

T H E
T R Y A L
O F

Richard Francklin,

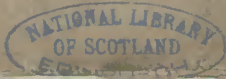
FOR A
MISDEMEANOUR,

In Publishing a False, Scandalous, and Seditious EXTRACT of a Private LETTER from the *Hague*, inserted in the COUNTRY JOURNAL; or, the CRAFTSMAN, of *Saturday, January 2, 1731*. Try'd at the Sittings of the Court of *King's-Bench, Westminster*, on *Friday, December 3, 1731*. before the Right Honourable ROBERT Lord RAYMOND, Lord Chief Justice of the said Court.

N. B. *A great deal of Pains has been taken to render this Tryal as Full and Just as possible for which Purpose Three different People took Minutes of it in Court.*

EDINBURGH,

Printed by GAVIN HAMILTON and COMPANY, and sold at the said *Gavin Hamilton's Shop*, opposite to the Parliament Closs, 1731.



T H E
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WITNESSES

IN

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TRYAL of *Richard Francklin, &c.*

Council for the KING.

Council for Mr. FRANCKLIN,

Sir PHILIP YORK, Attor-
ney-General.CHARLES TALBOT, Esq;
Solicitor-General,

Mr. REEVES.

Mr. WILLES.

Mr. PARKER.

Mr. BOOTLE, Sen.

Mr. NOEL.

Mr. FAZAKERLEY.

Mr. STRANGE.

Mr. TAYLOR.

Mr. BOOTLE, Jun.



R. Attorney-General first opened to the Court, before the Jury were sworn, that, as a special Jury had been granted upon his Motion, for the Trial of this Indictment, now before the Court; and that

as only Eleven appeared out of the Pannel of Twenty four, summoned to attend the 12th of last *July*, he insisted, that those Eleven might, if they were present, and not challenged, be sworn, and a Talesman added out of those that attended now; which was agreed to; but several of the Eleven that attended before, not attending then, the Jury sworn were as follows, *viz.*

Thomas Milner, of St. Andrew's Holborn, Esq;

Thomas Andrews, of Ormond Street, Esq;

* *Thomas Allen, of Finchley, Esq;*

* *Jacob Harvey, of Islington, Esq;*

A 2

* *Henry*

- * *Henry Norris*, of *Grove-Street*, Esq;
- Thomas Moore*, of *Queen's-Square*, Esq;
- * *William Tilliard*, of *Norton-Folgate*, Esq;
- * *Philip Baker*, of *King Street*, Esq;
- George Short*, of *Clerkenwell*, Esq;
- William Edwards*, of *Grosvenor-Street*, Esq;
- William Turner*, of *Ditto*, Esq;
- * *Henry Wingfield*, of *Hammersmith*, Esq;

Those with this Mark * were those of the Eleven sworn the 12th of *July* last.

The Council for Mr. *Francklin* challeng'd *Henry Wingfield*, Esq; and produced one *Pool*, who being sworn, deposed, That he summoned the said *Henry Wingfield* Esq; and that the said *Henry Wingfield* at that Time said, *That as for Mr. Pulteney, and the rest of them, he did not value them; but for that Scoundrel Francklin, he would hang him if he could;* upon which Account he was dismissed, and,

* *John Wilson*, of *Wilfdon*, Esq;

who was next upon the Pannel, was sworn.

Then the Jury was agreed to, only Mr. *Attorney-General* made a short and just Harangue, in Defence of the Character of *Henry Wingfield*, Esq;

Mr. *Parker* open'd to the Court, on the Part of the King, the Heinousness of the Crime, for which Mr. *Franklin* stood indicted; as that the Extract of a pretended Letter from the *Hague*, inserted in the *Country-Journal*, or *Craefman* of the 2d of *January* last, was a false, scandalous, and seditious Libel, reflecting on the Conduct of his Majesty and his Ministers, and falsely represented the Lenity of his Majesty's good Intentions in concluding the Treaty of *Seville* with their *Catholick* and *Christian* Majesties,
Mr.

