pretended Roberts, in regard to the name he made Miss Rose go by in Paris, having always called her Roberts, and given her out *for his wife in public, and at all places where they lodged.*

The second complaint of the 20th of December, 1751, concerns, as to the principal facts, 1. The complicity of ther sieur Pierre, a jeweller, who fearing he should not be paid an order of 8200 livres which the pretended Roberts had given him on the sieur Waters, because this Roberts had given such like draughts for a sum of 20,640 livres as well to the lord Southwell as to the petitioners, did cause this Roberts to come from Lyons, in order to engage him to prefer a complaint against the pe-
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tioners,

tioners, and endeavour to get the said draughts or orders cancelled.

2. That after having imagined the outrageous suppositions of bills extorted by menaces and violences for money unfairly won at play, and of effects carried off, which the pretended Roberts was so daring as to make Mr. Taaffe an accomplice in, this Roberts, fearing the bad consequences of the odious steps he had taken, left Paris in order to ramble about the country from one province to another; and the sieur Pierre took upon him the management of the affair, gave money to the attorney of the pretended Roberts, to carry it on briskly, and wrote word to this Roberts, with whom he held a correspondence, to bring some himself, in order to act against *the Englishmen*, out of whom he should get a great deal of money.

3. That the pretended Roberts, who had accused miss Rose of stealing his effects, and had taken out a warrant against her, did keep a literary correspondence with her; that he had even been to see her in England, and since that time had sent Chol de Clercy his valet de chambre, and one of his witnesses, to desire her to remit him 150 louis d'ors, or his jewels; which plainly proves both the falshood of the accusation, and the good understanding that is kept up between that girl and the pretended Roberts.

4. That the sieur Pierre spared no pains nor cost to defame the petitioners and destroy their reputation, giving them out for *sharpers* of a long standing, and *men worthy of the gallows*; that by means of an ante-dated letter of credit on the sieur Waters he got 18,000 livres made over to him, in order to secure this sum, and deprive the petitioners of it, in case the pretended Roberts should be cast.

5. That

5. That the sieur Pierre gave out of his own pocket six louis d'ors to an express that Roberts had sent to miss Rose to ask her for money upon his effects: that the sieur Pierre being sensible of the imprudence of his connections with Roberts, took the precaution to burn Roberts's letters, after causing the letters to be burnt which he had wrote to him: in fine, that the sieur Pierre got Roberts to give a power of attorney to one Bailly to pursue the affair, though he had taken upon himself the management of it, and had advanced different sums, which he hoped to get re-imbursed by the sieur Waters in prejudice of the petitioners who had demands upon him, but demands which the sieur Pierre pretended to set aside, by means of the letter of credit given him by the pretended Roberts: which evidently proves the sieur Pierre to have been an accomplice with this pretended Roberts.

The third complaint set down in the petition of the 5th of January last, re-unites in one point of view the several facts enumerated in the complaints, of which the petitioners have just given an account: they bear upon the combination, the fabrication of the false accusation, the supposititious name, the defamation; in fine, all the machinations practised as well by the pretended Roberts as by the sieur Pierre, in order to degrade the petitioners and blast their credit and reputation: certainly excesses of this nature will never be tolerated by the law; it is sufficient to complain of them, and prove them, in order to their not remaining unpunished.

Upon these different complaints the court proceeded to an information at the request of the petitioners, and in consequence a writ of bodily arrest intervened against Roberts, alias Abraham Payba, and a sub-pœna for a hearing against the sieur Pierre.

Abraham Payba underwent examination the 29th, 30th, and 31st of January last, and though he affected to dissemble, and even to deny the plainest facts, some confessions slipped from him, which leave no doubts concerning his combination with the sieur Pierre, nor about the arrangements they concerted together, in order to withdraw, under the name of this sieur Pierre, the money that Payba had lodged in the hands of the sieur Waters, banker, and thereby defeat the oppositions of the petitioners about that same money. It must be added, that Abraham Payba did also formerly acknowledge, on the same examination, to have written to miss Rose since her departure from Paris, to have sent her his valet de chambre to demand money of her and his effects, to have been to see her in England, in fine, to have assumed the fictitious name of James Roberts, which he was audacious enough to appear under before a court of judicature, ever an enemy to lies, after having imposed upon the public by this supposititious denomination: therefore, to the proofs resulting from the depositions of the witnesses, we must annex Abraham Payba's own confessions relatively to the reprehensible attempts which form the object of the petitioners accusation.

Seals were affixed on the effects which Abraham Payba had left, as well at the hotel of Orleans, where he had lodged with miss Rose, as at the hotel of Grammont, his last domicilium: many suits of cloaths of value were found in his mails, and material papers which prove, notwithstanding the reiterated denials at his examination, the fraudulent break he made in England. Those papers are summonses enjoining him to appear; advices of the critical situation of his affairs; exhortations to avoid the prescription and capital penalties he was threatened with; letters from his mother and his sisters; containing the general cry of that afflicted family

family, who were destitute of all resources, and exposed to the pursuits of his creditors, whose honesty and candour he had imposed upon : in fine, other letters from one of Abraham Payba's intimate friends, who gives him an account of the sentiments and fidelity of Miss Rose, by the name of *Nelly* : so that there remains no doubt concerning Abraham Payba's false character; whatever form he assumes, he still appears in his own proper colours.

The 16th of February, 1752, the *Sieur Pierre* underwent an examination; he sought to dissemble the facts of his combination with Abraham Payba, and his defamation of the petitioners; but his negations and affected retinences are not so much means of defence as they are subtilties artfully imagined, in order to avoid reproaches for which he condemns himself, since he endeavours to justify himself no other way but by departing from the truth; besides, the depositions of the witnesses formally contradict the declarations of the *Sieur Pierre*; he equally contradicts himself in the incoherent system of his elaborate defence. Such is the fate of inconsiderate steps; men eagerly venture upon them, when they are measured only by the violence of the passion that dictates them, and strive to disown them when they are brought before the tribunal of justice, which is to bring them to the test of right and wrong.

The examinations of Abraham Payba and of the *Sieur Pierre* were followed by judgments, ordaining a re-examination and confrontation of the witnesses. This last part of the instruction being terminated, the accused parties delivered in their petitions of attenuation.

Abraham Payba concluded with his petition the 20th of May last; a petition whose singular title runs in these terms, *Abraham Payba, known in the world by the name of James Roberts*, to be discharged from

from the accusation, which should be declared false and calumnious; in consequence, that his name should be erased in the registers of Fort l'Eveque; that the petitioners should be condemned to make him reparation in his honour, an act of which should be delivered to him; that moreover, they should each be condemned *in solido* in 30,000 livres of damages, and interest by way of civil reparation, and in costs of suit; in fine, that he should be permitted to get the sentence that should intervene, printed, read, published, and fixed up both at Paris and London, and wheresoever needful.

By two petitions of the 18th, and 31st of May last, the first containing the conclusions of the Sieur Pierre, the second his reproaches against the Sieur Wolfe, resulting from the condemnation he pretended to have obtained from the consuls against the Sieur Waters, relative to the funds belonging to Abraham Payba and deposited with the said Waters, the Sieur Pierre demanded that the judges would be pleased to discharge him from the calumnious accusation brought against him; order the defamatory libel, signified at the request of the petitioners under the title of petition of conclusions, to be *lacerated*, and previously that the injurious and dishonourable terms be suppressed; that the petitioners be condemned to make him reparation of honour before any *twenty-four* persons he should chuse, and in the place he pleased to appoint; that they be forbid, upon pain of *corporal and exemplary punishment*, to attempt, misuse, or prejudice hereafter *his honour and reputation*, and, for having done it, to condemn them each *in solido* in 20,000 livres damages and interests by way of civil reparation, one half of which applicable with his consent to the benefit of the poor prisoners, and the other half to his own profit, besides cost of suit; and order that the sentence to be given shall

shall be printed, read, published, and pasted up wheresoever it may be needful, at the cost and charge of the petitioners.

The petitioners concluded by their request, that, considering the proofs that must result from the charges, informations, and other pieces of the process, the judges would be pleased to declare Abraham Payba and the Sieur Pierre attainted and convicted of having contrived and forged the false accusation brought against the petitioners at the suit of James Roberts, of having made use of this fictitious name to carry it on, Payba of having made a fraudulent bankruptcy, and the Sieur Pierre of being an accomplice in this fraud, in causing bills, orders and transfers to be made to himself, *in order to defraud the petitioners, and deprive them of their demands on Payba*, and both the one and the other of having publicly defamed the petitioners, and attempted upon their honour and reputation; for reparation of which, to condemn them in such penalties as the court shall think fit; to inhibit their being guilty of the same again; to condemn Payba and the Sieur Pierre to make reparation of honour to the petitioners, and also to pay 100,000 livres for damages and interest, by way of civil reparation to each of the petitioners, besides all cost of suit; to condemn moreover the Sieur Pierre, still in form of civil reparations, to pay *in solido* with Payba the 20,000 livres damages and interest, and the costs decreed against Payba, under the name of James Roberts, by the sentence of the 25th of January, 1752; in consequence, and considering the complicity of the Sieur Pierre, that the bills and transfers of which he pretends to be bearer upon Payba, be annulled and cancelled according to the terms of the ordinances: that the Sieur Pierre be condemned personally and *in solido* with Payba, to make good the draughts given by the latter to the
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petitioners upon the Sieur Waters, or else to pay the contents thereof; to this effect, without regarding the oppositions and seizins of the Sieur Pierre, that the money in the hand of Desplaces, notary, be delivered to the petitioners, to the amount of their demands for principal, interest, charges, damages, and interests and costs; ordain that the sentence to be given shall be read, published, printed, and pasted up wheresoever needful, at the cost and charge of the parties accused.

Though these conclusions were grounded on the most evident and decisive proofs, nevertheless, on the 14th of June, 1752, a sentence intervened, whereby, on the complaints exhibited against Abraham Payba, the parties are definitively dismissed the court; his name is erased in the jail registers; costs compensated; Pierre cleared of the accusation; the petitioners condemned to pay 1200 livres damages and interest, by way of civil reparation; the pretended injurious epithets set down in the petitions and memorials of the petitioners are suppressed; Pierre is allowed to print and paste up the sentence at the charge of the petitioners, who are condemned *in solido*, to pay his costs of suit, and as to the rest of the other demands, the parties are finally dismissed by the court.

The petitioners did not hesitate to appeal from this sentence, which is as prejudicial as repugnant to the proofs that ought to result from the charges and informations; and upon their appeal they obtained an arret of defence, which was notified to the accused parties the 16th of June last.

The attorney general has lodged an appeal *à minima* from the two sentences of the 25th January, and 14th June last: this appeal cannot be levelled against the petitioners; it concerns only the culpable authors of the conspiracy deferred to the court; and the petitioners have never been in the

woful circumstance of deserving the shameful title and the sad rank of those enemies of good order and of civil society.

This detail of the facts and proceedings relative to the two causes tried in the chatelet, and now laid together before the court, exhibits the natural order of the arguments which the petitioners propose to make good.

Abraham Payba, under the fictitious name of James Roberts, appealed from the sentence of the 25th of January last; the petitioners are summoned upon that appeal, and on this head maintain, that the sentence impugned is so far from furnishing any pretext for a rational criticism, that on the contrary there is room for confirming it purely and simply.

The petitioners' appeal from the sentence of the 14th of June last, and Abraham Payba and the Sieur Pierre are summoned upon this appeal: and in this respect the petitioners flatter themselves they shall be able to demonstrate, that their arguments are victorious and decisive against that sentence: so that here are two appeals, which require a separate discussion, though they afford facts which mutually support and corroborate each other.

Arguments against the appeal of Abraham Payba, relative to the sentence of the 25th of January, 1752.

The calumnious complaint of the pretended James Roberts, the scandalous apprehending of the petitioners which it produced, their unjust detention in the prison which it operated, are the dire enterprises which the judges proposed to efface and punish the odious excesses; on the one hand, by granting the petitioners the discharge and the reparation which their innocence deserved; on the other hand, by decreeing against a rash accuser damages and interests, which were but a very light penalty for his monstrous accusation.

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Thus the event of the appeal from the sentence of the 25th of January 1752, depends on the truth or falshood of the facts which have been the principle of the extraordinary proceedure. The pretended Roberts, after having set them down in his complaint, did he establish them by the suffrage of the evidences he produced in court? In this circumstance, he objects with reason against a judgment that subjected him to penalties, when they ought to have been reserved for the petitioners only. On the contrary, were those facts wickedly imagined, and destitute of those proofs which alone could make them be adopted? In this case he attacks in vain the judgment that punished his machinations necessarily devoted to a proscription.

Previously to the examination of these different matters, the petitioners would offer a preliminary reflection, which alone is sufficient to evidence the supposition of the facts in the complaint of the pretended Roberts.

He alledges, that on the 24th of Sept. 1751, after being forced to drink, he was strongly urged to play when intoxicated with wine, and that he lost 870 Louis; in a word, that he was defrauded by dice which he suspected to be coggled. 'Tis on the 27th of the same month, that they who had so basely cheated him came to his lodgings in the night-time; that with oaths and violence they caused the door to be opened to them; that they threaten'd to slash his face with their swords; that they declared to him he should be forthwith sent to the bastile, if he did not give them bills for what he had lost at play: In fine, that by these threatenings and odious proceedures they got from him the bills they required. The person who was the object of these blameable attempts, and of actions of such consequence, must doubtless have been very sensibly affected by them. When he was come to him-

himself, he could not be too hasty in complaining of these outrages, of laying them before the justiciary, and strongly soliciting the punishment of the delinquents. However, from the 27th. of September, the date of so many excesses, till the 25th of October, the date of the complaint, the pretended Roberts remained in silence and inactivity. Such a lethargy is impossible, when cruel outrages are still aggravated by pecuniary demands, formed without cause and extorted by violence. It is not supposable that any one can be slow in redressing himself, when both the heinousness of the offence, and the care of one's fortune so strongly require an immediate recourse to the laws, to secure ones quiet and annul ruinous obligations. To defer proceeding against such excesses, which cannot be calmly thought on, is a demonstration that they were never committed: To lay them before the justiciary, after a voluntary concealment of them for a considerable time, is not so much to lay before this body crimes to be prosecuted, as frauds to punish. Thus the motive for the quiet of the aforesaid Roberts appears by his very tranquillity; he was easy, because he had no real grievance wherewith to charge the petitioners; and when he departed from this tranquillity to lay a complaint, to revenge a real offence was not in his thoughts; he has only been carried away by the impulses of a perverse imagination, heated by artful counsels, proceeding from calumny and malevolence.

