

(1.) Mr. Prynne proved it, first by his own printed Letter, and the Depositions published by his Direction, in a full Relation, &c. pag. 4, 6, 10, 11, 12. where he useth these Expressions: *Colonel Fiennes (writes his Major Langrish) who communicated unto me an Order that he had received from his Excellency, whereby he was enjoined to send Colonel Essex to Windsor, or the Parliament, in case he saw cause for it; and having given me Reason to see and know that there was cause so to do, he asked me, whether I would assist him in the Execution of it or no? The which, seeing cause for, I promised to do. But it will be necessary here to annex the Reasons which caused Colonel Fiennes to put in Execution the Order given him by my Lord General, to send up Colonel Essex from Bristol; not as an Accusation against Colonel Essex in this Place, (let that be followed by those to whom it appertains) but by way of Vindication of Colonel Fiennes, that he had done nothing herein, but what the Trust reposed in him, and the Safety of that important Place did require him; and that the rather, because it begins so far to reflect upon Colonel Fiennes, as if he had done him Injury, and there had been no Plot at all, but a Plot to put himself in the Governor's Place. The Malignants in the Town taking up this, and spreading it, and adding Strength to it by Colonel Essex's own Speeches and Carriages, it will be a great Injustice to him, who hath done his Duty, and therein no inconsiderable Services, to be requited with Calumny, &c. Besides, Colonel Fiennes writes thus in a printed Letter to his Father: My Lord, &c. I have sent a Letter long enough, and full enough of Particulars, concerning Colonel Essex, and which I think were sufficient to satisfy any Man, that it was necessary he should be removed from hence, before the Town could be put in any Possibility of Security, altho' he had not been touched in the Point of his Fidelity: His being here, I found inconsistent with the Good and Safety of this City; and tho' there were no apparent Proof of his Falseness, which I never affirmed, yet there were shrewd Grounds of Jealousy, as may appear by the Depositions, whereof I have sent your Lordship a Copy, together with this Letter. For my part, so my Lord General and the World be satisfied, that I had good Reason to send him away from hence, according to his Direction, I would not have things prosecuted too hard against him, altho' I am very much deceived, if many a Governor of a Town hath not been called to an Account, in Point of his Fidelity, upon weaker Grounds than those which I have sent.*

(2.) By his own express Confession, in the latter end of his Answer to the second Article, tho' he denies it in the Beginning, that he did it not upon any pretended Cause.

To the third, *That himself was never Governor of Bristol*, Mr. Prynne answered, That it seemed he had carried himself so dishonourably in that Government, that he was now ashamed or afraid to confess himself Governor, for fear he should suffer for it, else he could not have the Impudence to deny it. But since he thus denied himself Governor, he would quickly prove him so;

First, by his own Warrants, during his Government, wherein he stiled himself *Governor of Bristol*. Secondly, by his Acceptance of that Title from his Officers, Soldiers, the Committee, and all others. Thirdly, by the Parliament's, his Excellency's, and own Father's intitling of him *Governor of Bristol*, in their Lettets and Directions to him. Fourthly, by his exercising all the Authority, and receiving the Pay of a Governor.

Fifthly, by the full Declaration concerning his March to *Bristol*, set forth by his Major *Langrish*; who, in his Letter from *Bristol*, March 6, 1643. pag. 3, 4, 6. stiles *Colonel Fiennes our Governor*, and now *Governor of Bristol*, three several Times, long before he had a Commission to be Governor there. Sixthly, by his own Draught of an Ordinance presented to the House of Commons by the Lord Say, for the settling of a sufficient Garrison at *Bristol*; printed by himself, in his Relation made to the House of Commons concerning the Surrender of the City of *Bristol*, pag. 17 to 22, in which we find this Gentleman no less than eight several times expressly stiled, *Colonel Fiennes Governor of Bristol*. And are you not ashamed so confidently to deny that here in the Presence of this honourable Council, which yourself have so lately published to all the World? *Oportet mendacem esse memorem*. Seventhly, in the very Articles of the Surrender of the City and Castle of *Bristol* to the Enemy he intitled himself *Governor*, witness the Title of them: *Articles agreed on at the City of Bristol, between Colonel Nathanael Fiennes Governor of the said City on the one Party, and Colonel Charles Gerard and Captain William Teringham, for and on the Behalf of Prince Rupert, on the other Party, July 26, 1643.* And Article 1. *That the Governor Colonel Nathanael Fiennes, &c.* Certainly if he were not Governor before to keep, yet these very Articles prove he was then Governor to surrender it. And now, Sir, take your Choice; If you were not Governor, then you had no Power to treat or surrender the City or Castle, and so must be condemned (by your own Confession) as a Betrayer of them: If you were Governor of them, then you shew yourself most unworthy your Birth and Breeding in denying it now; especially since you have given an Account in a printed Relation, of your Proceedings and Surrender of *Bristol*, which is in Law a Confession of this Trust. To conclude: His Excellency's own Proclamation, posted up at *Westminster* by the Defendant's Procurement, and summoning us to give Information against him, doth no less than three several times together stile him, *Colonel Nathanael Fiennes, late Governor of Bristol*; and therefore eternally concludes him to deny it.

The Colonel confessed at last, *that he was Governor of Bristol*; but he next denied, in the fourth Place, *That he was ever Governor of the Castle of Bristol, tho' he was of the Town.*

And Fifthly, *That he had ever any Commission to be Governor of Bristol.*

To the first whereof Mr. Prynne replied; First, That he had the chief Command of the Castle, and none else. Secondly, That he placed his own Brother, *Colonel John Fiennes*, as Commander in Chief, and all other Officers under him, in the Castle. Thirdly, That he only gave Order for the fortifying, victualing, and garrisoning of it. Fourthly, That he laid up the Stores and Magazines of the City there, disposed of all the Lodgings in it, intending to make it the Place of his last Retreat: therefore certainly he was Governor of it. Fifthly, That tho' *Bristol* Castle and the City were divided heretofore, the Castle lying in *Gloucestershire*, and being no part of the City, yet since *Queen Anne's* Entertainment at *Bristol*, *King James* at her Request gave and united the Castle to the City, making it part thereof, and so it continueth to this Day: Wherefore since he confesseth he was Governor of the City, he must necessarily be

be Governor of the Castle too, it being no parcel of the City, and having no other Governor that had charge of it in chief but himself alone, and his Brother under him.

To this the Defendant, in the sixth Place, replied, That he had no Charge of it as a Fort, no more of any one House in the City.

To which Mr. Prynne rejoined, First, That the Castle was never reputed a House, but always a Fort, a Castle, and a very strong one too; therefore he must needs have the Government of it as a Fort, not as a House. Secondly, Himself esteemed it the strongest Fort in and about the City, bestowed much Cost in fortifying it, laid up his Magazines in it, kept a special Garrison there, made it the Place of his last Retreat, promised to hold it out till the last, if the City were taken, and to lay his own Bones there rather than yield it up; therefore certainly he took charge of it as a Fort, and must answer for surrendering it as a Fort.

Upon this Colonel *Fiennes* replied, That the Castle was not mentioned in his Commission, and so he was not chargeable with it as a Fort.

Which Mr. Prynne presently laying hold of, rejoined: First, my Lords, We have now a clear Confession that Col. *Fiennes* had a Commission to be Governor of *Bristol*, the fifth Thing he even now denied. Secondly, Tho' the Castle be not particularly named as a Fort in his Commission, yet this will not help him, for it is therein included as part of *Bristol*. This I shall undeniably evidence by a Case or two: Colonel *Fiennes*, by Virtue of his Commission, hath built several Forts and Sconces about *Bristol*, without, not within the City-Limits, tho' adjoining to it, as we have done the like about *London*; these Forts are properly no part of the City, as the Castle is, nor are they mentioned or included within his Commission, being built for the most part since the Commission was granted; yet no Man will doubt but if Col. *Fiennes*, or any other Officer, had treacherously or cowardly delivered up any of these Out-Forts to the Enemy, tho' no part of the City, it had been Treason in him, and he should have suffered for it: So had he in like manner yielded up or betrayed any one House in the City or Castle, were it fortified or not fortified, to the Loss or Hazard of the City, it had been Treason by the Laws of War; many Cities and Castles having been lost, by the loss or yielding of one House or Postern; much more then must he suffer for surrendering such a considerable Fort as *Bristol* Castle to the Enemy, without any Battery, Assault, or Necessity, tho' he found it not specified in his Commission, which extends to the whole City, and so to every House, Fort, and Parcel of it, tho' not particularly mentioned in it.

The Colonel then said, That he had no Commission to be Governor of *Bristol*, and by Consequence was not Governor of it.

To which Mr. Prynne replied: First, That since he undertook the Charge of the Town and Castle, as Governor, it mattered not much whether he had a Commission or not; for he writ, and carried himself as Governor, even from the sending away of Colonel *Essex*, till the Surrender of the Town and Castle, which he surrendered as Governor.

Secondly, That himself had formerly unawares confessed, That he had a Commission to be Governor, and that he was styled Governor by *Lan-*

grish, and others, even in Print, before he had his Commission to the Governor.

Thirdly, he should prove hereafter, That himself sent one Captain *Bagnall* twice up to *London* to procure not only a Commission, but an independent Commission, from his Excellency, that so he and his Garrison might not be subject to Sir *William Waller's* Commands, (which Captain *Bagnall* afterwards attested upon Oath, and that he spent sixteen Pounds in these two Journeys, to obtain this Commission, which the Colonel out of his Liberality never yet paid him) and the Colonel himself confessed afterwards to the Council upon *Bagnall's* Testimony, he sent for and received an independent Commission; that so he and his Garrison-Soldiers might not be liable to Sir *William Waller's* Commands, as they formerly were.

The Colonel hereupon told the Council, That he sent for this Commission, not to guard the City against the Enemy, as Governor of it, but only to keep his Soldiers in Order, who when they were commanded on any Service, grew Mutinous, and would still be calling on him to see his Commission: for which he gave an Instance in Col. *Popham's* Regiment; who disobeyed him when they returned from the taking of *Sherborne*: And this made him to send for a Commission, only to order his Soldiers, and keep them in Obedience; but he never had nor sent for any Commission to keep the Town or Castle.

To which Mr. Prynne replied, That this was the most absurd, irrational, if not unsoldierly Distinction, that ever was heard of in the World, and that he might be ashamed to propound it before Soldiers, in such an honourable Council of War as this: for what need was there either of a Garrison or Governor of *Bristol*, or of such a Commission to keep his Soldiers there in Obedience and Order, but only to preserve the City? This was the only End why he and his Garrison were there placed, maintained by the Parliament and his Excellency to keep the City, which else would have as well or better kept itself without them.

Secondly, That he was confident his Excellency never granted any such Commission to any Governor (nor any other Prince or General in the World) only to keep his Garrison in Order, but not to defend the garrisoned Place, whereof he was Governor: such an absurd Commission was never yet heard of, nor such a nonsense Distinction made by any Soldier. And thereupon he desired the Commission might be produced, to the End it might appear whether it warranted this Distinction, That it was only to discipline his Soldiers, but not to hold the Town against the Enemy.

Thirdly, That their Lordships now saw the true Reason why Colonel *Fiennes* so soon delivered up *Bristol* to the Enemy: he pleads, he had (or would have) no Commission to keep it, therefore it was he thus Surrendered it up to the Enemies almost as soon as they came before it: who doubtless would keep it better, defend it longer than he, tho' they wanted a Commission for it.

Fourthly, That this pretended Disobedience of Col. *Popham's* Regiment was long after his Commission received, and that upon this Occasion: Col. *Fiennes*, and his Major *Langrish*, would have taken from Col. *Popham's* Regiment that little Plunder they had gained at *Sherborne*, with the Hazard of their Lives, at the Country's Charge, without any Direction from *Fiennes*, who sent them not on that Service; which injurious, avaritious Act of his

they justly opposed by standing on their guard, and so kept that Booty he would have carry'd from them into *Bristol* Castle. This occasion then being subsequent to his Commission, could not be the Ground of its procuring, but rather that which himself unawares confessed; his desire of Independence and Exemption from Sir *William Waller's* Commands.

The Colonel then insisted: First, *That he received his Commission only upon this Condition, and with this Intention, to keep his Soldiers in order, but not to make good the Town and Castle: therefore he could be no further chargeable by it than as he received it.*

To which Mr. *Prynn* replied: (1.) That every Governor must receive his Commission at his Peril, as it is granted and intended by him that granted it, (as Tenants do their Leases, and Donees in tail their Lands) and hath no Power to annex any Conditions thereunto: his Commission then being absolute, to keep the Town for the Parliament, that being the sole use and end thereof, his conditional accepting of it being repugnant to it, was void and idle.

(2.) That the * Common and Martial Law of the Realm annex this Condition to every Governor and Officer of Trust, that he ought to discharge his Trust and Government, and keep that safe which is committed to his Custody to his utmost Power, tho' it be not expressed in his Commission; and therefore this pretended conditional Acceptance, directly against his Trust and Government, was most ridiculous.

Secondly, he alledged, *That he never sought after the Governorship of Bristol, but really desired not to accept it, and to be acquitted from it: to which end he produced and read divers Letters of his own to the Lord Say his Father, and one or two to his Excellency, which took up near two hours time in reading. In the reading of these Letters, the Colonel casually desired the Council to observe, that many of them were written before he had his Commission for Bristol, which was not till the first of May 1643.*

This Mr. *Prynn* taken present hold of, desired their Lordships in the first place, to observe his voluntary Confession of that Commission which at first he so obstinately denied.

To these Letters read, Mr. *Prynn* gave these short Answers:

First, That all these Letters were either his own or his Father's, and not above two or three of them proved true Copies, and that by Mr. *Sprig* the Lord *Say's* Secretary; therefore no Evidence at all to justify or excuse him, himself and his own Letters being no competent Witnesses in his own Cause; and his Father but *Testis Domesticus* at the best, if present.

Secondly, That the substance of the chief Letter to his Excellency, was only a modest excuse of his own insufficiency for that Charge; a common Compliment in every ingenuous Man's Mouth, that is prefer'd to any great Place of trust; who in words at least pretends Insufficiency for that Place which he perchance desires: just like our Bishops usual Answer, *Nolo, nolo, to vis Episcopari?* now used as a Formality, for fashion sake only, even when they come to be consecrated; when in truth they make all the Friends and Means they can to compass that Bishoprick, which (for fashion sake, out of a dissembling Modesty) they pretend, and twice together answer solemnly (when demanded openly

before the Congregation) that they desire by no means to accept of. Therefore this Letter of his can be no proof, that he was unwilling to undertake this Government, since his subsequent Acceptance and Actions disprove this pretended Refusal.

Thirdly, He observ'd, that in one of his Letters dated the 4th of *April*, he writ earnestly to his Father, to procure and send him his Commission: Therefore he was so far from refusing, that he sought the Government, and sent Captain *Beynall* twice to his Excellency to procure his Commission: as was after attested upon Oath.

Fourthly, That by divers of his Letters then read, it clearly appeared, himself was the chief Informer against Col. *Essex*, and the chief Actor in his Removal, to intrude himself into his Place; for that we had now his own Hand against his Words and Answer.

Fifthly, That the Scope of all his Letters was only to complain and cry out to the Parliament for more Monies from *London*, or to get more Authority to raise Monies in the Country, to pay the Garrison, without which Monies, he writ, he could not long hold the Town; but there is not one Clause in all the Letters, that he wanted Arms, Ammunition, Powder, Men, Provision, or that the Town or Castle was not tenable. If then he complained only of Default of Monies, with which if he were furnished, he made no doubt of keeping the Town; and it is clear he lost not the Town for want of Money, (for he hath not hitherto either in his printed Relation, Letters, or Answer, affirmed, that he surrender'd the City or Castle for want of Money) then by his own Confession, he must surrender them either out of Treachery or Cowardice, they being tenable, and furnish'd with all other Necessaries for a Siege but Money.

Sixthly, He observ'd that Col. *Fiennes* did never refuse the Place of Governor, as he should have done had he been unwilling or unable to discharge it: that his Importunity to quit it, in case he could get no Monies, was with no intent to leave the Place, but only to hasten the supply of Monies; it being the Argument and Rhetorick of most other Commanders in their Letters to the Parliament, to cry out for Monies, else all would soon be lost, and they must disband.

Seventhly, That he took on him the Power and Place of a Governor long before he had a Commission; that he drew and sent up Ordinances to pass the House to enlarge his Power and Territories for twenty Miles space round *Bristol*, and to settle himself in an absolute Government there. That he both earnestly writ and sent up twice to his Excellency for a Commission by a special Agent, that so he might be Independent; that he accepted of the Commission when it came; yet never acquainted the City or Committee of Parliament with it, doing all things in a high imperious manner for the most part, of his own Head, without their Privy or Advice; that he held his Commission without surrendering it till he surrender'd the Town and Castle to the Enemy, so unwilling was he to depart with his Governorship. From all which he concluded, it was apparent he was so far from refusing, that he did ambitiously affect, if not injuriously usurp, this Government, for his own private Lucre, to the Prejudice of the former Governor, and irreparable Damage of the whole Realm.

In fine, Col. *Fiennes* desired Mr. *Prynn* to prove. First, *That he ever undertook to his Excellency or the Parliament*

* *Littleton*. Sect. 378, 379. See *Coke's Institutes* on it, fol. 232, 233, 234.

Parliament to make good the City or Castle, and not to surrender the same to the Enemy without their Consents.

To which Mr. Prynne answer'd, That the very Law itself and common Reason informs us, that every Governor of a Town, or Fort is to make them good, and not to surrender them to the Enemy without the consent of those who committed their Custody to them, else every Governor might betray his Trust at pleasure. This therefore being a Condition in Law annexed to all Governors and Officers, and he confessing himself to be Governor, (and that by a Commission which no doubt enjoyned him to make good and keep the Place in manner aforesaid) needs no other Proof at all; the Law resolves it, and therefore none must doubt or contradict it.

With this Debate the Proof of the first Article was concluded.

Article 2. The second Article was proved by his own printed Proceedings mentioned in *A full Declaration, &c.* p. 5, 6, 7, 8, 15. by his Answer to the Article, and Relation to the House of Commons, p. 15. And Mr. Prynne informing the Council, that he did not charge it criminally, being a lawful Action done by direction of Parliament, but only by way of introduction and aggravation of the subsequent Articles, and Crime in surrendring the Town so treacherously and cowardly, after this his Sentence against, and Execution of those Conspirators, it was passed over without further Pressing.

Article 3. The third Article being likewise introductive, to aggravate his Offence in the fourth, fifth, sixth and eighth Articles, was briefly proved by his own printed Relation, p. 4, 5, 6, 23. by his printed Letter to his Excellency, confessed in part in his Answer, and to be further proved in the Proof of the ensuing Articles, was thereupon briefly run over: and so the first day's Hearing ended.

The second Day's Hearing; together with the third, fourth, fifth, sixth and seventh, spent wholly in the Proof and Defence of the fourth Article, to which most of the others in the Reply and Rejoynder were reduced.

THE three first introductive Articles being run over the first Day, the Prosecutors, the next Session, proceeded to the fourth, where the criminal and capital charge of the Impeachment began: The Defendant first demurred to the Depositions taken upon Oath against him, both before the Judge-Advocate himself, and by Sir William Waller and Col. Carre, by Commission from his Excellency; alledging,

First, That no Paper-Deposition ought to be allowed by the Law, in Cases of Life and Death, but the Witnesses ought to be all present and testify *viva Voce*, else the Testimony ought not to be received.

Secondly, That Sir William Waller was his Enemy, and by Confederacy with the Prosecutors, had been the chiefest Instrument of prosecuting this Impeachment against him; to which end he produced one Major Dowet a Frenchman (whom Sir William Waller had displaced, and so disgusted) to attest, That Master Walker's Reply to Col. Fiennes's Rela-

tion, was shewed to Sir William and his Lady before it was printed, and that Sir William had spoken to his Officers to acquaint Mr. Walker with all such Passages as they knew concerning Col. Fiennes, touching the Siege and Surrender of Bristol: therefore he was neither a fit Commissioner nor Witness in this Cause, nor yet any of his Officers under him.

Thirdly, That he had not joyned with the Prosecutors in Commission, neither had he notice thereof, that so he might cross-examine the Witnesses. Therefore for these Reasons, he desired, that all the Paper-Depositions might be suppressed, and not given in evidence against him.

To the first of these Objections Mr. Prynne returned this Answer: First, that himself had formerly used this kind of Proceeding in the Case of Col. Effex, against whom he had not only taken, but printed divers Paper-Testimonies, in things which might have proved Capital if the Proof had been full. That himself in this very Case had sued forth a Commission to examine Witnesses on his behalf, without our Privy, before we took forth any Commission, who did but imitate him therein, and that by the Judge-Advocate's own advice, who directed us to this Course, which he affirmed to be both legal and usual: That in the Civil Law (especially in Courts Martial) Trials were as usual *Testimoniis*, as *Testibus viva voce*: That in the Admiralty, (a Civil Law Court) as likewise in the Chancery, Star-Chamber and *English* Courts, formed after the Civil Law, they proceed usually by way of Deposition: That even at the Common Law in some cases, Deposition taken before the Coroner, and Examinations upon Oath before the Chief Justice, or other Justices, are usually given in evidence even in capital Crimes: That the high Court of Parliament hath upon just occasion allowed of Paper-Depositions in such cases: That in all Courts Martial, both in *England* and elsewhere, they have been constantly allowed, and particularly in the late famous Case of *Tomkins, Challoner*, and other *London* Conspirators, whose Examinations were read, and given in as evidence one against the other, upon which they were condemned and executed. Besides, there was both very great reason and necessity that such Depositions should be admitted in this Case, and in all martial Proceedings of this nature, because divers of our material Witnesses, being Officers or Soldiers now in actual Service, and dispersed upon several occasions into divers Brigades, and parts of the Kingdom remote from *St. Albans*, could not without great danger, disservice to the State, inconvenience to themselves, and excessive Costs, be drawn together personally to attend this Trial, which had been so frequently adjourned, not only from Week to Week, but Place to Place: That we several times petitioned both the Commons House and his Excellency, that the Council appointed for this Trial might be held at a certain Day and Place, within *London* or *Westminster*, before our Witnesses were dispersed, and where we could with less trouble and expence to ourselves and them, have produced all or most of them *viva voce*; but yet we could not (thro' the Defendant's Procurement, as we conceive) obtain this reasonable request: Therefore himself being both the Cause and Precedent of these our Depositions, and of removing the Trial to this Place, for our greater Incommodation and Expence, ought not to take advantage of his own Wrong, against a Maxim of Law, the constant Practice of the

Court-martial, and his own leading Example, which we did but imitate. Which Point the Council did upon solemn Debate among themselves clearly over-rule against the Defendant, upon the premised Reasons.

To the second Exception, concerning Sir *William Waller*, Mr. *Prynn* most solemnly protested for himself to the Council, that it was a most false and malicious Slander; that neither Sir *William Waller*, nor his *Lady*, nor any other in their behalf, did ever directly or indirectly excite, advise, or encourage him in this Prosecution; that the Delinquent himself was the only Man who unadvisedly put himself upon this Trial, as appears most evidently to all the World by the Close of his printed Relation in the Parliament House, where pag. 13. *He desires the House of Commons, that they would be pleased to let the Truth of what he had then affirmed to them (concerning the Surrender of Bristol) be examined at a Council of War, that so he might be cleared or condemned, as they should find the Truth or Falshood of what he had delivered:* by his, and his Officers Petition to his Excellency, and his Excellency's Proclamation upon their Petition, posted up at *Westminster* and the *Exchange*, wherein he summoned Mr. *Walker* and Mr. *Prynn* by Name, in the most publick manner that might be, and after that by private Notes, and sundry other publick Adjournments, to be his Prosecutors: Which thankless Office he was not altogether unwilling to undertake, when thus openly engaged by the Defendant; not out of any private Malice to the Delinquent, whom he formerly honour'd, and to whom he never bore any particular Spleen, having never received the least Injury from him; much less out of any degenerate Respects, instrumentally to wreck the private Malice or Revenge of any others upon him, (it being below his Spirit, and most averse to his Genius, his Conscience, to be subservient or instrumental to any Man's Malice or Revenge whatsoever) but merely out of a real desire to do his Country faithful Service, and vindicate the Truth of this unworthy State-ruining Action, under which the whole Kingdom now lay languishing, from those false Disguises which the Defendant in sundry printed Papers had obtruded on the World, to save his own irreparable Dishonour. The Prosecution therefore proceeding thus merely from himself, as all the Premises infallibly demonstrate, he had laid a most scandalous Imputation upon Sir *William Waller* (a noble well-deserving Gentleman then absent,) and on himself, in the fore-mentioned Exception, for which he demanded Justice against him from that honourable Council, unless he could make good this Calumny, for which he was most certain the Defendant had not the least shadow of Proof; the Testimony of *Dowet* (the ground of this Aspersion) not referring to him, but only to Mr. *Walker's* Relation, published long before any Impeachment of, or Prosecution against the Defendant: which Charge Mr. *Walker* himself there present was ready to answer, as to that Particular.

