

The Proceedings which Happened Touching the Divorcement between the Lady Frances Howard and Robert, Earl of Essex (c.1615)

Transcript

British Library, Additional MS 11600, ff. 10r–21r

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The proceeding which happened touching the diuorse betweene the Lady Frances Howard & Robert Earle of Essex & also the p[ro]ceeding against S[i]r Jaruis Haluash k[nigh]t Liuetenant of the tower: S[i]r Thomas Mounson k[nigh]t Richard Weston & Turner Widdow James Franckling touching [th]e poysoning of S[i]r Thomas Ouerbury k[nigh]t his Ma[jes]ties prisoner in the tower./

The lady Frances Howard before the kinges deligates Greoge lo[rd] B[isho]p of Canterbury Iohn B[isho]p of London Launcelot B[isho]p of Ely Richard B[isho]p of Litchfeild & Couentry Doctor Cesar Thomas Parry Daniell Dan Iohn Bennet Francis Iames & Thomas Edmonds k[nigh]ts authorized vnder the kinges broad seale: her plaint came in Iuly 1613./

That she & Rob[er]t Earle of Essex were married by publique rites & ceremonyes of the Church in Janu[ary] 1603 that she at that tyme was fully thirteene yeares old and is at this tyme to or three & twenty./

The the foresaid Rob[er]t at the tyme of the pretended mariage was about 14 & is about 22 or 23 at this tyme at that tyme & euer since, & at this present is a man (as farr forth as a man may iudge) & hath been in good health & perfect estate of body, not any way hindred by any ague, or sickenes, but that he might haue carnall copulation with a woman./

That since the pretended mariage, at least by the space of whole & continuale 3 yeares, after the said Rob[er]t had fully attained the age of 18 yeares, as tyme & place did serue, after the fashion of other married folkes, the said Frances Howard in hope of lawfull issue & desirous to be made a mother + [+ liued together w[i]th the said Rob[er]t at bed & bord & lay both naked & alone in bed. as married fokes use. & desirous to be made a mother/ +] from tyme to tyme againe & againe yeilded her selfe to his power & as much as lay in her offered her selfe & her body to be knowne. & earnestly desired coniunction & copulation & also the said Earle the

same tyme

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same tyme very often againe & againe did try to haue coppulation as w[i]th his lawfull wife which she refused not but vsed the best meanes she could, notw[i]thstanding all this the said Earle could neuer carnally know her, nor haue that copulation in any sort which the mariag bed alloweth: yet before the said pretended mariage and since the said Earle hath had & hath power & ability of body to deale w[i]th other women but peradventure by perpetuall a naturall impediment hath been hindred all the former tyme & is at this pr[e]sent that he can haue noe copulation w[i]th the said lady Frances furthermore the said lady Frances is hath been & is a woman fitt & able to haue copulation w[i]th a man & such a one as may bee carnally knowne neither hath in this regard any impediment Moreouer the said lady Frances

remayneth & is at this present a virgin also at the tyme of her pretended mariage the said lady Frances was vnacquainted w[i]th the Earls wont of ability & impediment formerly mentioned & furthermore, the said Earle long before the sute com[m]ensed hath uery often & at sundry tymes confessed in good earnest before witnesses of good credit & his freinds & kinsfolks that although he did his best indeauor, yet he neuer could nor at this tyme can haue copulation w[i]th the said lady Frances no not once & lately in regard of womanish modesty the said lady Frances hath concealed the former matters & had a purpose euer to conceale it if she had not been forced through false rumours of disobedience to the said Earle to reueale them./

Shee requireth since this pretended matrimony is but a fact & not in right it may be pronounced declared & adiudged as none [&] of none effect & she may be quitt & free from all knots & bonds of the same by your sentence & authority./

The earle./

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The Earle of Essex replyeth 5 Junij 1614/

To the first & second he answereth affirmatiuely./

To the 3, he thinketh that at the tyme of his marriage he was full fourteene yeares old & is now 22 & vpwardes. neither since hath had or hath any sicknes or impediment to hinder him but that he might haue had copulation of a woman saueing in the tyme of his sickenes of the small pockes, for to or 3 yeares after the said marriage which continued for a month or six weekes & at another tyme, when he had a few fitts of an ague;/

To the 4 he affirmeth that for one yeare he diuerse tymes attempted, that the 2 other yeares he did lye in bed most com[m]only w[i]th her but felt noe motion or p[ro]uocation, & therefore attempted the first yeare when he was willing she showed her selfe sometymes willing but other tymes refused./

To the 5 he answereth that he neuer carnally knew her, but found not any defect at all in himselfe, yet was not able to penetrat into her womb nor enioy her./

To the 6 he beleueth that before & after marriage, he hath found an ability of body to know any other women, & hath often tymes felt motions & prouocations of the flesh tending to carnall copulation, but for perpetuall & naturall impediment he knoweth not what the wordes meaneth, but that he hath layne by the lady Frances to or 3 yeares last past & had noe motion to know her & he beleueth he neuer shall./

To the 7 he beleueth not that the said lady Frances is a woman apt & fitt for carnall copulation because he hath not found it./

To the 8 & 9 he beleueth them both to be true & thinketh

that once.