We now come to examine the facts of the complaint by confronting them with the proofs, which alone can decide their reality or falsehood.

FIRST FACT *of the* COMPLAINT.

The aforesaid Roberts alledges, that having been invited to dine on the 24th of September 1751, by Mr. Montagu one of the petitioners, who some

days before had taken upon him to pay him a visit though an utter stranger to him, the latter was continually plying him with several sorts of wine and liquors, by which he fuddled him ; that after dinner, where there was a pretty large company, Mr. Taaffe, who with my Lord Southwell were the only remaining persons, took dice and threw them upon a table, asking who would play ; that Roberts excused himself, having only two crowns about him ; that the petitioners and my Lord Southwell told him that he might play upon honour, but that he again refused them, saying, that he wanted money, being to set out for Italy the Wednesday following ; that they continued urging him so warmly, that being intoxicated with wine, and not knowing any longer what he did, he complied with their solicitations ; in fine, that they took such advantage of his condition, that within less than an hour they won from him 870 Louis ; Mr. Taaffe 400, Mr. Montagu 120, my Lord Southwell 350, and that afterwards they let the plaintiff go away.

A N S W E R.

Mr. Montagu one of the petitioners allows, that he had paid a visit and invited the pretended James Roberts to dine with him, though not acquainted with him. Mr. Montagu, in his interrogatory of the 2d of November last, has set forth the reasons of his visit and invitation ; he has declared, that upon his arrival at Paris he enquired if he had any English neighbours ; that he was told of the aforesaid Roberts as such, who lodged in the Petits Augustins street, at the hotel d'Orleans ; that it being a custom among the English, that the last comers pay a visit to those who are on the spot, he waited on Roberts, who returned the visit ; and that being to entertain several English,
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he invited Roberts, who came. Thus this visit and invitation, which are represented as a plot against Roberts, arose from a very natural motive. Mr. Montagu looked upon him as an Englishman and an agreeable companion, could not he then shew him an act of civility, and entertain him at his lodgings, without incurring any guilt?

It is beside the question for the aforesaid Roberts to alledge that Mr. Montagu plied him with several sorts of wine and liquors, and at last fuddled him.

First, were it so, is this to be construed as a crime? Does not every body know that the master of a house, at whose table there are several sorts of wine, desires his guests to drink of them? If they yield to his invitations, if they drink so far as to *fuddle themselves*, (to make use of Roberts's words) what have they to complain of but the effects of their own weakness? As improperly does Roberts pretend that he was forced to drink; it is evident that this word *forced* cannot imply any violence, any blamable constraint; it means no more than the sollicitations authorised by custom, and in not a few places accounted indispensable civilities: And, indeed, how could Mr. Montagu force this Roberts at a dinner where he himself owns there was a very large company? The absurdity of such a reproach is glaring. Mr. Montagu used Roberts as he did the other gentlemen; this truth is evidently confirmed by reason.

Secondly, it is false that the *fictitious Roberts* was intoxicated with wine, and did not know what he did when he went away from dinner. It is true that Francis Chol de Clerci, Roberts's valet de chambre, has deposed that la Branche, servant to this Roberts, had told him that *his master had been made to drink to excess* at Mr. Montagu's, and that he had been taken in for a great deal of money, though

though he was not capable of playing *because he was too full of liquor*. But first this Chol de Clerci has declared, when confronted with la Branche, that the latter telling him that Roberts had been fuddled at Mr. Montagu's, did not tell him positively that it was Mr. Montagu who had fuddled him, but intimated that he had been fuddled by all the guests in general. Secondly, la Branche, mentioned by Chol de Clerci as the person who had informed him of the pretended drunkenness of Roberts, in his deposition does not say one word of this drunkenness, nor of the account which he is said to have given of it to Chol de Clerci, though it was very natural he should explain himself on this head, it being one of the allegations of the complaint. Thirdly, the same la Branche, at being confronted on the bill of the said Mr. Montagu, has answered, that when Roberts, his master, came out and went into his coach, *he seemed to him quite cool, and as usual*. Fourthly, the Sieur Colignon, Roberts's friend, is the only witness who says any thing of this pretended drunkenness, except Chol de Clerci, whose deposition is proved to be false by the declaration of that very person from whom he supposes to have had the fact he affirms. The Sieur Colignon has deposed, that when Roberts returned home, he observed that he was heated with wine and did not tread firm; that he said he had just lost a very large sum at play; but that afterwards he called for some champaign, which they drank together; but at the confrontation the same Colignon has declared, that *Roberts was not drunk at his arrival*; that he appeared to him only heated with wine; that he was not perfectly master of his reason; that he drank some champaign, and that as to his tread he could not observe it, he the said deponent sitting at table. Why then has the Sieur Colignon deposed, that Roberts did not tread firm, since

since at the confrontation he has positively said that *he could not observe him*? It is palpable from the Sieur Colignon's own deposition, the supposed Roberts was not drunk. He is indeed for giving to understand that he was heated with wine, and was not perfectly master of his reason; but abstractedly from the little credit due to a private deposition, has not the Sieur Colignon invalidated all his allegations, by retracting at the confrontation the circumstance of *his not treading firmly*, which in his deposition he had positively affirmed? What weight can his other assertions have, one of them being, by his own acknowledgment, contrary to exactness? Besides, is it not clear that in allowing that *Roberts was not drunk*, and that in retracting what he had affirmed without knowing it, of his not treading firmly, all the other allegations of the Sieur Colignon are no more than pitiful quibbles, to avoid part of the shame of a full recantation, and of the consequences whereof a man of any sense could not be ignorant. Thus of the only two depositions which relate to this pretended drunkenness, that of Chol de Clerci is the contrivance of premeditated deceit; la Branche, whom it makes to have related the drunkenness, not only deposes nothing of it directly nor indirectly, but formally disproves it at the confrontation, attesting, that when his master went into his coach from Mr. Montagu's, *he seemed to him to be cool and as usual*. The deposition of the Sieur Colignon is falsified by his retracting the circumstance of his not treading firmly, which alone would have been a strong presumption of this supposed drunkenness, he even explicitly owns that the supposed *Roberts was not drunk*. All the other witnesses say not one single word of this drunkenness, which had been set forth in the complaint, with a view of inferring from it the suspicion of a deceit. Thus

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this circumstance of the pretended drunkenness of Roberts must be absolutely rejected; there is not one single proof to countenance its admission.

But in the complaint itself there is a sensible demonstration of the falsity of this drunkenness, Roberts pretends that he was solicited to play and that he refused it, having only two crowns about him; he adds, that the answer was, he might play upon honour, and that he refused it a second time, on account of his journey to Italy, on which he was to set out the Wednesday following. Now who will be brought to believe that *Roberts being drunk and no longer knowing what he was doing*, as he himself sets forth, could have retained this pretended conversation, when his condition rendered him incapable of recollecting it? is it supposable that a man *drunk and continually ignorant of what he was doing*, should have had the presence of mind to refuse to play because he had but two crowns about him, and the reflection to persist in his refusal because he had need of money for a journey, the time of undertaking which had been determined? a drunken man is not capable of judicious and connected arguments; he alledges that he offered them at a time *when he did not know what he did*; but in hazarding these declarations, he doubtless never thought, that they carry the proof of their falsity along with them: such is the fate of iniquity, it destroys itself by the very means by which it endeavours to triumph, *mentita est iniquitas sibi*.

If the pretended Roberts has not been made drunk, as has been just now proved both by the depositions of the witnesses who are silent as to this imaginary drunkenness, and by Roberts's own allegations, which by their very supposition prove that he was not drunk, the necessary inference is, that Roberts was not solicited to play when he

was *intoxicated with wine*, and that no advantage was taken of his condition *when he did not know what he was doing*, to draw him in for considerable sums; but there was play at Mr. Montagu's that day, Roberts lost a great deal, he suspects the dice were cugged, and in consequence of this loss he has given bills to the petitioners and the Lord Southwell. It is true that there was play at Mr. Montagu's, as is usual at such meetings, but the party was not limited, as the complaint sets forth to the petitioners; for the Lord Southwell and Roberts, and seven or eight other persons were also engaged, neither was Roberts solicited to game; and as for his pretended loss, it amounted with Mr. Taaffe, as is plainly shewn in his interrogatory, to 55 Louis, of which he had lent him 25 in the course of play. As to the notes given to the petitioners, that of the *Sieur Taaffe* was on account of 350 Louis lent in the foregoing April to Roberts at New-market, a place 22 leagues from London, celebrated for races and gaming; that to Mr. Montagu was for a sum he lent to Roberts the day he dined with him. Roberts said to Mr. Montagu that he wanted money for a certain affair, that he was going to get some of his banker, but that it was very late. As this was an indication of Roberts's uneasiness lest he should not meet with the banker, Mr. Montagu offered him his purse, and Roberts borrowed of him 120 Louis, with a promise of returning them the next day. There is nothing strange in this easiness of Mr. Montagu, he looked upon Roberts as an Englishman, and the generosity of the English towards one another in pecuniary affairs is well known to all the world. The cause of the note to my Lord Southwell the petitioners know nothing of, they candidly shew the foundation of those they have a right to put in force against

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Roberts,

Roberts, they do not arise from any unlawful practices, they are not the result of money lost at play * ; but though it were allowed that the debts were of such a nature, can this be a pretence for a criminal prosecution ? This allegation belonged to a common process ; and thus, instead of proceeding on the complaint, the parties should have been referred to a civil procedure. This would have been allowing to them their respective rights, and preventing a criminal prosecution, arising only from the most malicious iniquity.

The suspicion of the cogged dice mentioned in the conclusion of the complaint, is one of the calumnies of the pretended Roberts, and what no witness has offered to confirm ; it is a groundless injury, the produce of an impostor, bent on advancing the most absurd allegations, to bring a legal obligation into suspicion, or to raise an odium against those whom he charges with his foul imputations ; but the petitioners need not apprehend that a reproach founded only on that falsehood and malevolence which hatched it, can gain any credit. Their known principles and behaviour secure them from the imputation of such base doings ; they never were capable of imagining them, much less are they so lost to honour as to practise them. This calumny then should be remembered only to inflict the more exemplary punishment on the person who could be so rash as to venture on it.

SECOND FACT *of the* COMPLAINT.

Roberts shews that on the 20th of September being in bed, the petitioners and my Lord South-

* Not one witness has deposed any thing of the gaming, the voluntary acknowledgment of the petitioners is the only proof of it ; their candour in this point shews their sincerity in all their other attestations.

well came and knocked at his door, threatening, swearing and offering violence betwixt eleven o'clock and midnight, that they caused the door to be opened, and gave him to understand, that if he did not give a note to each of them, for what he had lost, they would immediately have him carried to the Bastile, by the archers, who, they said, were below, and that they had brought along with them the governor of the Bastile; it being a maxim in France to imprison all who after 24 hours refused to pay what they lost at play; that they threatened to slash his face with their Swords, if he did not instantly draw the notes; that frightened with such menaces, he gave each of them a note for what he had lost on Mr. Waters banker at Paris, though he had then *no sums of his in his hands*; and as they could not be paid for want of such sums, being in fear of his life, he set out for Lyons the next day, it being the 28th of September, leaving Miss Rose in his apartment, and in possession of all his effects.

A N S W E R.

In the whole of this narrative there is nothing of truth, except that Mr. Taaffe and Mr. Southwell went to the pretended Roberts, when he of his own accord gave them bills. Mr. Montagu, one of the petitioners, was not with Mr. Taaffe and my Lord Southwell; he might have gone without any consequence, as being, like them, incapable of being carried to any violence in compelling Roberts to give him satisfaction for his debt; also as it was very natural that having lent money to Roberts on the 24th of September, who had promised to return it the next day, and had not kept his word, he should give him some security for the payment; it is therefore only out of a respect to truth, and to expose the fallacy of Roberts,

berts, that Mr. Montagu is going to prove that he was not at his house on the evening of the 27th of September, as he falsely alledges.

Of all who have been heard, the only witnesses who deposed that Mr. Montagu came to Roberts on the 27th of September, are Francis Chol de Clercy, valet de chambre to Roberts, and Colot d'Yverdun, porter of the furnished Hotel where Roberts lodged : but first Chol de Clercy, at his re-examination, has declared that there was a mistake in inserting in his deposition, that Mr. Montagu came about eight or nine o'clock of the evening of the 27th of September to Mr. Roberts, with Messrs. Taaffe and Southwell, declaring that he did not see Mr. Montagu, but he certainly did see Mr. Taaffe and Mr. Southwell one after the other.