Hereupon Mr. *Walker* informed the Council, that he acknowledged in the *Epistle to his Answer to the Defendant's Relation, that it was but a Collection out of the several Reports of divers Gentlemen and Commanders in that Service, before and when Bristol was besieged:* which when he had drawn up, having occasion to go to *Southampton*, he left in the Hand of a Friend, desiring him to shew it to whomsoever he should think fit, (and especially to those Gentlemen out of whose Mouths he compiled it)

to see if he had hit their Sense aright; and that this Party (as he was since informed) shewed it to Sir *William Waller*. He said further, that the written Copy was shewed to the Defendant himself, and therefore he doth not wonder if it were shewed to Sir *William Waller*: and that Sir *William's* speaking to his Officers, *only to declare what they knew touching that Business, with reference simply to his Answer*, could not be intended either Malice, or Combination, or Prosecution of this Impeachment, not then so much as thought of, nor any Prejudice to the Truth, since no Man can know a Falshood, because it is a *Non-entity*, and can be no Object of Man's Knowledge: That therefore this could be no just Exception to Sir *William* as a Commissioner, the rather because Col. *Carre* (a Man indifferent, was joined with him; much less any legal Exception to any Officers or Soldiers Testimony then under his Command, who did but testify what they knew for Truth. Besides, Mr. *Prynn* added, that Col. *Fiennes* himself had examined divers of Sir *William Waller's* Officers by Commission, before we examined any of them, and some of those whom we examined; and why we should be deprived of the Benefit of their Examinations for the Kingdom's Advantage, when himself had examined them only for his private Defence, there could be neither Reason nor Equity alledged, it being a mere Artifice, to deprive us of our most material Witnesses, and to suffocate the Truth.

To the third, of his wanting notice to join in Commission, and cross-examine the Witnesses on the other side, Mr. *Prynn* answered:

First, That himself had begun the Precedent, in taking forth several Commissions to Sir *William Waller's*, and the Earl of *Manchester's* Army, to examine Witnesses there, without our Privy or Consent, who neither had any the least notice of the Commissions to join in them, nor of any the Witnesses Names, till the Hearing, nor had not, nor could not cross-examine them, nor ever yet saw their Depositions: And why our Depositions, being Prosecutors, should not be admitted as well as his, being not taken so publickly before the Judge-Advocate, as most of ours were, he saw no reason.

Secondly, That we could not enforce Colonel *Fiennes* to cross-examine any Witnesses, or to join with us in their Examination; therefore if he neglected to do it, or went before us in his Commissions, as he did, by virtue of which he might have examined all our Witnesses if he would, before we had taken their Testimonies against him, the Default was his not ours.

That we left all our Depositions, and the Witnesses Names, with the Judge-Advocate, to whom he oft repaired, and from whom he might have received the Catalogue of them, to cross-examine them, if he pleased; which since he neglected to do, after so many Adjournments, and taking no Exceptions till now he came before the Council, of purpose to evade his Trial, and to elude both them, us, the Parliament, and People, whose Eyes are on the Issue of this Business, there was no reason to allow these frivolous Exceptions. All which the Council, upon short Debate, over-ruled against the Defendant, resolving, that the Testimonies ought to be used, unless some particular just Exception could be alledged against any of them.

These Obstacles being removed, Mr. *Prynn* then proceeded to prove the fourth Article; which he did,

First,

First, By the Defendant's own Answer thereunto, wherein he doth confess the whole Article in substance; yea, more than it chargeth him withal, as namely,

First, *That he never undertook to make good the City or Castle, or either of them, against the Enemy; declaring that he would not, nor could not undertake it:* Which is in plain English as much as to confess, that he had never any Thought or Resolution to hold them out to the utmost Extremity, as he ought to have done in Honour and Duty; but a professed Purpose to surrender them to the Enemies, traiterously or cowardly, as soon almost as they came before it.

Secondly, *That soon after the Enemy entred the Line* (with a very inconsiderable Number, not above a hundred and fifty at first, and three or four hundred in all at last, as the Witnesses attest) *he did surrender the Town and Castle, with all the Prisoners, Cannons, Ammunition, Artillery, Military Provisions, Magazines, Victuals, and part of the Arms,* (all but the Horsemen's Swords, most of which were likewise taken from them ere they departed the Town) *before the Enemy had taken any of the Out-Forts about the same, or had made the least Assault or Battery upon the Walls of the City, or of the Castle, or any Mine or Breach into the chief Fort thereof, (and that before the Town had been three whole Days besieged, which he denieth not, and therefore granteth by his Answer:)* Which whether it were not a most clear Confession and Demonstration of a treacherous and cowardly Surrender, in the superlative degree, he humbly submitted to the honourable Council's Judgment, and the Determination of all Men endued with common Reason; and yet the Defendant hath the Confidence, in the same Branch of his Answer, to deny *that he did deliver them up traiterously, cowardly, or dishonourably, or contrary to his former Promises,* (which were to dispute every Inch of the Town, from the Line to the City Gates, and from thence to the Castle-walls, which he would defend to the utmost, and there lay his Bones if he could not keep it, and make his Flag of Truce his Winding-sheet, as is proved by * divers Witnesses,) *or contrary to his Trust and Duty;* and the Impudence to affirm, *that he did defend the Town and Castle to the utmost Point, not only of Duty, but also of Honour, that any Soldier could or might have maintained the same.* Which whether it were not the greatest Paradox and Contradiction, that any Military Man in his right Senses durst ever affirm before a Council of experienced, valiant Commanders, he referred to the Resolution of all there present.

Thirdly, He confesseth, that tho' *neither any of the Out-works were taken, nor the Town Walls once battered or assaulted, when the Enemy entred the Line, yet as Things then stood, neither the Forts nor Castle ought to have been kept, to the Prejudice of the City and Garrison, but ought to have been surrendered together with the City, as they were, by the constant Practice and Policy of War in all Places, the Principles of Justice and Honesty, and the Rules of Wisdom and Discretion.* And he further adds in the Clause of his Answer to the eighth Article, *That he doth affirm and will justify, that if the Castle had been tenable, yet neither by the constant Practice and Maxims of War in all Places, nor by the Rules of Honesty and Christianity, he ought to have held the same.* A Riddle which Mr. Prynne professeth transcended the Limits of his Understanding to enucleate, if not

of all Mens else, but the Defendant's; and a Passage which carried *Treachery and Cowardice* engraven with Capitals in its very Front, proclaiming openly to all Men, that had the Out-Forts and Castle been never so strong and tenable against the Enemy, yet he was so far from resolving to keep them for the Kingdom's and Parliament's Security, that he professeth, *he ought not to have held the same, neither by the constant Practice and Policy of War, nor Rules of Piety or Christianity, but ought to have surrendered the same with the Town.* Certainly this Gentleman was either resolved to lose his Head when he penned this Answer, or else was intoxicated with the panick Fear that surprized him at Bristol, (which hath made his Pen and Brains to stagger ever since) else he durst not put in such an Answer in Writing to this Impeachment.

Fourthly, He saith, *that this Surrender of the City, Castle, Forts, with all the Ammunition, Cannon, Magazines, Arms, (but Troopers Swords) Prisoners, Ships, and his very Colours, before any Out-fort taken, or Battery made against City or Castle, was upon good and honourable Conditions, in respect to the Estate he was in.* I think he means himself was in an ill Condition, should the King's Forces have forcibly taken him Prisoner, for that the King had excepted him out of the Pardon mentioned in his Answer to the third Article: And therefore out of base Fear and Self-respects he would rather redeem his Head, and buy his Peace with the voluntary Surrender of a Place of such Consequence to his Majesty, than hazard his Life in defending it to the utmost. And withal he adds, *that this Surrender was for the Honour, Profit, and best Advantage of the Kingdom, and Parliament, by whom he was intrusted:* which when he shall be able to demonstrate, or make the Parliament and Kingdom believe, I shall profess this honourable Council may in Justice acquit him; till then (I hope) you cannot but condemn him, even out of these several Passages of his own Answer.

Secondly, From his Answer I shall descend to our Proofs, which extend to all the ensuing Articles as well as this: by which it appears,

First, That the Defendant wanted neither Men nor Ammunition, nor any manner of Provision, to defend the City and Castle against the Enemy: Not Men, for he had near 2000 Foot, and 300 Horse, beside Voluntiers, to defend the Town; and he might have raised at least 6 or 8000 able Men more in the City, if he had wanted Men, which were as many, or more, as besieged it. Proved by the Depositions of Colonel Stevens, Anthony Gale, Arthur Williams, Able Kelly, James Powel, and others.

Secondly, That they wanted not Ammunition, for we proved there were 60 (nay 70 double) Barrels of Powder in the Castle, with Match and Bullet proportionable, besides what was in the City and Forts, and might have been made weekly in the Town, if held out against the Enemy; and that by the Depositions of Mr. Edward Bainton, Arthur Williams, Joan Batten, Major Wood, and others: Besides, himself confesseth in his Relation 50 Barrels in the Castle only, when surrender'd; Mr. Hassard deposeth 50 at least.

Thirdly, That they had all manner of Provision both in the City and Castle, for three Months space or more; the Particulars whereof will appear in the Deposition of Nicholas Cowling, Able Kelly, James Powel, Dorothy Hassard, Mary Smith, and

others:

* Mr. Powel, Col. Strode, Col. Stephens, Mr. Hassard, Capt. Bagnal.

others: That himself and * others deemed the City and Castle strong and tenable; that he promised to hold the same to the utmost; to dispute every Inch of Ground with the Enemy; to retire into the Castle when he could hold the City no longer; to lay his Bones there rather than yield it; and make his Flag of Truce his Winding-sheet. If then the Place were so strong and tenable, and he wanted neither Men, nor Ammunition, nor Victuals, to defend the City and Castle, his Surrender of them must of Necessity be adjudged *Traitorly*; or *Cowardly* at least, if not both: for what else but *Treachery*; or *Cowardice*, or both conjoyned; could move him to this Surrender, in less than three Days Siege; before the utmost extremity, contrary to the Laws and Ordinances of War, whenas he wanted nothing necessary for a brave Defence?

Secondly; We have proved that the Town and Castle were not besieged three whole Days; for the Siege it self began but the *Monday* Morning, and the Articles of Surrender were agreed on before *Wednesday* Night, and the Surrender executed before 9 of the Clock the *Thursday* Morning: as Col. *Stephens*, Col. *Strode*, *Able Kelly*, and others testify.

Thirdly, That the Enemies were generally repulsed on all quarters of the City, with extraordinary great loss of Men, near 700 of them being slain, and as many wounded, with the loss only of six or eight of our Men: and that but 150 of them, or 200 at most, entered the Line the *Wednesday* Morning before Sun-rising (near three of the Clock) and were so afraid of being cut off, that they gave themselves all for dead Men, and might have easily been cut off, none of their own Party knowing of their entry till two Hours after they entred, nor sending them any Relief. Attested by *Arthur Williams*, *Joseph Proud*, *James Coles*, *Mary Smith*, Serjeant *William Hill*, *Stephen Radford*, *Michael Sparks*, and others.

Fourthly, That Major *Langrish* and his Horse-Troops, which had the Guard of that Place, and two other Captains of Horse under him, never once offered to charge the Enemy, whom they might easily have cut off, but retired into the City without charging them: That *Langrish* (very intimate with the Defendant) had been formerly complained of to him, by Lieutenant *Clifton*, Col. *Stephens*, and others, for his extraordinary Cowardice and Negligence, who desired he might be cashiered to walk the Street, as unfit for any Charge; yet the Defendant continued him in his Place, and set him to guard that very weak Place, where the Enemy, was likeliest to enter. Proved by *Joan Battin*, Col. *Popham*, Col. *Stephens*, and Captain *Nevil*, Lieutenant *Clifton*, Captain *Husbands*, and Captain *Vaughan*, (*Fiennes's* own Witnesses) upon Cross-Examinations before the Council.

Fifthly, That the day before the Enemy entred, one *Thomas Munday*, a Soldier under Captain *Henry Lloyd* (as both their Depositions witness) pointing with his Finger to the very Place where the Enemy entred the next Morning, told Major *Langrish* in the hearing of Colonel *Fiennes*; Captain, *Yonder is a very suspicious Place not fully fortified, and it is very doubtful; unless you set an hundred Musketeers more there, it being weakly manned, the Enemies will there make their first Breach.* Whereupon Co-

lonel *Fiennes* for this his good Advice, in an angry manner asked him, *What! doth he prate?* and called him *Saucy Knave*. And *Langrish* having the Guard thereof, suffered the Enemy the very next Morning to enter that Line at the same Place, from which he retired with his Horse without any Charge or Resistance; whenas he might easily have repulsed and beat them off. Yet the Defendant never questioned nor complained against *Langrish* for this his Cowardice and Treachery, which was the only real Occasion of Surrendring the City, but countenanced and justified him all he could, affirming in Print, that he was acquitted by a Council of War of Cowardice, (which was false;) and endeavoured to lay the Blame of not Charging upon one Lieutenant *Roufwell*, who was so far from being guilty of this Fact, that seeing *Langrish* with his Troop quit the Breach without Charging, he called him Coward, and with three or four Musketeers only marched up to the Enemy, and made good the Breach for a Time, till he received so many Wounds (whereof he after died) as forced him to retreat for want of Seconding; he affirming, that if he had been seconded by the Horse, or with 20 Musketeers more, he could easily have repulsed the Enemy, and made good the Breach. Yet this dead Man must be thus traduced to save *Langrish's* Credit, tho' Captain *Husbands* (one of the Defendant's own Witnesses) confessed, that *Langrish's* Cowardice, in not Charging, was the Loss of *Bristol*, and that he told him so openly to his Face, at a meeting in *London*, since the Surrender.

Sixthly, That for two or three Hours space at least, the few Enemies who first entred had no Relief nor Supplies sent to them, neither indeed could have, the Enemy being bravely repulsed with great loss in all other Places, so as they retired in disorder to their Quarters; and one whole Regiment of their Horse retreated as far as *White-Church*, four Miles from *Bristol*, with a Resolution never to come on again, had not the Message of the unexpected Parley, and Hopes of the City's Surrender thereupon, drawn them back to their Quarters: And that divers of the Enemies confessed, if they had then been repulsed or beaten out of this Breach, they had raised their Siege, and never come on again. Serjeant *Hill*, Major *Wood*, *James Coles*, depose all this, and the Defendant's Witnesses confessed it.

Seventhly, That from three in the Morning, when the Enemy entred, till about 10 or 11 a-Clock at least, there was no Charge at all made, except only with *Roufwell*, and after by Capt. *Nevill*, who charged them down-hill only with twenty Horse, an Hour or more after their entry, and could have then beaten them out, as he verily believed, and attested upon Oath, had he been seconded with 30 or 40 Horse or Musketeers. A very strange neglect, to suffer the Enemy to lodge so long within the Line, ere they were encountered.

Eighthly, That upon the Enemies Entry Col. *Fiennes*, instead of commanding the next Guards and Companies then at the Out-works, to fall upon and beat them out, as he was pressed to do by Lieutenant *Davison*, Major *Wood*, Capt. *Bagnal*, Mr. *Deane*, Serjeant *Hill*, and others, commanded upon pain of Death by his Lieutenant *Clifton*, to draw off the Line and Works on that Side of the City the Enemy entred, and to retire into the City with

* Col. *Strode*, Col. *Stephens*, Captain *Bagnal*, Mr. *Powel*, Mr. *Cowling*, Major *Wood*, Richard *Lindon*, Edward *Watkin*, Mr. *Hassard*.

with all Speed to the Market-place, full sore against their Wills: whereat divers of the Soldiers ^a were very much discontented and discouraged, and many of them said, *They were betrayed.* Whereupon they retreated from the Line and Out-works in great Disorder, many of them leaving not only their Swords, Muskets, Powder, Bullets, but their very Cannons behind them, which might have been easily drawn off, being down the Hill, and many Colliers Horses ready at Hand for that Service; at which the Gunners were so discontented, that some of them spiked and nailed up their Touch-holes, to make their Cannons unserviceable to the Enemy, and the City-Garrison too, in case they had returned to the Works and Line; which by this strange Soldiery, were left naked of all Defence near two Miles Space together, so as the Enemy might have entered the Line where they pleased, in sundry Places of greater Advantage, nearer to the City, Castle, and Suburbs, by much, than where they had made their first Entry. Which strange Device and unmilitary Policy, if it favoured not of apparent Treachery, yet at least it cannot be excused from extreme Folly, and want of Skill in Martial Affairs; which made Major Lewis, and other of the best experienced Soldiers (who advised not to draw off the Line into the City, but to fall presently on the Enemy from the Line itself, which was the nearer, best, and speediest Way) exceedingly discontented.

Ninthly, That when the Soldiers were thus hastily and confusedly called from the Line into the Market-place, they there stood idle, looking one upon another, without any Command to make a Sally, or do any other Service to secure the City ^b; whereupon, for want of Command and Employment, divers of the Soldiers who had been upon Duty at the Line four or five Days and Nights together, departed from their Colours, some to the Tavern, some to the Ale-House to drink, others to their Beds to sleep, so as their Companies were broken, and not half full: Whereas if they had marched orderly from the Line, against the Enemies, when they first entered it, which was far the best and shortest Way; or made a Sally as soon as they retreated from the Line, these Inconveniences had been prevented, the Soldiers kept in Heart, the Enemies cut off, or beaten out, the Breach made up, and the City preserved.

Tenthly, That when the Sally was made ^c, not before, but much about eleven of the Clock, it consisted not of above 200 Men, and that of those called off the Line, the fresh Men at the main Guard, and Captain Stokes's Company purposely kept for a Reserve, with the Garrison Soldiers in the Castle, (who were not in the Fight at the Line, and might have made a present Sally, without calling any from the Line) being not employed on this Service.

Eleventhly, That when the Enemies upon the Sally, tho' late, were driven from House to House, and so beaten that they let fall their Arms, and cried for Quarter; and when the Women were so courageous, that they proffered to go with their Children unto the Cannons Mouth, to dead the Bullets, in case the Soldiers were afraid, rather

than the City should be yielded, and thereupon encouraged both the Gunners and Soldiers to fight, working in the very Face of the Enemy, and stopping up *Froom-Gate* with a very thick Work (made with Earth and Wool-Sacks) where the Enemy should have entered the City; yet such was the Defendant's extraordinary Cowardice, that he even then sent twice out to the Enemy for a Parley, whereas the Soldiers generally desired and offered to fight it out to the utmost ^d: which so much discontented divers Soldiers, that they said they were betrayed, and in very anger brake their Muskets, Swords, Pikes, lest the Enemy should gain them, swearing that they should never serve the Parliament more, and taxing the Governor for his Parley and Cowardice.

Twelfthly, That the Castle was surrendered, the Prisoners released ^e, the Enemy admitted into the Town, long before the Hour agreed on, thro' the Defendant's Hastiness; yea the Soldiers, and Townsmen pillaged before his Face: yet he took no Care to see them righted, but left them to the Spoil, neglecting to take Hostages to see the Articles performed; which (contrary to the Rules of War) were not made between Prince *Rupert*, the King's General ^f, and the Governor, but between him and the Prince's Commissioners only: and that he made such Haste to quit the Town, that he left Captain *Blake*, and Captain *Husbands*, in *Brandon-Hill* and *Prior-Hill* Forts behind him, never giving them notice of the Articles, nor any Warrant under his Hand to surrender them to the Enemy, to the endangering of their Lives and Liberties.

Thirteenthly, That Col. *Fiennes* being moved to send away the Prisoners before the Siege, refused, saying, *He would keep them there to make his own Conditions the better*; thinking of nothing beforehand, but to surrender the City, to save himself: That he told ^g Mr. *Talbois*, that he should not be in *Bristol* for ought he knew at *Saint James-Tide* then next ensuing; and used such Expressions to him, as made him believe he meant to surrender the Town by that Time, (as he did the very next Day after *Saint James's Feast*) who thereupon left the City, as intended to be surrendered by the Governor. That he commanded Mr. *Hassard* to lay by a Reserve of 30 Barrels of Powder, with Match and Bullets proportionable, to which when he was reduced he would treat ^h: That there were about 140 Granadoes in the Castle, and one new Mortar-piece, and that *John Warden* one of the Gunners of the Castle did often importune the Defendant to give him leave to make a Shot at the Enemy out the said Mortar-piece, but the Defendant commanded him under Pain of Death not to make any Shot at them: whereat the said Gunner was so grieved, that he oft complained the Town was betrayed. All which Granadoes with the Mortar-piece were surrendered to the Enemies, and not one of them shot against them, tho' they shot many Granadoes at the Town and Garrison.

Fourteenthly, That the Castle and Forts were very strong and tenable, if not the Town; that the Defendant himself, the ⁱ Townsmen and Soldiers reputed them so; that they might have been held divers Months, yea to this very Time, had not they been

^a Joan Battin, William Whitehorn, Serjeant Gale, Captain Bagnal, Thomas Munday. ^b Captain Bagnal ^c Major Wood, William Whitehorn. ^d Serjeant Gale, Joan Battin, Mrs. Hassard, Thomas Munday. ^e Major Wood, Col. nel Strode, and others. ^f Richard Winton, Captain Husbands, and others. ^g Mr. Talbois's Deposition. ^h Richard Butler's Testimony. ⁱ Colonel Stephens, Colonel Strode, Mr. Powel, Major Wood, Captain Bagnal, Thomas Munday, Richard Lindon, Edward Watlin, Nicholas Cowling, Joan Battin, Nicholas Coles, Mary Smith, Ethelred Huddy, Michael Sparks, and others, attest this.

been surrendered; that the Enemy could not have taken them by force, even by their own Confessions, nor all the Devils in Hell have taken the Castle, had not the Defendant, beyond their Expectation, surrendered them basely into their Hands, and bestowed them upon him; for which Surrender the very Enemy called him a *base Coward*, and said he deserved to be hanged for delivering up such a Town and Castle as that to them so easily, for which they might thank *Fiennes*, else they could not have won them by Force, had not he bestowed them on them beyond their Hopes. From all which Particulars (fully proved) we conclude, *That the Town, Castle, Ammunition, Cannons, Arms, &c. were most Dishonourably, Cowardly, and Treacherously delivered up to the Enemy, and that without and against the Parliament's or his Excellency's previous Consents, who abhorred the Fact, and never gave the least way thereunto, being executed before they had any Thought or Tidings of it, and before the City and Castle was reduced to any Extremity.* And thus was concluded the second Day's Work.

The Sum of the Defendant's tedious Defence, consisted of the ensuing Particulars, to every of which, for Brevity and Perspicuity sake, we shall subjoin the distinct Replies then given, not in a continued Speech, as they were uttered, but in Parcels, as each part of the *Reply, Rejoinder, and Surrejoinder* was applied to each Part of the Defence.

First, The Defendant denied, *That all the Arms were surrendered to the Enemy; for it appeareth, by the first Article of the Surrender, that all the Officers of Horse and Foot, were to march out with their full Arms, and the Troopers with their Swords.*

To which Mr. *Prynn* answered, *That by the first and tenth Articles of Surrender, all the common Foot-Soldiers were to march out without Arms, and the Troopers only with their Swords, leaving their other Arms, together with all their Cannons, Ammunition, and Colours, behind them; therefore since all the Arms of the Foot, all the Troopers Arms but their Swords, (which were not many nor considerable) with all the Cannons, Ammunition, Colours, were thus surrendered, the Words of the Article of Impeachment, that all the Cannons, Ammunition, Arms, &c. were surrendered, were sufficiently and literally proved.*

2. That all, both in Scripture, Law, and common Parlance, is frequently taken for the *greatest part, or well nigh all*: as *Mat. 2. Herod was troubled and all Hierusalem with him. Mat. 21. 10. All the City was moved, saying, Who is this? All Men think so, All affirm it; They have taken all their Arms, Baggage, and the like: where all is taken for the greatest part, or all in effect.* And in this Sense the Article is true, since the Officers Arms, and Troopers Swords, in respect of all the other Arms there left, were not considerable.