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that once before. some wittnesses of credit he did speake to this purpose that he oftentimes had endeauored carnally to know her but that he did not nor could not./

The Arch B[isho]p speech to his Ma[jes]tie./

In asmuch as we firmly beleue that the scripture directly or by consequence doth conteyne in it sufficient matter to deside all controuersies especially in things apperteyning to the church & that marriage amongst christians can be no lesse accompted then a sacred thinge as being instituted by god himsele in paradise, honoured by the pr[e]sence of o[u]r sauio[u]r himselfe declared by St Paul to be a signe of the spirituall coniunction betweene Christ & his church./

I would be glad to know by what text or scripture, either by the old or new Testament a man may haue a warrant to make anullitie for a marriage solely celebrated, *propter maleficium versus hanc.*/

The like demaund touching auntient counsells either generall or prouinciall & concerning storyes ecclesiasticall, whether any such matter be to be found in them./

If for ought that appeareth neuer mention was made of this untill *Hircanus Rhemisis Ep[iscop]us*, who liued 400 yeares after Christ, it may welbe conceavid that this was a concomitant of darkenes & popish superstition which about that tyme grew to soe great a height & god permitting them, that punishment might fall uppon the children of unbeleife./

But since the light of the gospell is now in soe great a measure broken forth againe, why should not I hope that those who haue embraced the ghospell shold be free from this *maleficium*? especially since amongst a million of men in our age there is not one found who is clearly & euidently knowne to be trobled with the same & if there should be any which should seeme to be molested, we are taught to vse 2 remedyes the one spirituall phisicke & the other corporall./

For the./

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For the first o[u] Sauio[u]r said *hoc genus demoniorum non eicitur nisi per orationem ete ieiunium.* & St Peter speaking of the diuell *cui resistite firmi in fide* & the canonists themselues prescribe, almes, fasting & prayer to be vsed in that case, but that they ioyne supplications and their exorcismes thereunto, & for corporall medicine to be applyed therewith as against a disease, so is the iudgement of our late deuines whether they speake of maleficium or not./

Now admitt the Earle of Essex might be imagined to be trobled with *maleficium uersus hanc* I demaund what almes hath been giuen? what fasting hath been vsed? & what prayers hath been powred forth to appease the wrath of god towards him or his wife? or what phisicke hath been taken or medicine hath been applyed for 3 yeares together? not one of these things, but the first hearing must be to pronounce a nullitie in the marriage of which declaration we know the begining, but noe mortall mans witt can foresee the ende either in his p[er]son or in the'xample./

Then the Arch B[isho]p for confirmation of his opinion showed the testimonye of Beza Melancthon Perillus Hemingus Pollanus Ferritorius & Ganius./

The kings answeare./

To the first article that the scripture doth derectly eont or by consequence conteyne in it sufficient matter to deside all controuersies in poynts of faith & saluation that I confesse for the Orthodoxe proposition is that the scripture doth directly or by consequence conteyne in it sufficient matter to deside all controuersies in poynts of faith & saluation of which sort

annullitye in mariage cannot be accompted for one & therefore your consequence vpon the former proposition must fayle, for you say that the scripture doth directly or by consequence conteyne sufficient matter to disside all controuersies especially

in things./

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in things apperteyning to the church. this in myne opinion is proposits & one of the Puritans arguments w[i]thout a better distinction or explanations.

For further satisfaction to your following question I say your one to questions doth answer it. for if there be a warrant in scripture for pronouncing of annullity *propter frigiditatem* then all the meanes which may make him, *frigidus versus hanc* must be comprehended therein. for why doth our church iustly condemne as incestuous the mariag of man with his sisters daughter. or the mariag of 2 sisters but *aparitate rationis* for if it be not lawfull to marry your fathers wife because thereby you discover your fathers shame nor his sister because she is his kinswoman nor your owne sister because thereby you discover your father and mothers shame it can be noe more lawfull to marry your sisters daughter for thereby also you discover you owne shame as also the same reason serues for asending or desending in poynts of consanguinity *quia par est ratio* the like is this cause for although Christ speakes only of three sorts of Eunuches yet *ratio est quia non potest copula inter Eunuchum et mulierem* & therefore St Paule in the first of the Corinthians 7 Chapter telleth vs clearly it is noe *coningium sine copula* I conclude therefore *aparitate rationis* that Christ did Comprehend vnder those 3 sorts of Eunuches all in ability which doth perpetually hinder copulation *versus hanc* whether it were naturall or accidentall for what difference is there betweene cutting the hand of & beinge made impotent therefore amputation *et mutilacio membri* is all one in the ciuell law & it is a like