* 2. *Mean*, master of the furnished Hotel, who conducted my Lord Southwell to Roberts, and who was present at Mr. Taaffe's coming, does not depose that Mr. Montagu was seen in Roberts's house; nay farther, at the question being put to him at the confrontation, *Mean* has declared, that he did not see nor heard say that Mr. Montagu came to Mr. Roberts, on the evening mentioned in the deposition : Thus Chol de Clercy, Roberts's valet de chambre, has retracted what he said on the pretended visit of Montagu along with Messrs. Taaffe and Southwell ; and *Mean* both in his deposition and confrontation, has averred that Mr. Montagu did not come to Roberts. Is it said that Colot d'Yverdun stood to his declaration relating to this supposed visit, to omit the suspicion which naturally falls on whatever comes from that contemptible man, who was so flagrantly corrupted, that he left Paris that very day, or the day after his confronta-

* It is surprising that upon such a formal retraction, proving the falsity of Chol de Clercy's deposition, this fellow should escape punishment.

tion, as had been publickly foretold. * The falsity of this deposition is demonstrated both by the depositions of Chol de Clercy and by the repeated evidence of *Mean*, to whom all the facts were well known, since it was he himself who conducted Messrs. Taaffe and Southwell to Roberts. Thus then is it clearly proved, that Mr. Montagu did not appear in Roberts's house on the 27th of September; he certainly might have gone thither, and without any guilt or indecency, but it was essential to evidence the vile fallacy of the allegations contained in Roberts's complaint, he spoke only of facts within his knowledge; consequently he could not disguise them, without, at the same time, betraying his own conscience; so that the falsity which runs through his declarations, is a premeditated fallacy, and in this circumstance the more flagitious, as after a voluntary violation of truth, he endeavours to impose upon justice.

That Mr. Taaffe was with Roberts on the 27th in the evening is not deny'd, it is also allowed that the Lord Southwell went thither; but on what account? a very natural one, and which cannot be more exactly related than in Mr. Taaffe's answer to the interrogatories. He has declared, that hearing that Roberts was to set out the next day, (the 28th of September) he went to his lodgings in the day-time to ask for the 400 Louis which he owed him; but he was told, that he was not at home, being gone to Poissy, and was to return in the evening; that accordingly he went thither, and that Roberts very readily gave him a note of 400 Louis; that he even made some civil excuses for his delay in payment, but that he had been necessitated to employ his money other-

* Mr. Montagu pointed out this observation to the judge, he even offered to yield himself a prisoner upon the detention of that false witness, who doubtless ought to have undergone a trial; but all Mr. Montagu could say was flighted.

wife ; that at the same time he offered him notes for Mess. Montagu and Southwell ; that Mr. Taaffe took them and gave them to Mr. Southwell ; that Roberts told him, that if he would call upon him to-morrow, they would go all together to his banker, where they should be paid.

Is it then matter of reproach to Mr. Taaffe, that he went to his debtor, to require the payment of a sum which he had lent him in England without any acknowledgment, depending on his being immediately repaid ? Mr. Taaffe in lending this money gave an instance of that candid probity, that is as ready to do good offices as it is opposite to mistrust. He is informed on the 27th of September, that his debtor, who was no more to be found in England, and whom he fortunately meets again in Paris, is upon setting out the very next day for Italy, without giving him any security ; immediately Mr. Taaffe goes to his lodgings ; he is inform'd that he is at Poissy, and will not be back till evening ; Mr. Taaffe resolves not to slip the opportunity ; Roberts, confused at the appearance of a creditor whom he was for eluding, excuses his failure of payment, and gives him a bill on his banker payable the next day ; at the same time putting on a shew of punctuality, he offers him bills for Mr. Montagu and the Lord Southwell, which Mr. Taaffe takes upon him to deliver. Is there any irregularity, any deceit, in a behaviour so common as this between a debtor and creditor ? There is no body who would not have taken the same precautions as Mr. Taaffe, no body being willing to throw up a lawful claim. It is true, Roberts thought then, as he always did, to trick all his three creditors, since he did not keep to his appointment of the next day ; he even took a letter of credit for the sum of 18000 livres, the value of which was in his banker's hands, to hinder, if possible, the payment of his bills ; but in all these

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transactions we perceive nothing but the most irreproachable conduct on Mr. Taaffe's side, and on that of the pretended Roberts nothing but deceit and villainy : after being a bankrupt in England, he acted the same part in France, his iniquity followed him every where.

Roberts, after giving his notes without any constraint, laid himself out, as it appears, in fraudulent practices to avoid their payment. There was then no complaint of those pretended violences, by which it is said the bills were extorted; for had these violences been real, the justiciary would immediately have heard of them ; a man so abused as Roberts would without delay have declared himself against his guilty oppressors, far from droneing away near a month in a lethargick indolence : but the ideas of prosecutions were formed by degrees, malevolence suggested them, imagination supplied the subjects, and calumny put the finishing hand to them.

Pursuant to this vicious principle, Roberts sets forth, first, That on the 27th of September, the petitioners and Lord Southwell came knocking at his door betwixt eleven o'clock and midnight, with threatenings, oaths and acts of violence ; this charge, which is divided into three parts, is absolutely contrary to truth.

It has, in the first place, been shewn by the evidence of the witnesses, that Mr. Montagu did not appear in Mr. Roberts's house on the 27th of September: this is a falsity which Roberts could not advance but premeditately, it relating to a fact, which, to him, was personal; therefore he knowingly was for imposing upon justice ; and this prepense imposture has been the basis of all his allegations. Secondly, Mr. Taaffe and Lord Southwell did not come *together* betwixt *eleven o'clock and midnight*. La Branche and Dercourt, who were at that time his domesticks, depose only on hearsay ; and, besides

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the little credit to which such kind of declarations are entitled, these hearsays relate to a fact the falsity of which has been proved, as they only bring to mind the allegation of the supposed visit of Mr. Montagu, in company with Mr. Taaffe and my Lord Southwell; 'tis no more than a direct repetition of Roberts's allegation. *Mean*, master of Roberts's furnished hotel, deposes, that on the 27th of September, about ten o'clock at night, Mr. Southwell asked him whether Roberts was to be spoke with, that he shewed him to the door of his apartment, that he knocked, and spoke in English, that he was answered by Miss Rose in the same language; but that the door not being opened, he went away; that Mr. Taaffe came immediately after, that he writ a letter which he desired him to deliver to Roberts; that he, the said *Mean*, went and knocked at his door, which with all his entreaties he could not obtain to be opened till after a long half hour; that afterwards when he was gone down, he returned to the *Sieur Taaffe*, who was in his coach; that he told him that Roberts had promised that he should hear from him by eight o'clock in the morning; that Mr. Taaffe alighted, went up stairs, and knocked at Roberts's door, who, upon knowing that he was there, opened it; that whilst Mr. Taaffe was with Roberts, he sent for Mr. Southwell, who came about midnight. According to this evidence Mr. Taaffe went alone to Roberts's house. It was about ten o'clock at night when he came there, and this measure, as has been said, was entirely justifiable: informed that Roberts's departure was fixed for the next day, and the event afterwards proved the information right, was Mr. Taaffe to neglect a debt owing since the month of April 1751, and which he was on the point of losing by the flight of his debtor, who had before eluded his demands by quitting England? These circumstances leave not the least stain on Mr. Taaffe's visit, and if he had shewn any
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pique against such a deceitful debtor, which however, he did not, it would have been no more than the effect of the just sensibility of a man at such base returns to his generous confidence; was tranquillity only a speculative virtue in these critical moments, the reproach would doubtless fall only on those who disturb it by their shocking proceedings.

Chol de Clercy and Collot d'Yverdun are the last witnesses which mention this visit; Chol de Clercy makes it to have been betwixt *ten and eleven*; and, like *Mean*, he deposes, that Mr. Taaffe came alone; but at the same time adds, that when he came out of Roberts's chamber, Mess. Southwell and Montagu immediately appeared there, and that Mr. Taaffe, a moment after, went in again. This last fact, relating to Mr. Montagu, is proved a supposition, by Chol de Clercy's own retractation.

Collot d'Yverdun mentions also the coming and going of my Lord Southwell at *ten o'clock at night*; but he immediately loses himself, in deposing, contrary to the unanimous evidence of the witnesses, that a moment after his going, Mess. Taaffe, Montagu and Southwell came one after another into Roberts's chamber. Tho' these different visits, whether jointly or separately, do not afford any inference, yet have the petitioners thought it of importance to enlarge on the circumstance, on the one hand to prove the disagreement betwixt the witnesses, which indubitably excludes their evidence from the attention of justice; on the other, to shew the irreconcilableness between the facts which they depose, and the facts of the complaint: thus after having invalidated each other, they also invalidate the allegation of the accuser. Truth has been betrayed, in every circumstance where the purest respect was due to it; and yet by an effect absolutely contrary to the views of the plaintiff, and his witnesses,

nesses, truth triumphs by the very devices which had been practised to suppress it.

Thirdly, It is a notorious falsity in Roberts to affirm that the petitioners and my Lord Southwell knocked at his door with threatenings, oaths and acts of violence. The first act of this confederate visit is already quashed; as to the second, *Mean* deposes, that Mr. Taaffe went up to Roberts's apartment, that he knocked at his door, *and that Roberts, knowing it was he, opened it.* Here is no sign, no mention in this deposition of all these threatenings and oaths, and acts of violence. La Branche and Dercourt, Roberts's domesticks, who did not live in the Hotel d'Orleans where he lodged, depose, that they have heard Dercourt, without mentioning the authors of *this hearsay*, La Branche fathering it upon Cholot d'Yverdun, porter of the hotel, that on the 27th of September Mess. Taaffe, Montagu and Southwell came into Roberts's apartment, where they had made a great bustle, and had threatened him very much: but not a word does this same Cholot d'Yverdun say of this bustle and these threatenings; he says, that Mess. Taaffe, Montagu and Southwell went up to Roberts's chamber, *and that he does not know what passed between them till they went away, because he stayed at his door.* Thus the hearsays of these two domesticks are narratives, of which one is so suspicious, that the name of him on whose credit the deposition is made is concealed, and the other is formally disproved by him who was named to confirm the truth of it. Cholot d'Yverdun would certainly not have omitted the oaths, the threatenings, the acts of violence, not only if they had been known to him, but even if he had suspected any such thing. Chol de Clercy, it is true, talks a great deal of these imaginary threatenings; but first this witness, at his second examination, retracted the principal facts in
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his deposition ; and it is a rule, that an evidence varying, and much more a witness retracting what he had said, deserves no confidence ; *testes qui adversus fidem suam testationis vacillant audiendi non sunt* *.

Secondly, Chol de Clercy was asked, at his confrontation, with what words Mr. Taaffe had abused and threatened Roberts ; Chol de Clercy answered, that Mr. Taaffe said, “ Pay me, or give me a bill on Mr. Waters ;” and that Roberts made answer, that he had not money enough for his journey to Italy. This demand is quite free from any illegal threatening or violence ; Roberts was indebted to Mr. Taaffe ; was it a crime to ask him for a payment which he ought to have made long before ? But there was no occasion to urge Roberts, he drew a bill on Mr. Waters with a great shew of candor, and many excuses, on the debt’s not having been paid before.

Thirdly, Chol de Clercy did not lie at Roberts’s any more than Darcourt and la Branche, his footmen ; but though this was a known fact, upon the question put to him at the confrontation, to declare whether he had lain in his master’s apartment, against all truth, and all appearance, he said he had lain that evening and night in his master’s apartment, and in the bed where the sister of Miss Rose used to lie, *Miss Rose’s sister not coming home till after Mess. Taaffe and Southwell were gone, having, says he, spent the night in an easy chair.* Chol de Clercy was also asked at what hour Miss Rose’s sister returned, because it seemed something very singular, that this servant should fill her bed while she took up with an easy chair ; he answered, that *she returned betwixt eleven and midnight,* which evidently proved Chol de Clercy’s fallacy ; for it cannot be conceived that he could take possession of

* Leg. 2. F. de test.

Miss Rose's sister's bed, to whom respect was due from him, as sister to her whom, by his own confession, he looked upon as his master's wife, obliging her to spend the night in an easy chair. It must be added, that this same Chol de Clercy had in his deposition delivered as a fact, of which he was an eye-witness, that *Roberts, frightened by Mr. Taaffe's threatenings, had been compelled, crying and sobbing, to give him a bill on Mr. Waters, jun. banker at Paris.* At the confrontation, this Chol de Clercy was also questioned by what means he came to know that Roberts had given a bill of 400 Louis to Mr. Taaffe; to which he answered, that *Roberts himself had told him so, immediately after Mess. Taaffe and Southwell were gone.* Thus Chol de Clercy was not present at what passed at the draught of this bill: he had charged Mess. Montagu and Southwell with the like menaces to procure themselves a bill; and yet, at the second examination, he contradicts himself, declaring, *that it was by mistake that it had been inserted in his deposition, that Mr. Montagu came to Mr. Roberts on the 22d of Septemb.* so that Chol de Clercy was manifestly a corrupt witness, who, instead of regard and confidence, deserved the severest punishments assigned to false witnesses.

In fine, the deposition of Chol de Clercy is expressly overthrown by those of *Mean* and *Cholot d'Yverdun*; it is farther disproved by its contradictions, its retractations, and its evident fallacies; therefore no credit can possibly be given to this heavy charge of oaths, acts of violence and threatenings; they are the fictitious fruits of Roberts's own wicked brain, which he has incensed in his complaint; and Chol de Clercy has done his utmost to procure them some credit by his deposition. But in vain has calumny laid the heads of both plaintiff and witness together; no agreement
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to support a falshood can be lasting, it will at last betray itself, and then sink again into its nothingness.

The three succeeding witnesses speak neither directly nor indirectly of these so much complained of excesses ; thus all Roberts's allegations on this head must fall to the ground as absolutely false.