Mr. *Attorney-General* spoke next on the Part of the King, That nothing was requir'd, nor desir'd, but a fair Determination of this Matter, between his Majesty and his Subjects; and that if they prov'd the Publication of the *Country-Journal*, or *Craftsman*, of the 2d of *January* last (in which was inserted an Extract of a pretended private Letter from the *Hague*,) on Mr. *Franklin*; he hop'd that the Jury would consider it, whether it was a Libel or not; as to its being a scandalous and seditious Letter, was evident in his Opinion, from its aspersing the several Treaties of his Majesty and his Allies, enter'd into by them to prevent the ill Consequences of the Treaty of *Vien-na*, concluded between the King of *Spain*, and the Emperor of *Germany*; such in particular, as the Delivery of *Gibraltar* and *Port-Mahon* to the King of *Spain*, and a great Diminution of our Foreign Trade; that the said pretended Extract of a Letter from the *Hague*, intimated, *That the strict Union between France and Spain, would soon prove a Misconduct in some Ministers*; which he (in his Opinion) believ'd could mean none other than the Ministers of *Great-Britain*, whether of Sea or Land he could not tell. but it answer'd to the Information now against Mr. *Franklin*, as meaning some Ministers.

Mr. *Attorney-General* took Notice of an Act made in the Third Year of the Reign of *Edward I.* which provided for the Punishment of scandalous and seditious Libels; and the Publishers of false News. And of another Act made in the Reign of *Hen. VII.* Then he proceeded to *Mist's-Journal* of the 24th of *August*, 1728, which was allow'd as a Libel against his Majesty, tho' he was not directly mention'd.

He then concluded with telling the Court and the Jury, that nothing was requir'd of them, but a fair Definition of the Matter in Dispute, as they on their Oaths

Oaths must do; that he hop'd that they would not shut their Eyes against the Light, but see as every common Reader in a Coffee-House does.

Mr. *Solicitor-General* next spoke on the Part of the King, with several of the same Circumstances, that had been before mentioned by Mr. *Attorney-General*; and added several learned Arguments against Libels in general; particularly, the ill Consequence that attends a frequent Opposition of his Majesty's Measures, as no Treaty could be made without his Consent; and that the said Extract of the *Hague* Letter, reflecting on the Minister's Conduct, must of Consequence be a false, scandalous and seditious Libel.

He next took Notice of the Information, on which they were then trying Mr. *Francklin*, wherein he was represented as a seditious Person, and a Publisher of false News; and concluded, that as he prov'd the Fact on the Defendant, he hop'd they would give a Verdict against him.

Then the Council for the King proceeded to call the following Evidence to support the Charge.

Mr. *Jenkins* being sworn, produced a Letter, sent from abroad, which being read in Court, made mention of several of his Majesty's Allies being disgusted at the Extract of a private Letter from the *Hague*, inserted in the *Craftsman* of *January* last, which was taken Notice of by the King's Council, to be the same on which the Information was laid against Mr. *Francklin*. Here the Letter was read in Court.

George Tilsen, Esq; Under Secretary of State, was call'd, who being sworn, produced a Letter sent from the Secretary of State to his Catholick Majesty, to the Right Honourable the Lord Viscount *Townshend*, one of his late Majesty's Principal Secretaries of State, in the Year 1725, in which a formal Demand was made

made of *Gibraltar* and *Port-Mahon*, in Pursuance, as the *Spanish* Secretary said, of the then late Treaty concluded between his Master and the Emperor of *Germany*, at the Court of *Vienna*. Mr. *Tilson* was ask'd, how he came by that Letter? To which he answer'd, amongst other Dispatches from his Majesty's Minister at the Court of *Madrid*, brought by a Courier.

Mr. *Blare* was next call'd upon, and sworn, who deposed, That he had translated the said Letter, which contained a Demand of the Restitution of *Gibraltar* and *Port-Mahon*; and had likewise translated the Articles of the Treaty of *Vienna*. Then the Translations were read in Court, which he farther deposed were a just and true Translation from the *Spanish* Originals.