defrauding of

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defrauding of the woman when he who is to be her husband is either guelded when the use of that member towards her is by any vnlawfull meanes taken from him neither is it any way needfull to craue the perticuler warrant of annullitye *propter maleficium* out of the scriptures noe more then it is for there warrant in that place for any annullitye at all. for christ doth not directly say that a marriage soe made shalbe nullified. neither doth he teach us what forms of processe shold be vsed in it neither makes hee mention of a trienniall probation no more then the forbidden marriage in the 4 degrees without leaue of the B[isho]p of the diocesse, it is then sufficient for all moderate christians to be taught out of the word that marriage is *nulla sine copula* & that word *quod deus conmixit* is neuer in the scriptures where *erunt enion in carna vna* doth not proceede. vitz they shalbe but one flesh. but whether the impediment bee vniuersall, or *versus hanc* only or whether the fault hath been borne with him or done to him by violence or fallen to him by disease or by disproportion or ineptitude betweene the parties or by unlawfull & vnnaturall practises it is euer *par ratio* he is *Eunuchus versus hanc* neither doth it matter whether he bee *Eunuchus versus alias* seeing to her only he was married then *paritate rationis* such nullityes are grounded vpon the former warrant of scripture. neither had Christ any occasion to speake then to the Iewes concerning *maleficium* for although it be apparent that god made king Abilmilech & his family vnable to abuse Sarah Abrahams wife & was made by god *Eunuchus versus hanc* & that it be not improbable that the diue{1} who

is gods ape should imitate gods workes by his filthy witchcraft by making such as god will permitt him unable *versus hanc*, yet it was long after that tyme before the diuell put that tricke in practise and vse vppon the earth./

As for the 3 & 4 questions, what mension the fathers & councellors

make of

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make of maleficiu[m] I answer if they be well searched either there is some things to this purpose in them or at least *aliquid anologon* with a *partitate rationis* or by consequence may serue to decide this question: but leauinge this to search my mayne answer is that we must distinguish of tymes for in the first age as long as persecution lay heauy vpon the church and before that the Empyre became Christian the church did not meddle with questions of marriage for the ciuell Iudges determined them who would not suffer the church to medle with any thing that drew a consequence after it of possession & inheritance as marriage doth. nay euen diuers hundred yeares after the conuersion of the emperor the iudgement & descission of all such questions did still remayne *in foro ciuili*. till the Popedum began to wax great & assume or rather vsurpe to her selfe a supreme & independent iudicature in all ecclesiasticall causes. & therefore the fathers & councellors had noe occasion to make mension of that which was not *eorum fore* at that tyme. & besides it is auill argument to say such a thing is unlawfull because the fathers & councellors make noe mention of it: for you know much better then I that diuers & many poynts betwixt the Papists & vs are neuer mentioned in the fathers because they would neuer haue dreamed that such questions would arise & therefore the fathers were only exact in such questions as were agitated and vsed vpon the staige in there tymes as *de trinitate et duabus in Christo naturis* and such like. it is therefore sufficient that there can be found nothing in them w[hi]ch may iustly be understood to contradict this opinion and it is uery probable as I sayd before that this tricke of maleficium had not been put in practise in the world and therefore not knowne to be mentioned by them for why may not the diuill as well finde out new trickes of witchcraft when god will permitt him as he doth dailye new sorts of heresydes for his malice can neuer end vntill the end of tymes./

The fift argument my former answere doth also serue for till the nine hundred yeares of god it may be that diuillish trickes came neuer to be discouered and you know the old prouerbe *ex malis moribus bona legis* and it is not unlikely that that tymes of darkenes gaue the diuell occasion of deuising such new tricks. looke my demonoligye and yet was that law for which you cite *hinc manis Rhemesis Ep[iscop]us* made by Charles the great

who in

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who in many ^{greate} poynts as you know had soe greate light as I doe scarcely terme his tyme a tyme of dar blindenes but how great so euer and palpable that darknes was in poynts of superstition I will still maintayne it as I haue euer done that for matter of order and pollicy all the world shall neuer be able to finde out any other soe good and old order of gouernement to be put in the place of it in signe whereof there is noe well gouern'd com[m]onwealth in the christian world where the com[m]on law is not receaued to iudge in questions of that nature and it is certaine that this question now in hand is only a question of order and pollicy, for the

ground of this question that the essentiall poynt of matrimony cannot be accomplished *sine copula* is warranted by expresse scripture and confessed by your self./

To the 6 argument or rather hope I feare that hope will proue contrary to faith for as sure as god is there are diuells and diuells must haue some power and their power is in this world for Sathan is the prince of darkenes neither are the elect exempted from his power. Iob was nott, St Paule was not, Christ sayth to all his disciples *crobrauit uos Satanus* and if the diuell haue any power ouer the'lect it is ouer their fleshlyist and most sinfull part their or where unto originall sinn is soe tyed as god before and vnder the law to show the difficultie of purefying mans originall sinn caused the Amputation of the foreskinn of that member and exempte this of our proffession from the power of witchcrafte it is a paradox euer yet maintaine of any learned or wise man that the diuells power is not vniuersall amongst vs, that I freelye confesse but that it is vtterly restrayned *quo ad nos* how was then a Minister of Geneua bewitched to death and how are the witches dayly punished by our law surely they can harme none. but the Papish

were too

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were too charitable to labor so for auenging of them only Satan is permitted to punish man aswell for the breach of the second as first table and therefore we are noe lesse guilty then papists are and if the powre of witchcraft may reach to our liues much more to a member so governed by the fancy wherin the diuell hath his principall operation and he may soe estrainge the husbands affection from his wife as that he cannot bee able to performe that duty vnto her. for it is a com[m]on thinge in many mans natures that they cannot doe that act but where they loue nor fight but where they are angry god keepe vs therefore from puttinge the tryall of our proffessions vpon miracles loe the miracle mongers liue by their owne trade./