Roberts's second allegation relates to the violent means employed by the petitioners to compel him to give them bills : according to him, they said they were going to carry him to the Bastile, by archers whom they had brought, together with the governor of that prison ; that they afterwards threatened him to slash his face with their swords, and at last fear brought him to give them bills on Mr. Waters, though he had then no effects in his hands ; and fearing for his life, as the petitioners could not be paid for want of such effects, he set out the next day for Lyons, leaving Miss Rose in possession of his effects. There is in this narrative a striking contradiction, of itself sufficient to expose all its falsities : Roberts pretends that the petitioners should say to him, that they were going to carry him to the Bastile by archers which they had brought, together with the governor of the Bastile, if he did not draw the notes they required ; and that afterwards they threatened to slash his face with their swords, if he refused ; but this double threat is absolutely irreconcilable ; there is no declaring to any one, that if he does not comply with what is required, he shall be immediately carried to prison by archers, who act only by orders from the magistrates, and at the same time flying into such a rage as to threaten to cut his face upon non-compliance. The first threatening, which declares an intention to make use of an authorized compulsion, is not naturally followed by the second, which is big only with the rage of an illegal act of violence ; so that to employ both these menaces

naces at the same time against the same person, and on the same account, is shewing that one is not really in earnest; because all personal violence is carefully abstained from, when the measures of justice are made use of to force a compliance. It is then clear that Roberts's charge carries its refutation with it by the contradictions it contains; besides, what appearance is there that the petitioners could have contrived and made use of that ridiculous tale of the governor of the Bastile coming with his archers, by their orders, to carry off their debtor? 'tis a supposition so absurd, that common sense is shock'd at it; so that there needs no more than a superficial examination of Roberts's allegations, to be thoroughly convinced of their falshood and Iniquity.

Secondly, not one witness deposes that the petitioners threatened Roberts *to carry him to the Bastile, or to slash his face with swords*: Chol de Clercy, even that false witness, who talks of threatenings, and who has therein been disproved by all the other witnesses, is wholly silent as to this charge; he certainly had forgot part of his instructions; therefore there is no countenancing these imputations of threatenings and violences: Roberts's notes were made without any compulsion; and though there is no doubt but he would have been inwardly pleased to have eluded a just debt, still is it not less true that he very readily acknowledged it: his signing these bills was done with all the appearance of honesty, but his wicked heart recoiled at this act of justice; this is a fresh villainy: it does not effect the petitioners; the infamy belongs only to him.

Another of Roberts's suppositions is the motives of his departure for Lyons: he alledges, that being in fear for his life, having given the petitioners bills on Mr. Waters, the payment whereof
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could not be expected, as that banker had *none of his effects in his hands* ; but this want of effects is again demonstrated to be false by a double proof : First, Mr. Waters, whom Roberts brought as a deponent, in his additional articles of the month of November 1751, formally deposes that Roberts drew upon him three notes for the use of Mess. Taaffe, Montagu and Southwell, (these are the notes of the 27th of September) *and that he had in his hands at the time of his deposition the same effects of Mr. Roberts as he had then.* Secondly, by an order of the court of the 5th of January 1752, and signified on the 19th, it was enjoined, that *these effects, amounting to 26,200 livres, should be deposited with Desplaces, the notary* ; and this deposit has been passed, in presence of the parties concerned, by an act of the 20th of the same month. Thus Roberts really had effects in the hands of the Sieur Waters ; and in this fact there appears the same deceitfulness that runs through all the other ; therefore Roberts could not be under any real fear that the petitioners could not be paid *for want of funds* ; but being himself determined to disappoint them, on the 28th of September he took up a letter of credit from Mr. Waters, though the notes on this banker were of the foregoing day ; he had besides given an order for 8200 livres to Mr. Pierre ; and imagining to frustrate the demands of the petitioners by this fraudulent precaution of diverting the 26,200 livres, which were in Mr. Waters's hands, he set out for Lyons the same day, being the 28th of September ; consequently it was not the fear of payment, occasioned by a want of effects, which produced his journey to Lyons ; it was a designed premeditated fraud in Roberts, to carry off the funds which he had assigned to the petitioners : his design in travelling was, by his absence, to avoid the just demands of his creditors ;

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but this travelling scheme appeared still more advantageous, after he had given them bills, which, by the withdrawing of his effects, became unpayable; therefore the dread of an unfortunate debtor can take no place here. This was not Roberts's case; his measures were entirely directed by his iniquitous and fraudulent practices; and this base principle, from which nothing but falsities and crimes could be produced, prompted him to this odious accusation against the petitioners.

THIRD FACT *of the* COMPLAINT.

The pretended Roberts alledges, that, during his stay at Lyons, he was informed by different letters, and that it had been confirmed to him at his arrival, on the 25th of October, the very date of his complaint, that on the day of his departure, the Sieurs Taaffe, Montagu and Southwell came in the morning to his house, and finding no body there but Miss Rose and her sister, the Sieur Taaffe had persuaded Miss Rose to abandon the plaintiff, and to retire to the hotel de Perfol, where Mr. Taaffe lodged, who had promised to send her in a few days to England; that at last he rummaged the portmanteaus, bags and effects of the plaintiff; and, by his own authority, conveyed away several bags of money, to the amount of about 750 Louis; a pair of girandoles, bought of Sieur Pierre, and worth 8200 livres; a picture set in diamonds, of the value of 1200 livres; a shift-buckle, set with diamonds, rubies and emeralds, of the value of 650 livres; laces, and several womens gowns, to the value of about 7000 livres; two diamond rings with brilliant hoops; many gold snuff-boxes, a cantene, and other effects, which he cannot now call to mind; that all were put into a strong box, which the chevalier Taaffe had ordered to be brought into his apartment, and having directed it to be

put into a coach, which stood at the end of the Petits Augustines street, with his valet de chambre; that afterwards Mr. Taaffe conducted Miss Rose and her sister in another coach, which carried them to his lodgings; where, after staying three days, he sent them away to London, with one of his friends, who was returning thither.

A N S W E R.

It is true that the petitioners and my lord Southwell, went to Mr. Roberts's house the morning of the 28th of September, but their visit proceeded from no other motive than the desire of keeping the appointment he had made with Mr. Taaffe and my lord Southwell, in order to go with them to offer for payment the three bills which had been drawn over night on Mr. Waters. The petitioners missing of Roberts, inquired of Miss Rose, whom they looked upon as his wife, where he was. She answered them, that he had left Paris, upon which they withdrew, without touching, or so much as casting an eye upon any of his effects. The bare suspicion on this head is such a foul reproach, that the very confutation must give pain to such persons as the petitioners. Chol de Clercy, Roberts's faithful witness, has with his usual falacy, deposed that the petitioners and my lord Southwell came on the 28th of September into Robert's apartment, that they locked themselves in, and they with Miss Rose and her sister made up bundles of Roberts's effects; that afterwards they went away, and Miss Rose called in the deponent, and made him fill a portmantau with the effects belonging to Roberts, among which was a bag of English and Portugueze money, to the amount as Roberts told him, of 300 French louis d'ors; but about noon, Mr. Taffe's valet de chambre caused to be delivered to him by Miss Rose, a little box, in which Roberts kept his jewels

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and gold ; but that he could not give a particular account of its contents, having never seen that box open, and Roberts having besides carried away the key ; that afterwards Miss Rose and her sister putting their linen cloaths, and several band-boxes, in which were Roberts's laces in a coach, they got into it with Mr. Taaffe's valet de chambre, and went to Mr. Taaffe's lodgings, after ordering la Branche to put the large portmanteau in a hackney coach, which portmanteau and other effects were put into this coach and carried to Mr. Taffe, where Miss Rose and her sister stayed three days, and afterwards set out for London.

In order to form a true idea of this deposition and the credit due to it, the character of the mouth from whom it comes, is to be considered ; it is a standing principle that a witness should be clear of any kind of suspicion, *Testium fides diligenter examinanda est**, say the laws : the witness to be worthy of any confidence, must not be convicted of variation, *Quorum fides non vacillat* † ; but Chol de Clercy is not upon a level with those witnesses, whose attachment to exactness procures them the regard of a court ; ever departing from the truth of the principal facts in his depositions ; either he has voluntarily retracted at his second examination, or he has been convicted of false evidence at his confrontation, in the allegations which he had not voluntarily retracted ; so that comparing this witness only with himself, his own contradictions betray the falsity of his depositions ; his blunders serve to direct justice, and justice makes use of them to proscribe all his affirmations.

Chol de Clercy, after being guided in the last part of his deposition, by the same falacy which had dictated all the foregoing, could not here hold

* Leg. 2 & 3 F. de test.

† Leg. 1. de test.

out against another recantation at his second examination. According to the deposition of this witness, the petitioners had made up bundles in conjunction with Miss Rose; whereas, at his second examination, he says, it was a mistake to make him say that he had seen Mess. Taaffe, Montagu and Southwell making up bundles on the 28th of September; declaring, on the contrary, that it was no other person than himself who made up the bundles, together with Miss Rose and her sister, after the said gentlemen were gone. Chol de Clercy had affirmed that Mr. Taaffe's valet de chambre had caused to be delivered to him a little box, in which Roberts kept his jewels and gold, but the contents he was a stranger to, having never seen it open; and that, besides, Roberts had carried away the key; a flat contradiction to what Roberts alledges in his complaint, that he had left the keys in the locks. At the second examination Chol de Clercy says, *that it was only from Roberts, that he knew that little box contained jewels and gold*; an evident proof that this witness was no more than Roberts's eccho. Chol de Clercy had deposed that Miss Rose had put into a coach a bandbox, in which was Roberts's lace: at the re-examination Chol de Clercy said, that he never knew but from Roberts, that this box had lace in it; having neither opened it, nor seen it opened. Thus Chol de Clercy, so peremptory in his evidence on all the facts which he thought would prejudice the petitioners, expressly disowns them all at his re-examination. On one hand, he retracts his slanderous affirmation of the petitioners making up bundles with Miss Rose; saying, that it was he himself, after they were gone: on the other hand, whatever relates to the jewels, gold and laces, is so far from being of his own knowledge, that it is only a repetition of what he had heard from Roberts;

therefore no stress can be laid on the deposition, of Chol de Clercy ; either he has deposed against his own knowledge, and has been obliged to retract, or he has only deposed according to Roberts's dictates, so that in both lights he must appear to be utterly unworthy of any credit.

All the other witnesses who mention the bundles, and the removal of the effects, which Miss Rose had in her possession, as Roberts himself owns in his complaint, unanimously declare, that every thing was done by the directions of Miss Rose. She passed for his wife, and was called Lady Roberts, consequently no exception lay against any measures she thought fit to take about effects that had been left with her, and of which her apparent quality seem'd to check any contest on the disposal.

But Mr. Taaffe's valet de chambre had a little box delivered to him by Miss Rose, and afterwards went along with her to Mr. Taaffe's, where the other effects have been carried. These circumstances, which are grounded only on the ever erroneous deposition of Chol de Clercy, are disproved by all the witnesses who mention them. It is confirmed that Mr. Taaffe's valet de chambre did not receive any box from Miss Rose, and that he did not go with her and her sister to Mr. Taaffe's ; this valet de chambre who has been examined at Roberts's own request, and against whose deposition he consequently cannot except, has deposed on this head, that having on the day of Roberts's departure, received between eight and nine in the morning, a letter for his master, who was in town, he immediately hastened to Mr. Montagu's, where he hoped to find him ; but not meeting with him he went of himself to Mr. Roberts's, where he judged he might be ; that Roberts's footman, or valet de chambre, told him that Mr. Taaffe had been

been there, but was gone again; that the deponent went into Roberts's apartment, where he found a lady who went by the name of lady Roberts; that he asked her if she could give him no account of Mr. Taaffe, that she likewise answered that he had been there, but she did not know where he was gone; that as he was going away after saluting Mrs. Roberts, * she desired him to be so kind as to carry to Mr. Taaffe's a little trunk in which she said her laces were; that the deponent asking her if what was in the trunk belonged to her, she assured him that it did, and that then he told her, that if she would order one of her people to carry the trunk to a hackney coach that was waiting for him at the end of Petits Augustine street, he would take charge of it; that a footman belonging either to Roberts or his wife, called la Brache, took the said trunk and carried it to the coach of the deponent, who went away, and put it in the apartment of Mr. Taaffe, who was not yet come back. La Branche has deposed that Miss Rose's sister ordered him to carry a trunk to a hackney coach, which was standing at the corner of Colombier-street, † which he did, Mr. Taaffe's valet de chambre going with him, and ordering the coachman to drive to the Hotel de Perrou where Mr. Taaffe lived. The other witnesses are silent as to the carrying away of this trunk; but it is formally proved against the false evidence of Chol de Clercy, both by the deposition of Mr. Taaffe's valet de chambre and by the deposition of la Branche, which directly quadrates with that of the valet de chambre. First, that the trunk

* This deponent has declared that it was since this event of the 28th of September, that he then was informed of Miss Rose, whom he then did not know under that name, not being Roberts's wife.

† Petit Augustins-street opens into Colombier-street.

mentioned by Chol de Clercy had been carried away by Miss Rose's order. Secondly, that Mr. Taaffe's valet de chambre did not return to his master's with Miss Rose; so there is not a single fact which has not been misrepresented by this Chol de Clercy. Besides, as Mr. Taaffe's valet de chambre looked upon Miss Rose to be Roberts's wife, there was nothing extraordinary in his compliance with her desire; as such, she seemed to have a right to act as mistress, and her management was accounted to be pursuant to Roberts's own directions. What is still more, Mr. Taaffe knew not a word of Miss Rose's coming to him; it is positively deposed, that being informed at his return of this step, which was accompanied with the removal of the other effects which Miss Rose, together with Chol de Clercy, had bundled up, Mr. Taaffe was not a little angry at it, insisting that if she had any of Roberts's effects they should be immediately sent back; and that, as he would have no kind of intercourse with this girl, whom he had always taken for Roberts's wife, he left her his apartment, from whence she set out with her sister, without Mr. Taaffe's being either directly or indirectly privy to her coming or going.