3. Most of all the Officers Arms, and Troopers Swords were taken from them by the Enemy, as the Defendant confesseth in his Answer, and we have proved; and if any escaped with their Arms by chance, yet all their Arms were quite lost as to the State, which had no Benefit by, nor Account of them: therefore in this Regard the Article is most true.

Secondly, He denied *he surrendered the City and Castle against the Parliament's and his Excellency's Consents, tho' it is true he did it without their previous Consents.*

To which Mr. *Prynn* replied, That this was a very frivolous Distinction: For 1. Christ himself by this Speech, *He that is not with me is against me*, resolves, that what is done without the Parliament's and his Excellency's Consents (especially if they dislike and disavow it afterwards) is done *against their Consents*, and that in strict Propriety of Speech: Hence, if a Man's Servant, Cattle, without his Privity or Approbation, commit a Trespass, in his Neighbour's Ground, or if one casually tread upon another's Toe, he usually saith in these and such like Cases, *It was against my Will, or against my Liking and Consent.* *Bristol* therefore being undoubtedly surrendered not only beyond, but contrary to the Parliament's and his Excellency's Expectations and Desires, was certainly surrendered against their Wills and Consents, as well as without them.

2. The Parliament's and his Excellency's express Will and Intention was, that *Bristol* should be kept to the utmost Extremity, and not surrendered to the Enemy, this being the end wherefore they placed a Governor and Garrison there, and made Works about it: the Surrendring therefore of it, contrary to both their express Wills and Directions, must needs be not only without, but against their Wills and Consents. This all the World knows, unless the Defendant can shew their express Consents thereto.

3. The House's and his Excellency's former Opinions of, and calling him to an Account heretofore, and now into Judgment for this Surrender, as directly contrary to his Trust, and their Directions, is a sufficient Proof it was not only besides, but against their Consents: and to think or speak otherwise, is but to lay a grand Imputation on the Parliament and his Excellency, in making them Accessaries to this dishonourable, traytorly Action, which hath almost lost the Kingdom.

Thirdly, He alledged that four Days before the Siege he sent one *Scotlen* with a Letter to his Excellency, to acquaint him with the Weakness of the Garrison, that he had not above 900 Men besides Citizens, as likewise to see the Estate of his Army, and crave speedy Succours from him: That he found his Excellency had but 4000 Foot able to march, many of his Men being then sick, and not in a marching Condition to relieve him; *that it was clear, they could not expect, nor have had any Relief in six or eight Weeks time.* And to justify this Despair of timely Succours, he produced a Letter written by his Excellency to the Lord *Sey*, his Father, to this effect; *That he was sorry Bristol was in so much Danger, as by Col. Fiennes's Letter to him it seemed to be; and that himself at that present was not in a fitting Posture to relieve it, which troubled him the more, for that his Lordship's Son was engaged there:* (which Letter being read, Mr. *Prynn* inquiring the Date thereof, found it dated the 28 of *July*, two Days after the Surrender of *Bristol*, which was on the 26 of that *July*.) From all which the Defendant inferred the Necessity of surrendring the Town and Castle, for want of Succours: which had they been near, he could have made a shift to have held out three or four Days longer, and would have done it; but being hopeless of Relief, he could not in point of Soldiery or Policy have held it longer than he did.

To which Mr. *Prynn* replied, 1. That he did but his Duty in sending thus to his Excellency, and that this would no more excuse his Treachery and

Cowardice

Cowardice in Surrendring the Town, than *Weston*, *Gwynes*, and the *Bishop of Norwich*, their sending to the Governor of *Calais*, and the *Lords of the Council* for timely Relief, did excuse them.

2. That in this Message and Letter to my Lord General, but four Days before the Siege, he complained neither of want of Ammunition, Victuals, Monies, nor of the Weakness or Intenability of the Works, Town, Castle, (which doubtless he would have done had there been real Cause) but of the Smallness of the Garrison, which he said were then but 900, besides Citizens. But our * Witnesses prove expressly, that at the Time of the Siege he had at least 2000 Foot and 300 Horse, besides Voluntiers, which were near 200 more: and Major *Allen* attested, that he brought near 200 Men well armed from *Malmsbury*, but a Day or two before the Siege; so as his 900 were encreased to 2500 Men, or more: and he might have raised (as Mr. *Powel*, his own Witness attested) at least six or eight thousand able Men more, to bear Arms in the City, had he wanted Men: Therefore the want of Men was but a Pretence. Besides, had he needed only Men, why did he advise Sir *William Waller* to march out with at least 500 Horsemen, lest they should have helped to have spent the Provision of *Bristol*? as he confesseth in this Relation, Page 12. Certainly, either he thought the Town tenable with the Men he had, till all the Provisions in it were spent, and so the Garrison strong enough to defend it whilst they had Victuals, or else he desired rather to spare the Victuals for the Enemy, (to whom they were surrendered) than for Sir *William Waller's* Men who (had they staid in the City) would have made up his Garrison 800 Horse, besides 2000 Foot, and in all Probability have preserved the City, which was partly lost (as himself confesseth) by the Cowardice of the Horse, who refused to charge the Enemy when they entred, whom they might easily have cut off, had they but charged them, as they might and should have done. In brief, the Defendant's own Relation and Letter to his Excellency inform us, that his Garrison consisted of at least 2000 Foot, and 300 Horse, and was so strong and sufficient, that when the Enemy stormed the Town on every Side with all their Forces, they were valiantly repulsed, with the Loss of near a Thousand of their best Men, besides 700 wounded; whereas he lost not above six or eight Men at most, and had very few or none wounded. If then the Garrison were thus sufficiently strong to repulse the Enemy with so great Loss, when their Army was strongest and best in Heart, much more must it be sufficient to repulse them; and keep the Town, when near a Thousand of their best Men were slain, and 700 more wounded, with the Loss of six or eight only of the Garrison, the Assailants being much weakened, and Defendants as strong or stronger, and more courageous, by Reason of their good Success, than they were at first.

3. To his Despair of Succours in six or eight Weeks time, by Reason of the Weakness or Sickness of the Army, it was answered, (1.) That as Hope is the last Thing that forsakes a valiant Man, so it is the first that deserts a Coward, who placeth his Confidence any where rather than at home in his own Bosom.

(2.) That no Man, much less a Christian and Soldier too; ought to despair of God's Providence and Protection in a just Cause, even where he can

see no human Probability of Succours; but ought to wait and trust on God to the utmost Extremity, who many times sends Relief, exceeding abundantly, beyond all Men can ask or think, as he did to *Jerusalem*, *Samaric* of old, and to *Rachael* of late. *Audaces fortuna juvat*, was the Heathen Observation: *Fortes Deus adjuvat*, the Christians. His causeless Despair then of timely Relief from God or Man, the Parliament or his Excellency, argued not only want of Courage, but Faith too, both in God and Man.

(3.) Valiant *Massey* (if this Plea might be admitted) had far more Cause to despair of timely Relief than the Defendant: for both *Fiennes* and *Clifton* his Lieutenant professed openly, after the Surrender of *Bristol*, that they would be hanged if *Glocester* could hold out two Days, if the Enemy came before it: and Colonel *Pury* and Captain *Parry* deposed, that the Walls and Works about it were weaker than *Bristol's*, their Garrison not above 1500, Club-Men and all, their Powder not above 32 single Barrels, besides what they made during the Siege, their Provisions not so plentiful as *Bristol's*, their Cannon but seven or eight; whereas *Bristol* had 55 Cannon, besides Sir *Francis Popham's* Pieces; the Enemies before *Glocester* almost 10,000 more than those that besieged *Bristol*, and likewise accompanied with the King's personal Presence. Besides, his Excellency's Army, by Reason of Sickness, was now far weaker, and more unable to relieve *Glocester*, than it was when it should have marched for *Bristol's* Relief; yet notwithstanding all these Discouragements, and the great Damage and Discouragement the sudden unexpected Loss of *Bristol* struck into all Mens Spirits, *Massey* and *Glocester* Men did not basely yield up the Town to the Enemy, as soon almost as they came before it; but relying on God's Providence, and the Parliament's Care to the uttermost, received timely Relief from both, in less than three Weeks after they sent for Succours; as *Bristol* doubtless would have done, had Colonel *Fiennes* had so much true Faith and Valour as *Massey* had. Now that *Bristol* would have been relieved far sooner than *Glocester*, Mr. *Prym* proved by these Arguments.

1. Because my Lord General's Army was in a far better Condition almost by half to march when *Bristol* was besieged, than it was at the Siege of *Glocester*, the Number of it being much decreased by Sickness in the Interim, and their Courage and Spirits much daunted by *Bristol's* unexpected Surrender in so short a Time, upon such dishonourable Terms, which he doubted not all the whole Council present could experimentally attest.

2. The Parliament, his Excellency, *London*, and the whole Kingdom, looked upon *Bristol* as a Place of the greatest Consequence of any in *England*; next to *London*, as the *Metropolis*, Key, Magazine of the West, which would be all endangered, and the Kingdom too by its Loss: as a Town of infinite more Consequence than *Glocester*; by the gaining whereof the Enemy would be furnished with all manner of Provisions and Ammunition by Land, with a Navy and all Merchandize by Sea, and enabled to bring in the Strength of *Wales* and *Ireland* for their Assistance: Therefore being of so great Concernment, the Parliament, his Excellency, *London*, and the Kingdom, would have been far more careful to relieve it in due Time, than they were or would have been to relieve *Glocester*, of which they had yet a special Care.

3. *Bristol* was a Town of far greater Commerce with *London* than *Glocester*, many *Londoners* having a great part of their Trading and Estates too in it: Therefore this particular Interest would have made the *Londoners* more forward to march to relieve *Bristol* than *Glocester*.

4. Colonel *Fiennes* and the Citizens of *Bristol* had more powerful active Friends in both Houses, and about his Excellency, (as his Letter to the Lord *Say* imports) to solicit and expedite their Relief, than *Maffey* or *Glocester* had; therefore tho' the Parliament and his Excellency were very ready to have sent timely Relief to both, yet, in all probability, *Bristol*, in these Respects, had been sooner relieved (had it held out) than *Glocester* was or could have been; the rather, because the Loss of *Bristol* made many Men fall off from the Parliament, more to stand as Neuters, and damped the Activity and Spirits of most Men.

(4.) It was answer'd, that the Defendant produced no Proof of his Despair, but only his Excellency's Letter, written and sent to the Lord *Say*, not to him, and dated two Days after the Surrender made. This therefore could be no Ground, no Cause at all of the Surrender, which so long preceded it.

To supply this Oversight and Defect, Colonel *Fiennes* next Day produced a Witness, to prove, that the Day before the Surrender there came one into *Bristol*, who reported that the Lord General's Army was very weak, and in no posture to march. But who it was, or whence he came, or how he came in thither, the Town being beleaguered, or whether the Governor ever had any certain Information of this Report, there was not the least shadow of Proof.

(5.) It was reply'd, That if a Governor's groundless Surmise of an Improbability of timely Supplies, might be a good Excuse to surrender a Town, the strongest, best furnish'd Towns and Forts in the Kingdom might be betray'd, surrendered to the Enemy in a Moment under this Pretence. Col. *Maffey* might then upon far better Grounds have surrendred *Glocester* to the King the first Day; the Earl of *Stamford*, *Exeter*; and Col. *Warnlow*, *Plymouth*, the second Day they were besieged; than the Defendant *Bristol* on the third Day, since there was a far greater Improbability of relieving any of these in time, than of *Bristol*. And by this reason, had Col. *Fiennes* been furnished with Men, Ammunition, Victuals, to have kept the Town five or seven Weeks longer, yet, by this way of arguing, he would certainly have surrendred it when he did, (in less than three Day's space) and not have kept it to the fifth or seventh Week's end; because he conceived an improbability of Relief in eight Weeks time, out of a panick Fear, or out of a mere Design to colour his Surrender. He should have therefore held it to the uttermost Extremity, and God, or our vigilant Parliament (no doubt) by that time would have sent Relief, as they did to *Glocester*; or if none had come, he had then discharged his Duty, and been excused: But since he kept it not to the last, but prejudged God's, the Parliament's, and his Excellency's care to relieve him in due Season, his Fault is inexcusable and capital.

Fourthly, He alledgeth, *That he did not surrender the City, Castle, Arms, &c. traiterously*, and that no Treachery was proved against him.

To which Mr. *Prynn* answer'd: 1. That tho' there were no direct Proof of any Correspondency or Intelligence with the Enemy; yet if they were surrendred before uttermost Extremity, the very Law itself, and the Letter of the Ordinances for War, resolve this to be Treason. And being thus Treason, even in point of Law, he needed no other Proof that it was traiterously surrendred, but the Law and Fact itself: And we ought to charge it in the Impeachment, that it was traiterously surrendred, as the Law resolves it to be, else the Impeachment was not good in Law, neither could Judgment be given on it. Hence, by the Rules of the Common Law, if a Man be indicted of any Crime which is Treason, Felony, or Burglary by the Law, the Indictment must run, that he committed the Crime, *Proditorie, Felonice, or Burglariter*, else the Indictment is vicious and defective. Therefore, by like reason, the Surrendering of any Fort, before utmost Extremity, being Treason, it ought to be charged in the Articles, *That it was treasonably surrendred*, and for this end was inserted the Word *Treasonably* in the Articles.

2. It was answer'd, That Fear and Cowardice were the most traytorly Passions of all others: These have caused many to betray their own Reason, Senses, Liberties, Laws, Estates, Trusts, Friends, Countries, Kingdoms, Souls; whence we find the Fearful, marshalled in the very Front of those, *Who shall have their part in the Lake that shall burn with Fire and Brimstone*; and quite exploded out of God's temporal and spiritual Militia. Therefore if he surrendred them out of Fear or Cowardice only, tho' without any traytorly Compact with the Enemy, the Surrender is properly styled *Traiterous*, as well as *Cowardly*, even in Reality and Law.

3. It was answer'd, That tho' there were no direct Treachery charged or proved in the fourth Article, yet there were vehement Presumptions, Suspicions of it (which oft-times cast and condemn Persons, Murderers, Traytors, as Experience manifests, as well as positive Proofs) directly charged, and should be proved against him in the seventh; which we would here make use of and bundle up together. First then, his own frequent Confessions in his Answers, *That he never undertook to keep or not deliver the City or Castle to the Enemy without the Parliament's and his Excellency's previous Consents: That they neither in Honour nor Justice could expect such a Promise from him: That he ought not to have kept the Castle when the Enemy had enter'd the Line, but ought to have surrendred the same (altho' tenable) to the Enemy, together with the City, by the Principles of Honesty and Justice, the Rules of Wisdom and Discretion, &c.* coupled with his wilful *Misinforming of the Council of War*, when they met about a Parley, *that there were not above twenty Barrels of Powder left in the Castle* (whenas they were seventy *French* Barrels, besides what was in the Forts and City) and *not above three or four hundred weight of Match*; and commanding Mr. *Hassard* the Storekeeper to say there was no more (as he confessed to Capt. *Birch*) whenas Mr. *Hassard* deposeth there were fifty Barrels of Powder, and at least fourteen hundred Weight of Match, besides as much more as four Horses could draw, brought into the Castle that Morning (as *Arthur Williams* and *Joan Batter* deposeth) and a hundred and forty Bundles, as Capt. *Bushel* affirmed, of purpose to draw the Council

to a present Parley and Surrender, were vehement Presumptions, and circumstantial Proofs of Treachery and indirect Dealing: All which being compared with the Depositions of Capt. *Lloyd* and *Thomas Munday*, That the Defendant called *Munday* saucy Knave, when he informed him and *Langrish* of the Danger and Weakness of the very Place where the Enemy the next Morning entred, refusing to strengthen the Guards there as he was advised by him; and appointing Major *Langrish* (a noted Coward, formerly complained of to him for his Cowardice and Negligence) to guard this weakest Place, who never once offered to charge the Enemy, but gave them leave to enter, and yet he never questioned him for this Treachery, but countenanced him by his Favour, justified him in print, and produced him before the Council as a competent Witness: With his refusing to send away the Prisoners in the Castle before the Siege, upon Sir *William Waller's* Advice; saying, *That he would detain them there to make his Conditions the better if the Enemy came before Bristol* (attested by Sir *William*, Col. *Cook*, and confessed by himself) with his Speeches to Mr. *Talboyes* (who moved him to respite a Delinquent's Payment of a Sum of Money till *St. James-tide* then ensuing;) That he knew not whether he should be at Bristol at *St. James-tide*, &c. which made Mr. *Talboyes* then presently conceive he intended to surrender the City about that time, (as he did the next Day after *St. James's Day*, viz. July 26, 1643.) whereupon Mr. *Talboyes* presently removed and left the City; with his prohibiting *John Warden* the Gunner, (as *Richard Butler* deposeth) under pain of death, to shoot any *Granadoes* at the Enemy, when he pressed him that he might do it, which made him say they were betrayed. All these Particulars laid together, and coupled with Capt. *Roper's* Deposition, that the *Lady Newport* told this as a special Secret to the Countess of *Desmond*, at her being in *Oxford*, a little before *Bristol* was besieged, that this City would be surrender'd to the King as soon as his Forces came before it; (which Capt. *Roper* further attested from the Mouth of the Right honourable the Earl of *Denbigh*, that there were divers Wagers laid at *Oxford*, and offer'd to be laid in and near *London*, as soon as the Siege of *Bristol* was spoken of, that this Town would be surrender'd the 26th of *July*, the very Day it was afterwards yielded up;) the calling his Men off the Line under pain of death, and not suffering them to fall on the Enemy, which made many then say, they were betrayed, with his late and slender Salley. All these particular Circumstances annexed to the Premises, and subsequent Matters seriously ponder'd, are sufficient to make a vehement Suspicion, if not a punctual Evidence, that *Bristol* was not only cowardly, but traiterously deliver'd, as well in a proper as a legal Sense, notwithstanding the Defendant's Flourishes to the contrary, till Time shall discover the obscured Secrets of this Mystery more apparently to the World.

His Fifth Allegation was, *That the Town and Castle were not cowardly surrendered.*

Before he came to make this good by Proofs and Arguments, he first excepted against our Witnesses to prove the Surrender cowardly, because some of them were Women, others Enemies, who were not competent Witnesses, and were ready to slander their Opposites.

To which Mr. *Prynn* reply'd, 1. That some of the Witnesses only were Women, and those seconded by Men. 2. That they declared not their own weak Opinions, but the Judgments of Men; yea of the Enemies own Commanders, in private serious Conference among themselves, as well as in open Discourse to others. 3. That these Women-Witnesses, and other Females in the City, shewed more true Courage and Undauntedness than the Defendant and some of his Officers, working boldly in the Face of the Enemy, where they durst not appear; opposing a Parley when he sent out twice for it, and offering to go in Person with their Children into the very Mouth of the Cannon to dead the Bullets, if the Soldiers were afraid, rather than the City should be surrendered: Being then such masculine Females as these, he thought them meet Witnesses to prove the Surrender cowardly. 4. To the Testimonies of the Enemies he answer'd, that it was in this case the best and strongest of any other, it being the natural Disposition of every Soldier that takes any strong Fort or City, to extol the Enemies Valour, and Difficulties of winning it as much as possible, the more to advance their own Prowess. It's no great Honour in any Man's Judgment to conquer a Coward, or Place not tenable; therefore those who detract from their Enemies Valour or Strength, derogate most from their own Honour, Conquest, Prowess, and as much disparage themselves as their Enemies thereby. Since then the Enemies, both in private Discourses among themselves, and in Conference with others, so frequently censured this Surrender as cowardly, taxed the Defendant for a Coward, and confessed they could not have taken the Town, nor all the Devils in Hell the Castle, had the Defendant held them valiantly out against them, and not cowardly surrendered them beyond their Expectation; their Testimonies back'd with the Premises*, must be a most convincing Evidence in this Particular.

Secondly, he objected, that Mr. *Prynn* had been tampering with some Witnesses, and urging them to testify against him; for which he produced two Instances: The first was, that Mr. *Prynn* urged Mr. *Hassard*, who kept the Stores in *Bristol* Castle, to attest there were no more than fifty Barrels of Powder therein when it was surrendered; inso-much that Mr. *Hassard* told him, he would not go against his Conscience. Secondly, that he meeting with Lieutenant Colonel *Davison* in the Street, offer'd him a Quart of Wine, pressing him to go to a Tavern, and to set down what he could attest touching his advising Col. *Fiennes* to fall out upon the Enemy as soon as they entred, and his Dislike of drawing his Men from the Line, and his refusing to follow this Advice: which he denying to do, Mr. *Prynn* told him that he was engaged to give in his Testimony, because Colonel *Fiennes* had given him the Lye in Print, in his Reply to Mr. *Walker*. And for Proof hereof he produced two Witnesses, that *Davison* told him this Story in his Chamber in *Arundel* House, in the Presence of the Lord *Say* his Father.

To which unexpected false Calumny, Mr. *Prynn* returned this Answer, which he was ready to attest on his Oath: First, That being summoned by the Defendant himself to appear before a Council of War, to make good what he had written concerning the Surrender of *Bristol*, he did thereupon re-

pair

* Mary Smith, Ethelred Huddy, Joan Battin, Joseph Proud, Mich. Sparkes, Nich. Collins.

pair to Mr. *Hassard*, and other Witnesses present at the Siege, to desire them to witness the Truth only of what they knew touching that Action, which he might lawfully do: and because Mr. *Hassard* kept the Magazine, he desired him to inform him how many Barrels of Powder there were in the Castle when it was surrendred; who thereupon answer'd, there were fifty: upon which he demanded, whether there were no more than fifty? for he had sundry Witnesses to prove that he confessed to Capt. *Birch* and *Arthur Williams*, that there were sixty; and to Major *Wood*, that there were seventy Barrels left when it was surrendred; and Capt. *Bushel* (then Prisoner) affirm'd he found no less than seventy Barrels there: if then there were no more than fifty, he should do well to declare the utmost Number which he certainly knew to be there. To which he answer'd, he did think there were more than fifty Barrels, but how many more he could not certainly depose; and therefore he would rather testify less than there were, in setting down fifty generally, without adding this Negative to it, and no more, which he durst not swear, for then he was sure not to wrong his Conscience. To which Master *Prynn* reply'd, that he desir'd him by no means to wrong his Conscience in testifying more than the Truth, but to keep a good Conscience in witnessing the full Truth, and not concealing any thing to smother Truth. At last *Hassard* said, that he was not willing to appear against Col. *Fiennes*, for he had lost most of his Estate in *Bristol*, and that there were Arrears of Pay due unto him, for Payment whereof the Colonel had lately given him a Bill under his Hand, and if he should lose his Arrears, it would go hard with him. Whereupon Master *Prynn* then answered, he would not press him to any thing to his Prejudice, and so left him, he promising to give in his Deposition in Writing to the Advocate, which he never did. And whether this were tampering with Witnesses, or who had tampered most with *Hassard*, he or the Defendant, against whom he was unwilling to testify the Truth, or all the Truth, he humbly submitted to their honourable Judgments.