To the 7th argument touching the remedies, what doe you know whether both parties or either of them haue vsed both these remedies or not, and that those spetiall remedies should be vsed publicquely of them I can see noe necessitye for *non interest reipub[lica] nee ecclesia.* and priuat persons are com[m]anded to vse their fastings and almes secretly and in priuate besides noe such cure is like to succeed well except the parties one heart and desire be sett vpon it: and as for your conclusion vpon the incomodity either vpon his person or the'xsample I can see none in either for as to this couple betweene whome marriage was neuer truly accomplished they will both of them peradventure by the declaration of this nullity be capeable to accomplish marriage with others wherein they may liue to the satisfaction of their hearts and enjoy the blessing of procreation of children and to the example the law shalbe fulfilled with due administration of Iustice which cannot serue for any example or presidente of

nullities

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nullities hereafter for *Notorietus facti*, or rather *non facti* in this case ^{is} *luce clarior* besides the many legall probations & confessions of both parties which haue been taken in this processe whereas one the contrary if they shalbe forcibly kept together their names & shaddowes may be kept together but neuer their p[er]sons or affections & they shalbe forced to liue in perpetuall misery & scandall or both & what such forced continencye can auoyde the

Monk continency can teach vs & for a president in tyme to come it can reach noe further then to open a way of lawfull releife for such parties as shall chaunce to be distressed in this sort: & as your extract of your late deuines opinions vpon this question I confesse I cannot guesse what your intent was by sending them vnto me for they all agree in termes with my opinion but that there is such a thinge all maleficiats versus hanc & your very interlyned passages proue it clearlyest & for their aduice concerning the remedies that it is *consillium non ius nec decretum* not imposing a necessity but it is to be vsed by discretion as occasion shall serue to require it: &. as for the legall doubts of formality they concerne none of your callinge. if your conscience bee resolved in poynte of deuinity it is your part to giue your consent to the nullitye & let the Loyers take the burthen in making it formall: & as for the tryenniall probation I hope noe man can be soe blynded as to make a doubt whether it be taken afore or after the suit began & in conclusion our deuines solution of this question proues clearly that this resolution vpon this doubt howeuer it was in blindenes (as you thinke) yet it is now approued in tyme of greatest light & purity of the profession of the ghospell./

To conclude then if this may satisfie your doubts I will ende with our Sauiors wordes to St Peter *et cum conuersus fueris confirma fratres tuos* for one my conscience all the doubts I haue yet seene made in this busines are nothing but nodum in scyrpo querere./

The oath

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The oath taken by the Lady Frances Howard

That since the Earle of Essex was eighteen yeares of age he & I for the space of three yeares haue diuerse & sundry tymes lye together in naked bed all night & at sundry o~~ther~~ of the said tymes the said Earle hath endeauored to accomplish to consumat mariage with me & to haue carnall copulation with me for the procreation of children & at such tymes as the said Earle hath attempted me so to doe yeelded my selfe willinge to the said purpose all which notwithstandinge I say & affirme vpon my oath that the said Earle had neuer carnall copulation with me. Frances Howard./

The arraignment of Rich[ard] Weston at Yeeldhall in London the 19th of October 1615 concerning S[i]r Tho[mas] Ouerbury who was poysoned in the Tower of London.

The Com[m]issioners being sett who were the lo[rd] cheife Iustice of England the lo[rd] Maior Iudge Crook Iudge Doderidge Iudge Howton Sariant Randall Crew the Recorder & others the comission was read & the iury of the Graine. In list weare called & sworne./

Then the Lo[rd] Chiefe Iustice gaue the Chardge to the iury wherein he most of all insisted vpon the poynte of murder & poysoning the hainousnes of that cryme and of the vengeance & iustice of god in punishing the offenders he alleaged the first of Genises verse the 6 he also tooke occasion to repeate the murder of Vrias by David and therein obserued how adultery is most often the begining of that sinn. then he declared how of all fellonyes murther was the most detestable and of all murders poysoninge is the most horriblest and of all poysoninge the languering poyson: he showed by an acte of Parliament made in the 22th of

Henry the 8.

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Henry the 8 chapt[er] the 9th it was made high treason and that wisefull poysonings should be boyled to death rehearsing for example the death of one Richard Rowse that he had poisoned a man & a woman & was thefore scalded to death. thence layd open the basenesse & cowardlynes of poysoners who attempted that secretly agaynst which there is noe meanes of preuention or defence of a man self also how rare a thinge it was in o[u]r nation but since the diuell hath taught diuers to be very cunning in it so that they can in what space soeuer or distance of tyme they please by consuming in a month or two or three or more at the least they haue fower manner of wayes vizt first gustu secund astu third odore forth concastu he finished his charge with a serious exhortation to the iury to doe iustice in presenting the truth notw[i]thstanding the greatnes of any p[er]son that vpon their evidence should appeare to them to be guilty of the same offence comforting both iudge & iury with scriptures in the psalme for thou o lord wilt blesse the righteous w[i]th fauor wilt thou comfort him as w[i]th a sheild./

