

1741

The Tryal Between J.G. Biker, Plaintiff; and M. Morley, Doctor of Phyfic, Defendant; for Criminal Conversation with the Plaintiff's Wife; on Tuefday the 30th of June at Guildhall, London

Sword &. Buckler Court

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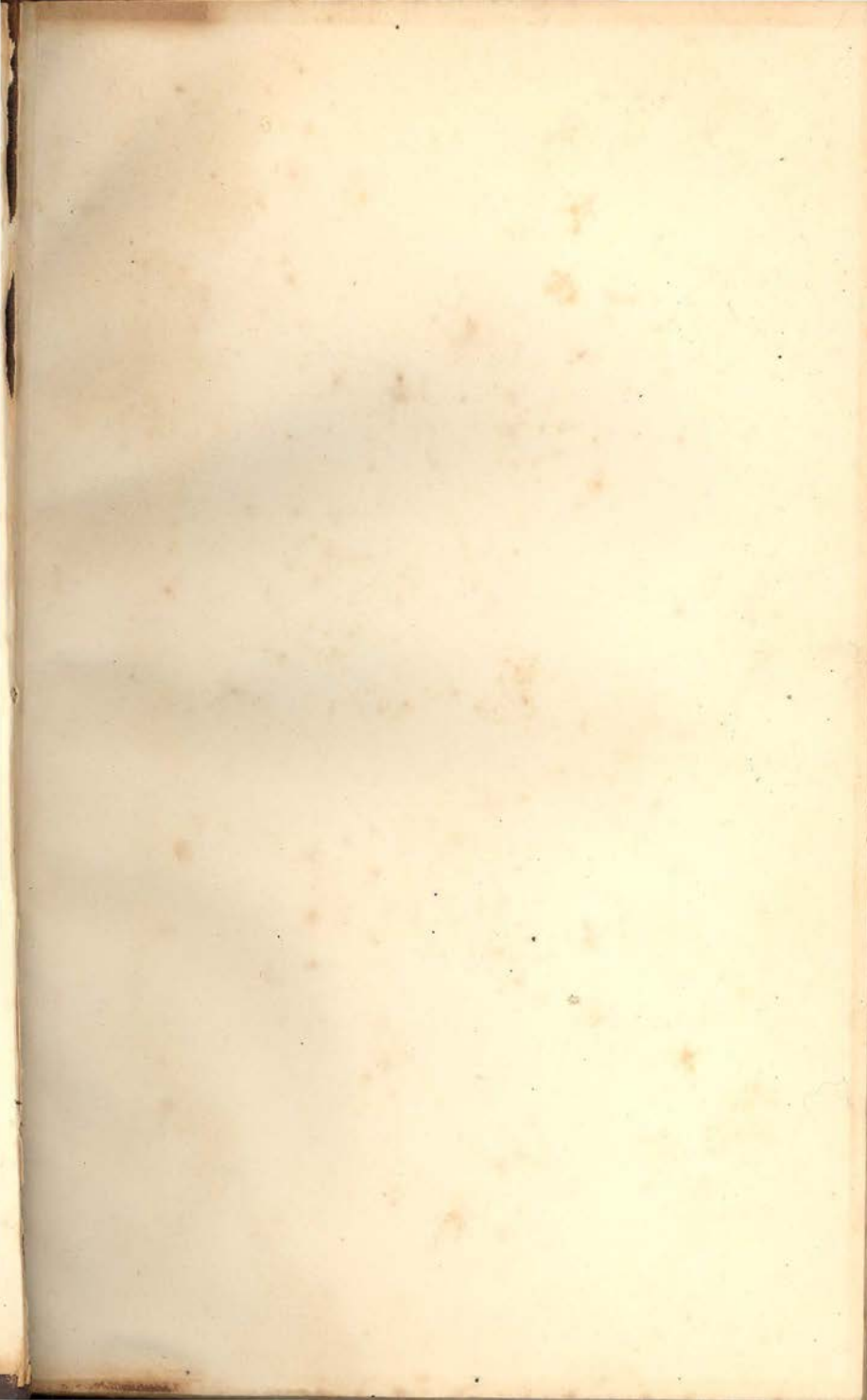
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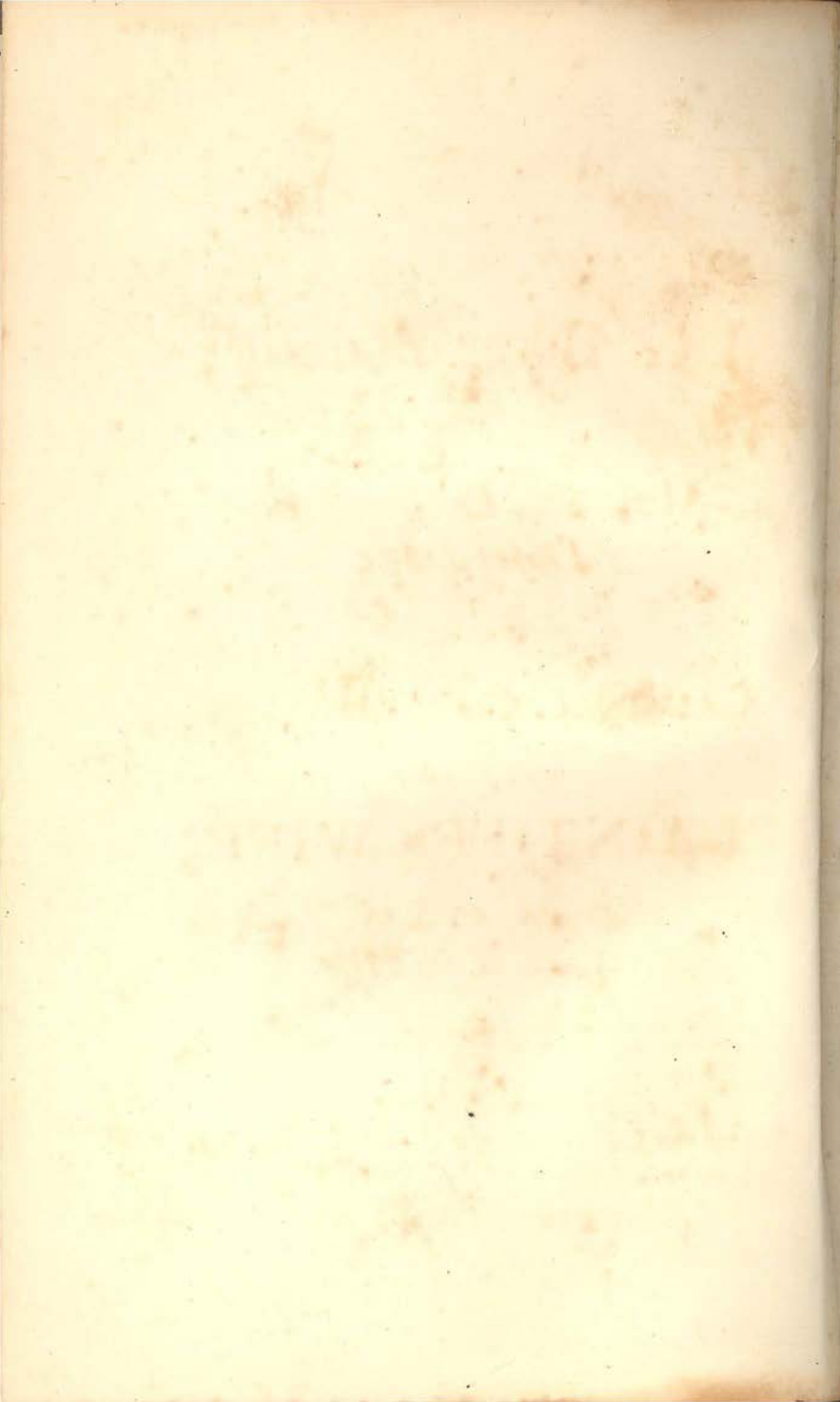
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THE
T R Y A L

