VI.—*Review of the evidence respecting the conduct of King James I. in the case of Sir Thomas Overbury: by JAMES SPEDDING, Esq. M.A. in a letter to C. Knight Watson, Esq. M.A. Secretary.*

(Read March 1st, 1866.)

MY DEAR WATSON,

The document which has recently been discovered by James More Molyneux, Esq. F.S.A. amongst the extensive collection of manuscripts at Loseley, containing a complete and authentic report of a message sent by King James I. to the Earl of Somerset on the 29th of December, 1615, is a valuable addition to the four letters printed in the *Archæologia*,* nearly fifty years ago, from the autographs in the same collection. Those letters were written to Sir George More, between the 9th and 24th of May, 1616, just before the trial; and there is another at Lambeth (not an autograph, but I suppose a true copy) addressed to Somerset himself in the preceding October, just before the committal. This new document gives us conclusive evidence as to the relation in which the King stood towards him in the middle stage of the proceedings, about half-way between those dates; and makes the history of it so clear and complete that no room is left for any further doubt about it. It appears therefore to be a fit occasion for collecting and reviewing the whole of the evidence bearing upon that point, of which we have now a great deal, when all is brought properly together; and of a kind too which is entitled not only to consideration but to precedence, as being better evidence than those who first told the story had access to, and such as they would themselves have preferred if they had had it. For it must be remembered that the writers of what passes for the secret history of James the First's reign were not acquainted with the true records of it. The real "secret history" is to be found in the official correspondence which passed in the course of business between those who transacted it; correspondence which they never saw, but which (or at least a great deal of it) we can see.

Instead, therefore, of taking the old story for a ground-work and trying to fit the new facts into it, I propose to approach the question the other way: to begin

* Vol. xviii. p. 313.

by setting aside for the time every fact which rests upon the report of writers whose information came from doubtful sources, and admitting those only about which there appears to be no doubt; to ascertain first what we can be said to *know* about it, and then consider what else we are to believe. In this, however, I shall confine myself to those parts of the proceeding in which the King was personally concerned. The evidence against the several persons charged with the murder of Sir Thomas Overbury was publicly set forth and brought to a judicial issue at the time, and this new paper throws no fresh light upon it. The evidence against the Earl of Somerset especially, was hunted out with the greatest diligence, studied and sifted with the greatest care, and set forth with the greatest skill and clearness; and though no official report of the trial was published, and the reports we have are all more or less defective and inaccurate, they are among the best of their kind, and probably the best that were made. It is not likely, therefore, that any new evidence will be discovered by which the aspect of his case, at it is seen in the State Trials, will be materially altered. Not so with regard to the charges against the King; charges not only not sifted by judicial process at the time, but not made or thought of till long after the time when any sifting was possible. Evidence materially affecting the aspect of these may turn up at any time, in any box or closet in which the secrets of those days have been placed for safety or found a resting place by chance.

Before I come to the particular case, it may be worth while to go back a little, for the purpose of exhibiting a piece of evidence which, although it has been accessible to all readers for the last twenty years, will probably be new to many, and the true bearing of which upon these questions does not appear to have been understood.

The discovery of the murder of Overbury happened to coincide in point of time, very nearly, with the appearance of a new favourite at Court. The rise of a new favourite was of course supposed to prelude the fall of the old; and when Somerset was seen to be called in question, for some cause not yet divulged, the inference of the Court of course was that the King was seeking a pretext for getting rid of him. And though the cause, as soon as it became known, amply explained and justified all that been done, and inconstancy in his personal attachments was not one of James's weaknesses, the hasty inference, having fallen upon ground so favourable, took root and grew; and is now a part of the story. It is of some consequence, therefore, to know how the case really stood in that respect; and it so happens that a letter from James to Somerset, written not many months

before, has been preserved, and enables us to answer the question. It was first printed in 1846 in Mr. Halliwell's 'Letters of the Kings of England,' from a manuscript at Lambeth Palace, which I have seen; a copy in an old hand, which appears to have come to that repository from some one who had guarded it as a secret treasure,—having been found (according to the docket) "in the black boxe signed with that seale w^{ch} Sir Tho. Maye brought." It has no date, nor any mention of the person to whom it was addressed. But of the person there can be no question; and incidental allusions to two several subjects, which are *both* known to have been fresh, prominent, and irritating in James's mind in January 1614-15,—*"Peacham's Book"* and *Raleigh's History*,—leave little room for doubt that it was written about that time or not long after. Though it is long, I must give it entire; partly because, when we want to know the state of a writer's feelings, extracts are seldom satisfactory, and partly because it is important enough to be worth preserving in a correct copy.

"First I tak God the searcher of all hairts to recorde that in all the time past of ydle talk I never knew, nor could out of anie observation of myne find anie appearance of anie such court faction as ye have apprehended; and so farre was I ever from overseeing or indirectlie feeding of it (if I had apprehendit it), as I protest to God I would have runne upon it with my feete, as upone fire, to have extinguished it, if I could have seene anie sparkle of it. As for your informations, ye dailie told me so many lyes of my self that waire reported unto you, as I confesse I gave the lesse credit to your reporters in other things, since ye could not be an eye wnesse of it yourself. Next I tak the same God to record that never man of anie degree did directlie or indirectlie lett fall unto me anie thing that might be interpreted for the lessening of your credit with me, or that one man should not rewle all, and that no man's dependance should be but upone the King, or anie suche lik phrase, quhiche if I had ever found, then would I have besturred my self as became both so great a king and so infinitelie loving a maister. Thirddie, as God shall save me, I mente not in the letter I wrotte unto you to be spairing in the least jote of uttering my affection towards you, as farre as yourself could requyre; my differing frome your forme in that pointe being onlie to follow my owne style, (w^{ch} I thought the comeliest); so as then having delivered my mynde as fullie to Maye as ye could have wished,—having wretten this letter,—having quyte turned my countenance from Grahme, the lyk whairof I never did to any man without a knowin offense,—I having receaved your nephew in my bedde chamber, the facon thair of being done in a needlesse braverie of the Queene, I did surelie exspect that the ydle talk would weare out lyk the Pope's

cursing (especiallie seeing my owne hairt knew it to be without a grownde). For I am farre from thinking of anie possibilitie of any man ever to come within many degrees of your truste with me, as I must ingenuously confesse ye have deserved more trust and confidence of me than ever man did,—in secrecie above all fleshe, in feeling and unpartiall respect, as well to my honour in everie degree as to my profite; and all this without respect ather to kinne or allye or your neerest or deerest freind quhatsoever, nay onmoveable in one haire that might concerne me against the quhole world; and in these points I confesse I never saw anie come towards your merite; I meane in the points of ane inwardlie trustye freind and servant. But as a peece of ground can not be so fertill but if ather by the owin naturall rankness or evill manuring thair of it become also fertill of strong and noysome weedes, it then proves uselesse and all together unprofitable, even so these before rehersit worthie and rare pairts and merites of yours have bene of long tyme, but especiallie of late, since this strange phrenesy took you, so poudred and mixed with strange streames of unquyetnes, passion, furie, and insolent pryde, and (quhich is worst of all) with a setled kind of indured obstinacie, as it choks and obscures all these excellent and good pairts that God hath bestowed upone you. For although I confesse the greatnesse of that trust and privacie betwix us will verie well allowe unto you an infinitelie great libertie and freedome of speeche unto me, yea even to rebuke me more sharpelie and bitterlie then ever my maister durst do, yet to invent a new art of railing upone me, nay to borrowe the tounge of the devill, in comparison quhair of all Peachem's book ^a is but a gentle admonition, that can not cumie within the compasse of anie libertie of freindship. And do not deceave your self with that conceat that I allowed you that sort of licencious freedome till of late. For as upon the one pairt it is trew yee never passed all limites thairin till of late, so upone the other I bore, God Almighty knowis, with these passions of yours of olde, dissembling my greif thairat, onlie in hope that tyme and experience wold reclame and abate that heat quhich I thought to weare you out of by a long suffering patience and manie gentle admonitions; but the circumstances joyned to the ^b maid them relish ten tymes worse to my taist then otherways they wold have done if they had onlie remained in puris naturalibus of passions. For first, being uttered at unseasonable houris and so bereaving me of my reste, ye was so

^a "There is now one Pecham, a minister of Somersetshire, in the Towre for that and a worse quarrell, having written seditious discourses under colour of petitions to the last parlement," &c. Chamberlain to Carleton, 5 Jan. 1614-5. (S.P.O.)

^b So MS.; a word has apparently been omitted: perhaps "same."

farre from condemning your owin indiscretion thairin, as be the contrarie it seemed ye did it of purpose to greive and vex me. Next, your fyrie boutades were coupled with a continuall doggit sullaine behaviour towards me; especiallie shortlie after my fall, though I gave you a farre contrarie prooffe after your fall, and in all the tymes of your other diseases. Thirdlie, in all your dealings with me ye have manie tymes uttered a kynd of distrust of the honestie of my freindship towards you. And fourthlie, quhich is worst of all, and worse then anie other thing that can be imagined, ye have in manie of your madde fitts done quhat ye can persuade^a me that ye meane not so muche to hold me by love heirafter as by awe, and that ye have me so farre in your reverence as that I darre not offende you or resiste your appetites. I leave out of this reckoning your long creeping bakke and withdrawing your self from lying in my chamber, notwithstanding my many hundreth tymes earniste solliciting you to the contraire, accounting that but as a point of unkindnesse. Now whether all your great pairts and merites be not accompanied with a sowre and distastefull sawce, yourself shalbe juge. Consider likeways of the difference of the things that ye laye to my charge and that I lay to yours. Heir is not he said and shee said, no conjecturall presumptions, noe things gathered out of owtward appearance. I chaarge you with no thing but things directlie actit or spoken to my self. I wishe at God thairfore, and I shall both pray for it and hoape it, that ye may mak good use of this litle mirroure of yourself quhich heirin I present unto you; it is not lyk Sir Walter Rallies description of the kings that he hates, quhomof he speaketh nothing but evill;^b for this layes plainlie and honestlie before you both your best and worst pairts.