Then the charge being ended the iury w[i]thdrew themselues into a priuate roome where they receaued their evidence from Mr Fanshaw his Ma[jes]t[y]'s Orowner & his Ma[jes]ties Counsell prepared & instituted for that purpose with examinac[i]ons & confessions aswell of the prisoner himselfe as of diu[er]se other witnesses before that tyme taken before the lord cheife Iustice of England & others his Ma[jes]ties Counsell. in the meane tyme the Sheriffe of London Mr William Gore was com[m]aunded to fetch his prisoner remayning at his howse to be ready in Court for the Arraignement so a certein tyme after the Graun iury returned to the lords & deliuered in the bill of Inditement signed billa vera where vpon the prisoner was sett vp to the barr & the inditement read by Mr Fanshaw which inditement conteyned in effect that Weston not hauing the feare of god before his eyes but instigated and

seduced by

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seduced by the diuell deuising & consulting not only to bring vpon the body of S[i]r Thomas Ouerbury great sicknes & diseases but also to depriue him of life to bring this to passe vpon the Ninth of May in the 11th yeare of his Ma[jes]ties reyne at the towre of London did obteyne & get into his handes a certeyne poyson of green & yellow color called roseacre knowing the same to be deadly poyson & the same he did maliciously & feloniously mingle & compound the same with a kinde of broath powred into a dish & the same broth so infected & poysoned did giue vnto the said S[i]r Tho[mas] as wholsom good broath to the intent to kill & poyson the said S[i]r Thomas which broath he tooke & eate also the said Weston vpon the first of Iuly in the eleauenth yeare aforesaid did in like manner get another poyson or poysoned powder called arsnicke & knowing the same to be deadly poyson did giue it vnto the said S[i]r Thomas as good medicineable powder to eate who in like manner did eate the same also the said Weston vpon the tenth of Iuly did gett another poyson called Mercu^ry sollinate knowing the same to be mortall poyson & did put the same into tarts to eate who in like manner did take the tarts & eate them & also the said Weston & another man vnknowne being Apothecaryes afterwards vpon the fourteenth of September following did gett a certeyne poyson called Mercury sollinnet knowing the same to be mortall poyson did put the same into a glister & the said glister mingled with the said poyson the said Apothecary for a reward of 20 pounds promised to him did put & minister it as good & wholsome into the gutts of the said S[i]r Thomas & that Weston was pr[e]sent with the same Apothecary & that imediatly after as well the taking & eating poysoned meats as ministring the said glister

the said S[i]r Thomas did languish into diseases & distempers & from the afore-said tyme of taking & eating the said poyson & glister did languish vntill the fifteenth of September following vpon which he Dyed. so the iury gaue vp there verditt that Weston in this manner had kild

poysoned

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poysoned & murdered S[i]r Thomas Ouerbury against the kings Maiestyes peace crowne & dignitie./

Which indictment being read he was comaunded to speake whether he were guilty of the same felony murder & poysonin{g} aforesaid ye or noe, to the which he answered lord haue mercy on me, but being demaunded againe he answered not guilty being demaunded how he would be tryed he answered he would referr himselfe to god. & would be tryed by god refusing to put himselfe & his cause vpon the iury or cuntry according to the law & custome, then the lord cheife Iustice declared vnto him the dainger he ran into by refusing his ordinary course of tryall being the meanes ordeyned by god for his deliuerance if he were innocent & how by that meanes he should make himselfe the authour of his one death euen as he should with a knife or dagger slay or kill himselfe exhorting him very earnestly either with repentance to confesse his faults or els in all humility submitt himselfe to his ordinary tryall whereunto he stubberly answered welcome by the grace of god & referred himselfe to god but utterly refused his cuntry wherevpon after seuerall perswasions & exhortations made vnto him by Iudge Croke Iudge Doderidge Iudge Hawton Mr Recorder & Seriant Crew nothing auayling with him the lord cheife Iustice plainly declared his opinion that he was perswaded that Weston had been delt w[i]thall by some great ones guilty of the same fact accessory to stand free whereby they might escape punishment & therefore was resolued & comaunded for satisfacc[i]on of the world the queenes Attorney their present should declare & sett forth the whole euidence without any parciality And yet notw[i]thstanding he once more vsed much perswasions to the prisoner to consider the dainger he brought himselfe to by this contempt & declared to him how great his said offence was of contempt in refusing his triall & how the lawes of the land had prouided a more seuerer punishment to such offenders then vnto those who were guilty of high treason & so the lord cheife Iustice repeated the same

Iudgement

17v

Iudgement giuen against such the rigour whereof he expressed in three wordes vizt onore rigore, famæ for the first that he who was to receaue the punishment was by the law to be extended and stretched out at length & to haue a stone under the ridge bone of his backe and then to haue a weight layd vpon him noe more then he was able to bare which were by little & little increased. for the second that he was to be exposed in some one place next to the prisone in the cold ayre being naked & for the bread which he was to be fed w[i]thall the coursest which was to be gotten & the water of the next sinke to the place of execuc[i]on & that day he had bread he was to haue noe water & that day he had water he was to haue no bread, & in this torment he was to linger till nature could possible hould out soe that they liued in this extremity eight or nine dayes & so he required [th]e prisoner vpon due considerac[i]on of these reasons to aduise himselfe & to plead to the contrary who notw[i]thstanding obstinately refused. whereupon the queenes Attorney at the