Here Mr. *Solicitor-General* took Notice, That the Treaty of *Vienna*, concluded in the Year 1725, between the Emperor and the King of *Spain*, was very prejudicial to his Majesty's Subjects; upon which his Majesty's Ministers (with his Majesty's Consent) concluding a Treaty of Peace, Union and Friendship with the Kings of *Spain* and *France*, in order to quash the ill Consequences that must have attended the said Treaty of *Vienna*, had it not been timely disappointed by the Conclusion of the *Seville* Treaty, which Mr. *Franklin* had in his *Journal* of the 2d of *January* last, ridiculed falsely and scandalously, in a pretended Extract of a private Letter from the *Hague*.

The Council for the King then propos'd to enter into a Proof of the Publication of the *Craftsman* of the 2d of *January* last on Mr. *Francklin*, for which Purpose they call'd one *Smith*, who being sworn, deposed, That he went to the House of *Richard Francklin*, and ask'd for six Country-Journals or Craftsman,

of the 2d of *January* last, and two of the *Saturday* before, which *Mr. Francklin* order'd his Servant to serve him with, and it was done accordingly, and he gave them *Half-a-Crown*, and had a *Shilling* given him as Change, he farther depos'd, that *Mr. Francklin* ask'd him if he sold them again, and that he told him he did.

Here was a palpable Variation, either from the Truth, or an Oversight of the Council for the Defendant, for eight Journals to a Man that sells them again, comes to but 1 s. and if he had not bought them for Sale, he must then have paid but sixteen-pence for them.

This Evidence, *Smith*, farther depos'd, That he sold one of the six Journals which he had bought as abovemention'd, to one *John Ibbot*, at the *Six-Canns Alehouse* in *Holbourn*; and a Journal being produced, he was interrogated whether that was it; to which he reply'd, it was.

The Council for the Defendant ask'd him, how he knew it to be one of the six he had bought at *Mr. Francklin's*, and whether or no he had mark'd it? to which he said, he had mark'd it, and was sure it was one of the six.

John Ibbot depos'd, That he bought one of the said Journals of the aforesaid Evidence, *Smith*, at the *Six Canns* in *Holbourn*. That he likewise had bought another of the said Journals of one *Mrs. Dewel*, who gave it him from behind the Compter of *Mrs. Dodd*, at the *Peacock* without *Temple Bar*. He was asked by *Mr. Fazakerly*, one of the Council for *Mr. Francklin*, if he had marked the very individual Paper bought of *Mrs. Dewel*? and if he was sure that the Extract of a private Letter from the *Hague*, which *Mr. Francklin* was then trying for, was inserted in that *Craftsman* he had bought? To which he

answered, Yes, he did mark it, and was sure that was the very same Paper.

Mrs. *Dodd*, being call'd, and sworn, depos'd, That she used about 60 Quires *per* Week of the *Craftsman*; but did not at first come to any Particulars relating to the *Craftsman* of the 2d of *January* last; whereupon Mr. *Attorney-General* ask'd her who she paid her Money to for these Papers of the *Country Journal*, or the *Craftsman*? To which she said, Mr. *Francklin*, or somebody by his Order. She was then ask'd, if she had those *Journals* weekly from Mr. *Francklin*'s? which Question she answer'd as follows, *viz.* That a Servant of her's always fetch'd them for her, and that she believ'd they came from Mr. *Francklin*'s.