“To conclude then this discourse proceedinge frome the infinit greif of a deeplie wounded hait, I proteste in the presence of the Allmightie God that I have borne this greif within me to the uttermost of my abilitie; and as never greif since my birth seized so heavilie upone me, so have I borne it is long as possiblie I can; nather can I beare it longer without committing ane unpardonable sinne against God in consuming my self willfullie, and not onlie my self, but in perrilling thairby not onlie the good estait of my owne people, but even the estait of religion through all Christendom, quhich all most quholie under God lyes now upone my shoulders. Be not the occasion of the hastening of his death

^a So MS.

^b “Sr Walter Raleigh’s booke is called in by the Kinges commaundment, for divers exceptions, but specially for beeing too sawcie in censuring princes.” Chamberlain to Carleton, 5 January, 1614-5. (S.P.O.)

through greif, who was not onlie your creator under God, but hath manie a tyme prayed for you, quhich I never did for no subject alyve but for you. But the lightening my hairt of this burden is not now the onlie cause that maks me preasse you indelayedlie to ease my greif; for your owne furious assaults of me at unseasonable houris hath now made it knowen to so manie that ye have bene in some crosse discours with me, as thair must be some exteriour signes of the amendment of your behaviour towards me. These observations have bene maide and collected upone your long being with me at unseasonable houris, lowde speaking upon both pairts, and thair observation of my sadnes after your pairting, and want of reste.

“Quhat shalbe the best remedie for this I will tell you by tounge. But for the easing of my inward and consuming greif, all I crave is that in all the words and actions of your lyf ye may ever mak it appeare to me that ye never think to hold grippe of me but out of my meere love, and not one haire by feare. Consider that I am a freeman, if I waire not a king. Remember that all your being, except your breathing and soule, is frome me. I told you twyce or thryce that you might lead me by the hairt and not by the nose. I can not deall honestlie, if I deal not plainlie with you. If ever I finde that ye think to retaine me by one sparkle of feare, all the violence of my love will in that instant be changed in^a as violent a hatred. God is my juge my love hath been infinit towards you; and the onlie strenth of my affection towards you hath maid me beare with these things in you, and brydle my passions to the uttermost of my abilitie. Lett me be mette then with your entyre hairt, but softened with humilitie. Lett me never apprehende that ye disdaine my persone and undervalue my qualities; and lette it not appeare that any pairt of your former affection is cooled towards me. A king may slakke a pairt of his affection towards his servant upone the pairties defaulte and yet love him; but a servant can not do so to his maister, but his maister must haite him. Hold me thus by the hairt; ye may build upone my favour as upone a rokke that never shall feall you, that never shall wearie to give newe demonstration of my affection towards you; nay, that shall never suffer anie to ryse in anie degree of my favour, except they may acknowledge and thank you as a furtherer of it, and that I may be persuadit in my hairt that they love and honour you for my saik (not that any living ever shall come to the twentie degree of your favoure). For although your good and hairtliie humble behaviour may washe quyte out of my hairt your bypast errors,

^a So MS.

yet shall I never pardon my self, but shall carie that crosse to the grave with me, for raising a man so hye as might mak one to presume to perce my eares with such speeches.

“To make ane end then of this displeasing discours, think never to value your self to me by any other merites so much as by love and hairtlie humble obedience. It hath ever been my common ansour to anye that wolde pleade for favour to a Puritane minister by reason of his rare giftes, that I had rather have a conformable man with but ordinarie pairts, than the rarest men in the world that will not be obedient; for that leaven of pride sowres the quhole loafe. What can or ever could thus trouble your mynde? For the exterior to the world, what can any servants exspect of their prince but countenance or reward? Do not all court graces and places come through your office as Chamberlane, and rewards through your father-in-lawe's that is Thesauraire? Do not ye two (as it waire) hedge in all the court with a manner of necessitie to depende upone you? And have ye not, besydes your own infinite privacie with me, together with the manie offices ye possesse, your nephew in my bedde-chamber, besydes another farre more actif than he in court practises? And have ye not one of your nerest kinsmen that loves not to be ydle in my sone's bedde-chamber? With this shuld ye have silenced these newes-bringers and makers of frayes. For no other thing is left behind but my hairt, quich ye have nather cause to doubte, nor, if it did need, could they counsell or advyse you how to helpe.

“Thus have I now sette down unto you quhat I wold say if I waire to mak my testament; it lyes in your hand to mak of me quhat you please, either the best maister and trewest freind, or, if you force me once to call you ingraite, quich the God of Heaven forbidde, no so great earthlie plague can light upone you. In a word, ye may procure me to delyte to give daylie more and more demonstrations of my favours towards you, if the faulte be not in your self.”^a

Here, as it seems to me, we have both a sufficient explanation of the origin, and a clear proof of the error, of the rumours which were beginning to prevail at Court. Somerset had begun to abuse the authority which he possessed over the King's affections. He had become imperious, insolent, violent, jealous, and exacting. His behaviour had provoked angry and passionate expostulation; of

^a Lambeth MSS. 930, 90. Docketed, “ADRIAN MOORE, JHONE HOLLAND. These three letters weare in the black boxe signed with that seale w^{ch} Sir Tho. Maye brought.” The MS. is not divided into paragraphs.

which the courtiers had heard enough to show that there was a quarrel of some kind. And so far they were right. But if they thought that it arose from a cooling of affection on the King's side upon the transfer of it to a new object, this letter affords good proof that they were wrong. For this is not the language of an affection wearied of itself and seeking occasion to escape from its bonds, but of one painfully alive, passionately loyal, bitterly resenting the inadequacy of the affection with which it is requited, and earnestly desiring to be restored to its former condition. If the love was cooling, it was clearly not on the King's side that the process was beginning. And indeed if he had really wished to find a pretext for withdrawing his favour from Somerset, what more did he need than the conduct which provoked this letter? Instead of imploring him so beseechingly to be again what he used to be, why did he not simply let him understand that the favour he had enjoyed had been abused and forfeited, and was withdrawn?

Nor did anything occur between the writing of this letter and the discovery of the murder of Overbury which belied the professions in it. Somerset continued to be as great a man as ever in all outward conditions;^a except the opinions of the courtiers, who, knowing that there had been a quarrel and seeing a new man rising rapidly in favour, began to look for a change. Whether such a change would have come at all, how soon, and with what circumstances, had things gone on in their ordinary course, nobody can ever know. Changes of the kind were more than once confidently expected and predicted during James's reign, which never came to pass. But the discovery of the murder utterly altered the case. And we have now to inquire how the King entertained that discovery, and what measures he took upon it.

Setting aside then (for the present) rumours, speculations, and anecdotes of doubtful authority, I shall begin by stating what we may be said to *know* about this.

Sometime in July 1615 Sir Gervase Hellwysse, Lieutenant of the Tower, hearing from the Earl of Shrewsbury (who had heard it from Secretary Winwood) that Sir Thomas Overbury was suspected to have died by violence while under his charge, volunteered a statement to Winwood; in which he admitted that there had been a *design* to poison Overbury by the hands of Weston, the under keeper,

^a For the relation between him and the King as late as the 20th of August, see Mr. Gardiner's copy of Gondomar's despatch, Oct. 28, 1615, which I had not seen when I wrote this.

but asserted that he had himself detected, dissuaded, and taken means to prevent, though he had not revealed it.

This Winwood reported to the King; whose first act was to require Hellwysse to set down his declaration in writing.

The declaration which in obedience to this command Hellwysse drew up is dated 10 September, 1615, and is still to be seen among the State Papers. It admits not only that he had himself discovered the intention of Weston to poison Overbury, but that he had since heard from Weston that Overbury was really murdered, and that it was done with a clyster, administered afterwards by an apothecary's boy, who had been bribed. The only actor in the business that he knew of, besides Weston, was (he said) one Mrs. Turner; who, as soon as she heard that the case was likely to be inquired into, had sent Weston to sound him and find out how much he knew, and what part he was likely to take. But though he did not in this statement mention the Earl or Countess of Somerset as directly implicated, it seems that in his previous communication to Winwood he had excused his own silence as proceeding from fear of "impeaching or accusing great persons;"^a and an admission in his present declaration that though he had "set down the whole truth," it was "peradventure not the whole truth," would naturally be interpreted as referring to Somerset.

Upon this the King, who does not appear to have heard of the rumour before, referred the matter to "some councillors," with the following general instructions for their proceeding:

"There are two things in this cause to be tried, and the verity can be but in one of them: first, whether my Lord of Somerset and his lady were procurers of Overbury's death, or that this imputation hath been by some practised to cast an aspersion upon them. I would first have you diligently inquire of the first; and, if you find them clear, then I would have you as carefully look after the other, to the intent such practices may be discovered and not allowed to pass with impunity."^b

The case upon inquiry was found to be so grave that it was thought expedient to put it into the hands of Sir Edward Coke, then Chief Justice of the King's Bench, and more practised in such investigations than any other man in England. A fragment of a letter, undated and unsigned, and without anything to indicate the address, but written in Winwood's hand, who was at that time in attendance

^a Bacon's charge against the Countess.

^b Read at the arraignment of the Countess, and the original shown to the Peers. See State Trials, vol. ii. p. 956.

on the King, represents, probably, the King's instructions on giving Coke the commission. They are instructions which would naturally be suggested by Hellwysse's declaration; the persons named being those indicated therein as most immediately concerned in the treatment of Overbury; Mayerne, as the physician who had prescribed for him and "left behind him directions;"^a the French apothecary, as the medical man who had attended him by Mayerne's appointment; Weston, as the under-gaoler who had been detected by Hellwysse in the act of bringing food which he knew to be poisoned; Mrs. Turner, as a person with whom Weston was known to be in collusion; Sir Thomas Monson, as the man who had recommended Weston for the place of under-gaoler with special charge of Overbury; and Hellwysse himself, as the responsible officer who by his own admission had known of the attempt and not revealed it. Judging by the style, and comparing it with other drafts in the same hand, I have little doubt that it was written by Winwood from the King's dictation; and what remains of it is worth giving at full length.