BETWEEN

J. G. Biker, *Plaintiff*;

AND

M. MORLEY, *Doctor of Physic,*
Defendant ;

FOR

CRIMINAL CONVERSATION

WITH THE

PLAINTIFF'S WIFE;

On *Tuesday* the 30th of *June*, at
GUILDHALL, LONDON.

L O N D O N :

Printed for J. HUGGONSON in *Sword and Bucklers*
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BETWEEN

J. G. Birkbeck, Plaintiff,

M. Morley, Doctor of Physic,
Defendant;

FOR

CRIMINAL CONVERSATION

WITH THE

PLAINTIFF'S WIFE;

On Tuesday the 20th of June, at
GOSWELL, LONDON.

LONDON:

Printed for J. Huggins in Great and Broad
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On Tuesday the 30th Day of June 1741, at Guildhall, London, came on before the Right Honourable the Lord Chief-Justice Lee, at his Sitings there; the Trial by a Special Jury, of an Action between J. G. Biker, Plaintiff; and M. Morley, Doct̄or of Physick, Defendant; for an Assault upon, and criminal Conversation with, the Plaintiff's Wife.

The Council for the Plaintiff, were Mr. Solicitor-General, Mr. Serjeant Burnet, Mr. Lloyd, Mr. Dennison, and Mr. Cummin; and for the Defendant, Mr. Serjeant Prime, Mr. Hollings, Mr. Serjeant Urling, Mr. Bootle, and Mr. Murray.

MR. Cummin opened the Declaration; which was, that the Defendant at several particular Days, and Times therein mentioned; in the Months of *February, March* and *April* last, made an Assault upon *Katherine*, the Plaintiff's Wife, and her ravished, debauched, lay with, and carnally knew, by which the Plaintiff lost the Aid and Comfort of her Society, to his Damage of 10,000 *l.*

Mr. Solicitor-General stated the Case, (as instructed;) we shall not attempt that dangerous Task, of

repeating after him, according to the Complement, justly made him by Mr. Serjeant *Burnet*, who seconded him; and therefore shall only briefly say, that on the Part of the Plaintiff, it was represented to be to the Effect following, *viz.* that Mr. *Biker* the Plaintiff, so very lately as the 22^d Day of *April* last, thought himself happy, in the Possession of a Wife, young, beautiful, virtuous and affectionate; when all at once this Happiness was dashed, by the Discovery of a Piece of Management of the Defendant, in seducing her from those Paths of Virtue, in which she had been brought up from her Infancy, and continued to walk, till her unfortunate Acquaintance with the Defendant, upon the Occasion hereafter to be mentioned; but so prevalent is the Force of a virtuous Education, that tho' she was surpris'd into a Breach of her Duty; yet when she had Leisure to reflect, she looked back upon her false Step with Contrition and Horror; insomuch, that tho' the last Instance of that criminal Commerce, for which this Action is brought, was on the 18th Day of *April* last, she expired in a Mad-house on the 8th of *May*. That in the Year 1732, the Plaintiff married this Lady, she being then but 17 Years of Age; she was the Daughter of an eminent Citizen, and by Nature and Education, accomplished as has been mentioned; and her Behaviour was what might be expected from such Education; so that Mr. *Biker* and she lived in great Harmony and Happiness, 'till the Time before-mentioned. That the Lady had a Misfortune to which some Women are liable, of being very apt to miscarry; that she had done this frequently, and been formerly attended on such Occasions by Dr. *Douglas*; but that her last Miscarriage, happening in *July*, or *August* last, and Dr. *Douglas*, not being then in the Way; the Defendant Dr. *Morley*, who practises in that Way of Man-Midwifery,

wifery, was called in; and when the Lady was in a good Degree recovered from that Indisposition, the Defendant forgetting his Duty and Character, and the Honour of that learned and useful Profession, in which he was growing very considerable, entertained an unwarrantable Passion for his fair Patient, and instead of suppressing and subduing it, (as upon all Considerations he ought to have done) he, tho' a married Man, and Twelve or Fourteen Years older than *Mr. Biker*, was resolved to indulge and gratify it any Rate: And for this Purpose proposed and cultivated an Acquaintance and Intimacy between the two Families; made many Visits to *Mrs. Biker*, when she was alone, under the Pretence of assisting her in the way of his Profession, altho' she was well recovered; that those Visits were long, at improper Seasons, and when he knew he should not find the Plaintiff at Home. That what pass'd at those Visits would be left to the Consideration of the Jury, when they should hear moreover a particular Account of three several Days, where the Defendant and *Mrs. Biker*, met at the *Royal Bagnio* in *St. James's-Street*, and there went to Bed together; the last of which Days, was *Saturday* the 18th of *April*; this the Plaintiff was enabled to find out by a particular Accident, which some of the Witnesses will give an Account of; the former of those Days were within five or six Weeks before; ——— that when the Lady grew very ill, the Defendant opposed sending for *Sir Edward Hulse*— and after mentioning several other Circumstances in the Opening, which we here omit, and which will occur in the follow Minutes of the Examination of the Witnesses; they proceeded in their Evidence for the Plaintiff.