Henry Boram, Servant to Mrs. *Dodd*, depos'd; That he fetches the *Journals* of the *Craftsman* every Week for his Mistress. He was then ask'd what Time of the Week? To which he said on *Friday* Nights, and that he had them from Mr. *Francklin*'s in *Covent-Garden*. He was ask'd if he remember'd fetching the *Craftsman*, or the *Country-Journal* of the 2d of *January* last? At which he made some small Hesitation, as not being certain. Then the *Attorney-General* ask'd him, if he remember'd the last New-Year's-Day, and on what Day in the Week it fell out on? To which he said, on a *Friday*: Then said the *Attorney-General*, do you remember fetching the *Craftsman* that Night, which were publish'd the next Day? (which were certainly those bearing Date the 2d of last *January*, for which Mr. *Francklin* was trying) Yes, reply'd this Deponent, I do. Then another Question was asked him, whether he ever fetched any *Craftsman* from any where else but Mr. *Francklin*'s, and how long he had fetch'd them for Mrs. *Dodd* in that manner! To which he said, he had liv'd with Mrs. *Dodd* about a Year and an Half, and

and that during that Time, he had never miss'd fetch-
ing the *Craftsmen* ; and that he never had them from
any where else but Mr. *Francklin's* in *Covent-Garden*.

The former Evidence, *Smith*, was re-called into
Court, and being examin'd as to another of the *Crafts-*
men of the 2d of *January* last, which was produc'd,
depos'd, That he bought that of a Servant Girl be-
longing to one Mrs. *Smith* at the *Royal-Exchange*,
and that he knew it by a Mark he had put upon it.

Mrs. *Smith*, who was called by the Name of *Pierce*,
came into Court, and being sworn, depos'd, That she
used every Week between 40 and 50 Quires of the
Craftsman, which she had of Mr. *Francklin*. She
was then ask'd, to whom she paid for those *Crafts-*
men ? She said, she had a Man named *David Davis*
that always fetch'd them for her, and that she gave
him the Money, which was 7 l. every Week, and
that he paid it to Mr. *Francklin* or his Wife, or some
of Mr. *Francklin's* Servants. Mr. *Bootle*, one of the
Council for Mr. *Francklin*, ask'd this Deponent if
she could be positive that she paid her Money for the
Craftsman's Journal of the 2d of *January* last ? To
which she reply'd, she did not remember it in parti-
cular, for about that Time she was married ; which
Expression caused some laughing in the Court. She
was then ask'd, if she could take upon her to say that
she did not pay for that very Day's *Craftsman* of the
2d of *January* last ? At which she was seemingly in
a Passion, and told Mr. *Francklin's* Council, That
she would not satisfy them ; whereupon the Judge re-
primanded her, and directed her to give her Answer,
which she did, and said, That she believ'd she paid
the Money for the *Craftsman* of that Day, as well as
all others.

David Davis depos'd, That he was employ'd by
Mrs. *Smith* to fetch in her Journals on *Friday* Nights ;
that

that he always fetch'd the *Country-Journal*, or *Craftsman*, among the rest. He was then ask'd where, and of whom he had them? Which Question he answer'd as thus; that he had them from the House of Mr. *Francklin* in *Covent-Garden*. He was also ask'd, if he paid for those *Journals* call'd the *Craftsman*, and to whom? To which he answered, That he always paid about 7 *l.* a Week for them; and most commonly to Mr. *Franklin's* Wife. He was then ask'd, If he was positive that he paid for that Day's Journal of the 2d of *January*; to which he said, he believ'd he did.

Thomas Lunnis, Assistant to Mr. *Paine*, Register of Pamphlets, at the Stamp-Office, deposed, That he registr'd the Advertisements inserted in the *Country-Journal*, or the *Craftsman* of Saturday 2d of *January* last, (which was the Day when the pretended Extract of the *Hague* Letter was published) that there were thirty eight of them, and that he sent the Person, who came to Register them, with a regular Note for the same, to the Receiver-General's Office. He was then asked, Who it was that came to Register them, and in whose Name it was done? To which he answered, That it was a Servant of Mr. *Franklin's*, and that they were registered in the Name of *Richard Franklin*. The Defendant's Council asked him, How he came to remember the Day? Whereupon he produced the Register-Book, which corroborated his former Deposition.