Secondly, For Lieut. *Davison*, Mr. *Prynn* protested, he never saw the Man till he came voluntarily to him in *Westminster-Hall*, and told him freely, without any Inducement on his Part, that he was in the Siege of *Bristol* under Col. *Fiennes*, and after that in the Siege of *Glocester*; from whence coming lately to *London*, he met with a printed Book writ by Col. *Fiennes* in Disgrace of Mr. *Walker*, wherein he had given him the Lye, and a base Lye in the Margin, to his Dishonour; whereupon being sensible of this open Injury, he repaired to Col. *Fiennes* to *Arundel House*, and there, in the Lord *Say's* Presence, challenged him for giving him the Lye in Print without cause, desiring him to give him publick Satisfaction, or else he would take Satisfaction himself, for he would not take the Lye from any Man in *England*: and withal told him to his Face, that he did advise him not to draw the Soldiers from the Line, but to fall upon the Enemies presently, and cut them off, as they might have done with ease; but he rejecting his Advice, called off the Men, and so not making a timely Salley, lost the Town. Whereupon the Lord *Say* answer'd, Son, you must take heed how you wrong any Gentleman of Quality, especially in Print; and if you have wronged this Gentleman, you may do well to right him: Upon

which Col. *Fiennes* confessed before his Father, he did give him such Advice, and that he had done him wrong in putting the Lye over against his Name: but it was much against his Will, thro' his Boy's Negligence; for after he had sent the Copy of his Reply to the Press, wherein the Lye was written in the Margin against his Name, he remembering this Mistake, sent his Boy purposely to the Printer to charge him to blot it out and not print it, which it seems his Boy then neglected; but he would see it put out in the next Edition. Whereupon I seeing his Freeness with me, and thinking his Testimony material, told him that the Surrender of *Bristol* was now brought into question before a Council of War by Mr. *Fiennes* himself, whom I and Mr. *Walker* were summoned to prosecute; and therefore we should desire his Presence as a Witness there, and so we parted then. Soon after the Council of War was adjourned; and then meeting with Lieut. *Davison* (who made the same Relation to above Twenty more in *Westminster-Hall*, as he had done to me) he told me he was going suddenly out of Town to *Glocester*: I desired him to testify his Knowledge touching the Premises before the Advocate ere he departed; whereupon he told me, that the Lord *Say* was his very good Friend, and had promised to help him to his Arrears, and therefore he was loth to appear in the Business, there being other Witnesses sufficient. To which I answer'd, I would have the Judge-Advocate's Warrant to bring him in as a Witness, and then no Exceptions could be taken; which Warrant when I had procured, I coming from the Advocate's, casually met *Davison* on Horseback above *Ludgate*, near the Advocate's Lodging in *Paul's Church-yard*, where asking of him how long he stayed in Town, he answer'd, that he was to depart to *Glocester* the next Morning: Whereupon I told him, I had a Warrant to bring him in as a Witness from the Advocate, who was then in his Lodging, which was close by; and therefore since he was to depart so soon, I desir'd him to go with me then to the Advocate to set down his Testimony upon Oath; which he excused, saying, he had promised to meet some Friends to drink a Quart or two of Wine with them before his Departure, and so we parted without more Discourse. And was this a tampering, only to desire a Witness to set down what he voluntarily informed me, before the Advocate, when I had a Warrant to examine him? As for offering him a Quart of Wine, or inviting him to a Tavern to drink, I protest I never did it; and am so averse from such a Courtesy, that, to my remembrance, I have never these eighteen Years space, gone into any one Tavern in *London*, or elsewhere, to give or receive one Quart of Wine, but only to eat a Breakfast or Dinner; and therefore it is very improbable I should proffer this Courtesy unto him, who, as I discovered then by his Discourse, had drank sufficiently before, and was going (as he told me) to drink more. But admit I proffered him a Quart of Wine, and that in the open Street, was a Quart of Wine, think you, so considerable a Thing as to tempt or corrupt a Witness of that Quality? or the open Street a fit Place for such a Purpose, where so many saw and over-heard us? Certainly if this Gentleman were so ignoble as to be corrupted with so poor a Courtesy as a Quart of Wine in the open Street, I am certain his Arrears of Pay, in Col. *Fiennes's* own private Chamber in *Arundel House*, where he had fair Promises

Promises to receive them, are far more prevalent Temptations to corrupt, and keep him back from appearing here in Person, whither the Defendant might have brought him to testify my tampering with him, had he pleased, he being still in *London*, and under his Command, tho' he will not appear upon our Summons to testify the Truth. But if he be such a one as Col. *Fiennes* would intimate him, (tho' I have a better Opinion of the Gentleman's Honesty) that a Quart of Wine will bias him more than Truth, I should rather want his Testimony, than put him to his Oath, were he now present: But being neither examined by us, nor yet intended to be, this impertinent Cavil sounds more of Calumny than Judgment.

But because Colonel *Fiennes* hath now given me this just Occasion, I shall in the third Place (which otherwise I should have concealed, but that his Aspersions have provoked me to alledge it by way of just Defence) truly inform your Lordships: First, What Advantages, Obligations, and Engagements he hath upon his own Witnesses, which may probably sway them to over-much Partiality in their Testimonies, of which we are wholly destitute in respect of ours. Secondly, How the Colonel and his Agents have tamper'd with, affronted, threatned and abused our Witnesses. 1. Most of the material Witnesses in this Cause were the Defendant's own Officers and Soldiers, from whom they expect not only future Preferments, but their Arrears of Pay, which they were in danger to lose if they should either appear against him, or he miscarry in this Case. Upon this Ground not only Mr. *Hassard*, as you heard, was unwilling, and *Davison* refused to give in his Testimony, but one Capt. *Oland* (as appears by Capt. *Harrington's* Deposition) with sundry other material Witnesses, denied to speak what they knew: and some of his Officers, since they came hither to witness for him, have said, that if the Cause went with him, (as they made little question but it would) they should have all their Arrears paid, else they should lose them. Now whether the Promise of Arrears be not a tampering with, and the Loss of them a threatening or terrifying of Witnesses, we leave your Lordships to resolve. Besides, Mr. *Sprig* (Secretary to the Lord *Say*) went to a noble Knight's Lodging at *St. Albans*, produced as a Witness by the Defendant, that same Morning he was to give in his Testimony, with this strange Prologue to an Evidence, that Col. *Fiennes* presented his Respects to him, and desired him to come that Morning to the Council of War to give in his Testimony for him; and that his Lord likewise desired to be remembered to him, and to let him know that two hundred Pounds (of the five hundred) due unto him, was ready for him at *London* upon his return, and the rest of the Money should be ready for him as soon as it could be provided, which Capt. *Harrington*, then present in the Knight's Chamber, heard and deposed; nor could, nor did *Sprig* deny he deliver'd such a Message, but said he had no ill Intentions in it. To which I reply'd, that whatever his Intentions were, the Words spoken at that Season, and upon that Occasion, tended more to corrupt a Witness, than my offering a Quart of Wine in the open Street did (had I offer'd it, as I did not) which was so much insisted on. And tho' I knew the Knight so well, that no Offers whatever could corrupt him; yet how such Speeches might work on other Witnesses who expected Debts and Arrears from the Colonel, I could not divine;

and those who durst use such tempting Speeches so openly in *St. Albans* during the Trial, would probably make use of the like, or worse Temptations in private to Witnesses, to corrupt or take off their Testimony. However the Court by this might clearly discern, which Side was most guilty of tampering with Witnesses. 2. That some of our Witnesses sent for thither by the Defendant, had been openly abused, affronted, quarrelled with by the Defendant and his Witnesses, even in the Council's Presence, and elsewhere: as namely Captain *Bagnal*, who, tho' an extraordinary Friend to the Defendant, (for whom he took two Journeys to *London* for a Commission at his own Charge, and raised a Company to defend the Town) yet merely for testifying the Truth impartially, was strangely questioned and affronted by the Defendant himself, abused with ill Language, taxed with Perjury, quarrelled with by *Scotten*, (who gave him the Lye in the Council-Chamber, before your Honours were departed thence) challenged, scorned, reviled, threatned to be mischiefed, (for all which Affronts we crave your Justice.) And if our Witnesses be thus affronted, menaced, abused in your very Presence, how think you were others dealt with behind your Honours and our Backs, to strangle Truth? A vehement Argument all hath not been rightly carried on that Side.

I shall next consider the great Difficulties on our Parts to procure, and the Impossibility to suborn the Witnesses we produce. First, All our Witnesses, for the most part, are Strangers to us, all of them better known and more obliged to the Defendant than to us: they are Persons disinterested, disingaged, who neither gain nor lose by the Trial; however the Sentence go; they were never under our Service, Power, or Commands, most of them were such who served the State *gratis*, and were no Mercenaries in that Service. We are no ways ally'd to them, have no Command over them, no Arrears or Debts to pay them, no Rewards or Preferments to bestow upon them, no Engagement to allure or enforce them; whereas, on the contrary, the Defendant hath all the Advantages and Bonds that can be, tending to Partiality over his Witnesses. Many of them are *testes domestici*, as his Brother, Kinsmen, Servants, Footboys; most of the rest his Officers and Soldiers, against whom we excepted as incompetent. First, Because they were Parties in this Case, joining with the Defendant in a Petition to his Excellency for this Trial, which was granted at their Request, as the Proclamation of his Excellency attests. Secondly, Because they were Confederates, and equally guilty with him in this Treason of surrendring *Bristol*, most of them being of his Council of War, and consenting to this Act; which if it prove Capital and Criminal in him, will likewise be so in them: in swearing therefore to acquit him of this Treason in which themselves are involved, they do in verity swear to acquit themselves, and one to justify and excuse the other, which ought not to be admitted; for then the foulest Treachery that is might and would be excused, yea, the greatest Traytors acquitted, if one might testify for the other in that particular Crime whereof they all stand guilty.

3. Because they all depose, as for their own Lives and Safeties, so likewise for their own Honour, Reputation and Reparation; some of them in their Speeches now, and most of them in their Petition to his Excellency, demanding Reparation in their Honour from us by this very Trial: and

so are both Parties and Witnesses in this respect; very unequal to be admitted.

4. Some of them have carried themselves as passionately in this Case as Parties; in menacing and abusing our Witnesses, and ourselves too, threatening no less than Hanging to us for questioning this Surrender; if the Defendant be acquitted; and can such be competent Witnesses?

5. He hath very strong Obligations upon most of them, the Bond of Consanguinity and Alliance; they are his Kinsmen: of Superiority and Command; they were his Officers, Soldiers, Servants, advanced by him at first, and preferred or promised Preferment by him since: the Bond of sundry Debts and Arrears due to them from him, which they are promised to receive if he be acquitted, and expect to lose if once condemned. And what strong Engagements, what great Advantages all these are to tempt or corrupt Witnesses on his part, and silence them from testifying ought against him on our part; and how far forth such Witnesses, who appear thus to be Parties, shall be allowed of in this Case, especially such as are *Participes criminis* (adjudged incompetent by all Laws) and guilty of the same Surrender, we shall humbly refer to your just Considerations.

2dly. The Defendant answer'd to an Objection made by Mr. Pryn; To wit, that it must needs be cowardly surrendred, because the Enemies that very Morning were valiantly repulsed in all Places (but that one, where only an hundred and fifty of them entred) with the loss of 700 Mens Lives, and as many more wounded, whereas the Garrison then lost not above 3 or 4, and had scarce any one Man dangerously hurt in the Assault; so as the Enemy by this great Loss was far weaker, the Garrison much stronger, and more courageous than before: Whereto he briefly answered, that the Slaying of 700, and Wounding 700 more, was not so great a Loss and Discouragement to the Enemy, as the Entry of the Line was an Encouragement.

To which Mr. Pryn replied, First, That those who entred the Line, by their own Confessions, were so far from receiving Encouragement by it, that they gave themselves all for dead Men, and had no other hopes but to be quite cut off. Secondly, Their Companions discouraged with the general Repulse in all other Places, knew not of their Entry in two full Hours Space, during which Time their Powder was quite spent, that they might have been all cut in Pieces, had the Defendant done his Duty. Thirdly, A whole Regiment of their Horse retreated four Miles off, with a Resolution never to come on again. Therefore the Entry of so small a Party, compared with their great Loss, could be but a very poor Encouragement, since they might have been so easily repulsed at the first, and sent back by weeping-crois unto their retreated Companies.

After this he descended to his Arguments, to prove the Surrender not cowardly.

His first Argument was this, That he was no Coward, as appeared; First, by his Apprehending and sending away Col. Essex: Secondly, By his Apprehending and Executing the Conspirators at Bristol in the midst of the City, even at Noon-Day: Thirdly, By quelling the Malignants, and disarming the Train-Bands of the City: Fourthly, By his valiant Behaviour at Worcester, where he and his Brother, when the Forces were there routed,

were some of the last Officers that came off the Field: Fifthly, By his charging at Keinton Battle, one of the next to Sir William Balfour, up to the Cannon of the Enemy, when the Horse killed the Cannoneers, as they lay under the Carriages; and by other following Particulars: Ergo, he did not cowardly surrendred Bristol.

To which Argument, Mr. Pryn replied: 1. In general, That they did not charge him in the Articles; to be a Coward, which was not now in issue; nor yet, that he had shewed himself cowardly in all Actions since he was Governor of Bristol; but only, That he had cowardly surrendred Bristol: And, *in hoc individuo* he did and might deal cowardly, tho' he might be valiant in other Particulars.

2. That the Argument was a gross *Non sequitur*; for as a very Coward may now and then do valiantly upon occasion, and yet be no valiant Man; (as sometimes *desperatio timidus fortes facit*, an experimental Proof whereof we find in *timorous Stags*, who run away at the Barking of the smallest Cur, yet will encounter both Dogs, Horses, and Men in Extremity, when they are at a Bay, and can run no farther;) so a valiant Man may sometimes commit a cowardly Action, and yet be no habitual Coward. To put this out of question, We have a memorable Example in the Apostle Peter, who tho' he were of a bold resolute Spirit, and no doubt the stoutest of the Apostles; as appears by his adventuring (as Christ's Command) *to walk out of the Ship upon the Sea itself in the midst of a Storm*; his resolute telling our Saviour, *That tho' all else should be offended and forsake him, yet he would not deny him, and tho' he should die with him, yet he would not deny him, (which all the other Apostles likewise protested, each for himself;)* by his resolute drawing out his Sword to rescue Christ when he was apprehended by the High-Priest's Servants, his cutting off Malchus's Ear therewith, his not putting up his Sword, nor giving over fighting till Christ commanded him; and by his following our Saviour into the very High-Priest's Hall, when the other Disciples forsook him and fled: (all Acts and Arguments of extraordinary Courage) yet after he saw Christ brought into question for his Life, he suddenly degenerates so far from his former Magnanimity, thro' a pusillanimous Fear then seizing on him, that at the very Voice of a silly Maid, and a High-Priest's Servant, he no less than thrice denied the Knowledge of his Master Christ, and that with bitter Oaths and Execrations: Should Peter in this Case argue,

I was valiant when I walked on the sea, in the Chamber when I told Christ I would rather die than deny him, in the Garden where I fought for him, and in following him into the High-Priest's Hall, whither the other Disciples durst not accompany me: Ergo, I did not cowardly nor unworthily, in thus denying him thrice with Oaths and Curses in the High-Priest's Hall?

Certainly, this were a most irrational, false Argument; because Courage in some Actions, is no Negator or Extenuation of Cowardice in others, almost in the self-same nick of Time. Yet this is Col. Fiennes's objected Argument; I have shewed myself courageous, (as well as Peter) in some Actions; in removing Col. Essex, executing the Delinquents, disarming the Malignants of Bristol, in the Fights at Worcester and Edgehill; yea, altogether as valiant as Peter, in my vaunting Words and Promises, * *That I would dispute every Foot of Ground with the Enemy to the utmost, who should win*

* See the Depositions of Col. Strode, Ja. Powel, Captain Bagnal, Mr. Hassard, and others.

win it from me by Inches; that my Flag of Truce should be my Winding-sheet: that I would keep the City, or it should keep me, or I would lay my Bones therein? (O brave vaunting Peter!) yea, I was pretty full of Courage during the Siege, till the Enemy entred the Line, and then I was just like Peter entering the High-Priest's Hall; I followed the Enemy a far off, and fell from fighting to parling; from defending to surrendering the City and Castle; before any Out-Fort taken, or one Shot or Assault made against City or Castle: Ergo, I did not cowardly or unworthily surrender them now, having shewed myself so valiant in Deeds before.

But since Peter's pristine valorous Acts, and Speeches, did no ways mitigate nor extenuate, but aggravate his subsequent cowardly denials of Christ, so will the Defendant's his Surrender.

3. His forementioned valorous Exploits have no relation at all to the Surrender of Bristol, being of a different Nature from them; his Prowess therefore in the one, can never expiate, nor disaffirm his Cowardice in the other, the only thing we now charge and prove, these other objected Actions not being here in Question.

4. He gave this Answer to the objected Particulars; so far forth only as they were applied to Bristol's Surrender, (1.) That the sudden Surprizal of Col. Essex, being done at a private House out of Bristol, when the Defendant had his Troops about him, and Col. Essex only three or four Servants near him; was a greater Act of Prudence than Courage, and a Man not really valiant would have done as much: (2.) That when he apprehended the Conspirators, he had the absolute Command of the City and Castle, a strong Garrison in both, and the major Part of the City and Country siding with him: It was therefore no great Argument of extraordinary Valour, to apprehend them being but few in Number, weak in Power, and suddenly surprized at unawares. And when he executed them, all the Malignants were disarmed, the whole City, and Country generally incensed against them for their horrid Treachery, and their Party unable to make the least resistance, so as a Child might have put them to death as securely as the Defendant. Therefore this could be no convincing Evidence of his Courage. (3.) That the Malignants were quelled by the Discovery of the Plot; and the disarming of the Train-Bands, to arm his own Soldiers and best affected Citizens, was by the general Consent of the Mayor, Sheriffs, and most part of the Citizens, after the Conspiracy detected without any the least Resistance; Ergo, no Act of Courage, but rather of Discretion or Distrust. (4.) That at Worcester, all the Horse were routed and fled, and his own and Brother's Troops among the rest, is no great Argument of their Valours, which received some Blemish by that Action: and that he and his Brother were some of the last Officers of Horse, who there came off the Field, it might be, as well because they were in the rear of all the Horse and so could not possibly fly out of the Field before the rest, as by Reason of any extraordinary Valour in them more than others, and so no convincing Proof of Valour in them. (5.) That his valiant Charging in Sir William Balfour's Regiment at Edgehill where every Man did valiantly, and none turned their Backs in all that Brigade, can be no special Proof of his Courage, since every Coward will charge in Company where no Man

turneth his Back, and where there is greater Danger in flying than charging: However admit it were good Evidence, yet this is a very ill Sequel, if put into a logical Form.

Col. Fiennes charged valiantly with Sir William Balfour at Edgehill: Ergo, he did not cowardly surrender Bristol.

His second Argument to prove the Surrender not cowardly, was his not quitting Bristol immediately upon Sir William Waller's Defeat at the Devises, and his raising of Men, Arms, and perfecting the Works even after that to defend it, when many of the Country-Gentlemen left the Town, and marched to London with Sir William Waller.

To which Mr. Prynne answered: 1. That he did but his Duty in all this, which was rather an Argument of his Diligence than Courage.

2. That it had been the greatest Treachery and Cowardice in the World upon Sir William's bare Defeat, to quit a City of so great Consequence, which he was charged to keep by his Commission, and in fortifying whereof he had spent so great Costs, before the Enemy came before it: who might probably, as things then stood, have no real Intention presently to besiege it, upon that Defeat.

3. Extraordinary Diligence in fortifying, is the greatest Argument of Fear and Cowardice, if not seconded with answerable Prowess in defending what is fortified. A Coward will sooner provide Armour of Proof, than a truly valiant Man; since therefore the City was no longer defended, fortified and manned, this Reason will rather convict than acquit him of Cowardice.

4. The true Reason why so many Gentlemen then deserted the City, was (as themselves have confessed) not for that they deemed it untenable; but because they feared and discerned, the Defendant intended not to keep it to the last, but to surrender it to the Enemy's Hand; which he hath clearly enough confessed in his Answer.

5. This Argument in verity, is no more in Effect, but a Governor provides Arms, Soldiers, Cannons, Ammunition, to defend a Town of Importance, or to encounter the Enemy, and then surrenders (as he hath done) in less than three Days Siege; or runs away after he hath stood a Charge or two; Ergo, he did not Cowardly herein; because he provided Men and Arms, whose valiant Use, not diligent Preparation, is the only proof of Valour.

His third Argument was, No Man could have expected less Safety of Conditions than himself, he only being excepted out of the general Pardon offered to the Soldiers and Citizens; Ergo, he surrender'd it not cowardly.

To which was answer'd: 1. That it is probable his speedy, unexpected Surrender of the Town and Castle, before Extremity, proceeded either from a Fear to lose his Life in holding them out till the last, or a Desire to purchase his Peace and Pardon out of which he was formerly excepted from the King, with so rich a Prize of Consequence as Bristol was, which would most certainly procure it, with infinite Advantage to the King, and greatest Prejudice to the Parliament. 2. That if he could have expected less Safety of Conditions than any other, for the Reason alledged, this should have rather engaged him to hazard his Life in defend-

ing it to the utmost Extremity, than to yield it upon any Terms prejudicial to his own Security, which is first provided for in the Articles.

His fourth was, That he could never have undergone more Danger in the Castle had he held it, than he did in the Guards, which he diligently visited; *Ergo*, he surrender'd it not cowardly.

To which was answered, he received no hurt at the Guards, and lost but six or eight Men at most in the Siege. *Ergo*, if he might with as little Danger and Loss have held out the Castle, his Crime and Cowardice was the greater in Surrendring it so dishonourably without Stroke, or once retiring to it.

His fifth was, from his Carriage when the Enemies entred, to prevent whose taking the City, he had only two Means left. The first was, to fire the Suburbs, for which he issued out a Warrant, which Warrant was not executed, but revoked for want of Men to fire them: The second was, to fire the City behind them, and so to retreat into the Castle; which he could not possibly do without the Death of many Innocents, Men, Women, Children, and ruining of many Men's Estates: A Fact so horrid, that his Conscience would no ways permit its Execution, he being loth to begin so ill a Precedent, which would have infinitely redounded to the Parliament's Dishonour. Besides, the Castle being not large enough to contain half his Horse and Foot, and the Streets very narrow, he could not have retired into it, without great Difficulty and Danger of being cut off by the Enemy, and those Horse and Foot which could not be received would have been utterly lost, and exposed to the Enemy's Cruelty. Upon which Considerations only, not out of any Cowardice, he did by *Clifton's* Advice call a Council of War, and propound a Parley, whereupon the Surrender ensued: Therefore it was not cowardly.

To which Mr. *Pryn* replied, 1. That it is apparent by this Argument, that if the Suburbs had been fired, the City and Castle, might have been saved, and the Enemies beaten out when lodged in the Suburbs; therefore he ought in this Case, both by the Common and Martial Law, to have fired the Suburbs to preserve the City, and Castle, and must answer his Negligence in not doing it; his want of Men to fire the Suburbs being a frivolous Excuse, since he had at least two thousand three hundred Garrison Soldiers; and Mr. *Hassard* the Gunner (as he acknowledged to divers) and Major *Wood*, with others, offer'd to beat, or fire them out of the Suburbs, but could not be permitted, tho' it might have been done with ease, the Houses being combustible, most of them built with Timber, and that Part of the Suburbs not very large.

2. That between that Part of the Suburbs and Body of the City, there was a Key on the West-side of *Froom-bridge*, unfordable by Horse or Foot every Tide; by Reason of the Waters, and at low Water too, thro' the Deepness of the Mud, being so deep in most Places, that Men must stick fast in it (as some of the Conspirators did upon the Discovery of the Conspiracy, who were taken sticking in the * Mud:) That there is no marching over the Key in File or Rank, but only one by one, in confused Order. That on the Key-side next the City, there is a Wall of Stone near eight or nine Foot high above the Mud; which no Horse can enter, nor no Foot scale, unless at a Slip or two, which

are but narrow, and stand four or five Foot above the Water: That there are Houses all along the Key, which commanded the Colledge-side, where the Enemy entred in such sort, that none of them could offer to wade over the Key, but they might be cut off with ease; that two or three Pieces of Ordnance planted at the head and lower-end of the Key, would so scour all that Passage, that none could have passed over without loss of Life, and the Passage there would have been so difficult, that one hundred Men would easily have kept out ten thousand, all which was attested by Col. *Popham*, Lieut. Col. *Paleologus*, Major *Wood*, Lieut. Col. *Andrews*, Capt. *Bagnal*, and some of his own Witnesses upon cross Examinations; therefore there was no Danger of the Enemies Entry there. For *Froom-gate* itself, it had a new *Portcullis*, and after the Enemies entring the Line, and late Salley on them, the very Maids and Women, in the Face of the Enemy, made a Barricado and Bulwark against it fifteen or sixteen Foot thick, with Earth and Sacks of Wool, to keep them from entring there, being their only Passage into the City from that Suburbs; that above the Gate was the River *Froom* (which runs under it) with a Wall and Houses between the City and it, so as the Enemy might easily have been kept from entring the Body of the Town, and could not have entred it without infinite Loss and Disadvantage.

3. That had they gotten over the Key, or *Froom* River into the Body of the City, yet the Streets were so narrow and disadvantageous to the Enemy, that their Passage might have easily been hinder'd, the Streets block'd up with Casks, Carts, Sleds, Stools, and a Piece of Ordnance or two placed at the Head of every Street, and the Houses lined with Musketeers would have scoured and secured it, that the Enemy must have sustained extraordinary Loss, at least fifty or an hundred Men for one of ours, as they lost before in the Storming. Besides, they must have all marched up the Hill, in paved Streets, which are so slippery that the Foot could have hardly stood to charge, and the Horse would certainly have slipt and fallen: in regard of which Disadvantages, our Men having the Hill, Flankers, the Shelter of Houses, and charging downwards, must needs have repulsed them with extraordinary Loss had they forcibly entred, and made a most safe Retreat into the Castle at any time when they saw just Cause, without any such Difficulty or Danger as was suggested.