ANNE PEELING, sworn,

Said, she was Chambermaid at the Plaintiff's in *Foster-lane, Cheap-side*, and lived there about two Years past; that her Mistress was subject to Miscarriages, and had in that time miscarried twice or thrice, the last of which was in *July* or *August* last. — That on those Occasions she had been formerly attended by *Dr. Douglas*, who was out of the Way the last time, as the Witness believes, and then another Gentleman, and afterwards *Dr. Morley*, was called in; that he used from that time to frequent *Mr. Biker's* House, and the Families became acquainted and intimate; and used to dine, but oftner to sup together — that the Doctor and *Mrs. Biker* used to be together, without other Company — often in a Bed-Chamber — for several Hours together: — That about the latter end of *March* last, or beginning of *April*, he came alone about Eight o'Clock in the Evening, and asked for the Plaintiff, who was not at home; he then asked for *Mrs. Biker*, who was at home; he asked if she had any Company with her; was told, no; then he went in — they were in the Dining-Room together — that between that time and Nine o'Clock, one or other of them opened and shut the Dining-Room Door several times, as if they had a mind to listen, or know if the Servants were listening; — that at Nine, *Mrs. Biker* used to take Milk-Porridge for Supper; and at that Hour, that Evening, call'd to the Cook not to send it in, till she called for it; — which she did upon the Doctor's going away, about half an Hour after — being ask'd as to the 18th of *April*, this Witness went on to say, that on that Day, being *Saturday*, her Mistress did not dine at home; her Master went to the Country in the Morning, and *Mrs. Biker* was to go out in her Chariot; that she

she did go out to the Shops in her Chariot, between ten and eleven, and return'd home about twelve, or a little after, — and went out again, alone and on foot, about a Quarter before two. This Witness could not say what Cloaths her Mistress went out in before Noon, but did observe, that she went out on foot in an Undress, a yellow Night-gown, and black Velvet Mantelet; that she return'd about eight in the Evening; that they (*the Servants*) had believed she dined at Dr. *Morley's* — that upon her coming in at Eight, the Witness observed nothing about her Dress; that she came into the Kitchen, and looked in a Looking-glass there, adjusted her Head-Cloaths by it, and said, she thought the Wind had almost blown her Cap off; — that about three or four Minutes before Mrs. *Biker* return'd home in the Evening, Dr. *Morley's* Boy had called to give Mrs. *Morley's* Service, and to desire Mrs. *Biker* to sup with her; — that Dr. *Morley* came to Mr. *Biker's* twice on *Monday*; that Mr. *Biker* did not return from the Country till *Tuesday* — and before he came, on *Tuesday*, Dr. *Morley* had been there; — being ask'd, whether this Witness used to be sent out when the Doctor and her Mistress were together, she said, she had been several times.

She proceeded (being examined) to give an Account, that in that Week after Mr. *Biker's* return, Mrs. *Biker* grew very ill, and Sir *Edward Hulse* was sent for on the *Thursday* or *Friday* — as she believes, Dr. *Morley* propos'd it — that on *Friday* Mrs. *Biker* was in Bed in her Bed-Chamber, Dr. *Morley* was with her, standing by the Bedside; and as he felt her Pulse, she said, *Oh! Doctor, my Conscience*; he put away her Hand, and said, *Pray, Madam, do not speak of it*; to which she replied, *I must*.

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This Witness, being cross-examin'd, did say, that she stood by the Bed during this last Conversation; that she was not order'd to go out of the Room; that her Mistress had been very ill then; and had been blister'd; — that she (*this Witness*) had not observed Mrs. *Biker's* Head to be disorder'd; that she had sat up with her on *Wednesday* Night — but believes not on *Thursday* Night — that she did not observe any Alteration or Confusion in the Doctor, on Mrs. *Biker* saying, *Oh! my Conscience, &c.* — that she believes the Milk-Porridge was prescribed to her Mistress for her Suppers, by Dr. *Morley*; that her Stomach was weak, and not able to bear Suppers of Flesh-meats — did not know that Mrs. *Biker* had any preternatural Disorders; — can't say that she had Disorders which required the Aid of a Physician; — being examined as to suspecting her Mistress, &c. she said, she and her Fellow-Servants took Notice of the opening and shutting of the Dining-Room Door, because it was unusual; — she does not know whether they had Reason to suspect that the Doctor had any Intention to corrupt her; but he used to come often, and ask for Mr. *Biker*, and if he was at home, the Defendant came in — she cannot say that she heard the Plaintiff desire the Defendant to cultivate an Acquaintance between the Families — says, that the Plaintiff was usually invited to the Doctor's along with his Wife. — This Witness looked out of the Window after her Mistress on the 18th of *April*, because she went out without a Servant, which was unusual — she went towards *Cheapside* — which is towards Dr. *Morley's*, who lives in *Bow-lane, Cheapside*; — does not remember she saw Dr. *Morley* at the Plaintiff's, on the 18th of *April*. — The Doctor has used to stay with the Plaintiff and his Wife till late Hours; sometimes till One in the Morning; — he used

to stay longest with the Wife when he found her alone.