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"and whither was yt ow't of hys owne meere motion or by the perswasion of any other, and yf by the perswasion of any other by whose was yt, and to what end.

"Did he ever meete wth him or heare word from him, eyther during the tyme of hys being in the Tower or any tyme sence, and to what purpose. Did he ever knowe of any mony he receaved from any, and for what use. When was the fyrst tyme that ever he heard of thys vyle busines and by whom.

"Mayerne must be asked the state of the prisonnier's body when he last saw him, and what deseases he was most enclyned unto: also both he and other physitians are to be asked the symptomes and effect of poyson, especially being geven in a glyster.

"The French apothecary ys to be asked whether he himselfe or a man of hys mynistred to the prisonnier when he was in the Tower. And yf hys man, who this was, how oft he sent him to him, and wth what phisick, especially what the last phisick was that he sent him, and yf yt was a glyster: as also he must be asked yf he had any acquayntance wth M^{riss} Turner, and what yt was, and whether he knew of any acquayntance betwixt hys man and her, and upon what occasion.

"The crowner ys to be asked what report was made unto him of the forme of the pryson^{rs} deathe, and what marks he saw upon hys body.

^a He had been sent to Bath, I believe, to attend the Queen.

“More persons may be examined^a and more Interrogatories made, as yt shall fall owt in the cōurse of the examinaç.

“Th’orderly fayre cōurse in a thing of thys nature ys, that fyrst Weston be haerd tell hys owen tale, after a good admonition that ys to be geven him; yf he contrary the Lievetenant, then, after once re-examining of the Lievetenant, are they to be confronted *ante omnia*; but yf they agree in one tale then ys Mystress Tournier to be examined next Weston: and yf they differ, after her keeping cloase a day or towe, they towe are to be confronted, then the Lievetenant to be re-examined, then Monson, then the rest of the partyes as occasion shall require.

“In conclusion, thys fact and mynt must eyther be trew or not: yf both prove trewe, then ys there noe more neede of examination: yf the mint only prove trewe, then ys there severe tryall to be taken for fyndeing owt the grownd of the lye upon the fact; but yf bothe be false, then must there be a fowle conspiracye in the busines, for the fynding owt wh’of noe paynes ys to be spared; the punishment w’of will be the best example that ever came in my cōwrt. But sence as yet the discoverye goes no further then to meane persons, the fayrer, juster, and stricter that the tryall ys, the more favour and honour yt will be to thoase greate persons to whom thys busines may be thought to have any indirect relation: for where innocency ys not clearely tryed the scarr of calumnye can never be clerely cured.”^b

Coke, finding how deeply the evidence implicated the Earl and Countess of Somerset, thought it prudent to strengthen himself with the help of persons of higher rank than his own;^c and upon his request to that effect the King joined in commission with him the Lord Chancellor Ellesmere, the Duke of Lenox, recently made Lord High Steward of the King’s house, and Lord Zouch, recently made Warden of the Cinque Ports. The exact date of the Commission I have not been able to ascertain;^d but I suppose it to have been early in October—certainly before the 17th. Nor can I find any record of the exact time at which

^a So in MS.

^b S. P. Dom. James I. vol. lxxxi. p. 132, A. The first sheet is missing; no signature, date, or docket.

^c Bacon’s Charge against the Countess of Somerset.

^d Gondomar’s despatch, Oct. 20, 1615, which supplies some new particulars concerning the movements of Somerset and Coke at the time the Commissioners were appointed, does not give the date. But he states that the first meeting of the Commissioners was on the 15th of October; and I have no doubt that Mr. Gardiner is right in supposing that the Commission was signed and delivered to Coke in person at Royston on the evening of Friday the 13th.

I have thought it better to add these corrections in foot-notes than to incorporate them in the text, because I did not know of this new evidence when I drew up my narrative, and if I were to introduce alterations I might make it inconsistent with itself.

Somerset was sent for as a person implicated, or any authentic record of the circumstances. But if it be true that during the earlier investigations he was attending the King on progress, being still in possession of all his honours and offices, the natural course of proceeding would be this : the Commissioners would send a special messenger to the King to say that Somerset was wanted, and beg that he might be directed to repair to London and hold himself in readiness to appear before them. And it was probably upon this occasion that the parting scene which Sir Anthony Weldon professes to have witnessed at Royston, and the particulars of which are so well known that I need not repeat them, really took place ; at which time it may very well have passed in the manner described : for the King could not have treated Somerset, before he had been examined, as a guilty man,—even if he had known (which he did not^a) what the evidence against him was ; and yet his reluctance to go, and the style of his behaviour at the moment, may very possibly have made the King feel that there was small chance of his proving innocent ; so that the words spoken by the King *immediately after the parting* may have been suggested on the instant by the parting itself.

But whatever may have been the manner of the King's behaviour to Somerset in public, the relation in which they really stood towards each other after this time is known to us on better evidence. Weldon may have described truly what he saw, but he could not then know what the occasion was ; and, in connecting the scene with circumstances which he learned afterwards, he may easily have made mistakes. But among the manuscripts at Lambeth there is a copy of a letter from the King—it came in the same sealed box which contained the letter I have already quoted—without date indeed, but evidently addressed to Somerset, and evidently written soon after the appointment of the Commissioners ; which shows that Somerset had vehemently remonstrated against the act, and exhibits the state of the King's feelings towards him in a manner so manifestly sincere, that it is worth quoting in full ; the rather because the copy printed by Mr. Halliwell in his "Letters of the Kings of England" is in some places incorrect.

"I neid not to ansour your lettir, since Lenox hath long before this tyme told

^a It would seem from a passage in the newly discovered paper as if Coke had actually objected on legal grounds to acquaint the King with the evidence : " And whereas he [Somerset] desires me to acquaint hym beforehand wth the thinges that ar to be layed to his charge, besides that it is so farre against the conseiens and hono^r of a King to doe it, it is altogether impossible for me so to doe, although I had never so good a will to doe it ; for the Chief Justice refuses absolutely to serve in his place, as I told hymself at Roiston, if I shall be acquainted w^t any articles concerning blood before the partie come to his publick triall."

you my resolution on that pointe; quhereupon you have bestowed so much skribling and railing, covertlie against me and avowedlie against the Chancellaire. Yett can I not abstaine pairtly for satisfaction of my owne hairt, and pairtly for satisfieyng you and your allye with reason (if reasons can satisfie you), to send you these few observations upon your letter.

“In a bussinesse of this nature I have nothing to look unto but, first, my conscience before God, and nexte my reputation in the eyes of the quhole world. If I can find one man stricter then another in pointe of examination, I am bound in conscience to employe him in it; and when in my conscience have sett downe a course, to change it at the instance of the pairtie, without any other reason but becaus they will have it, it waire litle for my honour. That I was too faint in not resisting the superbe^a judges willfullnes, I confesse I ever was and will be faint in resisting to the tryal of murther, and as bold and earnest in prosecuting the tryal thair of. And as my proceedings from the beginning of this bussinesse have bene onlie governed by the rewle of my conscience, as the Searcher of all hairts knowes, so must I to my great regraite confesse and avowe that from the beginning of this bussinesse both your father in law and ye have ever and at all tymes behaved yourselfs quite contraire to the forme that men that wishe the tryall of the veritie ever did in such a cace. And how farre it is now out of tyme, after that the Chancellaire hath served me more then thirteene yeares with all honour and faithfulness, having ever been a Regaliste, to rake up from the bottomes lesse pitt the tragedie of my poor mother, I appeal to your own judgment. Then quhy shuld I be thus neidlesslie vexed? This warrand stretches onlie to examination, whairin no innocent persons can gett wrong; and since the Chancellaire sees himself so suspected, is it to be thought that he daire utter any partialitie? And if ye will neid suspecte the worst (which is nather likelie nor possible), waire it not a more handsome way for my reputation that he might be privatelie advysed to be silent when he waire thaire except in yeas or noes; or ellis in regard of his aage and infirmities, and his manie bussinesses in the terme tyme, to mak his apparance but verie seldom? and so forbear to give anie opinion, as not acquainted with the course of the bussinesse. And as for the external show of my election of him in disfavour of you, first, I am sorrie the world shuld see you excepte against so grave a man; and nexte, the more severe choice I mak of persons for examination, the more it is in your favour, if honour and tryal of innocence be your end.

“Now, as to your motion in^a putting all the judges in this warrand, if ye

^a So MS.

meane for tryall in lawe, I never ment it otherways; but if ye meane for examination, it is more then absurde. And whairas ye alleadge that greate counsellors waire never employed in the examination of a thing of this nature, I say the quyt contrarie is trew, when as the circumstances or articles of the tryall may reflecte upon anie great personages; in which cace the juges daire never presume to medle without better assistance. To conclude then, I never had the occasion to showe the uprightness and sinceritie that is requyred in a supream juge as I have in this. If the delation prove false, God so deale with my soule as no man among you shall so much rejoyce at it as I; nor shall ever spaire, I vowe to God, on grain of rigour that can be streatched against the conspiratours. If otherwayes (as God forbidde), none of you shall more hairtelie sorowe for it; and never King used that clemencie as I will do in suche a cace. But that I should suffer a murther (if it be so) to be suppressed and plaistred over, to the destruction of both my soule and reputation, I am no Christian. I never meane wittinglie and willingly to beare anie man's sinnes but my own; and if for serving my conscience in setting downe a faire course of tryall I shall lose the hands of that familie, I will never care to lose the hairts of anie for justice saik.

"Faile not to showe this letter to your father in law, and that both of you reid it twice over at least; and God so favour me as I have no respect in this turne but to please him in whose throne I sitte. And so fairwell; praying the author of all veritie to mak the cleare veritie to be plainlie manifested in this cace.