Besides, whatever passed betwixt Miss Rose and Mr. Taaffe's valet de chambre, were facts of which Mr. Taaffe had not the least knowledge, and for which he cannot be made accountable, as facts of this nature are not of those for which masters are securities. The pretended Roberts's counsellors were so fully convinced of this truth, that, to strike out an action against Mr. Taaffe, they have set forth in the complaint, on the one hand, that Mr. Taaffe had himself carried away the effects of which they have given an inventory, that he had put them in a box, and that he had ordered his
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valet to put them in his apartment ; on the other hand, that Mr. Taaffe had enticed Miss Rose to forsake Roberts, and had carried both her and her sister to his lodging ; but all these facts are seen to be the product of an atrocious calumny ; the witnesses, even Chol de Clercy, are agreed that Miss Rose and her sister had acted merely from their own authority, and that Chol de Clercy had been assistant in all their operations. What drew Mr. Taaffe's valet de chambre to their apartment, was a thought that Roberts was at home, and that there he might meet with his master to deliver him a letter ; it was only at Miss Roses's request that the valet de chambre charged himself with a little box, it was by her order that la Branche, Roberts's servant, had carried the box to the hackney coach, which the valet de chambre had taken for the greater dispatch. In fine, Roberts's affair seemed so entirely committed to the management of Miss Rose, that after his servants had assisted her in all the measures she was inclined to take, she herself dismissed them, and payed them their wages ; as le Branche and Der-court have formally declared in their depositions. Thus Roberts's allegations are a heap of shocking absurdities, and punishable falsities : he is an arrant calumniator, who in the impetuosity of his rancour, has broke through all bounds, a disturber of the public tranquillity, a persecutor of innocence, his devices, his excesses, his impostures, are the only motives and instruments of his virulent prosecution against the petitioners.

Thus the last fact of Roberts's complaint exhibits the same malignity which had dictated the first, he accuses the petitioners of several thefts, they have laid their hands, if he is to be believed, on no less a sum than 750 Louis, exclusive of other effects which they have got into their possession ;

but who will be brought to believe that Roberts would leave such a sum with Miss Rose? This girl, his reputed wife, but known to him to be only his mistress, would certainly not have been the trustee of these 750 Louis; if he had so many by him, either he would have intrusted no body but himself, or he would have exchanged them for his banker's notes, as he had done with the 1800 Livres, which he had turned into a letter of credit on the very day of his departure. No less absurd and improbable is it, that the petitioners should have seized on the other effects which Roberts pretended he had left with Miss Rose. Would she have tamely sat still while they were stripping her of those effects, which it was so much her interest carefully to preserve, either for Roberts or herself, * consequently truth and probability are violated throughout all Roberts's allegations, his own witnesses, witnesses of his own tutoring, disprove every particular fact of his complaints, and he disproves himself by the absurdity of his exaggerated narratives; through these circumstances it was, that the former judges, discovering all the effrontery of a slanderous accuser, the ignominy and injustice of the detention of the petitioners, the enormous iniquity of a criminal process, the injury done to their honour and probity, have annulled a shocking accusation, and punished a virulent accuser by damages, which could not have been too considerable, if measured by the heinousness of the offence. The same sentence allows the supplicants to bring complaints both against a guilty slanderer and his accomplices. What grounds

† It is proved by the questions put to Roberts, in the second trial, that he was so well informed, of Miss Rose's having the effects, which he had intrusted or given to her, and with the carrying away of which, he has, however, wickedly dared to accuse the petitioners, that he has sent his trusty Chol de Clercy, after her to England, to demand either the effects or money.

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has he then to complain of a sentence which condemns him only to the penalties he deserves? Did he flatter himself with enjoying impunity after such infamous affronts against truth and justice? Did he persuade himself that the petitioners were destined to languish under the weight of his insolent oppression? Did he think that innocence was given up to his persecution? Indeed such sentiments may find room in the heart of an accuser, where malevolence keeps pace with temerity, but purer maxims lodge with justice: public order and tranquility require the exaltation of truth, and the punishment of iniquity. 'Tis then without any foundation that Roberts has thrown in an appeal from the sentence that condemned him to a reparation and costs and damages, in favour of the petitioners: such a notorious slanderer was not to escape the severity of justice; *Quisquis crimen intendit*, says the Law, *non impunitam fore noverit licentiam mentiendi**; consequently the sentence of the 25th of January 1752, ought to stand purely and simply.

*Pleas of the Petitioners against the Sentence of the
14th of June, 1752.*

THE Petitioners, after being acquitted of the false accusation of the pretended Roberts, after having lost the appellation of accused, which never belonged to them, have been authorised by the definitive sentence, to make proofs of the several facts which they had laid before the justiciary in their complaints of the 12th of November and 20th of December, 1751, and by their request of the 5th of January following. Whilst they were hampered with this extraordinary process, they were under the melancholy necessity of vindicating

* Leg. *quisquis* 10 cod. *de calumniatoribus*.

themselves. In vain did they add to the multitude of pleas, which demonstrated their innocence, complaints concerning interesting facts ; it was against the judicial oeconomy to admit them to any proof whereby they would have become accusers, when they were only the accused ; and under this last denomination were they to remain, till the decision of the accusation brought against them ; but when the process was brought to the moment of decision, all the complaints, all the demands they had in reserve, were in the number of the matters submitted to the authority of the judges.

Thus, on the one side, the accusation was declared slanderous, insolent, void of proof, and consequently the petitioners entirely cleared of it ; on the other, it appeared that the facts contained in their complaints were serious, interesting, in a word, susceptible of a steady prosecution ; and, on this account, their petition for a counter complaint was granted. It is by virtue of a sentence no less just than regular, that the supplicants have begun and drawn up the process in which they have appeared as accusers. It is true, the sentence given in this process is wholly on the side of the accused ; but an appeal is lodged against this sentence ; the petitioners plea is simple and decisive ; the sentence is directly opposite to the proofs which should regulate the determination, and which should be the law both to the judges and the parties ; consequently a verdict given as it were in defiance of proofs, is what the petitioners are intitled to have redressed. The different heads set forth in the complaints of the petitioners may be reduced to two general facts ; the first is the supposition of the name of the pretended Roberts ; the second is the complicity of the Sieur Pierre with this person ; a complicity which has been productive of the most culpable devices. They shall be laid open and demonstrated

monstrated all at once, in treating of the heads relating to this complicity.

SUPPOSITION of NAME.

The supposition of name of the pretended Roberts, is a fact which admits no manner of doubt, many proofs of it having been found in the sealed papers put to his effects; and he himself, in the interrogatory of the 21st of December 1751, before commissary Chenu, and in an interrogatory at the Chatelet, on the 29th of January 1752. publicly owned that his *name was Abraham Payba, born at London of a Jewish father.*

Every supposition is a trespass against truth; and truth ever being the unalterable rule of justice, it follows, that whoever presents himself before the justiciary under a false name, or a false character, deceives justice, by the error into which it leads us; he associates the justiciary to his lie, and this lie, as an offence against the most valuable laws of the justiciary, necessarily subjects the deceiver to their animadversion. Little will it avail Abraham Payba, that an alteration of name, by which no body is hurt, never was accounted a punishable fault: he will be told that this exception, which exactitude will perpetually explode, is absolutely inadmissible in his favour, upon a view of the motives and circumstances which induced him to change his name. It is not denied but that substituting a name without any pernicious consequence or design, is too slender an irregularity to bring upon it a serious prosecution; there is even a law, which foreseeing such alteration of name, runs in these words; *mutare itaque nomen vel prænomen, sine aliqua fraude, licito jure si liber es, secundum ea quæ sæpe statuta sunt minimè probiberis, nullo ex hoc præjudicio futuro.*

turo *. Thus according to this law, which yet is too indulgent to the disguisers of truth, there must not be the least fraud in this alteration of name ; it must be such that no person can be a sufferer by it : but the alteration of the name of Abraham Payba wants that purity of intention, that harmlessness in consequence, which this very law makes an indispensable condition in the change which it tolerates. An examination of the motives to this supposition of name, and the effects it has produced, sufficiently convinces any one, that it is intirely derived from a combination of fraud and falsehood.

First, Abraham Payba took upon him the name of James Roberts, only because leaving England, where he had failed for a considerable sum, he was for evading the pursuits of his creditors ; and to do this the more effectually, he laid aside in France his true name of Abraham Payba, and concealed himself under that of James Roberts, which did not belong to him. It is true that Abraham Payba, in order to assign a less disgraceful cause for his alteration of name, has declared, that *upon a variance with his mother, and leaving her, he took upon him the name of James Roberts, that she might not find where he was, and whither he was going* † ; but it was his bankruptcy that was the capital motive with Abraham Payba, though he has frivolously sought to give another turn to it, as if he was not afraid of the pursuits of his creditors, upon an expectation that his mother, to whom he had left all his effects and books, would appease or satisfy them, those effects being sufficient to clear them as *he believed* § : But this allegation is formally disproved, first, by letters from his mother

* Leg. unic. cod. *de mutatione nominis*.

† These are the very words of the interrogatory of the 29th of January 1752.

§ The same interrogatory.

and sister, who, having at last heard that he had escaped to Paris, bitterly reproach him with his scandalous flight, the cruel situation to which he had reduced them, the rigid pursuits of his creditors, the impossibility of satisfying them, his false ostentation in giving out that he had money in London, without informing them where, and lastly, their distressful condition; so distressful, that his mother expressly says, *she is on the point of wanting bread.* Is it thus this mother would have writ to him, if he had left her effects for discharging his creditors? Secondly, by the public news-papers of London specifying his bankruptcy; by decrees given against him at the request of his creditors, of which decrees printed copies were found among his papers. Lastly, by a precise letter of Mr. Mendez his correspondent, who, on the 2d of December 1751, informs him that no payment had been made to his creditors, that there was a talk of making one speedily, and that it was said there would be 11s. in the pound, whereby the creditors would lose one half.

Thus, after all he has said to the contrary, nothing can be more certain than Payba's bankruptcy. But it was besides fraudulent, he having carried away at his escape from England 3000l. sterling, that is about 72000 livres, in good bills. This Payba himself formally allows, and farther declares, in complaint of the 25th of October 1751, that before he left England, he had not only provided himself with bank bills, but also with other bills on several London bankers *for considerable sums.* Thus it is no longer to be doubted that the real motive of Payba's altering his name was his bankruptcy: now this motive was prejudicial to his creditors, who would have taken care to stop the payment of his bills, had they been drawn in his true name; and his intention was plainly iniquitous in diverting
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to his profit the amount of those bills, of which he deprived his creditors. Now, can such an alteration of name be called an indifferent action? It was a fraudulent, pernicious device, and far from becoming excusable by any exception whatever; the law, on the contrary, brands it with infamy, as a crime against public order and the law of nations.

Abraham Payba, a Jew, under the name of *James Roberts, an Englishman*, practised a continual deception with all persons whose misfortune it was to have any thing to do with him. It was upon a persuasion of this person's being an Englishman that Mr. Montagu, one of the petitioners, paid him a visit, entertained him at his house, and lent him money. Had he known him to be Abraham Payba, the fraudulent bankrupt, he would have shunned him as a suspicious person, and not worthy to mingle with gentlemen. It was by the disguise of his name, by his pretending to be an Englishman, that he abused Mr. Montagu's confidence. Could it be lawful for Abraham Payba to assume a character so very different from that which really belonged to him, in order to give a larger scope to his frauds, and carry on his practices with greater success? Let it not be thought that his infamy was limited to his bankruptcy. He has been continually perpetuating it by fresh acts of circumvention; he has appeared under a false name; he has dealt under a false name, drawn bills under a false name; what a condition must the poor people have been in, who took the bills he gave them in the name of James Roberts? If his creditors, with the like bills, but under the name of Abraham Payba, had presented themselves to dispute the bills under the supposititious name of James Roberts, a contest would have been inevitable, to prove, that Abraham Payba and James Roberts were the same identical person; they must have stood a denial in law; they must, in fine, have been involved in a weighty discussion, a discussion of
which

which the success would have been both expensive and uncertain, either because bills, without any mark of fraud in them, such as those signed Abraham Payba, might seem to deserve a regard above bills fraudulently signed James Roberts; or because that he who can carry his deceit so far as to sign a note in a fictitious name, may as easily falsify his handwriting and signature. 'Tis the property of guilt always to lead to further guilt. How then is a supposition of name to be tolerated, which draws after it such dangerous consequences? truth and integrity will ever refuse their countenance to this system, so irreconcilable with the security of law.