SARAH JAMES, *sworn.*

This Witness is Mr. *Biker's* Cook in Town, can say nothing to her Mistress's Miscarriage in *August* last, which happen'd in the Country ——— On the *Friday* before the Rehearsal at *St. Paul's*, for the Sons of the Clergy (*which Rehearsal was agreed to have been on the 14th of April, and consequently this Friday to have been the Tenth*) *Dr. Morley* came to Mr. *Biker's* House, about Eight o'Clock in the Evening, and asked for Mr. *Biker*, who was not at home; and then for Mrs. *Biker*, and whether she was alone; ——— she was at home and alone; ——— she at that time appear'd to be in Health; ——— he went up to her to the Dining-Room, and staid till about half an Hour after Nine; ——— between Eight and Nine this Witness, and other Servants in the Kitchen, heard the Dining-Room Door open and shut gently, several times; at Nine, Mrs. *Biker* called to this Witness, not to send her Milk-Porridge, till she called for it ——— this Witness did not suspect her Mistress till then. ——— When Mr. *Biker* went to *Cobham* (*viz. 18th of April*) Mrs. *Biker* went out in her Chariot in the Morning, and return'd about Noon, ——— she went out again on foot, and alone, about a Quarter before Two, not having dined; and ordered the Servants to go to Dinner; ——— she was dressed in a yellow Silk Night-gown, and black Velvet Mantelet; ——— she returned about Eight that Evening; ——— *Dr. Morley's* Boy had been there a few Minutes before, to invite her to Supper; they told her of him; she said, she had met him ——— she adjusted her Head by the Looking-Glass in the Kitchen; and said, she thought the Wind would have blown

blown her Cap off. ——— The Servants imagin-
ed she had gone to dine at Doctor *Morley's* that
Day ——— latterly she had gone Abroad without her
Chariot ——— being cross-examined ——— she said,
Mrs. *Biker* had not usually a good State of Health;
and that she had miscarried two or three Times.

EDWARD MEAD, *sworn.*

Says, he is Footman to Mr. *Biker*, and has lived
there about four Years — that Mrs. *Biker* used to mis-
carry; and was formerly attended by Dr. *Douglas*;
and near a Year past by Dr. *Morley*; that
Doctor *Morley* used to make long Visits at Mr.
Biker's. ——— That this Witness had some Suspicion
of him and Mrs. *Biker*, on account of the manner
of his paying his Visits; being about Eight
o'Clock in the Evening, the usual Time of the
Plaintiff's going to the Tavern. ——— That Mrs.
Biker went to the Rehearsal at St. *Paul's*; and had
Miss *Watts* in her Chariot with her. ——— That they
were set down at St. *Paul's* Coffee-house, and to dine
at the Doctor's. ——— Mr. *Biker* did not dine at
Home that Day. ——— As to Mrs. *Biker's* going out and
returning Home on the 18th of *April*; this Wit-
ness gave the like Account with the former Wit-
nesses ——— and farther said, that that Morning Mrs.
Biker had Mrs. *Morley* in the Chariot with her ———
that before the Defendant became acquainted with
her, she never used to go out of the Lane without a
Servant. ——— That this Witness made a *Memo-*
randum of the 18th of *April*; on Account of a
Conversation he had that Day with another of the
Witnesses (*Thomas Leach*) Mr. *Garnier's* Coach-
man, who meeting with him on another Occasion,
told him, he had seen Mrs. *Biker* go into the *Royal*
Bagnio, in St. *James's-Street*, that Afternoon. ———
that when Mrs. *Biker* went to Supper at Dr. *Morley's*
that Evening, she ordered this Witness to come to
her

her there, at half an Hour after Ten; that he came accordingly, and attended her home.

ANNE OLIVER, *sworn.*

This Witness lives at the Royal Bagnio in St. *James's-street*; 'tis kept by her Sister, Mrs. *Bucknall*—this Witness lived there about ten Weeks before the 18th of *April*.—She saw the Defendant there three several times, at about three or four Weeks distance between them—the first time was about a Month after the Witness came to live there—he used to come about two or three in the Afternoon, and a Lady came with him the first and second time—the first time they were in the red Room up one pair of Stairs;—there is a Bed in the Room—'twas ready Sheeted—the Witness did not know at first who the Lady was; but knew her afterwards—went to see her afterwards at Mr. *Biker's* House—she was Mr. *Biker's* Wife—the Defendant and the Lady staid the first time four or five Hours—he ordered the Bed to be warmed; and asked whether the Sheets were clean;—and order'd a Fire;—after they were gone, the Bed wanted to be made again—they went away when it was duskish— they both went away together the first time, out at the same Door, the Fore-Door—the Sheets were much tumbled—the Defendant paid half a Guinea for the House, besides the Fire—the Price is for a single Gentleman, a Crown—but if there be a Gentleman and a Lady, 'tis half a Guinea—they came a second time in about three Weeks, they were then in a Room two pair of Stairs backward—the Witness was not within when they went away—she had served them with Water and Rack, and the Doctor made Punch of it himself—the Bed was not Sheeted—they did not go into Bed that Time—they only lay upon the Bed—it was

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tumbled—they came a third time, about three Weeks afterwards, being the 18th of *April*; the Defendant came first, and asked for the Room up one Pair, and said a Lady would be there presently——the Lady came in about half an Hour, and went into the Parlour, and then up Stairs;——the Defendant enquired whether the Sheets were clean—the Witness went out of the Room, the Lady undress'd, and went to Bed—her Cloaths were by the Bedside when the Witness came in again, being rung for——it was to put on another Quilt, the Lady having complained, that there were not Cloaths enough on the Bed—the Witness laid on another Quilt—the Doctor was dress'd when the Witness was thus called in——after she withdrew, the Door was fastened after her, for she heard the Bolt fall down.—At this Meeting they had hot Punch—when they rung for her again, they were both dress'd; and as she remembers, the Defendant paid 16s. 6d. being for Sangree, the Fire, and the House;——this Witness is married—she saw something on the Sheets, that made her believe there had been a Commerce between them, as between Man and Woman—the Defendant bespoke the same Room for the *Monday* following—they staid till near Night; he went out at the Fore-Door, and desir'd them to let the Lady out at the Back-Door.—When this Witness saw Mrs. *Biker* afterwards at Mr. *Biker's* House, Mrs. *Biker* knew her, and said, *that is the Woman that laid the Quilt upon the Bed*—Mrs. *Biker* had on a black Velvet Mantelet and yellow Gown, every time she came to the Bagnio——in about a Fortnight after she had been last there, the Witness saw her at her Husband's (the Plaintiff's House) and she died soon after;—this Witness also went to *Bow-lane*, to see the Defendant;—she did see him there coming along the Lane to go into his Chariot——she kept the Room

Room up one Pair till the last on *Monday* — the Defendant found fault with the Arrack, and said it was not as good as she had given him before — she spoke in Favour of it, and said, she was sure her Master paid a good Price for it — she looked in his Face when she spoke to him, and afterwards knew it again.