com[m]andment of the lord cheife Iustice p[ro]ceeded to the opening & setting forth of the euidence against the prisoner, & hauing for his entrance into the case repeated the effect of the bill of Indictement formed by the grand inquest he showed that not only this Weston but diuers others were guilty of this murder wherefore he declared that S[i]r Thomas Ouerbury being a gent of good discent some tymes student of the middle temple a man of exceeding seuerall & uertuous conuersac[i]on after his retourne from trauaile he was uery famlier w[i]th a great lord whom saith he I must needes name the lord of Sum[m]erset vnto whom he gaue honest & good counsell finding him lusting after a lady not his wife but the Earle of Essex for which he often aduised and reprobued priuatly putting in his minde the fauors & honors his Ma[jes]tie had bestowed vpon him all w[hi]ch by this meanes should be hated & disgraced. Which good counsell & other speeches which he vsed to dissuade the said Sum[m]erset from the company of the lady of Essex & calling her uile & base woman stirred vp the anger & displeasure of Somersett & also the extreme malice of the Countesse whom Somersett had acquainted therew[i]th & here Mr Attorney obserued her frightfull malice being the malice of a woman how still it increaseth more & more

then they

18r

then they whow to atteine there weke desire the better there must be a deuorse of marriage betweene the lord of Essex and the Countesse and soe a marriage w[i]th somersett to make the lust lawfull to which S[i]r Thomas was a great rubb Somerse{t} also declared how his Ma[jes]tie vpon the knowledge of the worthy discretion of S[i]r Thomas Ouerbury intended to pr[e]ferre him in Ambassage whom Somersett secretly delt w[i]thall to w[i]thstand the direcc[i]ons of the king and lords of the Councell, ashuring him that if he were com[m]itted yet he would bare him out & how for his contempt he was com[m]itted to the towre the 21th of Aprill 1615 S[i]r William Wade being then Liuetenant & yet w[i]thin short space after w[hi]ch was the sixt of may 1615 S[i]r William Wade was remoued & S[i]r Iaruis Heluish was put in his place then the uery next day after Weston S[i]r Thomas his mortall enemy was pr[e]ferred by the meanes of the Countes to serue the Liuetenant & was made the keep[er] of S[i]r Thomas & heere he layes open the basse condic[i]on of Weston as being a Pander & how he was the carryer of l[ett]res betweene the Countesse & Somersett whereby diuers meetings were appoynted at Mrs Turners howse at Hamersmith & other places & that S[i]r Thomas Maunson was the man w[i]th whom the lady delt to be a meanes to place Weston in the towre then he did declare how the Countesse did perswade Weston to giue to S[i]r Thomas a certeyne water for the w[hi]ch he should haue a greate rewarde & that accordingly the Countesse deliuered the water to Weston his sonne a boy that serued a haberdasher in a little glasse w[hi]ch he deliuered to his father this Weston in the towre & that Weston showed the water to teh Liuetenant & asked him if he should giue it him & the next day Weston confessed to Mrs Turner he had giuen him the water & that it made him very sicke & caused him to vomitt demanding his reward but had none. then also that the lord of Somersett sent him a letter w[i]th certein powder wishing him to eate it & feare nothing although it made him sicke for his being sick should be a ground to moue the king for his deliuerance & thus he declared the matter of indictement & diuers circumstances vntill the Death of S[i]r Tho[mas] where he obserued the excellent constituc[i]on of his body when he liued & clearnes of skine

& w[i]th

18v

and w[i]th what strange blisters & botches it was fild after his death also he sayd that the customes of any prisoner dying in the tower his body is to be ueiwd & an Inquisic[i]on to be taken by the Crowner. but that S[i]r Tho[mas] ouerburyes freinds and others might by no meanes be suffered to see his body and although it was reported there was an Inquisition taken but could by noe meanes be found he tould also how dishonorably they buried him and gaue it out he died of the pox. after Mr Attorney had ended his speech Mr Ware also of the counsell for the kinge declared the familiarity that he had w[i]th S[i]r Tho[mas] both of the temple much com[m]ending his singuler honesty and vertuous conuersation affirming he was addicted to no dishonest actions and from this he proceeded soe vizt his hard vsage in the tower when he might haue noe company but the Apothecary and a villaine he spake of diuerse cakes pr[e]pared by the Countesse & sent S[i]r Thomas in the Earle of Sumersets name with other circumstances. Then by com[m]andement of the Courte was read by Mr Fanshaw the seuerall examinac[i]ons of diuerss wittnesses taken before the lord cheife Iustice and others which in effect was as followeth./

Lawrence Daus seruant to S[i]r Tho[mas] examined 13th of October 1615 corum Cook et Crew.