"JAMES R."*

This letter must clearly have been written after the appointment of the Commissioners, and probably not later than the 19th of October; for had it been written later, the King could hardly have failed to allude to a proceeding of Somerset's of which he was informed in a letter from the Commissioners dated the 18th, and which had a very suspicious appearance.

On the 16th of October, Somerset, being still at large and still holding the seals of his office, sent a pursuivant, accompanied by a constable and a locksmith, to the house of Weston's son, with a warrant "to search for bonds and writings concerning Mrs. Hynde;" under pretence of which, "divers writings concerning Mrs. Turner" were seized and carried away. Mrs. Turner being at the time the King's prisoner on a charge which was under investigation by the King's Commission, the Commissioners considered this so great a contempt that they at

* Lamb. MSS. 930, 91. Docketed, "ADRIANE MOORE. JHONE HOLLAND."

once ordered both him and the Countess to keep their several chambers, and see nobody except their own necessary servants. And when they found that, in spite of this, the very next morning Somerset had endeavoured to get a message conveyed to Mrs. Turner, they committed him to close custody under the charge of Sir Oliver St. John.

All this they reported to the King on the 18th, and the next day received a message from him signifying approval of their proceedings, and encouraging them to prosecute the business.^a

On the 19th Weston was brought up for trial, but “refused to put himself upon the countrie as the lawe required, and therefore in lawe stood mute.” Upon which the nature of the *peine forte et dure*, which was the alternative, was described to him, and the trial was adjourned for four days, in hope that he would think better of it. Meanwhile, that the large audience, including “some of the nobilitie and many gentlemen of great qualitie,” which had gathered to hear the proceedings, might not be altogether disappointed, the Judges “thought meete . . . to have openly and at large redd the confessions of the said Richard Weston, and the testimonies of others, aswell concerninge the fact of the said Richard Weston, as the *Earle of Somersett and the Countesse*, and Mrs. Turner, without sparinge of any of them, or omitting any thinge material against them (the necessitie and course of the evidence requiringe it, for that it appeared thereby that the said Richard Weston was p^{er}cured and w^{ag}ered by some of them); to the great satisfaction of the auditorie (which we might well discerne by their gesture), and to the great honor of yo^r Ma^{tie}, and your princely zeale to justice.”^b

With this proceeding the Commissioners (except in so far as Coke was one of them) had nothing to do. It was the act of the Judges of the King’s Bench, who reported it to the King the same day. I leave to lawyers the question how far it amounted to a prejudgment of cases which they were afterwards to try. The point with which I am concerned is the new position in which it placed the case of the Somersets. Neither of them had as yet been either accused or examined; they were as yet only suspected; and the evidence against them was in preparation and incomplete. It is true that the evidence now produced for the satisfaction of the audience was no more than must have been produced, had the trial proceeded, for the conviction of Weston; but the production of it in this irregular manner by authority of the Judges, whether justifiable or not in law, could have only one interpretation in public opinion; it was a judicial declaration

^a Lord Fenton to the L. Chancellor, 19 Oct. 1615.

^b The Judges of the King’s Bench to the King. S. P. Dom. James I.

that the Somersets were seriously implicated in the murder; and, whatever explanations they might give when called to their answer, it was impossible after this that they could be cleared without public trial.

The King, having received the Judges' letter reporting all this, wrote to Coke the next day (20 October) approving of what they had done and what they proposed to do; but because he concurred in opinion with them "that Weston, having neither lands nor goods to loose" [the ordinary motive of standing mute being for the benefit of heirs to save lands and goods from confiscation], "by practice hath bene wrought to this obstinacy, perhaps upon this sinister suggestion, that the accessory cannot be called in question unlesse the principal be first condemned,"—directing the Commissioners to make use of the interval in examining Weston himself "if no man had practised with him" (to induce him to stand mute), and also "all other parties against whom they might conceive just suspicion; namely, the Earl of Somerset and the Lady his wife; whom in like manner they were to examine on those points mentioned in the former letters of the Commissioners,"—meaning, I suppose, the abstraction of the papers concerning Mrs. Turner. "In this particuler," he concludes, "you may remonstrate unto them how unworthy a thing it is, in the state they now stand, to heape sin upon sinne, and to charge their consciences with the apparent danger of the damning of the soule of that miserable wretch, who as he hath bene the murtherer of another so now wilbe the murtherer of himselfe; wherby let them know that they can little releive themselves, if they shalbe found guilty, for w^{ch} we professe we shalbe hartely sorry. This being our resolution, to use all lawfull courses that the foulness of this fact be sounded to the depth; that, for the discharge of our duty both to God and man, the innocent may be cleared, and the nocent, as the nature of the offence shall deserve, may severely be punished."

This was to the Judges. On the 21st he wrote to the Commissioners much to the same effect; directing them to examine the Countess, and to confront Weston with her and Mrs. Turner, and with the Earl himself if needful; also to examine Helwysse and Sir Thomas Monson; and "earnestly requiring them, as they tender both his conscience and honour, to use all means for the full clearing and manifestation of the verity in this business, though they be not bound by law to do it—so that they do nothing against the law, wherein he must trust to their knowledge and integrityes."

To the proposal, however, of re-examining Weston, and confronting him with the others, the Judges objected; alleging that "a re-examinaçon or confrontinge

after a publique conviction of the ptie delinquent was not such as had been used by the course of his laws ;” and therefore that “the Earl and Countess would not be examined till after Monday,” on which day the trial was to proceed. And the Commissioners writing at the same time to the same effect, the point was not further pressed.

On Monday, the 23rd of October, Weston was brought up again, and, having consented to put himself upon his country, been tried, convicted, and sentenced, was hanged on the 25th. The same afternoon, and again on the 28th,^a Somerset was himself examined ; and, though no record remains of the particulars of the examination on either day, the important paper which follows gives us the result :—

“ THE COMMISSIONERS’ REPORT TO THE KING TOUCHING THE EARL OF SOMERSET.^b

“We are of opinion that there is vehement suspicion, and that the matter uppon consideration of the examinations and testimonies is preignant against the Earle of Sommerset for being accessorie to the poisoning of S^r Tho. Overbury before the fact done. And we had resolved to have committed the Earle to the Tower before his Ma^{ties} comming to Whitehall, if he had not had the custodie of the seales and other ensignes and ornam^{ts} of the King’s special favor. And, the saide seales and ensignes being taken from him, we hold it necessarie that the said Earle be comitted to the Tower.

“T. ELLESMERE, Canc.

“LENOX.

“ZOUCHE.

“EDW. COKE.”

This report, though it appears to be the original, being fairly written by Coke, and bearing the signatures of the several Commissioners in their own handwriting, has no date. But the allusion to the King’s coming to Whitehall, coupled with Camden’s note of the day when Somerset was deprived of the seals and sent to the Tower, enables us to fix the date within a day or two. Sir R. Winwood, writing from Theobalds on the 30th of October, directs the Commissioners to attend his Majesty at Whitehall at three o’clock the next day ; and we learn from Camden that the Earl was deprived of the seals and staff and committed to the Tower on the 2nd of November.

So far all was simple, natural, and straight-forward on the King’s part. A

^a Camden.

^b This is the docket, and is in Coke’s own hand.

prisoner in the Tower had been murdered. The murderers and their accomplices were to be discovered and brought to justice. A commission was appointed, with instructions to search the matter to the bottom, and with all the powers requisite for the work. They were left to pursue the inquiry in their own way; and when they reported that there was evidence implicating the Earl of Somerset as an accessory, they were at once authorised to commit him to the Tower,^a and he was committed accordingly.

The Earl on his part saw well that his hope of escape lay in his personal influence over the King; and having tried in vain to recover it by appeals to his affection in tones of complaint and reproach, he now bethought himself of another device to bring him to a private hearing. He intimated (15 Nov.) that he had some important state secret to communicate. And when the King replied by directing the Commissioners to hear his communication and report it,^b he declined to make it to *them*; alleging that it did not concern the criminal part of the business; and requested an interview with Lord Knolles and Lord Hay.^c To this the King, after considerable delay, yielded. On the 18th^d of December Lords Knolles and Hay were privately sent to speak with him; and it must have been either upon their report, or upon some subsequent message of the same kind,—and including among other things a request, reasonable enough according to modern notions, but contrary to practice then, to be acquainted beforehand with the charges against him,—that the King on the 29th of December sent for Sir George More and dictated his reply; which Sir George, it appears, set down in writing, in the paper recently discovered and now to be published. It will be found, I think, to be in perfect accordance with all the King's proceedings in the matter both before and after. The manner is earnest and natural, and so characteristic of the man that we need not hesitate to accept it as a faithful report of the words actually spoken. For proof of this, I must refer to the whole paper. It will only be necessary here to state the substance of the message; which, nakedly expressed in modern language, amounts to this:

Sir George More was to inform Somerset that nothing had been done against him which justice did not absolutely require; that no exception could be fairly

^a November 2. *Somersetto sigilla adimuntur: baculum Camerarii Regii insigne deponere et se Delegatis sistere per Baronem Wottonum jubetur; a quibus ad arcem Londinensem in custodiam mittitur, Georgio Moro arcis prefecto constituto.*—Camden.

^b Sir G. More to the Commissioners 18 Nov. Statement of Sir G. More 22 Nov.

^c Ellesmere and Coke to the King.

^d Decem. 18. *Baro Knolles et Baro Haye submissi a Rege ad Somersettum.*—Camden.

taken to any of the Commissioners; that whatever communications he wished to make he could make at any time through them; that his committal to the Tower was according to custom in similar cases, and was a measure which, in the face of their report as to the evidence, the King could not have interfered to prevent without exposing himself to suspicion of complicity; that if he and his wife were innocent, they need not either of them fear trial, which would clear them; that even if they should be found guilty, and yet the offence not appear manifest, he would not let the sentence be executed; that if they were guilty, they must confess their crime before they could ask for mercy, but upon that condition need not think their case desperate; that to acquaint him beforehand with the things that were to be laid to his charge was not in the King's power even if it were otherwise allowable, for it was more than he himself had been permitted to know; and finally, that if Somerset had any favour to ask hereafter, he must make it known through the Lords Commissioners, and not seek any other means.