The same Witness (*Anne Oliver*) being cross-examin'd, said, that she left the Bagnio on the first of *May*; that she has been in the Country since; — that the Plaintiff got her to the Country, for fear the Defendant should get her from the Bagnio — that she has been at *Tottenbam-Hale* — that the Plaintiff's Country-House is at *Tottenbam-Cross*; — that these Places are about half a Mile asunder — that she has lived at a Farmer's; the Plaintiff placed her there — that the Profits of her Place in the Bagnio may be about an hundred Pounds a Year — that the Plaintiff promised to make up her loss of Time — that she has had neither Money nor Bond from him, except two Guineas and an half — that she might say to Mrs. *Pye* that she would not leave her Place at the Bagnio, without a proper Satisfaction for her loss of Time; — that the Plaintiff was with her there on the *Saturday* next after his Wife and the Doctor had been last together; that his Attorney, Mr. *Stanysford*, was with him; — that their Pretence was, to prevail on this Witness to get the same Lady for the Plaintiff, which his Friend the Doctor had there — that she owned to them that the Doctor had been there — that since the first of *May*, the Plaintiff has maintain'd her, and her Husband (who lives at a Bagnio) when he pleased to come to her in the Country; — that the first time, the Defendant came on Foot to the Bagnio, and the Lady with him — that they do keep a Book of their Reckonings at the Bagnio; and make, or ought to make

Entries of them ; but that she did not go to the Book, nor make any Entry in it——that she did not know the Defendant nor Mrs. *Biker*, the first time they came——That they came together the second time, about three o'Clock ; and she did not then know who they were.——That she remembers the 18th of *April* ; because the Plaintiff, Mr. *Biker*, came to her (this Witness) that Day se'nnight, and because the Defendant had bespoke the Room for *Monday* ;——that she did not at that Time know their Names. — That she did not declare to any body, she was sorry the Plaintiff had engaged her——that *Bucknall* (*the Keeper of the Bagnio*) came to her at *Tottenbam*, and told her he came from the Defendant, and that if she would come away, he could get five hundred Pounds for her——that she did not declare she was sorry she was engaged ; nor, that she was to have fifty Pounds in Money, and a Bond for a hundred Pound ; nor that her Husband was to have such Reward ; nor that it was a pretty thing to live on ; or to pay Debts ;——but she said she was to trust to the Plaintiff's Generosity ; and if he was generous, he might put her and her Husband into a Way in the World ; and this she believes she said only once to her Sister *Deane* at the Bagnio——says, she saw the Defendant first (after his last Meeting at the Bagnio) in *Bow-Lane* ; believes it was on the 1st of *May*, about a Week or two after the Plaintiff first came to her——that she went to *Bow-Lane* for that purpose, with one of the Plaintiff's Servants, and at his Desire ; that she saw the Defendant coming up the Lane to his Chariot ; and said, he was the same Person ; and the Maid said, he was Dr. *Morley* ;——that she said nothing to him ; that he wore light Clothes, and a three-tail'd Wig, neither very light nor very dark ; that she never saw him since. That when she saw Mrs. *Biker* at her Husband's House in *Foster-Lane*, she

she was not in Bed, she was sitting by the Fire-side. — That this Witness made no Affidavit of what she had to say; but that she had declared to her Sister, that she had done so, to avoid her Importunity on the Defendant's behalf.—That Mrs. *Biker* was not masqued, when she came to the Bagnio; thinks she had on a black Hood and Straw-Hat. — She believes she might have said she never saw any part of Mrs. *Biker's* Face, only the upper part, except once, and that was in the Passage; but that she never did say, she did not know, whether she was handsome or ugly — that the first time the Plaintiff came to her (*this Witness*) he gave her half a Guinea for her Coach, and afterwards he gave her two Guineas at the *Thatch'd-House Tavern* — that she was never with him in the City after, till she was coming away — that she never declared he gave her a Guinea, for her Trouble of coming into the City; nor half a Guinea for Chair-Hire. — She believes her Husband had five and twenty Guineas from the Plaintiff at different Times; but that there were no Debts paid, or to be paid for him, nor Cloaths bought; — that she never went an airing in the Plaintiff's Chariot — that she has had a Guinea or two from her Husband, and no more, since the first of *May* last. — that he was to have 50 *l.* in all for the Loss of her time — but does not know when it is to be paid; — but, to be sure, it is to be paid on the Event of this Cause — that all things were provided for her in the Country — Wine as well as other Necessaries; — that her Husband partook of them, by coming when he pleas'd — that she had no Cloaths given her; that she bought some, which she bespoke before she left Town, and should have bought if she had not gone there. — That the Plaintiff did ask her, what her Place at the Bagnio was worth; — that

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he did not promise any thing — but that he would make up her Loss of time.

Sarah James (a former Witness) being examin'd again, said, that on the 1st of *May*, she went with the last Witness to *Bow-Lane*, where they saw Dr. *Morley* in the Street; and that immediately the Witness, *Anne Oliver*, said, *That is the Man*; this Witness says, it was the Doctor, and this Witness then told the other so; and the other (*Anne Oliver*) would have spoke to him; but, that this Witness did not think it proper—that she had not before told the other Witness; which was the Defendant's House.

Anne Peeling (a former Witness) That Mr. *Biker* knew the Witness *Oliver*, as soon as she saw her; and said, it was the Woman at the *Bagnio*.

THOMAS LEECH, *sworn.*

This Witness is Coachman to Mr. *Garnier*, Apothecary in *St. James's-Street*, within two Doors of the *Royal Bagnio*—he lived before, *viz.* about eight or nine Months ago, with Mr. *Biker*——he sat upon his Coach-Box at his Master's Door on the 18th of *April* last, and saw Mrs. *Biker* cross the way, just at the Head of his Horses; he saluted her by pulling off his Hat, and asking how her honourable Family did? But she answered not a Word; but made a sort of Return, by bending her Body—when she was pass'd behind him, he turned about his Face, looking over his Shoulder, and saw her go into the *Bagnio*, from which he was hardly ten Yards distant——he saw no Man go in there, nor with her—the time was, as near as he can judge, twenty Minutes after two——afterwards the same Day this Witness had a Conversation with the Plaintiff's Coachman, about another Occasion; that some mention being made of the Plaintiff's Family, his Coachman said his Master was gone to *Cobham* that Day,

Day, and his Mistress dined at Dr. *Morley's*; to which this Witness replied, he believed not, for that he was pretty sure, he saw her go into the *Royal Bagnio* in *St. James's-Street*, between Two and Three o'Clock.