He sayth he serued S[i]r Tho[mas] Ouerbury 8 or 9 yeares in all which tyme he was uery healthfull and neuer kept his bead for any sickenes only sometymes trobled w[i]th the spleene for ease thereof he had by the aduice of his doctors an issue made in his left arme but before his imprisonment he had noe sores nor blisters or other diseases in all his body and yt S[i]r Tho[mas] would haue gon one the Embassage but he was disswaded by Somersett who promised to bare him out: he complayned he neede not be in prison if Somerset would and that if he dyed his blood would be required at his handes that Somersett was as good as his word hauing told him at Newmarkett he would be euen w[i]th him./

The examinac[i]on of Henry Panten an other seruant of S[i]r Thomas examined

the 15

19r

the 15th of October 1615./

He affirmeth that S[i]r Tho[mas] was a man of an excellent constitution that he vsed sometymes to run and play at poyles and such like that he was of a moderate dyett neuer had any sore sauing the said issue in his arme and that S[i]r Thomas wrote letters to Somersett singnifieng that he need not to be in prison if Somersett would and if he dyed there his blood should be requyred at his handes. that S[i]r Tho[mas] meeting Somersett at one of the clocke at night vpon the gallery at Whitehall had speeches with him about the countesse whom he called base woman and told him he would ouerthrow all the kings fauo[u]rs and hono[u]rs and vpon displeasures betweene them at this conference S[i]r Tho[mas] desired that he might haue his pencion & he would shift for himselfe whereunto Somersett replyed and if my leggs were strong enough to carr{y} me and so flung away in anger all which this examine heard being in a chamber in the gallery then S[i]r Dudley Diggs being pr[e]sent in Courte and sworne declared *uiua uoce* that he was sent by a priuy Councill{or} a great man to S[i]r Tho[mas] to bring him to this greate man which he did and com[m]ing back ouer the water S[i]r Tho[mas] much discontented the reason whereof he sayd was that he was perswaded by that great man to w[i]thdraw himselfe from the Courte for some reasons which he disclosed not and that S[i]r Dudley afterwards being sent by the lords of the Councill to know the

resolution of S[i]r Tho[mas] touching the ambassage he found him to relye vpon Somersett to be excused. therefore. saying my pretious cheife knowes the kings mynde better then any one and I the mynde of my pretious cheife

The examinac[i]on of Rich[ard] Weston prisoner taken the 6th of October 1615 coram Cooke et Crew.

He confesseth before S[i]r Tho[mas] was prisoner in the tower he this examine carried three letters from Somerset

to the lady

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for the lady of essex to Roystone Newmarkett and Hampton Courte and deliuered them to Mrs Turner and that vpon the letter to Hampton Courte he had answer by word of mouth only that the lord would come and com[m]ing backe the same way in a coatch met the Countesse and Mrs Turner whom he told that his lo[rd] answered so whereuppon the countesse strooke out of the way to a farmers howse hard by whether within short space Somersett came and that afterwards in the night they mett at Mrs Turners howse in Paternoster Rowe he confesseth that of one yeare before S[i]r Tho[mas] imprisonment none carryed letters but he./

S[i]r Tho[mas] Mounson examined the 15 of Octobe coram Cooke et Crew./

He sayth he knew not Weston vntil S[i]r Tho[mas] was prisoner in the tower and that he preferd him to the Liuetenant to be the keep[er] of S[i]r Tho[mas] at the request of the Countesse of Essex and denyed that euer Mrs Turner spake with him./

Ann Turner examined the 1 of October cor[am] Cooke et Crew./

Shee sayth that Weston was her auncient seruant and her husbands Bayliffe in the Cuntry she denyed to haue any thing to doe in placeing of Weston in the tower but sayth the Countesse of Somersett did effect it when she was Essexs wife and vsed the helpe of S[i]r Tho[mas] Mounson./

S[i]r Jaruis Helwish examined the 30st October coram Cooke & Crew./

He sayth he had a letter from S[i]r Tho[mas] Mounson requesting him that Weston might be keeper of S[i]r Tho[mas] Ouerbury and that he did p[er]forme it afterwards hauing conference with S[i]r Tho[mas] Munson S[i]r Tho[mas] tould him that his keeper was not to suffer any letter or token or other thing to be deliuered him./

Richard Weston.

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Richard Weston againe examined./

He confesseth he showed the glasse which was deliuered him by his sonne from the Countesse to the Liuetennante and told him it came from the countesse of Essex and that he perswaded him not to giue it to S[i]r Tho[mas] also he sayth that he had diuerse tarts from the Countesse to giue unto S[i]r Tho[mas] with com[m]aundement that himselfe should not taste of them and confesseth that he thinketh they were poysoned he sayth Mrs Turner appoynted him to come to White hall to the Countesse and that they delt w[i]th him to giue

S[i]r Tho[mas] a water and bad him he should not drinke thereof and was promised a great reward and he suspected it was poyson his sonne afterward deliuered the glasse w[hi]ch he showed the liuetennaunt who rebuked him and so he sett the glasse in a study by S[i]r Tho[mas] but gaue it him not althoug{h} he had tould Mrs Turner he had giuen the water which made S[i]r Tho[mas] uomitt often and be exceeding sicke he sayth Mr Iames and Mr Rawlings seruants to the Countesse came often to know of his easment how S[i]r Tho[mas] did and what he did eate and that they deliuered him diuerse tymes tarts and iellyes which he gaue to S[i]r Tho[mas] who did eate thereof he sayth he demaunded his reward of Mrs Turner who answered he was to haue none vntill S[i]r Tho[mas] was deade and that he was promised a purseuants place and confesseth that after wardes at to seuerall tymes he receaued secretly after the death of S[i]r Tho[mas] of Mrs Turner from the Countesse for a rewarde 180ld./

Will[iam] Weston the sonne of the Prisoner examined coram Cooke et Crew./

He confesseth he receaued a glasse from the Countesse by her seruant 2 ynches longe being wrapped in a paper which he deliuered to his Father in the tower./

Then was read the confession of the Liuetenant to the kinge yt he mett with Weston carrying S[i]r Tho[mas] his supper in one hand and a glasse in the other and demaunded of him thus S[i]r shall I giue it him now whereat the Liuetenant stopt & asked what

to which Weston

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too which Weston sayd know you not what is to be done and soe the Liuetenant hauing made him to confesse the matter diswaded him and he seemed to be resolued not to doe it and afterwards this Weston confessed to the Liuetenant that an apothecary had 20ld for ministring a glister to S[i]r Tho[mas]/

Weston before the Lo[rd] Souch.