If there be any difference between the tone of this message and that of the letter written two or three months before, it is explained by the changes which had come over the aspect of the case in the interval. When he wrote that letter, the King had only heard that Somerset was so far touched that it would be necessary to examine him. He had since been informed, first by the Commissioners in the beginning of November that there appeared upon examination to be "vehement suspicion" and "pregnant matter" against him as an accessory before the fact, and afterwards by Coke (27 November) that the evidence against him was "sufficient:"—meaning of course sufficient to justify conviction. "He was not proceeded withall," Coke writes in reporting the trial and conviction of Franklin, one of the subordinate actors, "untill he had discovered sufficient matter against the Earle of Sommerset, and that I had forfeited his testimonie by other witnesses, which by God's providence I attained unto."* Somerset therefore stood now towards the King in a very different position from that in which he stood then.

Nor is it improbable on the other hand, that, though the King still upheld the authority of the Commissioners, leaving them to pursue the inquiry in their own way, and being even content to remain ignorant of the particulars of the evidence on which they were proceeding, he was less disposed than he had been to place absolute reliance on their discretion and sagacity. For in the course of the trials which had been going on, Coke (who in his double capacity of Commissioner to

* Coke to the King, 27 Nov. 1615

investigate and Chief Justice to try, was in effect the manager of everything,) had shown so eager and indiscriminate an appetite for evidence on one side, and such precipitation in announcing to the public from the Bench the import of what he had in store, that a duller man than the King could hardly have failed to suspect his judgment. When he wrote the letter last mentioned, he had just been announcing in open court, that, "*knowing so much as hee knew*, if this plott had not been found out, neither the courte, cittie, nor many particuler houses had escaped the malice of this wicked crue."^a In that letter itself, the new evidence which he described as "sufficient" against the Earl of Somerset was by his own showing insufficient. It was Franklin's confession of a conference with the *Countess*, in which the Earl was *supposed* to have taken part. But it appeared upon the very face of it that Franklin never *saw* the Earl; and though he believed him to be in the adjoining room and taking part in what passed, he could not have *known* that he was there at all, much less *what* part he took. And a few days later, having in the mean time sent Dr. Whiting to prepare Franklin for death, and obtained from him (in answer apparently to leading questions suggested by himself,)^b offers of many portentous disclosures, he not only concluded in his own mind that an extensive Popish poison-plot had been on foot,^c but made a second intimation to the public from the Bench, preparing them to expect some revelation of the kind. "For other things," he said, "I dare not discover secrets; but, though there was no house searched, yet such letters were produced *which makes our deliverance as great as any that happened to the children of Israel*."

This intimation was given out in court on the 4th of December; when Sir Thomas Monson, having been arraigned and pleaded not guilty and put himself upon God and the country, was suddenly removed from the court without

^a "The effect of Franklin's arraignment," S. P. Dom. 27 Nov.

^b For instance, "*Being asked* whether he should not have had an hundred pounds to be employed to the Palsgrave and the Lady Elizabeth, aunswered, 'An hundred? Nay 500, I will not say how much'. . . . *Being tould* that the Quene had bene extraordinarily sicke and payned, and her yong children taken away, sayd he, 'Soft, I am not come to it yet'. . . . *It was sayd to him* that it was not possible so yong a lady as the Lady Somerset should contrive such a plott without some helpes. 'No, no,' said he, 'who can thinke otherwise? for the lady had no money; but the money was had from the old lady,' " &c.

^c "And where your M. wryght that you would gladly knowe whether this newe discovery concerneth only this villany, or if it touch me in some higher nature, may it please your Ma^{tie} to be advertised that it concerneth not your Ma^{ties} own royal person, nor the Prince that now is, but some overture is made of some wicked attempt (besides this villany) against some that be dere and nere unto you, and besides some probable suspitions are given of some other persons, I will not say of what sexe they be, to have had an hand in this crieing syn of poisoning." S. P. Dom. 83, 344.

further proceeding (though not without a declaration from the Chief Justice that his protestations of innocence showed him to be indeed a very atheist, "the proofs being so plain that were to be produced against him,")^a and sent to the Tower. And it may very well have been upon that occasion that the King desired to see with his own eyes the proofs that *were to be* produced. Which it seems he did. For one of the grooms of the Privy Chamber, having reported the fact in a letter to Sir William Monson (Sir Thomas's brother), and being called in question for it, made the following declaration as to his authority for the statement: "He did heare the Lord Bishop of Bath and Wels say, that his Ma^{tie}, understanding that Sir Thomas Mounson was to receve his triall, did send to my Lo. Chief Justice for all the evidence or examinations which was to be delivered against S^r Tho. Mounson; and that his Ma^{tie} received the same, and did curiously consider every circumstance; and further, the Lo. of Bathe said that his Highness found many probable circumstances, forth of all which he could not make one unaunswerable argument to convince Sir Thos. Mounson; and that he would not condemne him if he were of his jurye. And further, the said Lo. Bishop said that thereupon the King deferred his triall, to see what other evidence would come against him."^b Now, though it is true that Coke committed the writer of the letter to the King's Bench prison for slandering the King in writing it,—“which giveth not an action,” he said, “*de scandalis magnatis*, but *de scandalis optimi et maximi*,”—I do not find any ground for suspecting that the statement was untrue; but find on the contrary that it furnishes a natural and sufficient explanation of the further proceedings in the case of Sir Thomas Monson; which have been thought inexplicable without supposing some unrevealed mystery, of the existence of which we have no other evidence whatever.

If this was so, that the evidence against the Somersets likewise might turn out to be such as either would not procure or would not justify a conviction, would naturally at this time present itself to the King's mind as a possibility. But however that might be, a public trial, after what had passed, was in their case unavoidable. It had been postponed hitherto because the Countess, who, as most directly implicated, was to be tried first, was with child. She was delivered of a daughter on the 9th of December; and on the 19th of January both she and her husband were indicted for the murder, and a true bill found against them.^c I presume, therefore, that the arraignments were then expected to be

^a Sir J. Throckmorton to Mr. Trumbull, 20 Dec. 1615. See "Court and Times of James I." i. 384.

^b Examination of John Lepton (taken by Coke), 5 Feb. 1615-16. S. P. Dom. vol. 86, p. 31.

^c Camden. Lord Carew's Letters (Camden Society), p. 23.

proceeded with at once, and would have been so, but for a fresh question that came in the way, relating to some secret negotiation with Spain in which Somerset had been engaged, and requiring the presence of Sir John Digby, then resident ambassador there. This made it necessary to suspend the further proceeding for the murder till his return. And before he arrived a dispute between the Lord Chancellor and the Lord Chief Justice on a question of jurisdiction, then a serious illness of the Lord Chancellor himself, together with some other accidents which I need not stay to describe, caused further postponements ; so that it was the 24th of May before the trial came on.

Justice, however, did not suffer in the end by the delay. For in the meantime Coke's threat that he would resign his place if the King were acquainted beforehand with the articles of accusation, appears to have been either forgotten or withdrawn. And indeed it is so hard to imagine any reasonable ground for the objection that I think the King must have misunderstood him. Had he threatened to resign his place as Judge if required to do the work of a solicitor for the prosecution, or to give, "before the party came to his public trial," an opinion upon the merits of the case, he would have had good reason, and anticipated by a generation or two a sound and salutary rule of judicial procedure. But on what principle either of reason or law he could maintain that the King, who was *not* to be judge and who *was* to be prosecutor, ought to be kept in ignorance of the grounds of the prosecution, I cannot guess. Whether he meant it or not however, and whatever his reasons were, he did not carry the threat out. For before the trial came on, the King did become acquainted with the articles of accusation, took a critical interest in sifting the evidence, agreed to strike out a good deal of it, and to reduce the charge into accordance with so much of it as seemed fair and sound, and yet the Chief Justice continued to serve in his place. The truth is, that, since it was the business of the Attorney-General in cases like this to conduct the prosecution in Court, it was necessary at last that he should see the examinations ; and the King's Attorney could not object to give information to the King. In the proceedings against Weston, Mrs. Turner, Hellwysse, Franklin (now all tried and hanged), and Sir Thomas Monson (not yet tried though already declared guilty), Bacon had no part, and, for anything that appears, knew no more of the case up to the end of December than was public.* But in January he was called on to draw the indictments, and therefore to

* "To have a man chased to death in such a manner (as it appears now by matter of record, *for other privacy of the case I know not*)," &c. Charge against Lumsden, &c. in the Star Chamber, 10 Nov. 1615.

examine the evidence against the Somersets ; and in an interview with the King, which I gather to have been on the 19th, he made his first report upon it.

This report again altered the aspect of the case in some degree. For to Bacon the evidence did not appear nearly so conclusive as it had done to Coke. "The evidence upon which my Lord of Somerset standeth indicted (he said) is of a good strong thread, considering that empoisoning is the darkest of offences ; but the thread must be well spun and woven together."^a And, remembering no doubt how the trials of Essex and Raleigh had been conducted, he strongly urged the importance of choosing a Lord High Steward with judgment and authority enough to cut off digressions, and also of taking measures not only for setting forth the evidence in its proper order, but of keeping it within its proper bounds ; and, with that view, of directing the Lord Chancellor to assist in the preparatory conferences as well as the Lord Chief Justice ;—a precaution of which the King was by this time very well able to understand the motive and the expediency.