Thirdly, This supposition of name has been carried on even to the face of justice. During the whole course of the process, Abraham Payba has been so audacious as to continue under the false denomination of James Roberts; he has deceived the magistrates, who judging him by the name he had usurped, have also given him the fictitious name of James Roberts. In his appeal from their sentence, he still persists in the disguised name of James Roberts; and what particularly calls for the attention of the court, is, that being interrogated by commissary Chenu on the 21st of December 1751, having answered under oath, and having in this interrogatory returned to his true name of Abraham Payba the Jew, he has again appeared before the justiciary, under the fictitious name of James Roberts an Englishman. Thus in contempt of exactness, in contempt of his oath, Abraham Payba very deliberately makes no scruple to reassume his former fallacy. The acknowledgment of his true appellation is no check upon him against the renewal of his fictitious denomination; and this shews it was a favourite device of his. In such circumstances there is no clearing one's self from the imputation of a criminal

nal intention ; to deceive society, to mislead the administration of justice, to betray one's oath, are real crimes, which the rather preclude from all favour, as they are always designed and premeditated : the assumption of a false name is by the law punishable with the same penalty as a cheat, *falsi nominis vel cognominis adseveratio pœna falsi coercetur* *. How will Abraham Payba vindicate his temerity in persisting in his supposition of name ? It admits of no palliatives, such shocking practices formed upon reflection, and carried on with effrontery, are quite inexcusable : but Abraham Payba's whole intention in this affair was to go on in a continued course of deceit and circumvention. After assuming the name of James Roberts, he clandestinely went into England to see Miss Rose, and demanded from her his effects : the carrying away of which he falsely charges upon the petitioners, tho' he was well informed that Miss Rose, with whom he had left them, had them in her possession ; he afterwards returned to this city, and lays aside the name of Roberts for that of Francis. In the interrogatory at the Châtelet the 29th of January 1752, he was asked, whether it was not true, that in the foregoing December, since his return from Boulogne, he had gone by the name of Francis ? his answer was, *that having made known to an Englishman his fear of being arrested, some body asking for him under the name of James Roberts, (so that his conscience was not clear) this Englishman said, that he did not know any such name ; and that the person living with him, speaking of the deponent, was called Francis ; but that it was false that he ever gave himself the name of Francis.* Here is a very peremptory affirmation ; yet when interrogated on the 22d of December 1751, by commissary Chenu, why he had taken the name

* Leg. *falsi* 13. F. de leg. Cornel. de falsis.

of Francis instead of Roberts, he answered, *It was with no evil design, because he was informed, that he was to be arrested.* The same question again occurs in the same interrogatory; and he answers, that *at his return to Paris he had taken upon him the name of Francis, being informed by several persons that there was an order for arresting him.* Thus the sacredness of an oath is of no weight to bring Abraham Payba to acknowledge the truth; to require him to pay a regard to it, is with him an unreasonable demand. It was not in the power of the judge himself to get a sincere confession from him; yet Abraham Payba enjoys impunity; the accusation was only *diminished*, tho' the petitioners complaint on the supposition of name had been admitted; tho' they had been allowed to prove that supposition, and tho' it had been proved with the clearest and most authentick evidence. But why was the proving of it allowed, if no penalty was to follow? or why was no penalty inflicted, when the proof was full and unanswerable? It must be owned, that the motive of such a dismissal is not easily conceived; justice and publick order were against tolerating an outrage carried on in defiance of truth; the interest of the petitioners, indangered by such frauds and devices, required a reparation, which yet has been denied them. It seemed impossible that a supposition of name, evidently loaded with a complication of guilt, should escape its due punishment; consequently the sentence on this supposition of name can never support itself; it stands equally in need of redress with respect to the article of complicity.

Combination of the Sieur Pierre with Abraham Payba.

THE complicity of the Sieur Pierre with Abraham Payba has produced a multitude of disorders,

ders, for which the petitioners are authorised to demand reparation, and which justice itself is concerned to suppress. This complicity offers three principal heads, all equally derived from the wicked combination of the Sieur Pierre with Abraham Payba.

The first includes the practices relating to Abraham Payba's slanderous accusation.

The second concerns the defamatory proceedings of the Sieur Pierre against the petitioners.

The third relates to the frauds concerted between the Sieur Pierre and Payba, to deprive the petitioners of their debt.

THE FIRST HEAD.

Practices relating to Payba's slanderous accusation.

IT was not without the advice and assistance of the Sieur Pierre that Abraham Payba, under the false name of Roberts, brought his slanderous charge against the petitioners; he has openly avowed himself to be his patron and director.

Payba left Paris on the 28th of September, to go to Lyons, and from thence to proceed to Italy: in his interrogatory of the 29th of January 1752, being asked what business had carried him to Lyons, he answered, that *he did not go there upon any business, but only as it was in his way to Italy.* So that Payba had not any thought of preferring a complaint, and why indeed should he have any thing to alledge with truth against the petitioners?

However, on the 25th of October, Payba suddenly appears at Paris, and on the same day his complaint is preferred: in that interrogatory he is asked what brought him back from Lyons; he answers, that *after three weeks, hearing nothing of his*

his effects, of Miss Rose, and his valet de chambre, he came back to Paris, to know what was become of them.

But herein Payba forgets that at the time of his interrogatory, he had declared in his complaint of the 25th of October, that, *during his stay at Lyons, he had been informed by several letters of the facts particularized in his complaint.* Now these letters must come either from the *Sieur Pierre*, or some other of his confidants. This observation is not a meer conjecture; it will presently be proved irrefragably. It will be proved at the trial, by several witnesses, that, before the complaint, the *Sieur Pierre* had boasted that *he had witnesses ready to depose against the petitioners, and that he was going to bring an indictment against them*; that he had writ to Payba at Lyons, that if he prosecuted the petitioners, it would bring him in considerable sums; that upon this letter he came away to Paris, and began his suit against the petitioners.

Secondly, it will be deposed, that the *Sieur Pierre* was reported to be the instigator and manager of this matter; that Payba made no secret of the *Sieur Pierre's* conducting the affair which he had against the petitioners; that the *Sieur Pierre*, speaking of the same affair, said that he had been with counsel, and that he would not take a step without being assured of its success; that the *Sieur Pierre* had named commissary *Levié* to Payba, to move his complaint; in fine, that the *Sieur Pierre* had given about 3000 livres to Payba's attorney.

Thirdly, Payba, in his interrogatories, allows, that the *Sieur Pierre* had named to him the commissary who had received his complaint; that he had given money to his attorney; that he had disbursed several sums for his business, and to himself, to the amount of 5 or 6000 livres. Certainly, a complex

view of all these different facts, and a consideration of their mutual correspondence, evidently demonstrate Payba's accusation was formed by the advice, and conducted by the operations of the *Sieur Pierre*. It is not usual to boast of having witnesses ready to depose ; it is not usual to prompt any one by a pecuniary bait to undertake an affair ; no body goes to counsel about it of his own head ; no body names the officers who are to be applied to, or makes considerable disbursements to them, who, after all, is to remain an unconcerned spectator of the event : it is interest alone that can set a man to work after this manner ; and what determines, beyond reply, this complicity, is, that this was not a common and merely civil process, but really a charge, which would have been followed with capital and infamous punishments, had it not appeared to be the contrivance of calumny. Now what man, who exercises none of the functions of justice, who has neither motive nor employment to second the measures of an enterprising accuser, will be so busy as to furnish him with all the means of beginning and continuing his prosecution ? Let it indeed be considered, that *Payba was at Lyons*, when the *Sieur Pierre made it his boast that he had witnesses ready to depose*, and that he was going to indict the petitioners ; what indictment has the *Sieur Pierre* brought against them ? There is no other than that carried on by Abraham Payba, which consequently must be that meant by the *Sieur Pierre's* indictment : the matter went in Payba's name, but it was conducted under the virtuous auspices of the *Sieur Pierre*. Upon an examination of every particular during the whole course of the prosecution, the veil drops off, and the *Sieur Pierre* is seen leading and supporting Payba : it is now impossible
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not to perceive him ; there is no bringing any more decisive proofs to evince his complicity.

The Sieur Pierre could not harden himself against the just reproaches to which he was liable ; but, in order to ward them off, he has thought fit to deny in his interrogatory such facts as were the least susceptible of contradiction.

He was asked, at his interrogatory, whether it was not true that he had advanced Payba's attorney 2700 livres ; and whether this attorney was not M. Courlesvaux the elder, his attorney ? To this he answered, that his usual attorney was M. Duchane ; that he had not directed Roberts to Courlesvaux, *whom he had not seen on this affair ; and that a long time after the beginning of the prosecution, he had advanced some money on Roberts's account, upon a letter of attorney, which Mr. Waters had given to Roberts.* It will be proved, on the contrary, by witnesses, that the Sieur Pierre had advanced 2700 livres to the attorney of Payba, alias Roberts ; and Payba formally allows, in his interrogatory before commissary Chenu, which interrogatory relates to the depositions that *the said Pierre had disbursed money to his attorney, and that he had charged him to give him whatever money should be necessary.* How then can the Sieur Pierre, who had given money to Mr. Courlesvaux, affirm that he had not seen him ?

At the same interrogatory it was asked the Sieur Pierre, whether he knew John de Clercy, Roberts's valet de chambre ; his answer was, that *he did not know him ;* yet this very Chol de Clercy has, in his confrontation of the 25th of November 1751 with Mr. Taaffe, contrarily declared, that, some days after his master's departure *, the Sieur Pierre, jeweller, having sent for him, he was surprized at his telling him, that ROBERTS was not his master's

* This departure was on the 28th of September 1751.

name ; but that he was called, as well as he, the deponent, can remember, PERA, or some other name ending in A. The Sieur Pierre could not then but know Chol de Clercy, Payba's valet de chambre, and as well did he know the true name of this sham *Roberts* to be *Payba* : Can he then have had any justifiable reason to deny these facts, when he was under oath to speak the truth ? But the Sieur Pierre flattered himself that his prevarication would be a blind to hide his complicity. However, his cunning has failed him, and the further he has departed from sincerity, the more light has he thrown on the secret he was for hiding.

The Sieur Pierre was likewise asked, whether, out of his own purse, he had not given Roberts six Louis d'ors to send a servant into England ? To this he answered in the negative ; that he did not know where Roberts was, during the continuance of the prosecution ; and that he had not given him any money to send a servant into England. It will on the contrary be deposed, that the Sieur Pierre did give six Louis d'ors to Francis †, Roberts's servant, to go to England ; and Payba, in his interrogatory before commissary Chenu, formally says, that he sent his valet de chambre post to find Miss Rose, that he might get money sooner, and that it was the Sieur Pierre who had given this valet de chambre six Louis for his journey. Thus the Sieur Pierre is ever departing from exactness, and that premeditatedly.

The Sieur Pierre has been further asked, whether he did not cause Roberts* to throw the letters

† This Francis was Roberts's valet de chambre, and his name Francis Chol de Clercy.

* In the Sieur Pierre's interrogatory, Roberts is always called Payba ; though the latter, in his interrogatory, which was antecedent to that of the Sieur Pierre, had owned his name to be Abraham Payba.

he had received from him in the fire; and whether he, on his part, had not thrown those from Roberts into the fire. The *Sieur Pierre* answered, that he had been several times with Roberts for money; that *he did not make him burn any letter, and that he did not burn his*. It will, on the contrary, be deposed, that the *Sieur Pierre* and Roberts have on both sides burnt their respective letters. Roberts, in his interrogatory before commissary Chenu, says, that *he burnt the Sieur Pierre's letters* before one M. Slade, who has been heard in the information; because, as he said, *it is his custom*. But this last part of the answer of the pretended Roberts is demonstrated to be false; because, except the letters of the *Sieur Pierre*, a great number of letters of a prior and posterior date to his intimacy with *Pierre*, were found among his papers; and these letters were certainly such as would not have escaped the flames, if such had been Roberts's custom; since both his bankruptcy and change of name were laid open in them. To another question put to Roberts, whether the *Sieur Pierre* has also burnt the letters received from him before the said Slade, Roberts answers, that *the Sieur Pierre might have burnt them, but that he remembers nothing of the matter*. This ambiguous answer is conceived to be no other than a subterfuge; and as Roberts did not use to burn his letters, as has been proved, it appears that his burning those from the *Sieur Pierre* was entirely a measure of their own concerting.

After so many proceedings of the *Sieur Pierre*, can there remain any doubt that he was not most truly the accomplice, the instigator, the manager of Abraham Payba's accusation? he not only made his boast of this accusation before it was drawn up; he not only declared that he had witnesses ready to depose, but the spirit, the vital motion of this

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affair, that is the disbursements it required, were entirely furnished by the Sieur Pierre. It would be to no purpose for him to cavil, and say, these disbursements might be made without his having any knowledge of the affair, because he had a letter of credit of 18000 livres, which had been put into his hands by Payba ; he will be made to know, that this letter of credit could not be accounted a very proper security for his reimbursement, because he was not ignorant that on one hand before it was given to him, there were opposite demands in the bankers hands, who had effects for the payment of it ; on the other, that these opposite demands did not amount to less than the funds on which this letter was given. The Sieur Pierre formally says in the sixth article of his interrogatory, that Mr. Waters told him that there were demands on Payba's funds. Now this information relating to these demands, was the antecedent to the letter of credit, as appears from the dates specified in the interrogatory of the Sieur Pierre ; so that he had no real security for coming at funds, claimed before any transfer in his favour ; besides, does not the receiving of Payba's transfer, when nothing was due to the Sieur Pierre, make him an accomplice in Payba's indictment ? Well, what was then the motive of this acceptance ? It was to have the noble satisfaction of supplying with money the attorney who was to prosecute the petitioners ; let this motive of the Sieur Pierre's disbursements, be compared with his declaration, that he had witnesses ready to depose, and that he was going to bring an indictment against the petitioners. * Let it be remembered

* It will be deposed that the Sieur Pierre informed Payba of every thing that was doing, there was even one of his letters, in which speaking of the imprisonment of the petitioners, he acquaints

bered that he denies his having seen Payba's attorney, at the time when it is proved he gave him money ; let his asseveration, that he did not know Chol de Clercy, Payba's valet de chambre, be recollected, when it is confirmed that he sent to him after his departure ; let it be considered, how he has denied his having given six Louis to this Payba's valet de chambre, when it is manifest, both from the evidences, and Payba's own declaration in the interrogatory, that he did give these six louis to this valet de chambre for his journey ; to these reflections let it be added, that no sooner was the complaint of the 25th of October preferred, than Payba disappeared, and that though absent, he was served with an activity, a zeal, an ardour which is only to be met with in a party present and deeply concerned. To be sure it will be said that he had left a letter of attorney with one Bailly, but this Bailly was Mr. Courlesvoux's clerk, and it was the Sieur Pierre who liberally supplied Mr. Courlesvoux with money ; it was then the Sieur Pierre who was the real actor, and herein he only forwarded the indictment he had projected, and of which the depositions of the evidences, who were all at his back, were to be the foundation. Consequently every thing concurs, to demonstrate the complicity of the Sieur Pierre with Payba ; nothing can be fuller than the conviction on this fact : The Sieur Pierre being thus Payba's accomplice, in the most unjust and most execrable accusation, shall such a nefarious combination meet with impunity, with countenance ? If Payba be guilty in undertaking this shocking prosecution, can the Sieur Pierre, who planned, supported, and forwarded it with all his Power,

acquaints him, *you know what is done* ; so that, through the whole indictment, the Sieur was Payba's very industrious and faithful agent. This fact is indisputable.

be innocent? Shall the petitioners, who were treated with the utmost ignominy, dragged to prison, treated like the vilest criminals, suffer such crying outrages, without obtaining those reparations which good order requires for the suppression of licentiousness, and which justice prescribes for attempts against the publick Peace? It is in vain for the Sieur Pierre to shelter himself under the title of the prosecution, as not being in his name; it is now too late to skulk in the dark; the mystery of iniquity is all brought to light; the accusation is a scheme invented by the Sieur Pierre; Payba has trod in the path which he traced out to him: Thus the injury is common; if Payba has given the wound, it was the Sieur Pierre who put the weapon into his hand, and directed the stroke; Shall he then commit such an offence, and not be brought to make a reparation.