Mr. *Webb* was called, and sworn, who deposed, That Mr. *Franklin's* Servant came to him, from the Register's-Office, with thirty eight Shillings, being the Duty to the King, for thirty eight Advertisements, by an Act of Parliament, and that he knew it was for the *Country-Journal*, or the *Craftsman* of the 2d of *January* last by his Books, which he produced;

duced ; and then said, That he sent the same to the Comptroller's-Office to be comptrolled.

Mr. *Scot*, Accomptant to the Stamp-Office, being call'd and sworn, depos'd, in order to prove the Number that were publish'd of those *Craftsmen* above-mentioned, that he had received ten Pounds eighteen Shillings for the Duty thereof. The Council for the Defendant asked him, Whether he received the Money from Mr. *Franklin*? He answer'd, No. Then they asked him, who he did receive it from? He reply'd, from a Servant of Mr. *Franklin* ; for that he himself seldom paid any Money, but that the Receipt was given for Mr. *Franklin's* Use.

There were several other Evidences call'd, particularly Mr. *Snow*, Mr. *Payne*, and Mr. *Pbeasant* ; but just as they began to examine Mr. *Pbeasant*, who was the first in Court, the Council for his Majesty agreed to rest their Proof upon what Evidence had been already produced, and which we have taken Notice of in a fair and candid Manner.

Now the Council for the Defendant began to make their Defence, which was done in the Manner following.

Mr. *Fazakerley* first open'd to the Court, on the Part of the Defendant, 'That tho' the Council for the King had spent the best Part of two Hours, endeavouring to prove, that the *Country-Journal*, or *Craftsman*, mentioned in the Information, was a false, scandalous and seditious Libel, yet it very evidently, in his Opinion, was not so ; for that he look'd upon the Letter from the *Hague*, which they call the Libel, to be no other, than an Account from one of Mr. *Franklin's* foreign Correspondence, and therefore came to him innocently.

The Council for the King demanded of him to prove, that Mr. *Franklin* had the afore said Letter sent him

him from the *Hague*; upon which he order'd one *Thomas Rawlins* to be call'd.

He appearing in Court, and being sworn, the Council for the Defendant ask'd him, whether he was present when Mr. *Franklin* was taken into Custody? He answered, He was. Then they asked him, how he came to be present? He reply'd, He was call'd upon to assist in the apprehending of him.

Then the Council for the Defendant demanded of him to give an Account to the Court what pass'd at Mr. *Francklin's*. He answer'd, That when he, with some of his Majesty's Messengers, came to Mr. *Francklin's*, they presently secured him, and searched his Pockets, and took all his Papers, and all that they could find in the House. The Council asked him, whether he saw ever a Letter among the Papers that was taken from him? He answer'd, that he believ'd there might be several.

Mr. *Boote* was the next Council for Mr. *Francklin*, who said many Things in Defence of the Liberty of the Press, and in particular of that of the Subject; and made a very learned Harrangue on the Doctrine of Libels on Ministers, such as that nothing could be call'd a Libel, unless it was directly to the Defaming some particular Persons, which he could not perceive the Letter from the *Hague* did, and consequently till such Times that the Person or Persons so reflected on shall be prov'd, he could not think the Evidence given, of any Force.

The Council for the King reply'd, That tho' no particular Minister was mention'd in the *Hague* Letter; yet, that some of his Majesty's Ministers, were meant thereby was evident, and it was no Matter who, for that it was the King's Cause that was trying, for the Aspersions of some of his Ministers; and they

they did not doubt but that the Gentlemen of the Jury was satisfied with the Evidence that was given.