This Witness, *Thomas Leech*, being cross-examined, said, when Mrs. *Biker* went into the *Bagnio*, she wore a a Yellow Gown, and something Black about her Shoulders; but could not be positive as to her other Dress; nor knows whether she had a Hat, or not. — That Mr. *Biker's* Family knew to whom he was gone to live, and gave him a Character some Months before; but, perhaps, they did not know particularly where his Master *Garnier's* House was. — That he was at the *Thatch'd Tavern* with the Plaintiff, who asked him, whether he did not see Dr. *Morley* go into the *Bagnio* with his Wife, which this Witness answering in the Negative; the Plaintiff drew his Sword, and said *Damn him*, he would run him through if he did not tell the Truth; but that Persons there (he thinks the Plaintiff's Attorney) interposed — that *Francis Bayley* is the Plaintiff's Coachman, whom this Witness conversed with, as is mentioned before.

FRANCIS BAYLEY, *sworn.*

This Witness lives with the Plaintiff, and is his Coachman. — On the 18th of *April* he was abroad in the Morning with the Chariot, and his Mistress in it; and at Noon when he came Home, she ordered him to put it up — he had a Conversation that Afternoon with *Leech*, (the last Witness) to such Effect as *Leech* mentioned: And had also a Conversation with one of the Defendant's Servants, about having half a Holiday that Day; by which he understood that the Defendant was gone abroad that Afternoon, without his Chariot.

HUMPHREY LINFIELD, *sworn.*

On the 24th Day of *April*, the Plaintiff at his House in *Foster-Lane*, called in the Defendant; and ordered him to bring in two more Men, which the Witness did accordingly: The Plaintiff was in a very great Passion; there was an Apothecary's Son who desired him to be easy; but he came to the Defendant at the Head of the Stairs, and pushed him down from the Top to the Bottom, and called out, *Damn him a Rascal, a Villain, break his Neck, knock his Brains out.*—The Doctor never turned, but took to his Heels, and went away.

———— FALKNER, *sworn.*

This Witness is Coachman to the Defendant, and lived with him in *April* last—had such Conversation with *Bayley*, the Plaintiff's Coachman, about having half a Holiday, as is mentioned before; and that the Defendant did not use his Chariot that Day, the 18th of *April*.

The Council for the Plaintiff rested here.

The Council for the Defendant, made some Observations upon the Evidence for the Plaintiff, and some upon their own; but because they arise for the most Part on the Plaintiff's Evidence, we shall give a brief Sketch of them in one View in this Place.

They said that this was a malicious Action brought for Revenge, upon some Disgust which they could not account for. — That in Order to entitle a Plaintiff to maintain an Action of this Nature, to the Ruin of the Reputation and Fortune of a Defendant, dearer to him than his Life; the Story ought to be probable; or if it was attended with any Improbabilities, it ought to be supported by the Testimony of Witnesses, whose Credit and Reputation, were above all Suspicion; and that the

the Circumstances, which were brought in Aid of the principal Fact, ought not to be such as are wholly incredible. That it is wholly improbable, that a Person of the Defendant's Character, (such as they should shew it to be,) sober, prudent, moral, almost arrived to the Top of his Profession, a Father of Children; happy in an agreeable Wife of his own, with whom he lived in great Amity; a Man who was, as the Plaintiff's Council had opened, Twelve or Fourteen Years older than the Plaintiff; at a Time of Life when irregular Desires are more easily governed; a Man, who by the Nature of his Profession, was ruined if only suspected; that he should resign himself a Slave to a destructive Passion for a sickly Woman, labouring under a Continuation of Female Disorders; and the Wife of a Person, whom he knew to be at the very Time, infected with the foul Disease; which, notwithstanding any intended Restraint to the contrary, he might communicate to his Wife, and she to the Defendant, if he could be so mad, as to be guilty of the Crime now imputed to him.

Then as to the Proofs, put the Testimony of *Anne Oliver* out of the Case, and there is nothing laid to the Defendant's Charge. They shall shew that she was seen and heard thro' a Crevice to make a Bargain, and receive a Bribe for her Evidence; and declared that she was fixed down by Affidavit which she had made, and was threatned with *Newgate* and the Pillory, and said she could not go back. There is, indeed, a Story told of the Doctor's coming to the Plaintiff's House, making long Visits, and staying one Evening from Eight, till half an Hour after Nine, the Night when Mrs. *Biker* countermanded the Milk-Porridge for half an Hour. Hard will be the Fate of the Gentlemen of the Faculty, especially that Part of it, which more particularly regards the fair Sex; if it shall be imputed to a

Man as a Crime, or even draw on him the Suspicion of it, that he is alone with his female Patient. What Proof is there given, that the Doctor took any indecent Liberties? But the Milk-Porridge was countermanded! a slight Circumstance; and which shews the Weakness of a Cause that wants such a Support; and yet it is observable, that the Witnesses do not agree in it, as if they had not carefully compared Notes. The two Women say, that Mrs. *Biker* called and forbad bringing it in for half an Hour; the Man says, he carried it in, and his Mistress sent it back again for half an Hour. Then as to the thing itself, it is not probable to answer the End it is alledged for. What Occasion to countermand it at all, if that half Hour was to be spent in a criminal Commerce; it were the better way to let it be brought in, and then they might expect to be undisturbed by the Servants for that half Hour. Another Circumstance is Mr. *Garnier's* Coachman, seeing Mrs. *Biker* going into the *Bagnio*; this is also highly improbable. He spoke to her, asked her for her Family; she knew him, took Notice of him, and if so, she would certainly not have gone into the *Bagnio*. Besides, the Doctor, who well knew Mr. *Garnier* an eminent Apothecary, would never have chosen to have an Affignation of that Kind, at a confessed — House, but just two Doors from him. This Story of the Coachman, seems to be nothing more than a Mistake of his, of some other Woman of the like Stature, and wearing such like Cloaths, for Mrs. *Biker*. It is observable upon *Anne Oliver's* Evidence, that Mrs. *Biker*, or whoever that Woman was, had her Face covered with a Straw Hat; then the Coachman sure (on his Coach-Box) could see but very little of it; and so little did he know of the Matter, that he cannot say whether she had a Hat or not; and he spoke of it with Uncertainty to the other Coachman,

man, viz. if he was not mistaken. Besides, if that had been Mrs. Biker, impatient to come to her Assignment, she had been there before; and would if she had seen a Person who knew her, have gone in at the Back-Door, as *Anne Oliver* would have it believed she went out of it. However (supposing that Woman to have been Mrs. Biker) the Defendant cannot be affected by it; if *Anne Oliver's* Testimony be rejected, as it ought. That they had with much ado got out of her, the Confession of Fifty Pounds, which her Husband was to have by Agreement, of which he had received Five and Twenty; and they should prove, what she denied, about her Declarations concerning a Bond for 100*l.* and being put in a pretty Way, and having their Debts paid. They should prove that the Doctor dined at Home on the 18th of *April*, and did not go out 'till Three o'Clock; that there was no Company in the red Room up one Pair of Stairs at the *Bagnio* that Day; nay, farther, that there was no Company in the House that Day, only one Man and one Woman, up two Pair of Stairs; and that they left a Shilling for the Female-Waiter, who was not within when they went away.