This advice was given to the King by Bacon at a personal conference on the 19th of January (as I understand it), and repeated by letter on the 22nd. But the same causes which shortly after postponed the arraignment would naturally postpone the preparations ; and it is not till the middle of April that we find any further correspondence about them. Several examinations had been taken in the mean time by the King's direction in search of evidence concerning the Spanish negotiation ; and several witnesses had been examined by Coke on his own account in hope of finding some proof of the great Popish poison-conspiracy which he thought he had detected, and the discovery of which he had rather prematurely announced three months before from his seat on the Bench. But nothing of importance came of either ; nothing of the first which was thought sufficient to found a charge upon,^b nothing at all of the second. These things therefore being dropped, the preparations for the trial were resumed.

With regard to the part which the King personally took in these, it is of course impossible to give an account of it which one can assume to be complete, because much of the business was transacted by word of mouth, and of the letters which passed we have no complete collection. But enough remains to justify an inference, in the absence of all evidence to the contrary, as to the spirit in which he acted.

^a Bacon to the King, 22 Jan. 1615-16.

^b Whether Somerset had committed high treason in revealing secrets to the Spanish ambassador, appears to have been the point in question. See "Notes for an Indictment" (drawn up by Coke). S. P. Dom. Feb. (?) 1615-16.

Under this head there are two principal questions to be asked : First, what part did he take in the selection of the evidence to be used ; and what directions did he give for the manner in which it was to be handled, in case the Earl stood upon his innocence ? Secondly, what was the nature and object of certain private communications which were made to the Earl by his authority, in hope of inducing him to confess the crime ?

1. With regard to the first, he required from his Attorney-General an account of the plan upon which he proposed to conduct the case, and a sketch of what he meant to say ; and he agreed, upon the Attorney-General's own suggestion, to give certain express directions to him and the other counsel employed ; which were to this effect : in urging the charge they were to abstain from all "bitterness and insulting," remembering that their part was to make Somerset "delinquent to the peers, not odious to the people ;"^a neither were they "to expatiate or digress upon any other points that might not serve clearly for probation or inducement of that point whereof he was accused."^b In accordance with this principle, he expressly approved of Bacon's intention to omit altogether, as irrelevant, frivolous, or inconclusive, a great part of the evidence which Coke had collected. And in one place he took exception himself to a passage which it was proposed to produce in support of the charge, on the ground that the words did not naturally bear the meaning put upon them ; a fact which I collect from two or three incidental allusions scattered through the correspondence, but important enough, when the question is in what spirit he was proceeding, to be worth bringing out in detail. The chief difficulty, it must be remembered, which the case presented was to find *direct* evidence of the Earl's personal complicity. The presumptive evidence was strong ; but if he really was a consenting party to the murder, he had taken care to keep himself so much out of sight, that no one could be found who had seen him do or heard him say anything which was conclusive of the fact. The evidence upon which Coke had been content to rely for this rested altogether upon a presumption. The Countess had been seen to go into an adjoining room and to return out of it, having (as was *supposed*) taken instructions from the Earl, who was *supposed* to be within. But though it is true that other evidence was produced to prove that he was there at the time, no one could say that he heard the instructions given. Not to add that, as all

^a Bacon to Villiers, 6 May.

^b "The Heads of the Charge:" marginal note in the King's own hand. Bacon's Works, vi. p. 97.

this took place long after the death of Overbury, and related only to measures for evading discovery, the clearest proof that the Earl was *then* in guilty collusion with the Countess could have proved no more than that he was an accessory *after* the fact. There was, however, another piece of evidence which would have gone much nearer to prove the Earl's personal complicity in the murder, if it could have been well established. While Overbury was in the Tower, the Countess (then Lady Essex) had written a letter to the Lieutenant, cautioning him as to the disposal of certain tarts; and one sentence ran thus: "*If he should send this tart and jelly and wine to your wife, then you must take the tart from her and the jelly, but the wine she may drink it, if she will, for in that there are no letters I know; but in the tart and jelly I know there is,*"^a &c.

Being asked whom she meant by "he," she said she meant Somerset.^b If so, it was a strong piece of evidence against him; for it was good proof that the Countess at that time thought him likely to send tarts which she knew to be poisoned; and it was proposed to use it in that sense and for that purpose. But when the King came to look at the words with the context, it struck him that this was not the natural interpretation of them. He therefore referred the point to the Commissioners for further investigation; observing that "that evidence, as it standeth now uncleared, must *secundum leges sanæ conscientiæ* be laid aside."^c In pursuance of this direction, Lady Somerset was examined again,^d and when she said that she meant by "he" not Somerset, but Overbury, that passage was withdrawn.^e

Now, when we remember that the King was all this time very anxious that the prosecution should be justified by the verdict (for in those days the failure of a Crown prosecution was regarded as a dishonour to the Crown), we cannot but conclude that the part he took in the preparations for the trial was governed by a desire to be just and fair to all parties—at least until we find him doing something irreconcilable with that supposition; of which I have not myself been able to discover any traces.

^a S. P. Dom. 86, 6; printed in Gardiner's "*History of England, 1603—1616*," vol. ii. p. 387.

^b 8 Jan. 1616, Gardiner id. *ibid*.

^c Bacon to Villiers, 13 April.

^d Bacon to Villiers, 2 May.

^e "That part of the evidence of the lady's exposition of the pronoun (he) which was first caught hold of by me, and afterwards by his Majesty's singular wisdom and conscience excepted to, and is now by her re-examination retracted, I have given order to Serjeant Montagu (within whose part it falleth) to leave it out of the evidence." Bacon to Villiers, 5 May.

2. With regard to the private communications with Somerset, it might perhaps have been wiser to let them alone; though, without knowing what effect they may have had in keeping him from extremities, it is hard to affirm even that with confidence. But though the policy was questionable, the motive, so far as I can see, was fair and the object good. The public declarations of the Earl's guilt (for which the King was no way responsible) having been so strong, while the proofs appeared on inspection to be in some respects so weak, the result of the proceeding and its effect on popular opinion was a matter of just anxiety; and he no doubt wished extremely that Somerset (if guilty, as he supposed him to be) could be induced to relieve him from the difficulty by a confession. But what inducement had Somerset to confess, if ever so guilty? Suppose him to have been privy to the murder before it was done; still he knew that, having kept so much out of the way, the evidence to connect him with it could not be much or direct. He knew, therefore, that he had two chances of escape. The King—either upon some misgiving as to the force of the evidence, or some fear of meddling with so powerful a man, or some remnant of affection for one who had so lately and so long been his bosom-friend—might shrink from bringing him to trial. And again, if brought to trial, he might be acquitted. Upon what motive should he throw away two such chances of escape? The only motive that could be presented to him was a hope that, if he voluntarily confessed his guilt, he would have a better chance of mercy than if he stood upon his innocence and were found guilty upon the evidence.

Now that the King was from the first strongly inclined to mercy, would have been glad of an excuse for it, and believed (as in those days most people did) that a clear, voluntary, and penitent confession furnished such an excuse,—can hardly be doubted, I think, after the letters and messages which I have already quoted. Had it been doubtful before, this message of the 29th of December now brought to light would have set the doubt at rest: for it contains an intimation of what such a confession might deserve, almost amounting to a promise. “As for himself,” he was to be told, “there is no cause why he should desire not to come to trial, if the proofs be so pregnant that they require it; for, being innocent, upon trial he will be cleared, and so being justified shall receive no disgrace; as with many great persons it hath fallen out, which have been committed to the Tower, and being tried have been cleared for the like offence. But if he be guilty (as God forbid) then must he take a course by his humble confession to plead for mercy; I being to follow the example of Almighty God, who doth not forgive sins till they be confessed and sorrowed for; no more can I shew mercy where

innocency is stood upon, and the offence not made known by confession unto me." Upon that condition I have myself no doubt whatever that the King did at that time (which was long before any attempt had been made to practise upon his fears) secretly intend to use in Somerset's favour his prerogative of mercy; and what he secretly intended to perform, he wished Somerset to be secretly encouraged to hope. He could not give a direct and explicit promise, because a direct promise to pardon him if he confessed would have seemed like a bargain and a bribe to purchase the confession. But he authorised certain persons (the Commissioners themselves first, and afterwards some private messengers) to suggest the hope to him, not as a message from him, but as from themselves. Of the manner in which the Commissioners performed the task we have two reports, one written by Coke and the other by Bacon, but both without date, and so little alike that it is doubtful whether they refer to the same occasion. They agree however in this; neither represents the Commissioners as having said anything false or meant to mislead, and both represent what was said to have been said in vain, for any effect that it seemed to take on Somerset. One effect however it had. It convinced him at last that, unless he could find some new means of diverting the King from his purpose, he would really have to stand his trial. It was rumoured in London about the middle of May that, finding this to be so (which he had not believed before), he had offered to reveal something which it greatly concerned the King and the State to know, and desired to see the Commissioners for that purpose.^a And it is certainly true that after the King had on the 9th of May, and again on the 13th, sent private messengers to him in great secrecy to renew his former assurances in a form coming still nearer to a promise,^b he did talk of making an

^a Edward Sherburn to Dudley Carleton, 17 May, 1616.

^b "Ye shall therefore give him assurance in my name, that, if he will yet before his trial confess clearly unto the commissioners his guiltiness of this fact, I will not only perform what I promised by my last messenger both towards him and his wife, but I will enlarge it, according to the phrase of the civil law, *quod gratiæ sunt ampliandæ*. I mean not that he shall confess if he be innocent, but ye know how evil likely that is, and of yourself ye may dispute with him what should mean his confidence now to endure a trial when as he remembers that this last winter he confessed to the Chief Justice that his cause was so evil likely as he knew no jury could quit him. Assure him that I protest upon my honour my end in this is for his and his wife's good; ye will do well likewise of yourself to cast out unto him, that ye fear his wife will plead weakly for his innocency, and that ye find the commissioners have, ye know not how, some secret assurance that in the end she will confess of him; but this must only be as from yourself, and therefore ye must not let him know that I have written unto you, but only that I sent you private word to deliver him this message." (*Archæologia*, vol. xviii. p. 352.)