Mr. Noel, took Notice to the Court, and to the Jury, That the Publick requiring a true and exact Account of what happens Abroad in Foreign Parts, as well as at Home, and the *Craftsman*, mentioned in the Information, did no other, therefore he could not perceive what Detriment such a Relation could be. And that, if the Press was debarred from giving the People such Intelligences, as occurred to them from Abroad, the People would be deprived of their greatest Happiness; and that though the Council for the King, thought fit to find some false, scandalous, and seditious Aspersions, against some of his Majesty's Ministers, in the aforementioned *Craftsman* of the 2d of *January* last, yet he could not find any such; nor did he believe but that all of his Majesty's Ministers were Men of Honour and Integrity, and he hoped that every Body present, particularly, the Gentlemen of the Jury, was of the same Opinion; and, consequently, if they were such, those scandalous and seditious Reflections could never affect them, as not deserving any such Aspersions; therefore he hoped the Gentlemen of the Jury would give Verdict accordingly.

The others of the Council for the Defendant, spoke to the same Effect; particularly Mr. *Strange*, who argued upon the Incoherence of the Matter in Dispute, with the several Treaties, which the Council for the King had caused to be read in Court, in order to the proving the said *Hague* Letter to be a false Libel.

He further argued, That it could be no Libel, for that he could prove by Evidence, the Facts therein mentioned; but the Council for the King raising a
Dis-

Dispute concerning what Libels were, that Point was dropp'd.

Here the Council for the King acquainted the Court that the *Hague* Letter, mentioned in the *Craftsman* of the 2d of *January* last, was, and could be no other than a false, scandalous and seditious Libel; for that it very plainly by Inuendo's, endeavour'd to subvert the Minds of his Majesty's Subjects, and maliciously asperse the Conduct and Administration of his Majesty and his Principal Ministers. And that tho' the Council for the Defendant had made a smart Defence for the Liberty of the Press; yet they could not be perswaded that the Abusing of his Majesty and his chief Ministers, and the spreading of false News, any ways belong'd to that Liberty, and that it was no Part of the *Printer's* Trade to scandalize whom they pleas'd; but that upon such Defaults they have always been punish'd according to the Nature of the Offence.

The Witnesses being examin'd, and the Council on both sides having gone thro' their Briefs, his Lordship proceeded to give his Charge to the Jury. Which he did in a concise, pathetick, and just Manner; first beginning with summoning up the several Depositions of the Evidences, and then shew'd them, that the Council for the King had plainly, and positively proved the Publication of the said pretended Extract from the *Hague* Letter upon the Defendant, and that his Council had produced no Evidence to the contrary; but had only prevaricated, pretending that they could prove the Assertions in the said Letter to be true, yet never produced one Evidence to that Effect.

His Lordship likewise observed to the Jury, that the Council for the Defendant had only produced one Evidence, *viz.* A Constable, who had depos'd, That the Messengers, when they secured Mr. *Franklin*, searched his Pockets, and took all the Papers from him they

they could find ; which was nothing to the Matter then before them ; for that they were only to consider whether the Letter, for which Mr. *Franklin* was indicted, was a Libel or not, as laid in the Information.

His Lordship then read Part of the said Letter, and acquainted the Jury, That in his Opinion, it very plainly reflected upon some Ministers, but who those Ministers were, he was at a loss to know ; and that the Council for the Defendant, had not so much as hinted at them ; but that he should be very proud if they would inform him.

Then his Lordship enter'd into the Nature of the Thing, that if the Jury was of Opinion that it was a Libel, then he hop'd they would consider too of what Nature it was, that it tended to breed and foment Disquiets and Disturbances between his Majesty and his Allies ; but more particularly between his Majesty and his Subjects.

Moreover his Lordship told the Jury, That if Insults and Reflections, upon his Majesty and his Ministers, were past by unpunish'd, how could they, and every other Person, expect to have Redress ? Therefore it was a Matter of the greatest Consequence that they had in Consideration, and that the Publick Tranquility depended upon their Determination ; and that if they thought the Extract of the *Hague* Letter to be a Libel, or whether it is not, is the only Dispute they had to decide ; and if they believed it to be a Libel, he doubted not but they would bring in the Verdict accordingly.

The Jury retir'd into the Lord Chancellor's Chamber, and after being locked up about half an Hour, return'd and brought in their Verdict Guilty.