SAMUEL BUCKNALL, sworn.

This Witness has been Master of the *Royal Bagnio*, in *St. James's-Street* about a Year and a half; *Anne Oliver* was a Waiter there some Months last Spring. — This Witness saw the Plaintiff there several Times; the first was some time in *April*, in the fore Parlour and Passage; the second time was on the 30th of *April*, the Plaintiff and one *Stanyford* an Attorney, enquired for *Anne Oliver*; when she heard of them, she was in a great hurry to go to them, so as not to stay to put on an Apron; she went to them in the fore Parlour, and this Witness went into the back Parlour; there is a Hole in the

Partition between the two Parlours, which was there before the Witness came to the House, and through which he could hear and see what pass'd; and through which he observed the Conversation of the Plaintiff and his Attorney, with *Anne Oliver*; they expostulated with her, why she did not come away, as she had promised; she said, she could not, till an Affair was at an end, which she was obliged to attend in the *Marshalsea-Court*; there was a Discourse of paying Debts for her; some Money was given to her, but how much, the Witness cannot say; she insisted upon 100*l.* to be secured to her Husband by Bond——when they were gone, this Witness had Discourse with her, asked her, who they were, and what Business they came about? She said, they came to enquire after a Doctor and a Lady, who came to the House sometimes; but that she knew neither of them; that the Lady always mask'd, or turn'd away her Face. Afterwards *Anne Oliver* and this Witness went to the *Marshalsea-Court*, and when they had done there, she pretended Business in the City, but went to *Tottenbam*;——where this Witness went afterwards and saw her; ——she said, they had done something to fix her—and that the Plaintiff had placed an old Woman as a Guard upon her—the first time this Witness and his Wife went to *Tottenbam*, the Farmer told them, they could not see her.—Being examined as to *Saturday* the 18th of *April*, he said, that there was but one Company in his House that Day, which were a Man and a Woman; that they came there between twelve and one o'Clock, or did not exceed two at most; that the Lady came first and asked for a Room, the lower part of the House was wet; she was shewn up two pair of Stairs to the red Room forward; there was a Fire lighted, the Gentleman came, they staid about an Hour, and had some Sangree; their Reckoning

oning was 16s. 6d. in this the Witness says, he is confirm'd by his Book, (which he produced) he received the Reckoning, and 'tis enter'd, *Master Paid*; — they left Sixpence or a Shilling for the Waiter (which he does not remember) but he afterwards gave it to *Anne Oliver*—she did not attend in the House that Day.—This Witness now knows the Defendant, and believes he was not the Man,—that they went away together between three and four o'Clock—he does not remember that there was any other Company that Day or Night—he endeavours to keep his Accounts in his Books right, and has turned away several Servants for not making due Entries.—*Anne Oliver* came about half an Hour after they were gone—when he saw her at *Tottenbam*, he did put it to her, whether she would come away, if she could get as much by speaking the Truth;—but she said she was fixed;—her Husband came in, and shewed a Watch, which this Witness had not seen for a great while before—the Husband had Wine of several sorts—this Witness said, *you do not want for any thing*—upon which the old Woman, who was placed over her by the Plaintiff, said, *no, if she could eat Gold she should have it.*—The Book which this Witness produced, being inspected, the Entry for the 18th of *April*, appeared to have a Figure altered, but the Day of the Week (*Saturday*) was fairly entred, and the Entry was in Course next after the 17th, —on the top of the following Leaf there were two Lines obliterated, so as not to be legible.—This Witness said, he had turned away two Servants, for not making due Entries;—that the Charge for the House, for a Man and a Woman, is ten Shillings and Sixpence; but they might have bathed for the same—says, he saw the Defendant before he went to *Tottenbam*—that the Defendant's Attorney had seen him, but not applied to him; that he had
been

been with the Defendant's Attorney before, he went to *Tottenham*—that the Distance between his two Journeys to *Tottenham*, was about three Weeks — believes he had not seen the Defendant in that intermediate time—that he did not see him at his Attorney's, to his best Remembrance—that *Anne Oliver* said, *she had been led away*.

Here *Anne Oliver* was called, to confront this Witness——she said, that he went once himself to her at *Tottenham*; and once sent his Wife — that he told her, the Doctor would pay five hundred Pounds, three hundred for her, and two hundred for himself.——The Witness *Bucknall* repeated what he before swore, relating to his Conversation with her at *Tottenham*, and persisted in it; and denied that he mentioned five hundred Pounds, or any particular Sum of Money.

Anne Oliver being re-examined, as to the Defendant and Mrs. *Biker's* Meetings at the Bagnio, said, that at the second Time of their coming, this Witness was not within; that they left Six-pence for her, at which she was dissatisfy'd.

SARAH BUCKNALL (*the Wife of SAMUEL BUCKNALL*) sworn,

Says, the first time the Plaintiff came to her House, he asked her for *Nanny Oliver* the Waiter; he waited for her near an Hour in the Parlour; he and his Attorney saw her twice; she (*Oliver*) said, they offered her 50*l.* and that the Plaintiff said, the Lady was his Wife; and that he would ruin the Defendant.——This Witness asked *Anne Oliver*, if she knew who the Defendant was? who answered, she did not till she had spoken with the Plaintiff——that she always declared she never saw the Lady's Face——that *Anne Oliver* told this Witness, if she had a Mind to be ungenerous, she could have 100*l.* to which the Witness answer'd, *If you could*

could, I am sure you would; *Anne Oliver* replied, then to shew that I can, I will go away To-morrow Morning.—This Witness was twice at *Tottenham*, the first time, *Anne Oliver* was not to be seen; the second time she had much Company, and her Husband was with her; and an old Woman, who was Guard over her.