He confesseth that S[i]r Tho[mas] had a glister which gaue him foure stooles and vomits also being found w[i]th the wrightings of S[i]r Iaruis Heluish and charged therewith confesseth the same to be true./

Symon Marston musitian examined.

He sayth he serued S[i]r Tho[mas] Mounson 6 yeares past and is by him preferd to the kings seruice, but waiteth sometymes on S[i]r Tho[mas] Mounson. he sayth he carryed diuers tarts and Iellies from the Countesse of Essex to the Liuetenant of the tower to be deliuered to S[i]r Tho[mas] Ouerbury./

Paule Delable an apothecary ex[amined] cora[m] Cook et Crew.

He sayth the 3d of Iuly he made S[i]r Tho[mas] a broath by d[octo]r Mayhernes aduice to coole his body, and that he saw his body was fayre and exceeding cleare and he saw his body being deade which was full of yellow blisters, and so consum'd away that he neuer saw the like body./

Gyles Rawling ex[amined] who was kinsman to S[i]r Tho[mas] Ouerbury./

He sayth that vppon the bruite of the murther of S[i]r Tho[mas] being taxed by some why he made no petition to the kinge that [th]e examinac[i]on of the cause might be referd to the Iudges of the law & denieth that he was perswaded by any to the contrary he sayth that he

com[m]inge oftentimes to the tower to see S[i]r Tho[mas] he could not be permitted to see him so much as at a window & Weston told it was the com[m]andment of the counsell & of the Liuetenant./

The Liuetenant ex[amined][th]e 2d of october 1615 coram cooke et Crew./

He sayth that after the death of S[i]r Tho[mas] Weston came to him and tould him that he was much neglected and slighted by the Countesse and could gett noe reward but afterwards he confesseth he receaued a 100ld and should receau more the Liuetenant also sayd that S[i]r Tho[mas] was uery angry w[i]th his

apothecary.

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apothecary at certeine vomits which he had and alsoe that the tarts and iellys would be furred with in a day or two standing and that nobod{y} eate of them but S[i]r Tho[mas] and Weston confessed to him that the apothocary 20ld for giuing the glister./

These examinac[i]ons being read and applyed to their purpose the lord cheife Iustice sayd he would discharge his duty first to god almighty in giuing him all glory for reuealing and bringi{ng} to light of so horrible & wicked a fault and next to his greate Master which in chardge of the like nature as in the cause of Sancker and Turner soe especially in this had giuen straight charge of a due and iust examinac[i]on to be had w[i]thout any manner of parcialtye or feare in the world to the intent as well the innocent might be freed as the guilty seuearly punished and for this purpose his Ma[jes]tie hath w[i]th his owne hand written to sheets of paper on both sydes conteyning interogatiues to be ministred to Diuers partyes which were to be examined which Interogatiues the lord Cooke showed the lord Maior and the rest of the Comissioners and when he had showed the kings Iustice who alleaged the many fauours and honors which the king had bestowed vpon the Earle of Somersett and his neernes to his Ma[jes]tie by reason of his office yet hath com[m]itted him prisoner to the tower and also hath com[m]itted his lady to safe keeping and so hauing last of all demaunded of the prisoner if he would be tryed by his Cuntry which he refused the court was returned till Munday next following in the after noone at too of the clock./

Other manuscript witnesses

- All Souls College, MS 117, f. 149r
- British Library, Additional MS 29587, ff. 6r–9v
- British Library, Cotton MS Titus C VII, ff. 99r–104v
- British Library, Harley MS 6356, ff. 90x–112x
- British Library, Harley MS 6447, ff. 1r–15v
- British Library, Sloane MS 1002, ff. 1r–13r
- British Library, Sloane MS 1819, ff. 1x–8x
- British Library, Sloane MS 1856, ff. 47x–50x
- British Library, Sloane MS 2531, ff. 141r–149v
- Beinecke Library, Osborn fb40, ff. 433x–493x
- Bodleian Library, MS Ballard 56
- Harvard Law School, MS 1227
- Harvard Law School, MS 67, ff. 3r–22x
- Huntington Library, HM 1553, ff. 1x–17x
- Huntington Library, Hastings Legal Papers Box 1, Item 16

Manuscript Pamphleteering in Early Stuart England

- Lincoln's Inn, Maynard MS 59, ff. 154r–163v
- Senate House, University of London, MS 313
- UCL, Ogden MS 7/42
- UT Austin MS, BL Microfilm 751 Phillips MS 12341, pp123–204

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<https://mpese.ac.uk/t/ProceedingsDivorceHowardEssex.html>