4. Admit they had taken the Body of the Town beyond the Key, adjoining to the Castle, which they could not have done without excessive Loss and great Difficulty; yet all that part of the Town being commanded either by the Castle, or other Forts and Outworks all in our Possession (as *Clifton* himself with other of the Defendant's Witnesses confessed, and Major *Wood* proved) they could not possibly have held it long, and would have been in worse Condition within it than before, and so no absolute Necessity of Firing it, had not his Courage and Conscience served him to do it.

5. For his Horse and Foot, Incontainability in the Castle, in case he had been forced to retire into it, there were sundry other Places to bestow them in besides the Castle: As, (1.) The Body of the City adjoining to the Castle, which would have billeted them all till the Enemy had forced it. (2.) That part of the Suburbs, under the Command of the Castle next to *Lawsford's* Gate, distinct

* Attested by Col. Popham, and others.

inct from the Body of the City if taken, and very defensible, the Castle and Outworks then remaining ours. (3.) The Out-Forts, where the Guards might have been doubled or trebled as there was Cause, especially now when he had an Overplus of Men that he knew not how to bestow. (4.) That part of the City beyond the Bridge in Somersetshire Side, which was very capacious, able to contain all his supernumerary Foot and Horse, tho' the other Suburbs and Body had been taken; which part (the Bridge being broken down or defended) had been inaccessible, strong, and tenable for a long Time against all his Majesty's Forces, we having then all the Out-Forts in Possession which commanded other Parts of the Town, and Ratcliff Church, Tower-Harris, and the Castle (three extraordinary strong Forts) commanding and securing that Part beyond the Bridge; which being fenced with extraordinary strong Outworks, and deep watery Dikes, Tower-Harris and Ratcliff Church on the one Side, with the River and Castle on the other Side, and strongly garrison'd with the Soldiers retir'd from other Parts, had been almost impregnable, and might have held the Enemies Play for sundry Months, had the Defendant resolved to hold it to the utmost. Having therefore so many several safe Retreats and Receptacles for his Horse, Foot, and not making use of any of them, tho' he promised to dispute every Inch of Ground with the Enemy (as he might have done with Honour and great Advantage) his Pretence is false, his Surrender cowardly beyond all Excuse.

6. He hath oft inculcated this to your Honours, that the Citizens were generally very malignant, and disaffected to the Parliament; and we have proved, that the most of the best affected, had carried their Estates and three Months Provision into the Castle, where their Persons and Goods were by the Defendant promised to be secured. His forbearing therefore to fire the City in case he had been necessitated to it, proceeded not from any publick Care he had of the Parliament's Friends or Kingdom's Safety, but from his private Respects to the Persons and Estates of Malignants, which he would rather carefully preserve, to enrich, encourage, and strengthen the Enemies, than fire or endanger to preserve the Parliament and Kingdom. Mercy and Compassion are doubtless commendable Virtues in a Governor, who should not use Cauteries or Firing till the utmost Extremity: But when such an Exigency happens, that a City must be fired, or both it and the Kingdom lost or hazarded, it is foolish Cruelty, not Christian Mercy, to be over-pitiful in such a Case. It is a cruel destructive Mercy to save a City (especially a malignant one, as this is averred then to have been) to destroy a Kingdom, yea, our Religion, Laws, and Liberties with it: Better the greatest Part of the City had been turned into Ashes to preserve the Castle and other Parts of it to the Parliament, and secure the Realm, than to surrender the whole so cowardly, so unexpectedly, to the Loss of the West, and Kingdom in all Probability.

7. The Defendant well knew of what extraordinary Concernment the Loss of *Bristol* would be to the Kingdom, of what infinite Advantage to the Enemy, as is evident by his own Letter to my Lord *Say* (dated *March 20, 1643*, before it was fortified or fully garrison'd) published in his printed Relation, Page 13, where thus he writes:

May it please your Lordship to understand first the Importance of this City of Bristol, &c. The Enemy hath lately cast his Eye upon it, prompted by the witty Malice of our Malignants, to espy his Advantage: If he possesseth this City, he will reap these Benefits by our Loss. 1. He will get much Money, Arms, and Ammunition in a more cheap and less hazardous way, than he can have them out of the Low Countries; all which he will pay for with Monopolies, and Engrossments of Trade, Things with which the great ones of this Town have been well acquainted, and are therefore Malignant. 2. If he gain this Town, he will soon subdue Gloucester, and become Master of all the Traffick between Shrewsbury and the Lizards-Point in Cornwall, a Quarter so plentiful as his plundering Army yet never saw. 3. He will become Master of all the Traffick of that Inland Sea the Severn, and make all the Shipping both of the Welsh and English Coast his own. 4. His Neighbourhood to Wales will from time to time supply him with a Body of Foot. 5. We shall lose a great Port-Town very Important for the Service of Ireland, and fit to give Landing to the Rebels of that Place, or any other Enemy. Since therefore he knew this City to be of so great Importance to the Kingdom, and the Loss of it so extraordinarily advantageous to the Enemy, he should in this Respect have held it out to the utmost Extremity, and rather hazarded the Firing of it by the Enemy, which would not have done it, (especially being Malignant) or by himself, than quitted both it and the Castle too, with all the Ammunition, Cannon, Arms, Provisions, Colours, Ships, Merchandize, Wealth therein, upon such poor dishonourable Terms, before any Out-Fort taken, or one Shot made against the City or Castle Walls, he wanted nothing but Courage to defend them, the Enemy having lost so many, and himself so few in the former Stormings.

His sixth Argument was, that he stood in Places of greatest Danger with his Troop, near Alderman *Jones's* House, where a Granado falling into the midst of his Troop, and hurting no Man, he thereupon encouraged his Soldiers, saying, *That God did protect them.*

To which was answered, 1. That not one of his Troop (for ought appears) was ever hurt in that or any other Place where he stood with them; therefore the Danger was not very great. 2. That this Place under Alderman *Jones's* House, was more than Cannon-Proof, and most secure against the Enemies Shot, which the House and Garden-Walls guarded off being between the Enemy and his Troop; therefore no Place of Danger but Security. 3. That this Granado's falling in among the Troop at that time, was merely casual, and hurt not any, tho' it frightened many, and made the Defendant and his Troop presently to remove from thence, as his own Witnesses deposed. 4. Himself never charged the Enemy in Person with his Troop after their Entry within the Line; his standing therefore with them in this secure Place before the Entry, was no great Proof of his Valour, much less that the Surrender was not cowardly.

His seventh Argument, to prove the Surrender not cowardly, was, That the Parley and Surrender were both agreed on by the Council of War; *Ergo* not cowardly.

To which was answered, 1. That himself was both the first Mover, Persuader of this Parley, this Surrender, and the principal Man that advanced it, drawing on the rest to consent to it, and not making the least Opposition against it. 2.

That the Council of War wherein the Parley was first propounded, was not general, as it ought to have been, but private, few of his Officers or the Gentlemen there, having notice of it, till a Parley was concluded, and a Drummer dispatch'd twice to the Enemy before they would take notice of it. At this Council no Country Gentlemen were present, but Sir *John Horner*, who gave no Vote, and Col. *Strode* who voted against it, and not above six or seven Officers, of which Lieut. Col. *Davison*, and Major *Holmes*, were two who opposed the Parley; as for Mr. *Edward Stephens* (whom Col. *Fiennes* averred in Print to be present as it) he denies upon Oath, that he had ever any Notice of it, and so doth Col. *Stephens* too. Being therefore such a private Conventicle and no general Council, and these thus voting against the Parley, it is a greater Evidence than Disproof of a cowardly Surrender. 3. The Defendant, and his Brother *John*, to circumvent the Council, and draw them on both to a Parley and Surrender, misinformed them that there were but twenty Barrels of Powder, and four hundred Weight of Match left; as he confesseth in his Answer to the eighth Article, commanding Mr. *Hassard* (who kept the Stores) to affirm there was no more, when as you have heard it proved there was above three times as much more then in the Castle. His Misinformation therefore being the chief Motive to sway the Council to this Parley and Surrender, their Consents will not excuse but aggravate his Cowardice and Treachery in seducing them. 4. If the Town and Castle were tenable, sufficiently provided with all Necessaries for a Defence, and not reduced to Extremity, as we have proved, the Surrender by a Council of War will not make the Cowardliness and Treachery less but greater, and subject the whole Council to Censure, as appears by the Cases of *Weston*, *Gaminys*, and others adjudged in Parliament: Otherwise, if this Plea should be admitted for a Justification, a Governor and his Officers might safely without Danger betray any Fort or Place thro' Cowardice or Treachery, by voting it in a Council first, and then putting it in execution.

His eighth Argument was, That when he sent to the Enemy for a Parley, and their Hostages came to *Froom-Gate*, which was barricadoed up, they swore, *God damn us we will come in at Froom-Gate* (which was the nearest way) *or have no Parley at all*: whereupon he sent them this resolute Answer, *That they should not come in there, but at Newgate*, which they were enforced to do after much Contest: Ergo the Surrender was not cowardly.

To which Mr. *Prynn* answer'd; 1. That at that time *Froom-Gate* was barricadoed up with a Bulwark of Earth and Wool-Sacks fifteen or sixteen Foot thick to keep out the Enemy, made by the very Women and Maids, with the Help of a few Men in a short Space; and when the Hostages came to that Gate, the Work was raised so high, that Capt. *Taylor*, the Defendant's own Witness, confessed, *He could not see nor confer with them over it, but was enforced to go to speak with them thro' a Window, when he received their God-damn-me Message, that they would come in at that Gate, or else return*; from which Window likewise he return'd the Governor's Answer to them. Now to demolish such a Barricadoe as this, to let in these peremptory Hostages, and the Enemy too, who might

then have clear Passage into the City, had been such an indiscreet and cowardly Act, as was not only below the Spirit of a Governor, or Soldier, but of a sucking Child; and would have argued the Defendant (if condescended to) a Man utterly destitute, not only of Courage but common Discretion. 2. This braving unreasonable Request argues plainly, that the Enemies had a very mean Conceit of the Defendant's Valour, else they would never have presumed to send him such a disdainful Message, which an heroick Spirit would have so far resented, as not to brook a Parley upon any Terms; and his not yielding to it, is no greater Evidence that the Surrender following was not cowardly, than that the Building of *Tinterton Steeple* was the Cause of the Encrease of *Goodwin Sands*.

His ninth Argument, was his Courage and Speeches at the Parley, wherein he confessed, 1. That the Motion of the Parley proceeded merely from himself. 2. That the Parley was concluded on before ever the Mayor repaired to the Council. 3. He said, *The Mayor was extraordinary fearful, and pressed earnestly for an Agreement with the Enemy*. 4. That when the Enemy's Commissioners at the Parley, upon the Motion of Capt. *Birch*, that the Citizens might have Liberty to carry away their Estates if they pleased, stuck at this Demand, he thereupon rose up, and with great Earnestness protested, that he would break off the Parley, and rather lose his Life, and hold and put it to the utmost Extremity, than not provide for the Security of the Citizens Estates: which Speeches he proved by the Testimonies of Capt. *Birch*, and Mr. *Prickman*. Ergo he did not cowardly surrender the Town and Castle.

To which Mr. *Prynn* reply'd, 1. That the Motion of the Parley proceeding originally from himself before any Solicitation from the Mayor or Citizens, argued that himself was more fearful than the Mayor, tho' thus extraordinary timorous; and that both the Parley and Surrender proceeded from his excessive Fear. 2. That we had here *confiterent reum*, that he held not the Town till utmost Extremity, as his Duty bound him: For he told the Commissioners, if they would not yield to secure the Citizens Goods (whom he frequently brands for desparate Malignants) he would then venture his Life, and put and hold it to the utmost Extremity; therefore he held it not by his own Confession till such Extremity: and so by the very Articles of War, and Construction of Law, is guilty of a cowardly and traitorly Surrender, for which he ought to die. And here observe the strange Temper and Guilt of the Defendant: My Lords, he was constituted Governor of *Bristol*, not by the Mayor and Citizens, but his Excellency and the Parliament, to preserve it from the Enemy's Hands, rather for the Kingdom's Safety, than Security of the malignant Citizens Goods. He had formerly oft protested to the best affected *Soldiers and Citizens, that *he would dispute every Inch of Ground with the Enemy, from the Out-works to the Gates, from thence to the Castle, whither he would make his last Retreat, and there lay his Bones, making his Winding-sheet his Flag of Truce*, and the like, for the common Good and Security of them and the Realm. But now alas, as soon as the Enemy entred the Line, *Heu quantum mutatus ab illo?* he became a quite other Man; and forgetting all former

* James Powell, Col. Strode, Capt. Bagnal, Abel Kelly.

mer valiant Promises, heroick Resolutions for the Republick, he presently sent for a Parley, and disputes not so much as one Inch of Ground with the Enemy near the Gates or Body of the City, retires not one Foot towards the Castle; and instead of adventuring his Life to preserve the City for the Parliament's and Kingdom's Safety against the *Irish* Rebels, and *Welsh* Malignants Incurfions, he hath not so much as one Word or Thought tending that way: but all publick Engagements set aside, he now only looks after the Security of his own Person, and of the malignant Citizens Persons and Estates, for the Enemies future Advantage, and rather than these shall not be saved, he now protests he will lose his Life, and put all to utmost Extremity. Had he really intended to make good this his Protestation for the Citizens Benefit and Safety, in case the Enemies had deny'd his Demand in their behalf, (which I much doubt of since notwithstanding his foresaid Protestations, he would not do it for the Publick;) I humbly conceive he ought much more in point of Honour and Duty to have executed it for the whole Kingdom's Preservation and Utility; which since he did not really perform nor intend to do it, you have here *confitentem reum* an Evidence dropping from his own Mouth sufficient to condemn him: And therefore my humble Motion to your Honours is, that his Person may presently be secured as by Law it ought. The rather, because it plainly appears by all the Carriages of the Defendant, from the Enemy's first Entry till his Return to *London*, that this Surrender proceeded merely from Timidity and Cowardice at the best, as I shall evidence by these Particulars.

1st. By his ^a calling the Soldiers from the Line under pain of Death, and not permitting them presently to encounter the Enemy, as he was importuned by divers; and bringing them off in such Confusion, that many of them left their Arms, Ammunition, and Ordnance behind them, which might have been easily drawn off, there being so many Colliers Horses in the City for that Purpose.

2^{dly}. By giving no Order nor Direction to the Soldiers drawn off, for any present Service or Salley in divers Hours, by Means whereof, many of them deserted their Colours ^b.

3^{dly}. By not imploying his Reserve under Capt. Stokes, nor his Main-Guard, nor Soldiers in the Castle (consisting of at least five hundred Men) who were fresh and had been upon no Service, to make a present Salley on the Enemy, who might with ease have been cut off by them without calling any from the Line ^c.

4^{thly}. By his contradictory Commands, and pale Looks, attested by *William Deane*, *Mary Smith*, *Capt. Busbel*, *Thomas Thomas*, and generally taken notice of by the Soldiers.

5^{thly}. By his Hastiness to propound and send for a Parley to the Enemy, even before the Salley made, as *Col. Strode* deposeth, contrary to his Advice; and then again presently after the Salley.

6^{thly}. By the Forgetfulness of all his former Promises, and of the very Castle itself, formerly accounted by him the strongest Rampart and last Retreat, where he would lay his Bones ^d; which was not now so much as thought on, altho' the Magazine, Ammunition, and Provisions lay there-

in; whereby he betrayed, cheated, and undid the best affected Citizens.

7^{thly}. By his own Confession in his *Relation*, p. 10, he writes, *That all the Conditions they desired were yielded to; yet had he not then so much Heart or Brain left within him, as to demand or make more honourable Conditions, than to deliver up the Town and Castle, with all Artillery, Arms, Ammunition, Cannon, Victuals, Prisoners, and Colours too* (which was all that could be lost or given away from the State) *or to demand convenient Time or Carriages to convey away their Goods from thence.*

8^{thly}. By accepting Articles in the Commissioners Names, when as they should have been in *Prince Rupert's* then present, who else was not obliged to observe them; and not exacting an Oath or due sufficient Caution for performing them, after so many Experiences of their Treachery and Truce-breaking.

9^{thly}. By suffering one of the Enemy's Hostages to depart the Town as soon as the Articles were concluded, and giving Liberty to the other to do the like; but that *Major Allen* coming casually into the Room withstood it; by Means whereof they had all been wholly exposed to the Enemies Mercy and sudden Assaults, having no Security for himself, his Soldiers or the City; whereas both his Hostages continued still in the Enemies Hands ^e.

10^{thly}. By his not publishing the Articles after they were concluded, till *Capt. Busbel* (a Prisoner of the Enemy's Party) put him in mind thereof and published them at his Request ^f.

11^{thly}. By suffering his Men to fall off their Guards, the Prisoners to get loose, the Enemies to enter the Town and Castle before the time appointed for the Surrender ^g, *Whereby many Rapines and Violences were committed both on the Soldiers and Townsmen in the very Streets and Castle, which the Enemy could not prevent, and the Colonel, never endeavoured to see righted; which caused Col. Gerrard* (foreseeing some Complaints would be made) to desire *Major Wood* (who in these Disorders suffer'd three days Imprisonment there) to carry a Letter from him to *Nath. Fiennes* (which he shewed to *Major Wood*) to this Purpose: *That whereas many Outrages had been committed contrary to the Tenor of the Articles, which might haply be imputed to the King's Grace, he gave him to understand that the Fault was in himself, who had most unsoldierly neglected to look to the Performance of them upon his Party: and if this Declaration did not give him Satisfaction, he should be ready for furtbur clearing of himself to wait upon him with his Sword in his Hand.*

Your Friend whom you call Cavalier,

Charles Gerrard.

Which Letter *Major Wood* deliver'd.

12^{thly}. By his leaving *Capt. Blake*, and *Capt. Husbands* with their Soldiers in *Windmill-Hill* and *Brandon-Hill* Forts ^h, when he marched out of *Bristol*, and given them no Notice of the Articles of Surrender, no Warrant under his Hand to deliver up these Forts according to the Articles; the first Notice they had both of the Articles and the Defendants leaving the Town, being given them by the Enemy, who demanded the Forts which they held after the Governor's Departure, from whom they received no Order to quit them, which might have endanger'd their Lives.

^a *Capt. Bignal*, *William Deane*, *William Whithorn*.

^b *John Powell*, *Mr. Hallers*, *Capt. Bignal*, *Col. Strode*.

^c *John Powell*, *Capt. Bignal*.

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^d *Captain Husbands*, *Richard Whiston*.

^e *Capt. Bignal*.

^f *Major Allen*.

^g *Major Wood*, *William Whithorn*.

^h *Mr. Baynton*.

ⁱ *Major Wood*.

13thly. By his taking no * care to march away with his Men in a Body (which they could not well do because their Colours and Drummers were surrender'd by Agreement) whereby they might have been kept together for the Service of the Parliament: And yet the *Preservation of his Men and Horse in a Body for their present Service*, is the best and only Reason he gives for the Surrender of the City and Castle, both in his *Relation, Letter, and Answer to the Articles*.

14thly. By his cowardly and unadvised Speeches concerning the Intenability of *Gloucester* for three Day's Space, if the King's Forces came before it, and his Discourse to Mr. † *Pury* after its Relief; his Fear transporting him into such an uncharitable Opinion, as to judge brave Col. *Massey* as pusillanimous and cowardly as himself.

15thly. By his very printed *Relation, Letter, Replies, and Answer to the Articles*; in all which the intelligent Reader may palpably discern a Spirit of Trepidation and Cowardice to have seized both on his Brain and Pen, which made him invent so many unworthy Shifts, untrue Surmises, (as of close deck'd Boats prepar'd by the Enemy, a Resolution to storm the Castle, and to take it in two Days at most, &c.) And utter so many strange Paradoxes, yea Contradictions, unworthy a Man of Honour; and deny, not only Colonel *Essex*, but himself to be Governor of *Bristol*, or of the Castle there; of which before. If all these Evidences may be credited against his bare proofless Allegation, the Surrender must needs be cowardly and unworthy at the best.

Upon this Col. *Fiennes* affirmed, that the Report that *Bristol* was cowardly and unworthily surrendered, was first raised by Mr. *Prym*, the Prosecutor, in his Book intituled *Rome's Master-Piece*, Pag. 35. published the first of *August* 1643. within five Days after the Surrender of *Bristol*; and that before the publishing of this Book, it was not so reported, nor reputed by any.

To which Mr. *Prym* reply'd: That this was a most false Calumny without the least Shadow of Truth; for first, tho' the Title of his *Rome's Master-Piece* was written and licensed for the Press by a Committee of the Commons House (who earnestly desired him to translate and publish the Letters and Plot therein comprized, with such Observations as he thought meet, and they should approve) on *August* 1, 1643. yet the Book itself was not compiled, nor fully printed off till the end of *August* or after, the Publication being near a Month's Space after the License; before which time, not only *Mercurius Aulicus* had informed the World in Print, *That Nathanael Fiennes* (by name, whom I named not) *had bestowed Bristol on the King, &c.* (which Words were read out of *Aulicus*;) but likewise many *London Mercuries* (and namely, that from *Monday* the 31st of *July*, till *Aug.* 7. p. 17.) had divulged in Print, *That Bristol was cowardly deliver'd to the Enemy; that if Col. Massey had been Governor in his Place it had not been surrender'd at all, but held out still, &c.* And, in truth, the Surrender thereof to the Enemy in so short a Space, was so far beyond all Mens Thoughts or Apprehension, that the very first Tidings of it made most Men openly aver in every Place, it was most cowardly and unworthily at least, if not treacherously surrendered to the Enemies. This was not only *Vox*

Populi in *London, Westminster*, and elsewhere, but *Vox Parliamenti*, the Opinion of the Commons House (if not the Lords too) who were much dejected at the News; which the Defendant himself took notice of upon his very first Entry into the House, after his return from his noble Exploit; where every one look'd strangely on him with a discontented Aspect, and few or none of his dearest Friends once moved their Hats unto him, (as they usually do to all other Members upon their Arrival from any publick Service after some time of Absence;) and some of them minded him of *Gominey's* and *Weston's* Case. Whereupon he, conscious to himself of the Commons general ill Opinion of this Action, to avoid their Examination and Censure, was enforced to make his Apology for it openly in the House, *August* 5, 1643. in the Close whereof (containing his bare Relation, no ways satisfactory) he desired, *That what he had affirmed might be examined at a Council of War, that so he might be cleared or condemned according as they should find the Truth or Falshood of what he had declared.* Which Passage of his, published in Print long before *Rome's Master-Piece*, is a pregnant Evidence and Acknowledgment, that the very House of Commons conceived this Surrender proceeded either from his Cowardice or Treachery; else there had been no need of any long Apology, or such a Reference as this to a Council of War. And indeed, his own printed Relation is so full of palpable Shifts, and Expressions of a timorous Spirit, that the very reading of it confirmed me and others in this Opinion, that the Surrender was cowardly or treacherous; and my Passage in *Rome's Master-Piece* concerning the Inconveniencies of *Bristol's* Surrender, with reference to the *Welch* and *Irish* Rebels, were taken *verbatim* out of his own printed *Relation*, p. 13. where thus he writes, *If the Enemy possessed Bristol, his Neighbourhood of Wales will from time to time supply him with a Body of Foot. We shall lose a Port-Town very important for the Service of Ireland, and fit to give Landing to the Rebels of that Place, or any other.* By all which it is clear, that I was not the first Raiser of the Report of its cowardly Surrender, but that himself, and others then in Print, had raised this Report, before I published any thing to this purpose. Secondly, to put this out of question; 1st. It evidently appears by the Deposition of Mr. *Edward Stephens*, *Thomas Monday*, *William Deane*, *John Battin*, *Abel Kelley*, *Arthur Williams*, *Mrs. Hassard*, *Richard Butler*, *Mary Smith*, *Ethelred Huddy*, *Joseph Proud*, *Jeremy Hokway*, *Anthony Gale*, and others, that both the Soldiers and Citizens of *Bristol* were much discontented with the Governor's Parley and Surrender, when it was but in Agitation, and openly said they were betrayed; and that not they only, but the very Enemies, concluded the Surrender to be cowardly, before we had any Tidings of it. 2dly, Sir *John Horner* (his own Witness) deposeth, that in their coming up to *London*, before we had any Notice of it, (they being the first who came thence and brought Tidings of it) two or three Ministers spake against it, *as cowardly and unworthy.* 3dly, Major *Allen* attesteth, that he and some other Officers present in the Siege, concluded it so in their private Discourse, as they retreated from *Bristol* before they came to *London.* 4thly. It was generally reported cowardly or traytorly both in *Lon-*
don

* Major Wood.