Whether the Commissioners had any such secret assurance I cannot say. If not, this last direction is the

important disclosure of some kind; though from the terms of the King's answer I infer that it was not an offer of information which it concerned him to possess—that was the device which he had tried before unsuccessfully—but a threat of disclosing something which it concerned him to keep secret. The exact date of it I cannot ascertain; but it cannot have been many days before the trial, and, being his first attempt (as far as I can find) to work upon the King's *fears*, it is important to know how it was entertained. The following confidential letter from the King to Sir George More, through whom the threat was sent, furnishes on this point evidence of the most conclusive kind; and though it is not new in itself, it will probably be sufficiently new in this connection to be worth quoting at full length.

“GOOD SIR GEORGE,

“I am extremely sorry that your unfortunate prisoner turns all the great care I have of him, not only against himself, but against me also, as far as he can. I cannot blame you that ye cannot conjecture what this may be, for God knows it is only a trick of his idle brain, hoping thereby to shift his trial; but is easy to be seen that he would threaten me with laying an aspersion upon me of being in some sort accessory to his crime; I can do no more (since God so abstracts his grace from him,) than repeat the substance of that letter which the Lord Haye sent you yesternight, which is this: if he would write or send me any message concerning this poisoning, it needs not be private; if it be of any other business, that which I cannot now with honour receive privately, I may do it after his trial and serve the turn as well; for, except either his trial or confession precede, I cannot hear a private message from him without laying an aspersion upon myself of being an accessory to his crime, and I pray you to urge him by reason, that I refuse him no favour which I can grant him without taking upon me the suspicion of being guilty of that crime whereof he is accused; and so farewell. JAMES R.

What followed upon this I cannot make out with certainty, for want of exact dates. But it seems, that, upon the very eve of the trial, More reported to the King a new difficulty. Somerset had been seized with some “strange fit,” either was or pretended to be either mad or unable to move, and what was to be done? In answer to which “strange news,” the King directed him to let Lord Hay and Sir Robert Carr (who had already been sent) speak with him first; and “when that most questionable part of the transaction. It is to be remembered however that the object of it still was, though by a false alarm, to get at the truth; nor was there any danger of its leading to anything else; for, if Somerset knew that he was not guilty, he knew also that his wife would not confess of him.

* *Archæologia*, vol. xviii.

is done," he added, "if he shall still refuse to go, ye must do your office, except he be either apparently sick or distracted of his wits; in any of which cases ye may acquaint the Chancellor with it, so that he may adjourn the day till Monday next, between and which time,^a if his sickness or madness be counterfeited, it will manifestly appear."^b

His concluding words are, "If he have said anything of moment to the Lord Haye, I expect to hear of it with all speed; if otherwise, let me not be troubled with it till the trial be past." This therefore would seem to have been the last act of this secret negotiation; of which I have noticed, I think, all the particulars which can be said to be known. For Weldon's picturesque account of Sir George's midnight visit to Greenwich, though not materially differing in substance from my version thus collected, is difficult to reconcile with it in detail; these letters of the King's own hand, which so conclusively establish the fact that Somerset had uttered some threat which he thought would frighten him, being scarcely consistent with a story which represents the whole transaction, from the announcement of the threat to the arrangements made for meeting it, as having passed at a secret personal interview between the King and More in the middle of the night immediately before the trial. And indeed we have other evidence to show that the apprehension of some outbreak of the kind on Somerset's part was of rather earlier date. In a paper in Bacon's handwriting, which appears from internal evidence to have been written three or four days at least before the trial, the following question is proposed as "a question legal for the judges:" "Whether, if my Lord of Somerset should break forth into any speech of taxing the King, he be not presently by the Lord Steward to be interrupted and silenced; and, if he persist, he be not to be told that if he take that course he is to be withdrawn, and evidence to be given in his absence; and whether that may be, and what else to be done." I am inclined to think, therefore, that Weldon confounded two separate stages of the business, and that Somerset did in fact resort to the threat when he found that the King was in earnest, and when the threat failed to move him, resorted to the pretence of sickness or madness.

Whether the opinion of the Judges was taken upon the question suggested by Bacon; or, if it was, what opinion they gave; or whether any preparations were made to act upon it; I cannot undertake to say. But the occasion did not arise. When Somerset consented at last to go, and came to the Bar,—whether it were that he was unwilling to shut the gate against mercy, or that he had been warned that

^a So in the original.

^b *Archæologia*, vol. xviii.

if he broke out into invective against the King he would be forcibly silenced and removed; or (which is as likely as anything else) that, though he had used the threat in hope to serve his turn by it, he had really nothing to say,—certain it is that he did neither say nor hint anything about the King whatever. He asserted his innocence confidently, and defended himself boldly, and, after a trial which lasted twelve or thirteen hours, was found guilty by all his triers severally,—no one dissenting. And when I have added that the King, who remained at Greenwich all that day, was observed to be very restless and uneasy until he heard that the trial was over and no attack made upon himself, I believe this account of the part he took in the proceedings against Somerset for the murder of Overbury will be found to be complete, in so far as it can be collected from evidence that can be properly called authentic.

In excluding from it all particulars derived from more doubtful sources I do not mean to imply that all such are without foundation. Many of those supplied by Weldon and Roger Coke and Wilson are probable enough in themselves, and might be combined with my narrative quite well. But I wished first to set forth in order those facts which cannot be doubted; after which we shall be better able to see how many and how much of the rest will stand with them. Sir Anthony Weldon was clerk of the Board of Green Cloth, was living about the Court all the time, and professes to relate things which he had himself seen or heard, or received from those who did see or hear them. Roger Coke belonged to a later generation, but his father was Sir Edward Coke's son, so that he was a legitimate inheritor of traditions from a good source. Arthur Wilson was scarcely a man at the time; but when he wrote his history he was no doubt within reach of many persons who could give him valuable information. But Weldon wrote from recollections of some standing, and those who have moral endurance to read his book through will hardly believe that he could report anything at any time without large infusions from his own very savoury imagination. Roger Coke could but tell us with regard to the secret history of these trials as much as he remembered of what his father or his uncles remembered of what their father had told *them*. And Wilson professes to speak from reports, for which he does not profess to vouch. Whenever therefore the story told by these writers is irreconcilable with the evidence of letters written at the time in the course of business, or with warrants still extant, or with statements publicly made by those who had means of knowing, or even with contemporary letters reporting the passing news of the day, we need not hesitate to set it aside, or to bring it into harmony with them by some conjectural correction. Thus Weldon's statement

that the discovery of the murder came first from an apothecary's boy, who revealed it to the English Agent at Brussels, may perhaps be true: it may have been in this way that Winwood became acquainted with the rumour which he communicated to the Earl of Shrewsbury. But that Winwood had known the fact before from the Countess of Shrewsbury, who had been voluntarily informed of it by Helwysse, and that he had acquainted the King with it, and that they had all kept it close until the agent at Brussels came over with his report, is as much less probable than the account of the matter given by Bacon in court as it is less in accordance with the documentary evidence still extant. So again, Roger Coke's account of the commencement of the judicial proceedings may perhaps be correct thus far. The King's messenger may have reached Coke's chamber at midnight, Coke may have received the message as soon as he woke, attended the King at Royston the same afternoon, and taken his instructions for the investigation. But that his first act was to make out a warrant for the arrest of Somerset, and that it had been executed before he arrived at Royston, is certainly not true. So again, the words said to have been used by the King when Somerset remonstrated against the indignity of being sent for by Coke,—“Nay, man, if Coke sends for *me*, I must go,”—are so very much in his manner that I think they must be genuine. But they must have been spoken when Somerset was first summoned to attend the Commissioners,—not when he was committed to custody.

An examination of the whole story in this way might yield other particulars, probably or possibly true, which would serve to enliven the narrative a little; but when stripped of all they contain of improbable or impossible, I doubt whether they would materially affect the substance of it. And therefore if the field had been a fresh one, and I the first explorer, I should not have thought it necessary to go further. The proceedings, so far as the King was concerned, appear to me—supposing him to have been really governed by the motives which he professed to be governed by—natural, consistent, and intelligible, from first to last, and to require no other explanation. Since, however, the belief that some strange undiscovered mystery still lies beneath has been so general, and given rise to such a variety of strange conjectures, I may be still called upon to explain that fact; and the explanation need not be long.

The particulars of the several theories which have been propounded on the subject it will not be necessary to discuss; because if my own theory be sound it disposes of them all together. It is enough to observe that one general assumption lies at the bottom of them all, and if that goes they must all go. This

assumption is, that the King had himself been a party to some great crime, of which he dreaded the disclosure, and which he knew that Somerset had the means of disclosing. My reasons for rejecting it are, first, that the appearances which have suggested it are one and all explicable *without* any such supposition; and, secondly, that his conduct throughout the whole business was inconsistent *with* any such supposition.

The belief that traces had been discovered of some portentous secret which would not bear the light, was no doubt general at the time among the people: and where evidence is suppressed suspicion naturally falls upon those who had the means of suppressing it. But in this case the existence of such a belief is amply accounted for by the public announcement of the fact which had been made from the Bench. When the Chief Justice of England informed the people that he had evidence proving that the nation had narrowly escaped a danger as great as any that the Children of Israel were delivered from—evidence of a plot which, had it not been discovered, “neither Court, city, nor many particular houses had escaped the malice of that wicked crew,”—what wonder that they expected some horrible iniquity to be presently brought to light? What wonder that, when nothing came, they supposed it had for some mysterious reason been hushed up? Or that when the Chief Justice himself was, not many months after, removed from his place, they remembered the words he had uttered, and concluded that he had forfeited the King’s favour by seeing too far into his secrets? What the evidence was from which he inferred this secret conspiracy, *they* had no means of knowing. But we have. The evidence may still be seen in its original shape—probably all there ever was—as collected by Coke himself; and it may all be clearly traced to the confessions made by Franklin after his condemnation. He had been sentenced on the 27th of November, and would in the ordinary course have been hanged on the 29th. But as he went from the bar he had dropped a hint to those about him that “there were greater persons in this matter than were yet known.” And on the 28th, when questioned on that point by the minister whom Coke sent to press his conscience, he began to throw out hints of awful disclosures which he could make if he liked; and there can be no doubt, on comparing them with Coke’s reports to the King, with his remarks in Court, and with the tenour of the interrogatories which he drew up afterwards in search of further evidence, that this was the stock upon which the whole thing grew. Nothing came out of it, simply because there was nothing in it. Some portions of the evidence elicited by those interrogatories were indeed designed by Coke to be introduced by way of aggravation into the charge against Somerset, but they were struck out by Bacon,

with the King's express approbation,* as not of weight and not to the purpose; a respect which he considered due to the dignity of Justice. Any suppression of evidence other than this, there is, so far as I can find, not the shadow of a reason for suspecting.