THE SECOND HEAD.

Defamation of the Sieur Pierre against the Petitioners.

THE defamation of the Sieur Pierre is a sequel of his rancour against the petitioners, as he durst not directly prosecute them in that indictment which he had formed for their ruin: By way of amends for this concealment, he has gratified himself by the foulest speeches and the most contumelious invectives; with unlimited malice he has attacked the probity and honour of the petitioners. Thus all kinds of persecution have been employed against them, and every engine set at work for their destruction; but vain are all the confederacies of malice and calumny against innocence! Justice ever opposes against them an unfurmountable

surmountable barrier, and they sink at last under the weight of their own iniquity !

Omitting the scandalous terms of the *Sieur Pierre's* defamation, the petitioners will only observe to the court on the one hand, that it will be proved by the unanimous depositions of several credible witnesses ; on the other, that the expressions made use of by the *Sieur Pierre*, the opprobrious appellations with which he has loaded the petitioners ; lastly, his unwearied eagerness to represent them as persons deserving punishment or imprisonment, are crimes of so much the deeper dye, as they are the horrid work of calumny, whose shafts the petitioners have already but too severely felt.

What resource then is left for the *Sieur Pierre* against the just reproaches of the petitioners ? His defamation is proved, and that at the same time the petitioners did not deserve it : for tho' the laws do not admit the truth of a defamation to be a valid plea for it, *veritas convicti non excusat* ; yet the asperity of complaints which may escape a wretch under the torture of pain and the vehemence of despair, are in some certain circumstances to be borne with ; but the *Sieur Pierre* had no manner of pretence of complaint against the petitioners, he attacked them without reason, and his calumny was absolutely kindness : It is imagined he has been greatly chagrined at the ill success of the rash accusation whereof he was declared the protector ; but could he be without Remorse, at being made the instrument of an abominable persecution, without yet attempting openly to blacken the character of the petitioners ? He must sometimes learn to judge himself by the rules of justice ; those inclinations which flatter and please, are not always such as do most credit to the possessors ; if passion

produced them, passion is incapable of justifying them : It is this passion which has dictated all the steps of the Sieur Pierre ; it was unjust in its principle, it is become punishable in its execution.

It is with reason therefore that the petitioners sollicite reparation proportionable to the heavy and reiterated insults¹ of the Sieur Pierre ; he may vainly persuade himself, that he shall still have the liberty of continuing them, but he thinks not, without doubt, that they are an offence contrary to justice and good manners.

THIRD OBJECT.

Fraudulent practices concerted between the Sieur Pierre and Abraham Payba, in order to deprive the petitioners of their debts.

WE cannot better prove the methods practised to deprive the petitioners of their debts, than by making it evident that the Sieur Pierre has used the utmost efforts to possess himself, in concert with Payba, of all the Funds deposited by the latter with his banker, altho' those Funds were much more considerable than the debt pretended by the Sieur Pierre, and that under that pretence he had no lawful reason to take upon himself such possession.

The Sieur Pierre pretends, that he is creditor of Payba for the sum of 8200 livres, and that he had a draught of Payba's upon the Sieur Waters ; this draught was dated the 27th of September, 1751.

The petitioners are creditors of Payba for the sum of 12480 livres, and they had each a draught of Payba upon the Sieur Waters, bearing date also the 27th of September, 1751.

My lord Southwell had likewise a draught of the same date, drawn by Payba upon the Sieur Waters.

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The 28th of September, 1751, the petitioners having presented themselves to the Sieur Waters, without obtaining their payment, they formed a protest or exception before him the same day.

In prejudice of the draughts which Payba had drawn upon the Sieur Waters the 27th of September, for the Benefit of the petitioners, Payba on the 28th of September took a letter of credit of this same Sieur Waters for the sum of 18000 livres, payable by different bankers of Italy.

The Sieur Pierre was not ignorant of the exceptions in the hands of the Sieur Waters; it is formally allowed by the 6th article of his interrogatory, where speaking of two visits which he made to this Sieur Waters, for Payment of his draughts, one of the 20th of September, the other eight days after, he gives an account of the exceptions whereof this banker informed him.

The funds which Payba had at the Sieur Waters's amounted to 26200 livres; this cannot be disputed, it is established by the verbal process of the depositum of these funds, a depositum ordained by an arret of the court the 5th of January last.

After having taken the letter of credit for 18000 livres, Payba set out for Lyons the 28th of September, 1751. His design was to go into Italy on leaving this city; thus affecting an intent of trading, which transferred the funds he had at Paris into the hands of bankers, who might furnish him with the money those funds amounted to, and leaving with his creditors at Paris fallacious draughts, being possessed, after these draughts, of funds sufficient for the payment of them: It was afterwards that he became a voluntary bankrupt, so much the more fraudulent, as he declared in the interrogatory which he underwent in the Chatelet, *That he had*

no business in Italy, and that his intent in going thither was merely for amusement.

The 17th of October 1751, the Sieur Pierre, during the absence of Payba, presented a petition to the consul: he affirms that he was creditor of the latter, to whom he gave the Name of *James Roberts*, for the sum of 8200 livres, for goods delivered, which sum is to be taken up of the Sieur Walters; and consequently he demands, 1. The liberty of stopping and distreining, as well as demanding this sum in the hands of the Sieur Waters. 2. Permission to summon, &c.

By virtue of the judge's permission, the Sieur Pierre detained and distreined, as well as demanded, this sum of 8200 livres; at the same time summoned the Sieur Waters to see condemned and personally to pay this sum, and he obtained judgment conformable to his demands.

The Sieur Pierre was not then *Creditor of Payba for more than 8200 livres*. This fact is extremely important, because it is the basis of all the expedients which demonstrate the fraud concerted between the Sieur Pierre and Payba, to cheat and cozen the petitioners.

Payba returned suddenly to Paris the 25th of October 1751, and the same day two different Operations were set on foot against the petitioners: The first, the calumnious complaint of Payba; the second, the conveyance of the letter of credit of 18000 livres, for the benefit of the Sieur Pierre. We shall only stick to that which concerns the second undertaking, the petitioners having settled their course relative to the false accusation of Payba.

The Sieur Pierre did not furnish Payba with any equivalent or acknowledgement for the letter of credit of 18000 livres. This fact is established by

the interrogatory of Payba, who declares, 1. That he expected to recover the value of the letter of credit, deduction being made for the bill of 8200 livres due to the Sieur Pierre.—A fraudulent declaration ! because, independant of the 18000 livres, he had, according to the Sieur Pierre, sufficient funds with the Sieur Walters to pay the 8200 livres for which he pretended to be the creditor. These funds, which were in the hands of this banker, amounted to 26200 livres, as settled by the verbal process of the depositum. 2. That the Sieur Pierre *had not given him any acknowledgment, that he relied on his honour, that he was an honest man, and that he could easily enter into any engagements with him by means of that letter of credit.*

The 6th of November 1751, the Sieur Pierre summoned the Sieur Waters before the consuls, to see himself condemned, and personally to pay the sum of 18000 livres, which *Payba*, now called *Roberts*, had transmitted to him.

The 17th of November, *Payba*, under the name of *Roberts*, *making choice of domicil with the Sieur Pierre*, demanded of the consuls to be received as an intervening party in the suit depending between the Sieur Pierre and the Sieur Waters, and consequently, that the latter should be condemned to pay to the Sieur Pierre the sum of 18000 livres. This demand produced sentence conformable to the views of the Sieur Payba, and it was signified to the Sieur Waters, at the request of the *pretended Roberts*, with the same choice of domicil with the Sieur Pierre.

Thus, in the first place, two actions were formed against the Sieur Waters, at the request of the Sieur Pierre, one for the payment of 8200 livres, specified in the draught of the 27th of September 1751 ; the other for the payment of the sum of
18000

18000 livres in the letter of credit made over by the *pretended Roberts* to the *Sieur Pierre*, the 25th of October 1751.

In the second place, an association of *Roberts* and the *Sieur Pierre*, to obtain the condemnation of these two sums; an association proved on one side by the petition of *Roberts* and the *Sieur Pierre* in condemnation of the sum of 8200 livres for the benefit of the latter, with whom *Roberts* made choice of domicil; on the other, by the intervention of *Roberts*, in the suit depending between the *Sieur Pierre* and the *Sieur Waters*, for the sum of 18000 livres, the formal condemnation whereof *Roberts* has demanded for the benefit of the *Sieur Pierre*; infomuch, that it is fully demonstrable by these proceedings, that the *Sieur Pierre*, and the *pretended Roberts*, united all their efforts to get possession of the generality of the funds in the hands of the *Sieur Waters*, safely to reckon amongst themselves, according to their good faith, which seemed not to be extended to the creditors of *Roberts*; that which the *Sieur Pierre* and *Roberts* counted to leave with the *Sieur Waters*, fully proves what they intended for those creditors.

But there were some practices still more fraudulent than those which directly tended to the possession of sums which they had no right to demand, nor liberty to appropriate to their own use. Let the *Sieur Pierre* make out, if it is possible for him, what title he had to the 18000 livres of the letter of credit, the remittance whereof he had accepted. It is a certain matter of fact, that he had not given any equivalent. It was on the 25th of October, the Moment which *Payba* arrived from Lyons, that this letter of credit was transmitted to the *Sieur Pierre*. His debt was limited, according to his own confession, to 8200 livres; and the

17th

17th of October he lodged an attachment in the hands of the Sieur Waters, he summoned him for the payment of those 8200 livres, and there were funds at that banker's to the amount of those 8200 livres, exclusive of the 18000 livres of the letter of credit, since those funds amounted to 26200 livres. Why therefore, we repeat, would the Sieur Pierre finger the 18000 livres of this letter, since he still pursued the 8200 livres, which was the only debt he was permitted to demand? The Sieur Pierre would consequently have had possession of all the funds found at the Sieur Waters's, banker to Payba: And what use was he to make of these funds? Did he pretend to keep them? that had been an invasion of another man's property, because he had not given the value of the letter of credit for 18000 livres. Did he propose to remit these funds to the *pretended Roberts*? that was manifestly to associate with him, in order to cheat his creditors. The Sieur Pierre actually knew, from the beginning of the month of October, and consequently before the remittance, which was not till the 25th, that there were exceptions upon the funds in the hands of the Sieur Waters. This the Sieur Pierre has declared himself in his interrogatory, Art. 6. So that the Sieur Pierre cannot avoid the reproach of a voluntary fraud, in the step which he undertook to compel the Sieur Waters to pay him the 18000 livres of the letter of credit associated with Payba; he could have no other view than to gratify him with those 18000 livres, at the expence of his creditors.

So to resume the case of the petitioners in two words; they reproach the Sieur Pierre with having practised fraudulent methods with Payba, to deprive them of their debts: their proof is decisive

and unanswerable. The Sieur Pierre pretended not to be the creditor of Payba for any more than the sum of 8200 livres. He himself fixed his debt to that sum, by his demand of the 17th of Oct. 1751. However, he has pursued not only the payment of that sum of 8200 livres, but also that of 18000 livres, which was not due to him; and the pretended Roberts is received as an intervening party, to determine the payment of this second sum, in favour of the Sieur Pierre. Now, exacting what is not due, and seeking to deprive creditors (by favour of a remittance, for which no equivalent is given) of the sums which an ill-disposed debtor endeavours to bilk them of; this must surely be reckoned a deliberate fraud, a base and reproachful injury! Such has been the conduct of the Sieur Pierre; determined to favour the designs of Payba, most certainly if this Sieur Pierre had succeeded in obtaining payment, if the court, in its great prudence, had not ordered the depositum of the sum, which he hoped to get into his own possession, the petitioners would be deprived of their debts, and Payba reap the fruits of his enterprize, thro' the care and assistance of the Sieur Pierre, his protector.

The 13th article of the 11th chapter of the ordinance of 1673, is the law which decides on these fraudulent practices, and the regard due to their authors. The petitioners beg leave to quote it.

Those who shall have aided or favoured a fraudulent bankruptcy, in embezzling effects, accepting conveyances, sales, or similar donations, and which they knew to be to the prejudice of the creditors, or declaring themselves creditors, not being so, or for a larger sum than that which is due to them, shall be condemned in the penalty of 1500 livres, besides double the value of what

what they shall have embezzled or over-charged, to be applied to the benefit of the creditors.

What is this but a fraudulent conveyance? It is certainly a conveyance for which no equivalent was given. But the Sieur Pierre had not given the value of his letter of credit; and he knew that the funds, which produced the value, were seized, before the conveyance was accepted.

What is this but to declare himself creditor for a larger sum than that which is due? Is it not to demand more than what he is permitted to receive, agreeable to the quota of his debt? Has not the Sieur Pierre demanded 26,200 livres, at the time there was not due to him, from his own confession, more than 8200 livres by Payba?

What is this but to favour a bankruptcy? Is it not to be necessary to the concealing the effects of a debtor, to the prejudice of his creditors? Has not the Sieur Pierre endeavoured to procure the cash, which he knew to be distreined, in order to send it to Payba, debtor, to the disappointment of his creditors?

What then should be the punishment of the Sieur Pierre? The penalty of 1500 livres, and the condemnation to the benefit of the creditors of double the sum, which he demanded above his debt. Now the Sieur Pierre has demanded 18000 livres which he had no right to: let him cast his eye on the law, and judge himself of the matter.