† Mr. Brown, Mr. Pury.

don and *Westminster* upon the first notice of it; and some Women in the Streets openly called the Defendant a Coward, for this unworthy Action; which his own Lady-Mother condemned, and would not believe at first (affirming, that her Son was of a more valorous Spirit, and honourable Extraction, than to deliver up a Place of such Consequence as *Bristol* in so short a time, where he had promised to spend his Life, and lay his Bones, rather than quit it;) and all this before I took any special Notice of it. Whereupon having some relation to *Bristol*, in and near which I had divers Friends, I made a more particular Enquiry into this Action, from such Soldiers and Citizens present in the Siege, who could give me the best Information; and upon due Examination of what was alledged on either Part, I found the Surrender such as I published it to be in *Rome's Master-Piece*, by Approbation of a Committee of the Commons House; who both authorized the Book, and concurred with me in this Opinion. From all which it will appear, that I was not the Raiser, nor first Inventor of this Bruit, *That Bristol was cowardly and unworthily surrendered*, it being published in Print by divers, and the common received Opinion of all Men in City and Country, before I gave my Censure of it, which I have here made good.

His tenth Argument was, That both the City and Castle were untenable against the Enemy; Therefore the Surrender not cowardly, nor unworthy. Their Intenability he endeavoured to prove.

First, From the Weakness and Insufficiency of the Line, Outworks, Walls, Fortifications both of the City and Castle.

Secondly, From the want of a sufficient Garrison to defend the Town; to manifest which, he alledged, that he had not above two thousand Foot and Horse to guard the Place, which were not half enough, the Works being near five Miles in compass, and divided by a River, so as his Men stood very thin upon the Line, and had no Reserves at all, unless for some particular Places; by means whereof his Soldiers, in most Places, continued four or five Days and Nights together upon Duty without Relief. And to prove the Garrison insufficient, he insisted, (1.) On the Letter printed in his Relation, *Pag. 14.* complaining of the *weakness of the Garrison of Bristol, and desiring an Augmentation of it.* (2.) On his Excellency's Opinion, *ibid Pag. 16.* *who thought it necessary this Garrison should consist of three Regiments of Foot, two Troops of Horse, and one Company of Dragoons.* (3.) On a draught of an Ordinance presented to the House of Commons by the Lord Say; for *the settling of a sufficient Garrison at Bristol* (*ibid. Pag. 17.*) wherein he propounded, *that the Garrison might consist of three Regiments of Foot, the first consisting of 1200, the second of 1000, the third of 800 Men, and of two Troops of Horse, and one Company of Dragoons;* with less than which he could not possibly (as he said) maintain the City against the Enemies Forces that came then against it, who had few less than seventy Colours of Foot (Lieutenant *Clifton* affirmed, who told them) on *Gloucestershire* Side, which Captain *Husbands*, telling them with his Prospective-Glass, multiplied the Colours to one hundred.

Thirdly, From his want of Powder and Ammunition, *he having no Match at all, and but fifty Barrels of Powder left, which would not have served them above two Days;* which he endeavoured to

prove by the Proportion of Powder they spent in two Days before, and by a Letter from Colonel *Warnloe* from *Plymouth* (attested by Master *Nichols*) who writ, that they spent forty Barrels of Powder there in one Day, when they beat the Enemy out of their Works.

The City and Castle being therefore untenable in all these Respects; and no Succours near to relieve them in due Season, his Surrender could not be deemed cowardly, but discreet and honourable to preserve the Citizens Goods, and the Garrison (consisting of above 1500 Foot, and Horse) to serve the Parliament (which then wanted Men) in other Places of Advantage.

To which Particulars Mr. *Pryn* gave these ensuing Answers, First, That the Works about the City and Castle were very strong, defensible, tenable, against all the Enemies Power, which he proved; 1. By the Judgment and Opinion of the Defendant himself, who never once complained of the Weakness or Insufficiency of the Works of Castle till the Surrender, but oft affirmed the Works to be very strong, sufficient, and tenable, before the Siege, and that he doubted not to make them good against all the Enemy's Power, as Col. *Stephens*, Col. *Strode*, Capt. *Bagnal*, Master *Powel*, with others depose. And he publickly confesseth in his printed *Relation, Pag. 10.* that *himself (and some others too) had a great Opinion of the Strength of the Castle*, before it was surrendered; tho' now upon a sudden, he would make your Honours believe, and endeavours to prove it, the weakest most untenable Piece in the World, having spent one whole Day's time in demonstrating its several Weaknesses, or rather in them his own, who, notwithstanding all these Imbecilities, had so great an Opinion of its Strength: And indeed did not the Defendant deem the Works sufficient, the City and Castle strong, he must discover himself Guilty, either of extraordinary Folly, in putting the Parliament, Country, City, to so great Costs to fortify, garrison, furnish the City and Castle with all Necessaries to hold out a Siege, if it were not really tenable, and of no considerable Strength at all in the upshot; or else of extraordinary Treachery, if he knew it not tenable, and yet gave it out to be very defensible, on purpose to induce the Gentry and Country in those Parts to bring their Money, Plate, Estates, Provisions thither, as to Places of Strength and Security, as we know they did, upon his Promises to defend them to the last, that so they might become a Prey to the Enemies, who had all the Ammunition, Provisions, Arms of those Parts delivered into their Hands at once, which they could have never gained, had not the Defendant fortified the Town and Castle, and affirmed them to be strong and tenable. Besides, his own many liberal Promises to defend the Castle to the utmost, in case he was forced to retreat into it, and there to secure the best affected Citizens and their Goods, argues its Tenability in his own Apprehension. 2. As the Town, but Castle especially, was tenable in his own Judgment, so likewise in the Opinion of others. (1.) Of the Gentry and Country who repaired thither, as to a most secure Sanctuary against the Enemy, towards whose Fortification and Defence they liberally contributed. (2.) Of the Citizens, who all deemed the Town, but the Castle especially (to which they carried their Estates, and above three Months Provisions) to be defensible against all the Enemies Power, as appears by the Depositions of *James Powel*,

Able-Kelly, William Deane, Mistress Hassard, and others, and by the Tragedy of Bristol, lately published by Capt. Birch, Mr. Powell and other Citizens of it; who writ thus of the Castle, Pag. 5. The Castle being strongly fortified and victualled, as being the last Place to retreat unto, if the Town should be taken; being assured we should be able to keep it (till Relief came) as a Sanctuary for the Persons and Estates of such as were most active for the Parliament; divers of us accordingly brought in our Goods, with Provisions for ourselves, and to help victual the Soldiers that were to be entertained in it, &c. (3.) By the Opinion of divers Soldiers of our own Party, as Col. Stephens, Col. Strode, Lieutenant Cols. Paleologus and Andrews, Major Wood, Major Allen, Captain Bagnal, Nicholas Cowling, Mr. Hassard, Richard Linden, Edmund Wartkorne, Thomas Munday, and Richard Butler attest. (4.) By the Speech of the Enemy's own Commanders, who viewing the Works of the said Castle soon after its Surrender, swore, God damn them, all the Devils in Hell could not have taken the Castle, it was so fortified, had not the Governor cowardly surrender'd it; that they might thank Fiennes for it; and that they could not have taken the Castle, had it not been yielded up to them beyond Expectation: as Mary Smith, Ethelred Huddy, Joan Battin, Thomas Thomas, and Michael Spark senior, witness.

And whereas he alledged, that Sir William Waller, and Sir Arthur Haslerig, deemed Bristol not tenable, which he endeavoured to prove by this Passage in their Letter to him, dated July 1. 1643. — (attested by Mr. John Ash, and printed in his Relation, Pag. 27.) *We think the Enemy will fall on this Night, if not, to morrow Morning; and if so, what good will this Regiment do Bristol if we perish? It is a wonder to us, to see our Friends delay Help where there is Safety, &c.*

Mr. Pryn answered, 1. That this Letter declares not their Opinion concerning the Intenability of Bristol, but their Importunity to have speedy Supplies from thence. 2. It expresseth that Bristol's greatest Security consisted in their Army's Success, there being no Danger of a Siege as long as their Army were Masters of the Field. 3. It proves nothing, that either the City or Castle might not have held out till Relief should arrive from his Excellency, or that it could not hold out above three Days longer. 4. The Defendant confesseth that had Col. Popham's Regiment continued in the Town, it had not been lost, and that his sending of them to Sir William Waller, was the Loss of the Town: therefore the Castle and Town in respect of the Fortifications were both tenable, and had no want at all but of Col. Popham's Men, which he supplied by his new-raised Regiments before the Siege.

2. Whereas he alledged, that divers Gentlemen left the Town, and went away with Sir William Waller, and Sir Arthur Haslerig, because they deemed it not tenable:

It was answered, That the Reason of their Departure (as themselves have confessed) was, the Fear and Assurance they had, the Defendant would not hold it out to the last; whereas Col. Strode, Col. Stephens, and others, who had his Promise to hold it out to the utmost, continued with him still.

Fourthly, It was answered, That the objected Weaknesses and Defects of the Works and Castle, were mere Inventions of the Defendant since the Surrender, not thought or spoken of before, nor once propounded at the Council of War when the

Parley was in Agitation; where the Debate of this Particular of the Tenability of the Town and Castle was never disputed, for if it had, the Town would have been held some four Days longer, while this point had been debated, which hath taken up four Days here. As for the Castle, the Defendant himself confesseth, and his Lieutenant Clifton with Major Holmes depose, that in the whole Debate of the Parley and Surrender, the Castle was never mentioned nor thought on: therefore the weakness and Untenability of it was no Ground of its Surrender, as is now pretended. Finally, the Defendant in his printed Relation, Pag. 9, 10. and in his Answer, affirms; that the Cause why the Castle was not tenable against the Enemy, was for want of Match and Powder, not in regard of its inconvenient Situation and weak Fortification, the only Causes now insisted on; therefore this is but a mere Pretence invented since the Surrender.

To the second Pretence of wanting a sufficient Garrison to hold it; Master Pryn answered, 1. That the Defendant had two thousand Foot, besides two hundred Voluntiers, and three hundred Horse and Dragoons at least; which were sufficient to defend the Town against all the Enemy's Power, as is infallibly evident by the Repulses every where given to the Enemies when they stormed it, and the great slaughter of hundreds of their Men, with the loss but of three or four of ours, attested by his own Witness, and published in his own Relation and Letter to his Excellency. And if the Garrison were sufficient thus to repulse the Enemy in his greatest Strength and Assault at the very Outworks, then certainly they were abundantly able to defend the Town and Castle after the Slaughter and wounding of above 1700 of the Enemies, had they been discreetly and courageously commanded by him; but doubtless they were more than enough to have defended the Castle, the Body of the City, and that Part beyond the Bridge, after the Suburbs entred, and the Line wholly quitted on Gloucestershire Side. 2. If the Garrison had been too weak, he might have raised six or eight thousand able Men more in the City, or retained five hundred of Sir William Waller's Soldiers, whom he sent out of the Town to save the Expence of Provisions. 3. The Garrison Soldiers that were in it, would have fought, and held the City and Castle out against the Enemy, thinking themselves strong enough to do it, but the Defendant would not permit them, as sundry Witnesses attest; the want therefore of a sufficient Garrison is but a mere Pretence. 4. A Garrison must be judged to be sufficient or insufficient to defend a Place, only in regard of the Enemy's Strength that comes before it; that Garrison being sufficient to defend a Town against seven or eight thousand Besiegers, which perchance is insufficient to guard it against twenty Thousand. Now we confidently affirm, that the Garrison then in it, was sufficient to guard it against all the Power then before it, as appears by the Enemy's several general Repulses with extraordinary Loss to them and none to the Garrison; by the Enemy's Paucity, not being above seven or eight thousand at most, (most of them Horse) and their Quarters divided with an unfordable River, so as they could not come to rescue or relieve one the other. And whereas he pretended the Enemy was near fourteen thousand strong, because they had about seventy or one hundred Foot Colours only upon *Durdham Down*; this is a most fallacious Argument: because every puny Soldier knows

knows it is a common Policy in Wars, to carry and display a Multitude of Colours more than there are Companies, afar off, at a distance, of purpose to amaze or terrify the Opposites, and make themselves appear more numerous than in truth they are; which Policy was now used. And whereas Captain *Husbands* affirmed, that he told one hundred Foot Colours on *Durham Down*; he saith, that it was but with his Prospective-Glass (an uncertain Instrument to tell Colours with) which multiplied the Colours more than they were, Lieutenant *Clifton* telling not seventy at most. And how full these Companies under those Colours were, we shall produce only the Testimony of Mr. *Sawidge*, a late Soldier in *Ireland*, who deposed *viva voce*, That he was in *Bristol* within two Days after its Surrender, when there was a general Muster of Prince *Rupert's* Foot in the Marsh there, at which both Prince *Rupert* and *Maurice* were present, where he told (to his best remembrance) fifty-two, but for certain above forty-two, of the Enemies Colours, which had not above 1400 Soldiers at the most belonging to them, for he particularly told, and took special Notice of them: Whereupon he demanded of one of the Officers on the Place, why they had so many Colours, and so few Men? who answered, that they had many of their Men slain and wounded in the Siege. So as by this Account, they had more Foot in the City, by seven or eight hundred, when it was surrendered, than Prince *Rupert* had without it, whose Forces were most Horse; and therefore a sufficient Garrison to defend it against so small a Force. Besides, it appears by the Relation of *Glocester* Siege, Pag. 1. (attested by Mr. *Pury* to be true) that there were about nine thousand Men more before *Glocester* than there were at *Bristol* Siege. If then *Glocester* Garrison, consisting at the most but of 1500 Men, were sufficient to guard it against 9000 more than were before *Bristol*, then *Bristol* Garrison of above 2000 Foot, and 300 Horse, must needs be abundantly sufficient to defend it against 9000 Enemies less than were before *Glocester*. And whereas the Defendant alledged his Letter of Complaint for want of a sufficient Garrison; this was in *March* 20, 1643. when he had but one complete Regiment of Foot, and but two Troops of Horse, not at the Siege, when he had above twice double the Number. 5. For his Excellency's Opinion, and his own Propositions, that the Garrison should consist of three Regiments of Foot, and three Troops of Horse and Dragoons: It was answered, that he had above that Number of Horse, and almost his full Number of Foot at the Siege, and might have raised more had he pleased; therefore a competent Garrison, according to his own Desire. But that which quite takes off this Objection, is, That such a large Garrison as this, was not desired by him, or thought meet by his Excellency, only to defend *Bristol* against a Siege, but likewise to defend *Bath*, *Berkley-Castle*, and the Country round about for twenty Miles space, and to suppress Insurrections, if any should happen in the Western Parts; as appears by his Excellency's Letter, and his own Propositions. Therefore this Pretence, that he had not a full Garrison to defend the Town, because he wanted some of his number of Foot, which should have defended *Bath*, and the Country twenty Miles round about, is but an impertinent Plea. 6. For his want of Reserves to relieve his Men, himself confessed, that Reserves might have well been

drawn from the main Guard and Castle Garrison, who were not in any Fight or Action during the Siege; that he had some few Reserves for some particular Places, as there was Occasion; that Captain *Stokes*, whose Company was a mere Reserve, stood in *St. James's* Church-yard, when the Enemy entred, tho' not employed to repulse them at the first, nor afterwards in the Sally. If then he had Reserve for some special Services, he had, no doubt, a competent Garrison; it being unusual to have a whole Reserve, and a vast unnecessary Expence to maintain a double Garrison in any Place. 7. Whereas he alledged that his Men, for want of Relief and Reserves, would have quite been tired out in three or four Days more, having been near five Days on Duty without Relief; and that a Man might die of a lingering Consumption as well as of a Fever. It was answered, That the Garrison of *Glocester* had no Reserves at all, and were constantly upon Duty without Relief, above thirty-five Days and Nights together, yet held it out courageously, without dying of a Consumption; and why *Bristol* Garrison might not have done the like (being furnished with good Store of *Bristol* Milk, strong Wines and Waters) with as good Success, had the Defendant put them to it, (especially having some Reserves to relieve one another) he could see no Reason, but only his willingness to yield up the Town to the Enemy, for fear of a Consumption, of which none are willing, or use to die, till Nature be totally spent. 8. There was then no Sicknes at all in the City, no want of Provisions, or Necessaries; no Loss but of eight Men at the most when yielded: how then the City and Castle could be surrendered upon this Pretence of an Impossibility to keep them longer, for want of a sufficient Garrison, we cannot conceive; especially since the Women with their Children proffered to go unto the Cannons Mouth to dead the Bullets.

Thirdly, To the pretended want of Match, Powder, Ammunition, (for a Sufficiency of all other Provisions and Victuals was acknowledged) it was answered, 1. That we had proved * there were 1400 weight of Match (besides a Dray-load more of Match in the Castle itself, when surrendered; and a Match-Maker with Materials to make more Match in the Castle as fast as they could spend it, besides much Match in the City: and he might as soon have alledged want of Water in the River *Avon*, as of Match in *Bristol*, which makes Match and Cordage for all the West of *England*, and other Parts. 2. For Powder, we have proved by some Witnesses, that there were at least sixty Barrels in the Castle only, besides as many more in the City, Forts, and what was weekly made in the Town: yea some Witnesses prove there were seventy double Barrels in the Castle, left to the Enemy. Captain *Husbands* confesseth he had two Barrels of Powder in his Fort, *Arthur Williams* attesteth there were sixty Barrels in the Town, and Major *Allen* brought nine Barrels more from *Malmesbury*: And by his own printed Relation, there must be at least 90 Barrels left; For he therein confesseth that he found 45 Barrels of Powder in the Town, when he first entred upon the Charge thereof; after which he received 30 Barrels more from *London*, 126 Barrels from *France*, besides six or seven Barrels weekly made in the City, all the Powder taken out of Shops, Ships, and the nine Barrels

from

* Joan Battin, Arthur Williams, Major Wood.

from *Malmesbury*; all which (admit the Barrels out of *France* single) amount to 210 Barrels; but to 336 Barrels, if those from *France* were double, as they were: Of these he saith, Sir *William Waller* had about 60 Barrels, and that he spent about 60 more in the Siege: deduct then 120 Barrels out of 336, there remained no less than 216; or 120 out of 210, there were left 90 Barrels at least by his own Confession, allowing him all that was made or found in the City and Ships merely for Waste and Musters. And whether there were a Necessity of surrendring the Town for want of Powder, when so many Barrels remained only in the Castle, besides what was in the Forts and City, let all Men judge: there being 60 Barrels more than Col. *Massej* had when *Glocester* was first besieged.

But his grand Pretence is, That this Powder would have lasted them only two or three Days at most; whence this Prodigal of his Powder, not Blood or Coin, writes thus in his *Relation*, Pag. 9, 10. *That which made it evident, we could not hold out the Castle above two or three Days, was, because we had Ammunition for no longer Time, having only 50 Barrels of Powder, and no Match, at all, (No Match for himself, he means for Cowardice, else there was Match enough) and according to the Proportion of Powder, we had spent the Days before, would not have served us above two Days, and it is clear we should not have had any Relief in six or eight Weeks.* A pretty prejudicating Fancy, not to be admitted on any Terms: For by the same Argument he surrendred it up now when he had 90, or admit but 50 Barrels left; he would have then yielded it had he 500 remaining: For thus he would have argued, 500 Barrels after the rate of 50 Barrels we spent the two first Days, would have lasted us but twenty Days at most; and we could have no Succour in six or eight Weeks, therefore I was necessitated to render the Town for want of Powder to hold out till Relief might come: Nay, if he had 1000 Barrels then left, he would by this Reason have yielded the Town up, for want of Powder: for he argued thus; Col. *Warnslow* at *Plymouth* spent 40 Barrels in one Day; Ergo, I should have spent so many every Day at *Bristol*, and by this Computation 2 1000 Barrels would have lasted me but 30 Days: and I had no hopes of Relief in forty or fifty Days at nearest; Ergo, I was necessitated to yield for want of Powder to serve me till Relief might come. Had valiant *Massej* argued thus at *Glocester*, he might have surrendred it to the King on this Pretence the very first Day and Hour he came before it. He might have alledged (with better Reason than Col. *Fiennes*) we have but 30 Barrels of Powder in all to defend the Town with, and these will not last above one Day, for Col. *Fiennes* spent thirty Barrels a Day at *Bristol*, and Col. *Warnslow* 40 in one Day at *Plymouth*: Therefore 30 Barrels against a far greater Army of Enemies, will not last above one Day, and we lawfully may and ought, in true Military Policy, to surrender *Glocester* to the Enemy the first Hour they come before it, for want of Powder, since Col. *Fiennes* surrendred *Bristol* for this very Cause, when he had twice as much Powder as we. Had *Massej* done or argued thus, what had become of *Glocester* and the Kingdom ere this? But since he made no such anticipating Argument, but with his little Store of Powder (far less than was in the Castle of *Bristol* only) maintained the Siege for 31 Days, and preserved the Town when he had more Cause to despair of Relief than Col.

Fiennes, Why the Defendant might not, should not have done the like at *Bristol*, I cannot yet conjecture. Indeed, he saith, in his Answer to the eighth Article, *That he was less able to defend the Town four, or the Castle fourteen Days, than Massej was to defend Glocester 24 Days with the same Proportion of Powder.* Certainly, if it were possible for *Massej* to defend *Glocester* against a far greater Force than was at *Bristol* with 50 Barrels of Powder for 31 Days, it was more possible for the Defendant to have defended the Castle of *Bristol* of less Circumference by three Parts than it, with 90 single or 70 double Barrels (which he surrendred) for three times 30 Days, and till Succours had arrived. But to exclude all Pretences, Mr. *Prym* affirmed, that there must the same Rule and Law be observed in case of Powder, Ammunition, and Men, as there is in case of Victuals: And what that is, the King of *Sweden*'s and his Excellency's Articles of War (newly reprinted. define, *to wit*, *a present and absolute want of Victuals, and all edible things to sustain Nature*: And so a present absolute Want and Expence of all Powder and Ammunition; else any Fort may be betrayed upon remote pretended Necessities. A Governor must not argue thus, It may be I may spend 50 Barrels of Powder in two Days: Ergo, 50 being all my Store, I will presently surrender before I put it to the Hazard, and yield up my present Stores to the Enemy before the two Days expire: for then what Place can be secure, or will hold out to real Extremity? But on the contrary, he must thus resolve, I have thus much Powder yet left, and by good Husbandry it may last much longer than I apprehend; the Enemy's Ammunition, for ought I know, may fail before it, who knows not how small our Stores now are; however it is better I should spend that little I have left against the Enemy, rather than yield it up to supply their Wants and annoy our Friends: Therefore I will, yea, I ought in Reason and Duty to be reduced to a present real, not a surmised possible Want of Powder, before I would yield up the Fort, committed to my Trust, to the whole Kingdom's Prejudice. This was Col. *Massej*'s Resolution, this ought to be the Conclusion of every Governor whatsoever, and of the Defendant at *Bristol*, which wanted neither Fortifications, Men, Victuals, Ammunition, Cannon, Powder, Wine, Beer, Match, Water, nor any Necessaries when it was surrendred, to defend it till Supplies might have arrived. Therefore it was yielded up before any the least Extremity, and so *unworthily*, and *cowardly*, both in Law and real Verity.

Fourthly, as to his best and most special Plea or Inducement, That he surrendred the City and Castle so speedily as he did, of Purpose to preserve a Body of 1500 Foot and Horse for the Service of the State, then wanting Men; and the Lives and Estates of divers of our Friends.

Mr. *Prym* answered, 1. That he might be ashamed of such a poor absurd Pretence as this, to veil his Cowardice: his Surrender in Truth being but to save his own Life and Estate, not the Garrison's, who were safer in the Town and Castle, than in any other Place whatsoever, and lost both themselves and their Estates by surrendring them, which they had preserved (as *Glocester* Men did their City and Estates) had they manfully held them out to the last.

2. The Parliament had no less than 2000 armed Foot, and 300 Horse in the City, to serve them there

there immediately before the Surrender: yet this thrifty Governor would for their Service and Advantage, surrender both City and Castle, with all the Cannon, Ammunition, Arms, Magazines, Provisions, Wealth, Ships, Prisoners, Colours in it, to preserve them only 1500 disarmed, plundered, dismounted Men, to serve them God knows where or how. A very frugal Steward surely for the Republick, to lose them no less than 800 Men in the very Bargain, with the City, Castle, Arms, and Premises to boot.