BARBARA PYE, sworn,

Said, that *Anne Oliver* told her, the Plaintiff had given her half a Guinea, and would give her fifty Pounds, if she would prove that the Defendant and his Wife were together;—that she told him her Place was worth 100*l.* a Year; and desir'd time till *Monday* to consider of it; but he came again sooner, and told her, he would do what she had insisted on, that is, give her a hundred Pounds, and give Bond to her Husband for the Money——that *Anne Oliver* told this Witness, she never saw the Gentleman and Lady in Bed together; and that she did not know the Defendant's Face.

ANNE SIDWELL, sworn,

Said, that *Anne Oliver* told her, the Plaintiff would give her 50*l.* down, and a Bond for 100*l.* to prove, that the Defendant us'd to lie with the Plaintiff's Wife——that *Anne Oliver* told this Witness, that the Lady always came mask'd; and that she should not have known the Lady, if the Lady had not known her; that she did not know the Gentleman, but that he was to be shewed to her by some Friend of the Plaintiff's, and then she was to swear to him.——This Witness had formerly pawned Plate for *Anne Oliver*, and of late redeemed it——they dined together with the Plaintiff, at the half Moon Tavern; *Anne Oliver* requested her not to say a Word to him of any thing *Anne Oliver* had told this Witness, for it
would

would be *Anne Oliver's* Ruin—— At the Tavern the Plaintiff gave this Witness a Guinea, to pay her Coach home: And *Anne Oliver*, in his Presence, told her, she should be well rewarded, if she held her Peace, and went into the Country—— and the Plaintiff desired this Witness might say nothing, unless put to her Oath; and, in that Case, she must tell the Truth—— that *Anne Oliver* has kept the *Rummer Tavern, Covent-Garden*——that the Plaintiff desired this Witness not to take the Guinea as a Reward, and said, *My Dear, be silent if you can, we are sure of our Cause; but if you won't appear, I will make you amends. Mrs. Oliver will satisfy you, that I'm a Man of Honour.*

Mr. PAIN, Apothecary, sworn.

This Witness appeared very unwilling to be examined to the matter, proposed to him; till he understood the Sense of the Court to be, that he must answer—— Then he said, that by some Conversation the Plaintiff had with him about *Christmas* last, he took it, that the Plaintiff had the foul Distemper; —— and *Dr. Morley* knew of it to be sure; —— it did not confine him at home; —— he might be some Months under Cure; —— and he might be pretty well in the Spring.

Miss WATTS, sworn.

This Witness is Sister to *Mrs. Morley*—— the Defendant and his Wife lived in Harmony—— this Witness and her Mother live at *Stratford*; but when in Town, they are at the Doctor's —— they have been at the Doctor's the most Part of last Winter —— *Mr. Biker* made the first Visit between the two Families —— and used to make frequent and long Visits —— this Witness and *Mrs. Biker* were at the Rehearsal together on the 14th of *April*. This Witness saw *Mrs. Biker* every Day that Week, except *Wednesday* and *Monday*; she saw her on the 18th, being

ing *Saturday*, at about eleven in the Morning — the Defendant dined at home that Day at Two, or half an Hour after, as she thinks, being their usual Times of Dining, and went out about three, to the best of her Knowledge Mrs. *Biker* did not dine there that Day — on the 14th the Plaintiff and his Wife were invited to dine at the Defendant's, and a Footman sent with the Message; the Plaintiff did not come; they sent again for him in the Afternoon.

Being cross-examined, she said, on the 18th Mrs. *Biker* came to Supper at the Doctor's about Eight o'Clock — the Defendant did not come till a good while after.

There were many reputable Witnesses (some of them Apothecaries, and some his Patients, or the Husbands of his Patients) called to the Doctor's Character; who gave him a very good one.

After an excellent Reply by Mr. *Sollicitor General*,

Mr. STANYFORD (*the Plaintiff's Attorney*) sworn,

Said, that when he and Mr. *Biker* went first to *Anne Oliver*, they did pretend as mentioned in her Testimony, and said that they were recommended for such a purpose; and they related to her such Circumstances, as she knew they could not have from any body, but the Defendant, or Mrs. *Biker*: The Plaintiff gave her half a Guinea to incline her to be free to talk to them — and then this Witness, looking on the *Bagnio* to be inconvenient for that purpose, proposed going elsewhere; — and accordingly, they took a Coach, and came to the *Ship Tavern* without *Temple-Bar* — there the Plaintiff burst into a Flood of Tears, and declared himself the unfortunate Husband of that Lady — that the Plaintiff did not offer her any Money or Bond; but they thought it necessary to have her
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away from the *Bagnio*, that the Defendant might not apply to her.—She insisted on having a Satisfaction for her Loss of Time, and referred to her Husband—she asked when the Cause would be heard; this Witness told them in *Trinity-Term*, if he could—but, perhaps, it might not be till *Michaelmas-Term*. The Husband of *Oliver* demanded 50 Guineas for her Loss of Time—this Witness and the Plaintiff thought the Demand high; and this Witness was tender in giving any Advice in a Transaction of that nature.—but five and twenty Pounds, or Guineas have been paid to *Oliver*, the Husband, and he is to have other five and twenty at the end of the Cause.—This Witness is pretty sure there was no Bond given.—*Anne Oliver* made no Affidavit; this Witness only took down her Evidence in Writing, for Instruction for Counsel. This Witness contradicted the Substance of the Conversation in every material part of it, which was sworn by *Samuel Bucknall*, to have pass'd in the Parlour of the *Bagnio* between Mr. *Biker*, this Witness, and *Anne Oliver*—and says, he was with Mr. *Biker* at the *Half-Moon Tavern*; *Anne Sidwell* came there to offer her Evidence for the Plaintiff, and to tell him that the Defendant had been tampering with her; but this Witness was of Opinion, that they had no Business to encourage such a sort of People, and put her off.

The Right Hon. the Lord Chief Justice, with great Patience, between eight and nine o'Clock at Night, summ'd up the very long Evidence, and left it to the Jury, having condemn'd in strong Terms, the Practice of giving Money to, or driving a Bargain with a Witness, under the Pretence of Amends for Loss of Time, or otherwise, the Jury withdrew, and after three Quarters of an Hour, brought in a Verdict for the Defendant.

F I N I S.