Without doubt, the Sieur Pierre will alledge that he did not look on Payba as a bankrupt; but the Sieur Pierre cannot but know that he left Paris without paying his debts; consequently he ran away from his creditors. And alas! what can he call such a flight? Payba quitted Paris to go into Italy; he left his debts, and carried off his effects:

those which remained were not sufficient to satisfy his creditors : they laid exceptions ; and when Payba re-appeared, the Sieur Pierre immediately associated with him in the design of wresting some funds from his lawful creditors ; one in demanding more than was owing to him, the other in seeking to receive, by favour of this fraud, that which belonged only to his creditors. Where can be found an honest name annexed to such practices ? The petitioners know not.

The * Sieur Pierre will still say that he has advanced sums since the letter of credit : But to whom has he advanced them ? To Payba's attorney, in order to carry on the most abominable process. Why has he advanced them, when he knew that the funds of his fraudulent conveyance were distreined ? If these practices pass unnoticed, what subtilties, what frauds will be punishable !

Thus the Sieur Pierre and Payba are equally convicted of a mutual association to deprive the petitioners of their debts ; and this association cannot admit of any doubt, since the Sieur Pierre and Payba laboured with the same diligence, and to the same end ; the Sieur Pierre wanted to be paid by the Sieur Waters 18,000 livres, which were not his due ; and the Sieur Pierre could have no other design than to remit this sum to Payba, to the prejudice of his creditors. Payba pressed the Sieur Waters to pay these 18,000 livres to the Sieur Pierre, and Payba could have no other view in remitting this sum to the Sieur Pierre, than because

* It is so true that the Sieur Pierre has always been associated with Payba, that in the suit of the court about the 26,200 livres, which the Sieur Pierre would handle at all events, M. Guerin de la Marre was at the same time solicitor for Pierre and Payba ; and M. Laujon was also employ'd for Pierre and Payba, as well under his name as that of M. Mondolot.

he knew it would be restored to him again by the Sieur Pierre, to the prejudice of his creditors.— Every thing then proves the agreement between the Sieur Pierre and Payba, united in a civil cause; they were equally so in a criminal one, instigated by the same spirit, the same motives, the same projects.

By what means then can the Sieur Pierre justify his conspiracy with Payba? This conspiracy is proved by the resolution, the preparation, and the support of the slanderous accusation of Payba: this conspiracy is established by the scandalous defamation of the Sieur Pierre against the petitioners: this conspiracy is demonstrated, in a word, by the united efforts of the Sieur Pierre and Payba to remit the sums which the Sieur Pierre had no right to demand, because they were not due to him, and which Payba neither could require, because they belonged to his creditors. On the subject of this conspiracy the petitioners offer many kinds of proof to justice; proofs testimonial, literal proofs: in fine, the dissimulation of the Sieur Pierre, and the confession of Payba. These different proofs, all connected and depending upon one another, can permit no doubt that the Sieur Pierre has been the promoter and accomplice of the accusation of Payba; and as this accusation is a scandal against good order, and an enterprize against the honour and the reputation of the petitioners, it follows, that the reparations should be common between the accuser and those who are the accomplices of his accusation. This is an argument of full weight.

The Sieur Pierre has confined his defence to some exceptions against the witnesses. These mean exceptions, which are found in two petitions of the 18th and 31st of May last, are reduced in general to an allegation, that these witnesses are bribed, and that they are absolutely the petitioner's creatures.

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How easy is it to raise reports of this nature ! but they defeat themselves ; when, on one side, regard is had to the sentiments of the petitioners, who were ever strangers to all base and unworthy actions ; and on the other, to the rank and condition of the witnesses, who are above such temptations, and who have often supported their credit when ready to sink under a load of affliction. They are not domesticks, or door-keepers, as the evidence represents in the informations made against the petitioners ; they are gentlemen, whose rank, manners and fortune can prompt no ideas but those of honour and probity. This is therefore a new insult which the *Sieur Pierre* casts on the petitioners, when he accuses them of a criminal subordination, which cannot be the task of any but the most miserable slaves to corruption.

The particular exceptions concern the *Sieur Rohault*, and the *Sieur Woulfe* ; the first is, 'tis said, at law with the *Sieur Pierre* ; the second has endeavoured to favour the petitioners, by making a proposal to the *Sieur Pierre* to lose a considerable sum upon his debt, that there might remain sufficient funds entirely to pay the petitioners.

The *Sieur Pierre* has thought proper to summon the *Sieur Rohault* to a civil discussion, begun since the deposition of the *Sieur Rohault*. But can this step of the *Sieur Pierre* be considered as a legal cause of exception ? It would be very easy to set aside all witnesses, if persons accused were permitted to destroy their evidence, by entering against them an actional law. An exception so ill founded, far from being admitted, must form a proof against him who rashly, and inconsiderately raised it.

In respect to the *Sieur Woulfe*, the *Sieur Pierre* has given a long history, relating to a sum of an hundred and twenty *Louis d'Ors*, which the *Sieur Woulfe*,

Woulfe, in conjunction with the Sieur Waters, proposed to lose upon his debt, if credit may be given to this relation; he engages from a calculation to prove, that by means of this loss, there would remain funds sufficient fully to pay the petitioners, and my Lord Southwell, which forms the proof of a signal favour, and foundation for a substantial cause of exception against the Sieur Woulfe. But, 1. There is no proof of the truth of the proposition of this loss. 2. No consequence is to be drawn from the calculations of the Sieur Pierre. 'Tis easy for him to make them square with the sum which he pretends the Sieur Waters, and the Sieur Woulfe, would have dis-
treined to pay the petitioners: But the Sieur Pierre is himself mistaken in his supposition, in stating the sum of 20880 livres, which he represents as the amount of the debt of the petitioners, and of my Lord Southwell, though this debt is no more than 20640 livres, according to their draughts, the copies whereof had been notified to the Sieur Waters: But it is the property of falsehood to betray itself. 3. The Sieur Pierre, in speaking in his petition of the 31st of May, of that kind of agreement proposed, according to him, by the Sieur Waters, and the Sieur Woulfe jointly, had doubtless forgot on one side, that by the 6th article of his interrogatory, he attributes that proposal to the Sieur Waters alone; on the other, that by his answer to the 25th article of the same interrogatory, he declares *that he knew nothing more of the Sieur Woulfe, than that he appeared as one of the clerks of the Sieur Waters*: So that all is pitiful invention in the exception formed against the Sieur Woulfe, which deserves not the least attention.

The Depositions must then continue in full force against the Sieur Pierre; the witnesses are
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unexceptionable. It is true, their evidence is no way favourable to him; but his anger or abuse will be in vain; he cannot clear himself of the facts they lay to his charge, unless he can prevent their declaring in a court of justice, what they are summoned thither to bear testimony of.

The literal proofs are neither liable to exception or contradiction; they infer nothing more against the *Sieur Pierre*, than the tricks and proceedings of the *Sieur Pierre*; by which there is demonstrative proof, that he has demanded, in league with *Payba*, that which was not due to him; that he has accepted a conveyance without furnishing any equivalent, and when he knew there were exceptions on the funds of the conveyed effects; that he was not a creditor relative to those effects, and consequently could not either except or demand the payment, nor advance any sums, since the funds of those effects were distreined: So that he endeavoured to be admitted as a creditor, without title, to the prejudice of those to whom the money was due before the session of conveyance. And thus the *Sieur Pierre* was willing to oblige *Payba*, and cheat his creditors, by premeditated design. But these sort of enterprizes, which tend to the subversion of honour and good faith, will never find favour in the eyes of the law. The *Sieur Pierre* would have greatly exerted himself, had such methods been practised against him.

Thus all things unite to prove the legality of the petitioners demands: they depend upon the first sentence of the *Chatelet* being confirmed purely and simply, and their course upon this matter is decisive. They have been subjected to all the rigours of a criminal proceeding, which had no other foundation than a false and scandalous accusation. 'Tis by the same proofs which have a-
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rifen against the accuser's allegations, and the contradiction of his witnesses, who cannot agree amongst themselves, that the falsity and malignity of his imputations has been discovered. To these demonstrations might be added the precise confessions which this accuser has been forced to make in the second process, wherein he appeared in quality of the person accused. He has confessed * that he knew Miss Rose had his effects, and that he had sent for them to England, and yet he had accused the petitioners of forcing them from him. It is agreed that the *Sieur Taaffe was alone*, when he drew his bills, that my Lord Southwell went after the *Sieur Taaffe*, and that the *Sieur Montagu* did not appear with him, and nevertheless he had attributed to the petitioners a criminal association, to extort these bills from him. All the menaces and violence were on his side, and yet he had accused the petitioners of this scandalous outrage. The sentence, which has prescribed so daring an accusation, with reparation and damages and costs, can never be lawfully invaded, and if there be occasion for any alteration, it must tend to augment the punishments, which appear so much the better founded, as the confessions of *Payba* in the second process, contain new proofs of his calumny and malignity.

As to the second sentence of the 14th of June last, the petitioners desire that it may be abolished. All the offences which they have been permitted to inquire into, have been fully proved from such evidence as 'tis impossible to reject; the forgery of the name of *Payba*, the conspiracy of the *Sieur Pierre*, his defamation, his efforts to deprive the petitioners of their debts, are facts which

* Interrogatories of *Payba*, as well at the Chatelet, as before the commissary Chenu.

evidence and truth tender to justice as objects worthy of animadversion. Nevertheless they have shut their eyes upon actions so reprehensible. Payba has been set at liberty, and the Sieur Pierre discharged from the accusation with costs and damages. It is certain that the accused employed all their arts, to prevent the second trial being brought before the judges, who were acquainted with the first affair: it has indeed been turned out of its natural course; but the petitioners apply to the tribunal of sovereign justice; they take no methods inconsistent with good order and equity: they cannot plead in vain, because they are really under such circumstances as require complaint. Payba and the Sieur Pierre are united to ruin them; but though they flatter themselves with Impunity, though a first judgment may have stifled the stings of their conscience, they cannot be ignorant that they have over-reached justice; and the magistrates before whom the parties have the honour to appear, are beyond the reach of delusion; their knowledge is that of truth itself.

From these considerations, OUR LORDS, it will please you in proceeding to judgment of the criminal process between the petitioners on one part, *Abraham Payba* and *Louis Pierre* on the other part, being at the report of M. de Montholon, counsellor, as well upon the appeal brought by the said Payba, from the sentence of the Chatelet of Paris of the 25th of January 1752, as upon that brought by the petitioners from the sentence of the 14th of June 1752; in respect to the appeal of the said Payba from the sentence of the said 25th of January 1752, to set the appeal aside, to ordain that the sentence appealed from shall have its full and entire effect, and to cast the said Payba in the
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customary fine : and as to the appeal lodged by the petitioners, to throw that entirely aside, and rely solely on the proofs which will result from the charges and informations, in the course of the process ; to declare the said Abraham Payba and Louis Pierre duly convicted of contriving the false accusation laid against the petitioners at the request of the *pretended James Roberts*, of making use of the false name of the said *James Roberts*, the better to support it, and as well one as the other of having publickly slandered the petitioners, and attempted, by all manner of abominable ways and aspersions, to injure their honour and reputation, and of practising, in concert, the most fraudulent methods to deprive the petitioners of their debts : in reparation whereof, to condemn them in such penalties as to the court shall seem fit ; to forbid them to relapse, or to act or speak against the honour and reputation of the petitioners, under pain of corporal punishment ; to condemn the said Payba and Pierre to make the petitioners honourable satisfaction, in the presence of twelve persons whom the petitioners shall please to appoint, and to assemble in a place which shall be by them fixed on, and there say and declare that it was falsely and maliciously they contrived and made the slanderous accusation entered against the petitioners at the request of the said *James Roberts* ; that they have made use of this false name, and that they have raised and spread scandalous stories and injurious reflections against the petitioners, whom they acknowledge to be gentlemen of honour and probity ; whereof they shall cause a deed to be drawn up by a notary, at their expence, to be lodged in the registry of the court, and a copy delivered to each of the petitioners, in default whereof all they have done to be of no effect : to condemn the said Payba and Pierre,

jointly, in a hundred thousand livres damages to each of the petitioners, or such other sum as the court shall think fit, by way of civil reparation : to condemn besides the said Pierre, by way of civil reparation, to pay jointly with the said Payba, the twenty thousand livres damages and costs, the condemnation whereof has been pronounced against the said Payba under the name of James Roberts, by the sentence of the Chatelet, of the said 25th day of January last : to ordain that the fraudulent conveyance made to the benefit of the said Pierre, and by him accepted, to the prejudice of the exceptions which he had knowledge of, and without having given any equivalent for the said conveyance at the time of acceptation, shall be declared null and void, and that the said Pierre shall be compelled, personally and jointly with the said Payba, to make good the draughts given by the said Payba to the petitioners, upon the Sieur Waters, banker, at Paris ; the payment of which draughts has not been made under pretence of the said fraudulent conveyance ; consequently, without regarding the exceptions of the Sieur Pierre, of which replevy clear and simple shall be made, the money lodged in the hands of the notary Desplaces, by the said Sieur Water, shall be paid and delivered to the petitioners, to the full amount of all their demands, as well principal as interest, damages and costs ; obligation to be laid on the said Desplaces to perform this punctually, and when done to receive a discharge ; reserving power, however, to monsieur the attorney-general to take, for the sake of public justice, such methods as he shall think adviseable. To condemn the said Payba and Pierre, jointly, in the whole expence of the process. To ordain that the arret which intervenes shall be read, published, printed, and affixed in every proper place,

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at the expence of the said Payba and Pierre; without the least prejudice to the petitioners in all their other rights and actions, demands and pretensions. — And you will do well.

SIGNED,

Edward Wortley Montagu,

A N D

Theobald Taaffe.

Monf. DE MONTHOLON, Reporter.

LAUJON
MONDOLOT } Attornies.

FORME, Proc.