3. Neither did he save those 1500 naked Men, as he pretended, nor yet a Body of three hundred to serve them else where, he bringing scarce one hundred of them with him into *London*. He lost the City, Castle, Arms, all else in them before, only to save the Men, and their Estates; and after lost both the Men and their Estates, to save himself, never reserving so much as one Ensign, Drum, Trumpet, upon the Parley, to call or keep his Men together, nor yet mustering them into Order, nor marching away with them in a Body, nor relieving them when dismounted, plundered, abused in his Sight, leaving every Man to shift for himself the best he might. And was not this a pretty Saving of Men to serve the Parliament elsewhere, thus carelessly to lose them, and of twenty three hundred Men compleatly armed to serve them, to preserve scarce two hundred, stript of all their Arms, and quite disbanded? God preserve the Republick from such frugal Stewards, such pernicious Bargains.

4. Admit he had saved full fifteen hundred unarmed Men to serve the State, was not this a sweet Purchase (think you) to save so many Mens Persons with the Loss of such a Place of Consequence, Strength, Shipping, Trade, Command by Sea and Land, with the Hazard of the whole Kingdom? Better himself, and all those fifteen hundred, nay, better ten thousand Men had bravely lost their Lives in Defence thereof; yea, better the whole City had been ruined, if not possible otherwise to be secured to the State, than that the Enemy should have so easily possessed it, to the City's, Country's, and whole Kingdom's infinite Prejudice.

5. The Parliament needed no Man at that time to serve them elsewhere, but they would extremely want *Bristol* were it lost, far more than they wanted Men. It was a bootless Service then, to lose what they should certainly most of all want, to preserve only what they needed not.

6. These Mens Service was useful no where but in *Bristol*, where the State only needed and expected it; and those who would not do them the best, the uttermost Service there where they most needed it, with the Hazard of their Lives, would hardly do them Service elsewhere, unless they might have Victory in a Bag, (as *Ulysses* had the Winds) and might fight only where they were sure of no Resistance, to gain *Sarmacida spolia, sine sanguine & sudore*.

7. They could do the Parliament no such good Service any where as there, in keeping *Bristol*; there most of them were in their proper Center, their Native Soil, where they fought for their Lives, Estates, Lands, Houses, Wives, Children, Liberties, in the very Height and Strength of their Spirits; there they were entrenched in strong Forts and Bulwarks, well mann'd, victuall'd, ammunition'd; where, in respect of the Enemy's Disadvantage in assailing,

and their own Conveniency in defending, they might have slain one hundred Enemies for one of ours, as they had done before, killing and wounding above fifteen hundred of the Enemies, with the Loss only of eight of the Garrison; after which Rate they might have slain the Enemy's whole Army with the Loss only of one hundred Men, (a Service they could never hope to attain to in the open Fields) and also have saved not only fifteen hundred, but two thousand two hundred of their own Men, to serve the State, together with the City, Castle, Ships, Arms, Magazines, and Western Parts, all depending on them; and that with the total Ruin of the Enemies Forces.

8. It is very improbable that these Garrison-Soldiers and Citizens would adventure their Lives to serve the State in any Place else, who would not do it on their own Dunghil, and in their proper Charges, where they were most concerned; those that will not fight it out to the utmost in a Fort where they have all Advantages, will certainly not do it in the open Fields, where the Enemy and they are upon equal Ground. And it is not very likely, that Men disarmed, discouraged, left to the Scorn and Plunder of the Enemies, stript of all their Fortunes, driven from their native Habitations, and brought to trust to the Enemy for their Lives, rather than to God and their own Swords for Victory and Security, should fight for the Parliament without Arms, or any other Encouragement in the open Fields.

9. Admit he secured the Parliament fifteen hundred pillaged naked Friends to serve them elsewhere, yet sure I am, he hath truly gained them fifteen, nay, fifty thousand Enemies, with all the Arms, Strength, Ports, Forts, Traffick; Provisions, Wealth, that the West of *England, Wales*; or *Ireland* can afford, whence divers Thousands of Enemies and Rebels are lately arrived in *Bristol* Ships, to cut our Throats, possess our Estates, yea lay our Kingdom waste. And was not this a good Piece of publick Service worthy our highest Applause?

10. The very Loss of *Bristol* (for ought any wise Man can yet perceive) is like to cost the Parliament and Kingdom the Lives of above fifteen thousand, nay thirty thousand Men, (as it hath cost them some thousands already) ere *Bristol* and the West be reduced to that Condition they were when this City was surrender'd. And is not this a sweet Piece of good Husbandry, to endanger the Loss of thirty thousand Mens Lives, but to save the Lives of fifteen hundred only, and that when they were in greatest Security, and no Danger at all of being lost, had they stood it out?

11. The Defendant and his Men were purposely placed in the City and Castle, (to the Kingdom's vast Expence) to this very end, that they might preserve them from the Enemy, even with the Loss of their Lives, rather than the Enemy should possess them to the publick Prejudice: And yet this valiant Gentleman is so discreetly sparing (at leastwise of his own, if not of their Lives) as rather certainly to lose the Town and Castle, than to hazard the Loss of all or any of their Lives, contrary to his very Trust and Duty.

12. Might not every Governor and General upon this Pretence deliver up any Fort, City, Town, Country to the Enemy, without Shot or Stroke, to preserve the Lives of their Men to serve the Parliament elsewhere? Had Colonel *Massej* at

Glocester, or *Col. Warnslow* at *Plymouth*, made this Plea of saving their own and their Garrisons Lives, to serve the Parliament elsewhere, these Towns might have been yielded up upon better Articles than *Bristol* long ago. Had his Excellency been acquainted with this frugal State-Policy by *Col. Fiennes*, at the famous Battles of *Edge-Hill* and *Newbury*, he might easily, before the Fights began, have founded a Parley, and yielded up all his Ammunition, Cannons, Arms, Carriages, Colours, Drums, Cornets, Prisoners to the Enemy, and given them the Honour of the Field, of purpose to save the Effusion of Christian Blood, and preserve the Lives of his Soldiers to serve the Commonwealth in other Places, (there being the same Pretence of Reason in these Cases as in *Bristol*;) And then I pray, what had become of our Parliament, Religion, Laws, Liberties, Estates, and Lives too ere this; I doubt they had all been lost by this new kind of Saving. And then what Service could these Men do the Parliament or State when all was certainly lost? We owe our Lives, Limbs, Fortunes, all we have, to our dear Country; delete this Principle out of Mens Hearts, and you dissolve, yea ruin all civil Society. It is therefore no Excuse at all for the Defendant to lose this Place of Consequence to save a few Mens Lives, or Estates, together with his own.

13. It is the greatest Honour of a Governor, and a Soldier, to die fighting; to lose his Life to save his Country. The very Heathen Romans, and *Tully*, teach us thus much Martial Divinity: *Dulce & decorum est pro patria mori*. But this unmanly Governor was clear of another Mind, he will neither hazard his own, nor other Mens Lives to save a City, a Parliament, a Kingdom. Better all these were lost than his Life, or Garrison endangered by any bloody Assaults. And is not then this his principal Excuse the highest Manifestation of a degenerate cowardly Spirit? Our Saviour Christ informs us, *He that loseth his Life* (by adventuring it for his Religion, God, and Country) *shall save it*; yea, and the Place committed to his Trust as *Maffey* and others have done: *but he that will save his Life* (or others) by a cowardly and unworthy Surrender, as this Gentleman did, *shall lose it*, and that deservedly, by the Ax of Justice, for such unmanly Cowardice. It was *Caiaphas's* Divinity concerning Christ himself, *It is expedient for us that one Man should die for the People, that the whole Nation perish not*: And it should have been the Defendant's Honour and Integrity to have said the like; better that I, being but one Man, yea, better my whole Garrison had died in defending this noble City, than that the whole Nation should perish thro' its Surrender, to preserve our Lives. It was the Defendant's Promise before the Siege, *to die in Bristol's Defence, and lay his Bones therein*; but this he now professeth, was spoken only in Policy, to encourage and keep the Soldiers in heart, not in reality with any Intent to perform it. Certainly if it be a sign of a good *Shepherd*, or Governor, *to lay down his Life for his Sheep*, his Country, it is an undoubted Badge of an evil and timorous one, to refuse to do it after so many Promises. This is the Defendant's Case, who would rather adventure his Head in a martial Trial, than his Life in a Breach, and for this deserves the Loss of both.

The next Debate was of a Point of principal Concernment; namely, *What should be judged uttermost Extremity in regard of Men, Ammunition,*

Viſtuals, or Intenability of any Fort, to justify the Governor's Surrender of it to the Enemy? And whether the Defendant were reduced to any such Extremity ere he surrender'd Bristol?

For resolving of this grand Question, *Mr. Pryn* alleged, that his Excellency's Ordinances of War determined, *That whosoever yieldeth up any Town, Fort, Magazine, Viſtuals, Ammunition, Arms, or that moveth any such thing but upon Extremity, and that to the Governor, or in Council, shall be executed as a Traitor*. This is the general Law. Now what this Extremity is, will be the sole Question; for Resolution whereof we need go no further than to the several Cases of *Gomineys*, *Weston*, *Cressingham*, *Elmbam*, and the Bishop of *Norwich*, antiently resolved in Parliament, to the late King of *Sweden's* Military Laws, and his Excellency's own Explanation of this Point (taken out of them) in the second Edition of his *Laws and Ordinances of War*, which reduce Extremity to these three Heads; (where there is no absolute present want of Men thro' Slaughter or Mortality to defend the Place.)

1. *If the Garrison be reduced to an utter Extremity of all eatable Things whatsoever, so as they have no kind of Food whereby to subsist, but must necessarily perish by Famine if they yield not presently.*

2. *If there be no hope at all left them in such a Case of any Succour or Relief.*

3. *If without parlying at the very Instant, both the Forts, Men, and Arms, must of necessity fall into the Hands of the Enemy.* If the Governor can prove by pregnant Witnesses that he was really reduced to all these Extremities, then he is to be acquitted; but if he fail in real Proof of any one of these, then he is to be condemned and executed as a Traitor, both by the King of *Sweden's* and his Excellency's Martial Laws: and this is the general Law-Martial of all Nations, approved by our own Common Law, of purpose to establish Military Discipline against Cowardice, Negligence, and Treachery, which are apt to be varnish'd over with specious tho' false Pretences.

To prove this Definition of Extremity, *Mr. Pryn* produced the last Edition of his Excellency's Ordinances of War, printed by his special Command, and the Judge-Advocate's License. But the Judge-Advocate opposed the reading of them, pretending they were not yet approved by his Excellency so far as to be used at a Council of War, and that they were made since the Loss of *Bristol*.

To which *Mr. Pryn* reply'd, that they were printed by his Excellency's special Direction, and enjoined to be observed by all, (as appears by the Title) having been first voted and agreed on at a Council of War; that the publishing of them in Print, by special Command, was the highest Approbation that might be; and it were in vain to ratify and publish them, if we might not make use of them at this Council of War, in a Case which falls punctually within their Resolution: and tho' *Bristol* was surrender'd before the last Edition of these Ordinances, yet this Clause which defines Extremity, being on y an Exposition of the former Laws, and no new additional Law not formerly published, we might and ought to read it of right, to determine this Difficulty, for which it was purposely added. But the Advocate being very earnest against the reading thereof, the Council referr'd it to my Lord General, whether the *Explanation in the new printed Ordinances and Laws of War should be used at this Trial?* Who declared his Judgment, they should not now be read, or used.

Whereupon

Whereupon Mr. Prynne laid down this Conclusion for a positive and necessary Principle in War, that *utmost Extremity* to justify the Surrender of any Garrison, Town, Fort, or Place of Consequence, *must not be an imaginary, or possible Extremity, or a conjectural Improbability of holding out any long time, but a real, necessary, and present Impossibility of holding out any longer against the Enemy: affirming, that no Governor of any fortify'd Town or Castle ought to surrender the same upon any pretence of Extremity but where there is an absolute, real, and present Impossibility of holding out any longer than that very instant time wherein he makes the Surrender.* The Reasons whereof (he said) were very observable, grounded upon the highest Principles of Policy and War; as namely,

1. To retard the Enemy's Progress and Conquests, lest a whole Kingdom should be lost in a Moment, as all *England* would have been long ere this, had *Glocester, Hull, Plymouth, Exeter,* and other Places, made no longer nor better Resistance than *Bristol* tho' not of such importance to the Realm, nor so well furnish'd as *Bristol* with all manner of Provisions for a Siege. A General of an Army, Governor of a Town, must defend his Part with respect to the whole Kingdom; and therefore tho' he cannot hold his Ground; or guard his Fort absolutely, or for any long Space against the Enemy, yet he must lose Ground but by Inches, not give it away by whole Towns or Countries; and tho' he cannot defend his Charge still, yet he must hold out till the last Minute to stay the Enemies Progress, and prevent a sudden total Conquest of the Realm.

2. To spend the Enemies Men, Ammunition, Provisions, a long Siege being the usual Bane of any Army; an infinite Charge, Disadvantage, Discouragement to the Besiegers, but great Advantage, Encouragement to the opposite Party.

3. To give a good Precedent and Encouragement to other Governors, Garrisons, Forts, adjacent Counties, and to uphold Martial Discipline thereby; the holding out of a Place of Consequence (as is evident by the late Example of *Glocester*) giving great Encouragement to the adjoining Places to hold out strenuously to the last; and animating all the Party adhering to them: whereas the sudden Loss, or yielding up of any eminent City, strikes Terror into all adjoining Towns, Forts, Counties, who presently wheel about to the conquering Enemy, as appears by the Example of *Bristol*; whose unexpected Surrender, drew on the Loss of *Dorchester, Barnstable, Exeter, Dartmouth,* with most of the Western Parts; and it had hazarded the Loss of *London*, yea of the whole Kingdom, had the Enemies pursued their Victory to *London* Walls, and not been unexpectedly beaten off at *Glocester*, endanger'd by *Bristol's* Surrender; and quite given for lost by Col. *Piennes* and his Officers.

4. To give Advantage of surprizing other Places, or Quarters of the Enemies; to cause either a Raising of the Siege by such Diversions; or to get something equivalent to the Place besieged, in case it should be lost, or not relievable: whereas a sudden unexpected Surrender forestals all such Diversions and Compensations of Losses. Had *Bristol* been held out to the utmost; in case his Excellency could not have timely relieved it; yet he might have carry'd *Oxford*, or surprized divers of the Enemy's Garrisons, Forts, Men, Arms, &c. in other Quarters, whilst they were occu-

pi'd at *Bristol*; when as its sudden Surrender before three full days Siege, anticipated all Diversions, and Recoveries in Value, to help ballance *Bristol's* Loss.

5. To deprive the Enemy of the Ammunition, Provision, Victuals; and Magazines in the Town and Castle; which if spent in their Defence; to the Enemy's Loss and Slaughter, the Cannons cloyed, the Arms made unserviceable to the Enemy, they could not have readily been supply'd from other Parts, and so the Town and Castle might have been easily regained by a present Siege, in case they had not been seasonably relieved: however, the Victory at least had been less honourable; less advantageous to the Enemy; who by an unworthy speedy Surrender gained a City and Castle ready fortify'd, victualled, ammunition'd, provided with all Necessaries to their Hands; fit for present Defence, without any Cost or Labour; with Cannon and Arms almost sufficient to furnish an Army by Land, and Shipping enough to set out a strong Fleet by Sea.

6. To preserve the adjacent Towns; Forts; Counties, depending upon the holding out of the Place besieged, who by a cowardly present Surrender may be in danger to be surprized on a sudden, and taken unprovided of Ammunition, Men; Arms; Victuals, or sufficient Fortifications. If a Town well fortified, manned, victualled, to hold out three Months Siege in most Mens Opinions; shall be cowardly yielded up before Extremity, in three Days space, as *Bristol* was; all the neighbouring Garrisons, Counties, Cities, Castles, who depend upon its three Months Defence, are in danger of surprisal, and being taken unfurnished at unawares, as infinite historical Examples evidence; and the *unexpected Surrender of Bristol* (as the *Relation of Glocester* Siege truly styles it) was likely to have endangered *Glocester*, whose vigilant Governor would doubtless have been better furnished with Men, Ammunition, Victuals; had not *Bristol's* over-hasty Surrender forestalled his Intentions. And who knoweth not; that this Surrender might have endangered the Loss of *London* thro' an unexpected surprize, had the Enemy presently advanced towards it, as some advised?

7. If any Town be yielded up before absolute Extremity and Necessity of holding out longer; there is a most certain present Loss to the State, (perchance irrecuperable for the future too) but if held out till Extremity, there is still either a probability or possibility of securing and preserving it left; even to the utmost minute of its Tenability, and that by infinite Casualties; Contingencies, and Passages of divine Providence, transcending all human Apprehensions. As, (1.) By unexpected Supplies from other Parts. (2.) By Diversions or Invasions of the Enemies Quarters elsewhere; engaging them to raise their Siege. (3.) By successful Sallies. (4.) By extraordinary slaughters of the Enemies upon disadvantageous Assaults; of which they of *Bristol* had former Experiences, where the Enemy lost an hundred Men to one of ours; and had near 1700 slain and hurt in less than three Days; with the Loss only of seven or eight. (5.) By sudden Sickness in the Enemies Camp. His Excellency (as this Defendant affirmed) had two or three hundred Men that fell sick about this time in his Army in one Day, and one thousand or more in one Week's space, and the Enemies (for ought he knew) might have undergone the like Mortality. We read that God's *Angel* in

one Night slew in the King of Assyria his Host, an hundred fourscore and five thousand Men, and thereby raised Jerusalem's Siege: And for ought the Defendant knew, God might have sent an equivalent destroying Plague among the God-damni-me Army of Cavaliers, who besieged Bristol. (6.) By unseasonable tempestuous Weather, which had broke up many Leaguers. (7.) By the Death or Slaughter of some principal Officers or Commanders. (8.) By sudden pannick Fears and Apprehensions of approaching Rescues, of which we have an eminent Scripture-Precedent in the Besiegers of Samaria; to omit profane Histories. (9.) By sudden Mutinies and Discords among themselves, which in Scripture, and Stories, are copious. (10.) By Scarcity of Provisions, with which the Enemy before Bristol was very much pinched, as Mr. Savidge deposes. (11.) By want of Ammunition, the Enemies condition at Bristol, who had spent most of their Powder and Shot; of which they had far less in their Camp, than the Defendant surrender'd to them in the Castle. (12.) By Despair of Success, for which very reason the Enemies had retreated from Bristol in two or three Days more, had those who entred the Lines at first been repulsed, as they might have been with ease, tho' the Defendant alledged they had taken a solemn Oath not to raise the Siege till they had taken the Town; which might have been as easily frustrated, as the Oath of the Jewish Conspirators, Who vowed they would neither eat nor drink till they had murdered Paul; yet missed of their Design. Besides all these (whereof Histories afford plenty of Examples) there are infinite other Contingencies frequent in Story, whereby God, out of his divine Providence, hath many times miraculously preserved Forts and Cities, even in their utmost Extremities, against their potent Enemies; when they have been resolute to stand out to the last, especially in the Cause of God, Religion, or their Country. And in such a Case as this is, where we may with Confidence expect the best and speediest Assistance the Lord of Hosts, and God of Heaven can provide for us, (if we dare rely upon his Promises or Providence without distrust) he deserves not the Title of a Soldier, much less of a Christian Soldier, Governor or Commander, who will not trust God to the utmost Exigency, and rely upon his Power, Wisdom, Faithfulness for seasonable Deliverance and Relief; which the Defendant (for want of Faith as well as Courage) durst not do, and so yielded up all.

8. If absolute and present Impossibility of longer Defence, be not made the only Rule of utmost Extremity, we shall open a wide Gap to the Treachery, Cowardice, Negligence, Indiscretion, Avarice, Ambition, Discontent of every Governor and Commander, to the Overthrow of all Martial Discipline, and expose the whole Kingdom to speedy Loss and Ruin; it being an easy matter for any Governor or Commander, how cowardly, false or treacherous soever, to invent many plausible Excuses, many forged, supposed, probable Extremities, and to find Witnesses under his Command to attest them; and by Pretext thereof, to betray and yield up the most considerable Towns, Castles, Forts, throughout the Realm, to the Enemy, without any Stroke at all, or after a few Days counterfeit Siege, the better to palliate his treacherous Designs. And therefore upon all these Grounds, as likewise to reduce Extremity to a certainty, no other Extremity ought to be ad-

mitted, but only a present absolute Impossibility of holding out any longer; to which the Defendant was no ways reduced, as we have already proved.

In Opposition to these Reasons, Col. *Fiennes* maintained these three Things.

The first was this, That whenever the principal Rampart of any Town was once entred by the Enemy, this was a sufficient Extremity to justify both a Parley and Surrender. But the Line of Communication which the Enemies entred at Bristol was the principal Rampart, as he pretended: Therefore his Surrender of it upon their entering the Line, was justifiable.

To which was answered: 1. That the Enemies entering the principal Rampart, is no lawful sufficient Ground of a Parley or Surrender, no nor yet the taking of the principal Fort (for the Reasons aforesaid) as long as the other Forts or Towns are tenable; by holding whereof the Enemy may in time be repulsed out of the Works they have entred. If this were true military Doctrine, then London should by like reason be surrender'd to the King, in case he came before it, together with the Tower, as soon as the Line of Communication (the chief Rampart) were enter'd, or any Out-Fort taken; and an whole Army should yield the Field, if one Troop or Company of the forlorn Hope were routed. 2. Tho' the Line of Communication of Bristol were enter'd in only one Place, yet not one of the Out-Forts was taken; the Body of the City defended by the Key, and all that Part beyond the Bridge, together with the Castle (the chiefest Fort, Rampart, Sconce) and every Street in the Town both tenable and defensible, as we have formerly proved; therefore the Enemies bare Entry within the Line of Communication only, was no Extremity at all to justify its Surrender, in the Judgment of any but extreme Cowards. 3. That the maintaining of such a cowardly Paradox to excuse this Surrender, was an Argument it proceeded from Cowardice, and a sufficient Proof of a timorous Spirit.

The Second was, That if the Enemy had once enter'd or possessed the Town, the Castle ought not to be kept to the Prejudice of the Citizens, but ought to be surrender'd together with the Town, by the constant Practice and Policy of War in all Places, all Ages. In which he was so confident, that he challenged Mr. *Prynn* to shew one Precedent to the contrary, and produced divers Examples in foreign Parts, out of *French Mercuries* and *Gallobelgicusses*, with some late Examples at home to justify this Assertion: As namely, the Example of *Leipsick*, *Mentz*, *Philipsburgh*, *Prague*, *Ausburg*, the *Burse*, *Breda*, and other Towns abroad; of *Portsmouth*, *Exeter*, *Lincoln*, *Worcester*, *Winchester*, *Chichester*, *Malmesbury*, *Hereford*, *Taunton Town and Castle*, *Bridgwater*, *Dorchester*, *Dartmouth*, *Lime*, *Reading*; where he saith, the Towns and Castles were both surrender'd together, and not the Castles held out when the Towns were taken; yet none of these Governors were ever questioned by the King or Parliament. And he gave this Reason to prove this Paradox, that if Castles should hold out when the Towns were taken or yielded, it would much dishearten the Citizens, and make them unwilling to entertain or assist any Garrisons in the Castles.

To which Mr. *Prynn* retorted, That this was the grossest Absurdity that ever was broached by any Man in his right Senses, and had he not been intoxicated

toxicated with a Spirit of Pusillanimity, he would never have invented such a poor Subterfuge, or made such an ignorant Challenge as this to save his endangered Life. For, 1. Castles and Citadels, in most Towns, are usually the strongest, most tenable, most impregnable Places of all others, best able to resist and annoy the Enemies; the Out-works, Line, and Towns themselves less tenable and resistible than they: to argue therefore, that the Castle ought to be surrender'd as soon as the Town is enter'd or taken by the Enemy, is in effect to aver, That the strongest Fort of all must be yielded, because the weakest part of all is enter'd. If this were a good soldiery Argument, then, by the self-same Reason, if there were twenty strong Forts or Castles about a Town, and but one weak one, the whole twenty strong ones, tho' tenable, must be yielded, because only the weakest one was forced; and the Lord Mayor of *London* (in case that City were besieged) might yield up both the Tower, Town, and all the other Forts to the King, if the weakest part of the Line were but enter'd, or *Hide-Park* or *Issington* Fort once enter'd by the Enemy; yea, by this kind of Soldiery, if the weakest Troop or Company in an whole Army be routed, the main Body and Batallion of it must presently yield up themselves and the Field too, because this weak Party thereof is defeated: and his Excellency at *Edge-hill* Fight, where some of his Horse and Foot run shamefully away upon the first Charge, should by this senseless Policy have fled or yielded, and not won the Day, (as he did with greater Honour) because the worst and weakest part of his Army was routed. But since all Men know, that the strongest Forts and Parties are to defend the weakest, not the feeblest them; and the Castles in Cities made more strong and tenable than other Parts, for this very purpose, that they might hold out when the weaker Parts are taken, (this being the only Use for which they were built and made so strong) the Reason holds good on the contrary Part; that because the Town which is the weakest is taken, therefore, for this very Reason, the Castle, which is the strongest Part, ought to be held out and not surrender'd.