The appearances, therefore, which first put it into people's heads to suspect a mystery, and are still supposed to imply the existence of one, may be all explained without supposing anything more than this: that a condemned felon would not scruple to tell lies, when he found that by telling them with due respect to the appetite of the questioner he could gain a few days' respite from the gallows. And therefore whatever inferences concerning the King's supposed crime rest upon these, must, I conceive, be withdrawn. Which being done, the only thing remaining to be accounted for is Somerset's threat to "tax him" with something, and his uneasiness while that threat was hanging over him.

But the utterance of such a threat by Somerset is as easily explained as the offer of fresh disclosures by Franklin. It was his sole remaining chance of deterring the King from bringing him to a public trial. And as for the King's uneasiness, is there any man who in such a case would not have *felt* uneasy? are there many men who would have been able to conceal the feeling? A proud, bold, unscrupulous, desperate man—a man too who was well known to have been trusted by the King for many years with his most secret thoughts—had declared that if he brought him to trial he should repent of it, for he would publicly accuse him of being himself implicated in the same crime; (for, whatever Somerset meant, this is the sense in which the King understood him.) Such an accusation made against a king, who can not be brought to trial for it, is a breath which blasts the reputation for ever, a stain which cannot be wiped out, though supported by no evidence at all. To a thoughtful man, full of apprehensions, it must have threatened a whole brood of mischiefs and dangers. The fear of all this, though it did not deter the King from his duty, did (and very naturally did) disturb his tranquillity. Though he resolved to confront the danger, it is not to be denied that he dreaded it. "I will not omit to acquaint your Lordship," says one of Sir Dudley Carleton's correspondents, "that the day of the late Earl of Somerset's arraignment his Majesty was so extreme sad and discontented, as he did retire himself from all company, and did forbear both dinner and supper until he had heard what answer the said Earl had made. It

* "As for all the subsequent evidences, they are so little evident, as *una litura* may serve them all." The King's note in the margin of Bacon's letter. (Lambeth MSS. 933, 125.)

seemed something was feared should in passion have broken from him ; but when his Majesty had heard that nothing had escaped him more than what he was forced to answer to the business then in hand, his Majesty's countenance soon changed, and he hath ever since continued in a good disposition."^a Now, knowing (as the writer of this letter did not know, but we do,) what it was that the King had to fear, and with what reason, can anything be conceived more natural than all this ? What is there in it so strange, that we must needs believe him guilty of murder or worse, though two centuries of scandalous curiosity have not revealed a tittle of evidence to countenance the suspicion, more than the circumstance which I have just read an account of ?

But to say that in order to explain the facts it is not necessary to suppose the King guilty, is not to say all : I am prepared to maintain further that if you suppose him guilty it is impossible to explain the facts.

By the supposition, the King has done something of which he dreads the disclosure, and of which Somerset knows. An inquiry is raised which implicates Somerset in a capital charge, and places his fate at the King's disposal. Had he been afraid of provoking him, he might easily, keeping the inquiry close and in his own hands, have managed it so as to keep him in temper by secretly favouring or promising to favour him. What does he do ? He leaves it all to Sir Edward Coke—the most unsubservient, intractable, self-willed, contradictory, and indiscreet man in his dominions—a man whose pride was in his reputation for probity and independence, and who was as staunch as a bloodhound in hunting out evidence ; leaves it to him without any restriction upon his discretion, or any watch kept over him ; puts the probe into his hands without any caution except a solemn injunction, as he would avoid God's curse, to search it to the bottom.^b Again ; after all Coke's pains, the evidence against Somerset is found to rest chiefly upon presumptions, and is certainly not conclusive. How easily, and even plausibly, he might have used that circumstance as an excuse for dropping the prosecution, and so shunning the thing he feared ! What does he do ? He

^a E. Sherburn to Carleton, 31 May, 1616. S. P. O. It appears, however, from Mr. Gardiner's extracts from Gondomar's despatches, that the King spent great part of that day in talking with Gondomar about the Spanish match.

^b The words said to have been addressed by him to the Judges at Whitehall, concluding with this famous imprecation, rest only on Weldon's authority. Whether they were truly reported or not, and *when* they were spoken, if spoken at all, is immaterial ; for all that they *meant* was repeated by him in writing several times over, as we have seen. From Gondomar's despatch (Oct. $\frac{20}{10}$) it would seem that they were addressed to the Counsel when he gave Coke his first Commission.

shows only the more anxiety to press Somerset to a confession, and to have the case sifted to the bottom, with an unshrinking determination to bring it to a public issue in court. Once more; Somerset, finding him in earnest, directly threatens, that, if the trial be not forborne, he will have his revenge by making the dreaded disclosure. Being so threatened, how easy to have soothed him by secret messages, intimating that though tried he should not be hurt; that though public opinion required the public proceeding, yet the charge should be so lightly pressed as to insure an acquittal! What does he do? He refuses to hold any private communication with him until the trial be over. Lastly, when the trial comes on, though the threat is fresh in his ears, does he hang out signs of hope? Does he fill the court with Peers whom Somerset may recognise as friends, or select a president who is likely to be partial? Far from it. The person selected for Lord High Steward was the Lord Chancellor, whose previous appointment as Commissioner to assist in the investigation Somerset had objected to, on the ground of supposed personal hostility; and as for the selection of the Peers, though I think I have seen it remarked that there were some of them who ought to have been excluded as personal enemies, nobody has yet thought of objecting that the court was packed with his friends. And very evident it is, that, though he did not desire to take any unfair advantage either way, the King's anxiety was not for an acquittal, which would have relieved him at once from all further apprehension and difficulty, but for a conviction.

You see, therefore, that there is not a single movement, from the beginning to the end, such as you would have expected from him had he been acting under a guilty consciousness that his reputation was in Somerset's power: whereas if you suppose him to have been moved at first only by a natural horror of the crime and strong zeal for justice, and alarmed at last only by the fear of what a proud man, falling suddenly from such a height to such a depth, might in the bitterness of revenge or jealousy do or say,—there is not a single passage in his whole proceeding which you might not have expected.

Nor were the pardons which he granted soon after, to the Countess first and then to the Earl, inconsistent with these suppositions, if they be rightly considered. The Countess, though in some respects the guiltiest of the whole party, was the first and the only one of them who confessed before conviction. In showing mercy to a confessing penitent the King thought he was following the highest example of all; and indeed, if he had not done so, he might have been justly charged, if not with breaking a promise, at least with deceiving a hope

which he had himself encouraged. And for the Earl, though he had refused to deserve mercy on that condition, yet that very refusal, maintained as it was to the end with resolution and consistency, was a fact tending to strengthen the doubts for which the gaps in the evidence certainly left room,—doubts whether he was really an accessory before the fact. His behaviour at the trial was felt at the time by spectators fully predisposed to believe him guilty, as something unexpected and in his favour. “The only thing worth note in him” (writes Sherburn to Carleton, after observing that his answers to the charges were “poor and idle,”) “was his constancy and undaunted carriage in all the time of his arraignment; which as it began, so did it continue to the end, without any change or alteration. His Lordship, though he would not confess himself guilty, but stood upon his innocence, yet hath received the same sentence which the day before was given to his Lady,”^a &c. Nor did the passing of this sentence produce any change in him in this respect. The nearest approach to a confession which could ever be extracted from him, either before or after, was an admission made to Coke in the preceding February that “the presumptions against him might be such, having consented and endeavoured with others the imprisonment of Overbury, &c. as that, the same being enforced by wit and art against him, the extent of law might lay hold of him and find him guilty, being never so clear.”^b To this day the question of his guilt remains doubtful, and the resolution with which he stood upon his innocence is felt to be a part of the evidence. “When these two letters are read,” (says the late Professor Amos, speaking of certain unsuccessful “attempts to overcome the Earl’s resolution,”) “the Earl’s perseverance in defending his innocence will appear to be a feature in his conduct deserving of much consideration in passing our judgment upon his guilt or innocence :”^c to which I may surely add—though it be an inference for which Professor Amos was little prepared—that it was deserving of no less consideration from the King in determining whether he should allow the sentence to be carried into effect. As it was, the punishment which fell upon both of them, even supposing both to have been equally guilty, was amply sufficient for example; and, though there have seldom been criminals who had less popular sympathy to plead for them, there is no reason to suppose that the mercy extended to them was at the time disliked. Another of Sir Dudley Carleton’s correspondents, writing on the 29th of May—only five days after the trial,—describes it as the general wish that the

^a Sherburn to Carleton, 31 May, 1616. (S. P. O.)

^b Coke to the King, 8 Feb. 1615-16.

^c “Great Oyer of Poisoning,” p. 411.

King might spare Somerset. "Where a man converseth" (he says), "he finds all spirits induced to favour, pity, and wish well to this personage condemned." Yet he seems himself to have believed him to have been not only an accessory before the fact, but the original actor and mover. "The Lady" (he adds) "comes into the business by him and by his means." . . . "The pity I write of cannot proceed from thence that he did but serve another's purpose."^a

I am, &c.

JAMES SPEDDING.

^a Edward Palavicino to Carleton, 29 May, 1616. (S. P. O.)