2. Castles in most Towns command the whole Towns where they are, and those who are Masters of them, are still Masters of the Places, and will soon regain the Towns; but if once surrender'd, the Enemies become presently absolutely Masters of both; and no Hope is left of regaining either Town or Castle again, without a Siege, or infinite Expence and Danger. Therefore there is all the Reason in the World to maintain the Castles to the utmost, when the Towns are enter'd, and not to yield them up together, both to preserve the Dominion of the Place, and regain the Towns with Ease and Speed.

3. As long as the Castles hold out, the Enemy can enjoy little Benefit by the Towns, and have less Security in them. Besides, their Conquest is incomplete, less terrible, not advantageous; their Progress from thence to other Places retarded, unless they leave the Castles unbesieged. And their forcing of the Castles will consume them far more Men, Ammunition, Money, than the entering of the Towns, which, without the Castles commanding them, are little worth. Therefore for all these Reasons it is apparent, that Castles ought to be kept by the constant exquisitest

Grounds and Policy of War, whenas the Towns themselves are taken or surrender'd.

4. Neither will this be a Discouragement, but the greatest Incouragement that may be to the Citizens, that the Castles must thus hold out to utmost Extremity: (1.) Because the Persons and Estates of the wealthiest Citizens will be there secured against the Enemy's Rage and Plunder, (as the honest *Bristolians* thought to have saved their Persons and Estates, by retiring into the Castle when the Town had been forced, which were lost by surrendering it.) (2.) Because by keeping the Castles, the Towns are certain to be preserved or regained in a short time, and thereby their Liberties and Privileges. (3.) Because by this means they shall not be long under the absolute Power of the Enemy, and new Lords to controul them; whereas if the Castles be yielded, their Persons, Estates, Laws, Liberties, will be wholly exposed to the Enemies Will and Pleasure, and subjected to their Tyranny. Therefore, upon all these Grounds, the Defendant ought to have kept the Castle of *Bristol*, being strong and tenable, to the utmost Extremity, and not to have surrender'd it with the Town, tho' the City had been taken or yielded by Composition.

5. For Examples, Mr. *Prym* answered, That if he had his Books about him, he could shew him at least one thousand Examples in Story to one of his, where Castles have held out when the Towns were taken or yielded; but since his Challenge was to produce but one Example to the contrary, he should out of present Memory furnish him with divers. The first, was a very ancient and memorable one recorded in Scripture, (which he wondred the Defendant, who had read the Scriptures, could forget) to wit, that of *Thebez*, *Judg. 9.* where we read, *That Abimelech went to Thebez, and encamped against it, and took it. But there was a strong Tower (or Castle) within the City, and thither fled all the Men and Women, and all they of the City, and shut it to them; and got them up to the Tower; but did not yield it up, tho' the City was taken. And Abimelech came to the Tower and fought against it, and went hard to the Door of the Tower to burn it with Fire: And a certain Woman cast a piece of a Millstone upon Abimelech's Head, and all to break his Skull: Then he called hastily to his Armour-bearer, and said unto him, draw thy Sword, and slay me, that Men say not of me, a Woman slew him; and he thrust him thro' and he died: and when the Men of Israel saw that Abimelech was dead, they departed every Man to his place.* Thus the Siege was raised, the Town preserved, regained, and that by a Woman. Had Col. *Fiennes*, in case the City of *Bristol* had been taken, retired to the Castle, according to his Promise, and there stood upon his Guard, perchance Prince *Rupert* coming for to assail it, as *Abimelech* did the Tower of *Thebez*, might have been slain with a Millstone by one of those valiant Women who offered to go up to the Cannons-mouth to dead the Bullets, in case he or his Soldiers were afraid to charge; or at least by some Musket or Cannon-Bullet; and so the Siege might have been raised, and the Town regained: No Man could tell whether such an Accident might not have happen'd, had the Defendant patiently expected the Issue of God's Providence in the Castle till utmost Extremity, which no Man ought to despair of, since (as the wise Man informs us) *Time and Chance*

Chance happen alike to all Men. Besides, the Siege might by sundry other forementioned Casualties have been raised, and the City preserved: But alas, the Defendant was so far from having the Faith and Courage of a Man, that he fell infinite short of the Courage and Prowess of this Woman of *Thebez*; styling the holding out of the City and Castle, tho' but a Day or two longer, a *desperate Resolution*, &c. not staying till they were assaulted, but presently yielding up both without any Assault, contrary to this Scripture Precedent, which he had neither Heart nor Courage to imitate. But lest he should pretend this one Example to be singular, I shall furnish him with sundry others, which I wonder he could forget. If he had read the *Roman Story*, he should have found the *Capitol* defended against the *Gauls* when the *City of Rome* was taken; and preserved from *Surprize* only by the crying of a *Goose*. In our unhappy antient Civil Wars, the *Tower of London* hath oft-times been held out when the City hath been yielded; the like we read of the Castles of *Edinburgh*, *Berwick*, *Northampton*, *Salisbury*, *Devizes*, *Oxford*, (in the time of *Maud* the Empress) *Rochester*, *Bedford*, *Nottingham*, *Pomfret*, frequently kept in former times, when the Towns were yielded, or taken: and not to rove farther for Precedents; even *Bristol-Castle* itself was held out by *King Edward II.* and the younger *Spencer* (in the last Year of this King's Reign) against the *Queen* and her Son *Prince Edward*, after the Town was yielded up to them by Composition, to save their Lives and Goods; and in these Days *Bristol* was styled and reputed, a good Town, and a strong, well closed, standing on a good Port of the Sea, having a strong Castle, and the Sea beating round about it, writes the Historian. Certainly had this Gentleman well studied the History of *Bristol* while he was there, he might have found a Precedent for holding out this very Castle after the City surrendered, and then he would not have made such a silly Challenge, to shew him one such Example. But if these antient Examples had been forgotten, yet we have fresh Precedents enough of this kind, which we cannot but remember. The Castles of *Warwick* and *Nottingham* both held out lately against the King's Forces, when the Towns were taken. Nay, the very Close at *Litchfield* (tho' no Castle but a Cathedral) held out against the Lord *Brooks*, when the Town was yielded; and since the Parliament took it, against all *Prince Rupert's* Forces, almost as many Weeks as *Bristol* itself did Days, and against near as great an Army, tho' it had not above 160 Soldiers in it: Yea, when the Prince had drained the Mote about it, sprung a Mine, blown up a great Part of the Wall, and enter'd the Breach with above 200 Men (being 50 more than first enter'd the Line at *Bristol*) yet the Garrison there was so far from yielding the Place by a Parley, that they encounter'd the Enemies, took 200 of them Prisoners, beat the rest out, made good the Breach, till all their Powder within half a Barrel was spent; and then came off upon more honourable Terms by far than the Defendant at *Bristol*, (which was not so much as assaulted, much less enter'd) even with their Colours displayed, their Bag, Baggage, Arms, and Restitution of their Prisoners taken by the Enemy: which Conditions were most punctually performed, because they shewed themselves Men of Valour, and had their Arms about them to defend themselves from Violence; when as the Defendant yielded up both

Arms and Colours. To these I might add the Examples of *Limerick* and *Galloway* Castles in *Ireland*, who held out many Months against the *Irish* Rebels, after the Towns were yielded: Of *Stafford* Castle, defended long against the Parliament after the Town taken; and the fresh Example of *Lincoln*, where the Close was kept against the Earl of *Manchester*, after the Town surrendered. But Examples of this kind are so frequent in all Stories, and so experimentally known to every one who hath been bred a Soldier, that I shall forbear to trouble this honourable Council (so well versed in Histories and War) with any more Precedents of this kind.

6. To his objected Precedents, Mr. *Prynn* answered: (1.) That they were only alledged, not proved by Witnesses or Records; *Gallo Belgicus* being neither a legal Testimony, nor Record to be given in Evidence at a Trial: (2.) That many of his Precedents were foreign, and it did not legally appear what were the Grounds of those Towns or Castles speedy Surrenders; which in all Probability was want of Food, there being such a Scarcity of it in *Germany* by Reason of the long continued Wars, that few Towns or Castles were victualled for one Fortnight's Siege: and perchance they wanted Ammunition as well as Food. (3.) It appears not whether those Governors were not questioned, and capitally punished for delivering up these Towns and Castles; since we find that in these late *German* Wars, some have been condemn'd and executed for yielding up Towns too suddenly. (4.) Many of our Towns he named had no Castles in them, at least none fortified to keep out an Enemy. (5.) Although the surrendering and quitting of these Town to the Enemy, was connived at, and never brought legally into question, as the Surrender of *Bristol* now is; yet they deserved to be both questioned and punished, (as the quitting and yielding of *Taunton*, *Dorchester*, *Lincoln*, *Banbury*, *Oxford*, and other Places:) And if so, these Examples can be no Justification or Extenuation of the Defendants Crime. It is no Plea for a Thief, when taken and arraigned, to say, such and such Thieves have robbed others, and yet were never indicted nor punished for their Robberies: Ergo, my Robbery is lawful, and I must not be condemned for it. Had they been apprehended and indicted, it had been no Plea for them, that some other Thieves escaped without questioning, therefore no Justification or Excuse for him who is arraigned; yet this is the Sum of the Defendant's Argument: Other Governors in *Germany* and *England*, who have cowardly and treacherously surrender'd and quitted Garrison-Towns, have not been questioned for it; Ergo, I must not be condemned or blamed for my cowardly, traitorously Surrendering of *Bristol*, now I am actually impeached and convicted for it. If this be a good Plea, to what end are martial Laws? Every Coward and Traitor shall then 'scape scot-free, tho' he undo and betray a whole Kingdom.

7. Some of the Towns he instanced in, were cowardly quitted, or yielded up upon his Surrender of *Bristol*, (as *Barnstable*, *Dorchester*, &c.) whose Loss must be put upon the Defendant's Score. As for the Loss of *Exeter*, which he instanced, it was answered: (1.) That *Exeter* was besieged, and held out more Months than *Bristol* did Days; being beleaguered above three Months Space ere it yielded: and had he held out *Bristol* so long, as he easily might, it would have been relieved

relieved in half the time, and kept safe till now.

(2.) That the yielding up *Bristol*, was the loss of *Exeter*, which was much discouraged by its ill Precedent, and left destitute of all Hopes or Probabilities of Relief by its Surrender; being too remote for his Excellency to relieve it, without endangering the loss of *Kent*, *London*, and *Essex*, during his absence hence; and there being no other Forces near, that could in any possibility or probability relieve it: yet tho' it were thus hopeless of all Succours, and much discouraged with the ill Examples of *Bristol*, *Barnstaple*, *Dorchester*, *Bridgewater*, *Taunton*, and other Western Towns, it held out till the principal Fort was taken, and all their Powder spent; yea the Garrison and Citizens were all resolved to have kept it with their Pikes and Swords, when their Ammunition was exhausted, had they had but any probable Hopes of Succours from any part; of which being utterly hopeless, they did for want of Powder, after above three Months Siege, surrender the Town and Castle upon somewhat more honourable Terms than the Defendant did *Bristol*. Wherefore this Precedent was so far from justifying his ignoble Act, that it was a pregnant Testimony and Conviction of his Guilt in not holding out *Bristol* three Days, when *Exeter* held out above three Months Siege, and spent all their Ammunition before they fell to Parley.

The third Thing maintain'd by Col. *Fiennes* was, That some Generals had sentenced Commanders to Death for being too obstinate in Defence of Forts, and standing it out over-long; and that a *French* Author (there produced) affirmed, it was a capital Offence to stout out a Place over-long.

To which Mr. *Prynne* answered, 1. That this new Doctrine was certainly calculated only for that Meridian where this great Soldier was born, and fit for none but it. 2. That the Defendant was so far from this Fault of stouting it out over-long, that he deserves to lose his Head for yielding *Bristol* up too soon; which certainly, in all Mens Judgments, is the more capital Crime of the two. 3. That no one Precedent could be produced in Story, where ever any Governor of a Town or Fort was judicially condemned or executed by the Prince or State that intrusted him to keep them, for holding them against the Enemy over-long: And if the Defendant had been guilty of this Crime, we would have been so far from impeaching, that we, and the whole Kingdom, should have honour'd him highly for it, tho' we have both just Cause to prosecute him for the contrary; for which sundry Governors have legally been condemned. 4. That it was a most ingrate Requiral to execute any Man for his over-much Valour and Fidelity; and if this were once allowed for Martial Law, it would quickly make all Governors and Soldiers Cowards or Traitors; therefore certainly the Defendant had much mistaken his *French* Author, who writes only in general, that some have been put to death for stouting and holding out a Town over-long, without defining by whom this was done. He pretends it was done by those who intrusted them with the Towns, of which no Example can be produced; but certainly the Author meant it only of the Enemies, who have sometimes put a Governor to death when a Town hath been forced, for holding it over-obstinately out against them, for which there are divers Precedents. And in this Sense (which doubtless is

the true) it suits very well to the Defendant's Case. The poor Man was excepted (as he tells us) out of the King's Pardon sent to *Bristol*, and so like to suffer if he held the Town or Castle till it were forced by the Enemy: Wherefore to prevent all Danger, and save his best-beloved Life, he thought good to avoid the Rigour of this Law, by purchasing his Impunity with the over-hasty Surrender of them to the King; and so by this unworthy-Shift,

Incidit in Scyllam qui vult vitare Carybdin:

Forfeiting his Head to the Parliament and Kingdom, to secure it from the King.

Mr. *Prynne* concluded his Reply to the Defence of the fourth Article, and those that followed it; with Col. *Fiennes*'s Commission for *Bristol*, and some Precedents in point resolved in Parliament; the Transcripts whereof out of the Parliament Rolls, proved upon Oath to be true Copies, he there delivered to the Council*.

Col *Fiennes*'s Commission (the Original whereof he there produced) was read as followeth.

RObert Earl of *Essex*, &c. To Col. Nathanael *Fiennes*. By virtue of an Ordinance of the Lords and Commons in Parliament, I do constitute and appoint you Governor of the City of *Bristol*, as also Commander in Chief of all the Forces raised, or to be raised and employed for the Defence of the said City, and the Liberties of the same, and of the Garrison there, to serve for the Defence of the King, Parliament, and Kingdom. These are therefore to will and require you by virtue of this Commission, to take the said City and Forces into your Charge as Governor in Chief, and by all possible ways and means (except in point of Civil Government) to provide for the Defence and Security of the same, and to maintain the same against all Enemies and Opposition whatsoever: and from time to time diligently to exercise the said Forces within the said City and Liberties, in Arms; commanding all Officers and Soldiers to obey you as their Governor and Commander in Chief, for the Service above-mentioned, according to this Commission given you. And you are likewise to observe and follow such further Order and Direction as you shall receive from myself, or from both Houses of Parliament. Given under my Hand and Seal of Arms this first Day of May, 1643.

E S S E X.

From this Commission it appears, 1st, That Col. *Fiennes* was constituted Governor of *Bristol* by Commission from his Excellency, under his Hand and Seal. 2dly, That he had the Command in Chief of all the Forces and Garrisons there, who were to be employed for the Defence of the said City, and the Liberties of the same; and to serve for the Defence of the King, Parliament, and Kingdom. 3dly, That he was specially charged by that Commission, to take the said City and Forces into his Charge as Governor, and by all possible Ways and Means to provide for the Defence and Security of the same, and to maintain the same against all Enemies and Opposition whatsoever; and that all Officers and Soldiers were there to obey him as their Governor and Commander in Chief for this Service: Therefore he and his Officers were expressly enjoined by this Commission to defend and keep it against the Enemy,

to

* See these Records at large, with some others to the same purpose, at the end of this Trial.

to the uttermost Extremity, and were there placed for that very Purpose: and that he sent for and accepted this Commission upon these very Terms, and not only to rule his Soldiers, not to keep the Town and Castle, as he falsely at first pretended. *Atbly, That he was to observe and follow such further Order and Direction from Time to Time, as he should receive from his Excellency and both Houses of Parliament;* therefore not to surrender the City and Castle without their special Order or Direction, which he never had to do it, as himself confesseth. His very Commission therefore being expressly violated in all these Particulars by this his Surrender, before he was reduced to utmost Extremity, is a sufficient Evidence to declare and condemn him for a Traytor, by the very Ordinances of War, especially since he knew the grand Importance of the Place, for the Kingdom's Safety.

For Precedents adjudged in Point, I could produce many out of foreign * Histories, which I shall pretermitt, because they are no binding Evidence in Law; wherefore I shall confine myself to such domestick Examples of this Nature, as have been formerly adjudged in Parliament, (the supreme Council of War, whose Judgments must direct all others) register'd amongst our Parliamentary Records, which cannot be controlled, and are the best Evidence of any other. The Records themselves (examined by the Parliament Rolls) are long, and written in Law *French*, which perchance some of this Honourable Council understand not; I shall therefore briefly open them in *English*, and apply them to the present Case, in order as they are opened.

The first † Precedent is the Case of *John Lord of Gominycs*, who in the Parl. of 1 R. 2. n. 38, 40. was indicted and arraigned before the Lords, 'for that he being made Governor of the Town and Castle of *Arde* (in *France*) by *K. Edward III.* to this Intent, *That he should safely keep the same for the King and his Heirs, without surrendering them to any Person without their Command, did yet in K. Richard II's Reign, deliver and surrender the same to the King's Enemies, without any Command from him, to the dishonour and disinheriting of the King and his Crown, and of the Realm of England, against his Undertaking aforesaid, without any duress or default of Victuals or Artillery, or of any other things necessary for the Defence thereof. To which Indictment the Defendant pleaded, that the Town and Castle were so weak, that he could not well keep them against so great a Power of the Enemies as was then ready to assail them: Whereupon he assembled all the Knights, Esquires, and others in the Town, and informed them of the Dangers the Town was in, and of the Enemies Forces; and by common Counsel and Consent of them all, he enter'd into a Treaty with the Enemies, to save the Lieges of the King within the Town and Castle; and thereupon yielded up the same upon Terms of Composition, receiving no Reward at all for surrendering the Town or Castle. But because one *Geoffery of Argentine*, Knight, affirmed in Parliament, that he was then in Person within the said Town and Castle, in the Defence whereof he was always ready to live and die, never consenting to the Surrender thereof; and because *Sir Ralph de Ferrers, Kt.* had valiantly defended them in former Times against a great Force of the Enemy, when they were not so strong as at the time they were surrender'd: And because *de Gominycs* had*

'undertaken to keep them, and if he could not have done it, he ought in no wise to have undertaken to keep them; and that another should and would have undertaken the safe keeping of them, had he not undertaken it; and for that he yielded them up in this sort before utmost Extremity, when he wanted neither Men, nor Victuals, nor Ammunition, he was adjudged to lose his Head, notwithstanding his Plea, that he did it by the Advice of a general Council of War, to save the King's Liege People's Lives and Estates, and that the Town and Castle were weak, unable to resist the Enemies Power.'

This Town was of far less Importance to the Realm of *England* than *Bristol*; no Treachery at all appeared in the Surrender, made by the Vote of a general Council of War; yet we see the Governor adjudged to lose his Head, for not holding it out to the utmost Extremity, according to his Duty. And if his Plea could not secure him from such a Sentence, *Col. Fiennes's* Plea being the very same with his, that he surrender'd the City and Castle of *Bristol* to the Enemy before utmost Extremity, because they were weak and untenable for any long time, to save the Lives and Estates of the Garrison, and Parliament's Friends, and that by the Counsel and Assent of all the Knights, Esquires, Soldiers, and Inhabitants thereof, must needs be frivolous, and can no way extenuate his Fault, nor save his Neck from the Block; the rather because *Bristol* was of far greater Consequence to the Kingdom now, and better provided, fortified, manned, victualled, and more likely to be relieved, than *Arde* was then.

The second Precedent was of *Pierce de Cressingham*, and *John de Spikefworth*, Esquires, who were arrested and arraigned in Parliament 7 Rich. II. num. 17. 'for yielding up the Castle of *Drinkham* in *Flanders* to the Enemies, from whom it was gained by the Bishop of *Norwich*, tho' it were well and sufficiently stored with Victuals and other Necessaries, and strong enough to be held against the Enemies, without the Will or Command of the King or his Lieutenant. To which *Spikefworth* pleaded, That he had never the Custody of that Castle, or any thing to do therewith, but was chased into it by the Enemy, it being then in the Custody of *Pierce de Cressingham*: That soon after the Enemy assailing the Barbican he was unhappily routed, and one of his Varlets slain close by him: That he had never any thing to do in the Castle, neither as a Soldier thereof, nor in any other manner whatsoever, but only continued in it in manner aforesaid, till it was surrender'd by the said *Pierce*; and therefore prayed, that it would please the King to have him excused. Whereupon it was ordered he should be set at Liberty, if nothing else could be said against him. *Pierce Cressingham*, who had the Custody of the Castle, alledged, That upon the yielding up of the Town and Castle of *Burburgh* to the Enemy, of all the Garrison-Soldiers he had with him at *Drinkham*, none would continue with him for the Safeguard of that Castle but only five Persons; by Reason of which great Necessity, he was constrained for the Safety of his own Person and People, to enter into a Treaty with the Enemies to deliver up that Fort; and thereupon he yielded it up, and not for any other Cause, nor in any other manner, but only by Constraint of the Power of the Enemies aforesaid; denying that he ever received any thing from the Enemies by way of Gift, or in any other manner:

* See *Grimston's History of the Netherlands*, p. 827, 828.

† 1 R. 2. num. 38, 40.

manner: Whereupon he conceived that no Man ought to impute any manner of Blame or Reprach unto his Person; but if it should be thought he had done ill in any manner, he most humbly cast himself upon the Grace of his Liege Lord. But because this Excuse was held insufficient, he was committed to Prison, till the King should otherwise declare his Opinion concerning him.

Here was a Case of far greater Extremity than Bristol, without any apparent Mixture of Treachery; but only five of the Garrison left to defend the Castle, when as the Defendant had 2300 Soldiers at least in Bristol; and a Surrender by common Advice for the Governor's and Inhabitants Safety: yet because *Cressingham* the Governor, by Virtue of his Office, was bound to hold it till the utmost Extremity, he was for the present adjudged to Prison; and to expect a farther Sentence afterwards; whereas *Spikeforth* was acquitted, because he came casually into the Castle, as forced by the Enemy, and had no Charge of it, as a Governor, Officer, or Garrison-Soldier; all which (as appears by this Resolution) are answerable and punishable for delivering up the smallest Fort before utmost Extremity.

The third Precedent is the Case of the Bishop of *Norwich*, accused in Parliament 7 R. II. num. 32. for surrendering the Town of *Gravelin* to the Enemy, before utmost Extremity, upon Condition that it should be totally demolished. To which the Bishop pleaded, that by Reason of the Disobedience of his Captains, who quitted the Field, and betook themselves to their Forts, he was constrained to retire with his Forces to the Town of *Gravelin*, which he would have held out well enough against all Men, and did hold out till the other Captains had surrendered their Forts adjoining to the French; and after that, until speedy Supplies might have arrived from England: But because there were six or 7000 Englishmen, who came out of the Forts surrendered, lying on the Sands near *Calais*, who could not get into the Town, and were in danger to be slain by the French within two or three Days, (the Truce being then expired) whose Loss would have been charged principally upon him; thereupon he was commanded by the King himself to render the Town to the Enemies, or else to demolish it, and then to march to succour the said English, and after that towards England, to save himself and others of his Army, in case they were in any great Want of Victuals, as in Truth they were: and because it behoved him to abate and void the Town, as it was lawful for him to do at his Pleasure, being gained by his proper Conquest from the Enemy; it seemed to him, that he ought to be well excused of whatever was surmised against him (for * compounding with the French to raze the Town to the Ground, and to depart whither he would with his Bag, Baggage, and Men.) To which was answered by the Lord Chancellor, That there was sufficient Victuals in the Town when the King's Letter came there; after which the King sent other Victuals thither in great Plenty, with Letters importing, how he had appointed his Uncle to come speedily to his Aid and Succour: yet notwithstanding he departed thence, leaving the Town to the Enemies, against the Form of his Indenture; by which the King granted him whatsoever he should conquer, not at all to surrender, sell or leave the same to the Enemy, but to hold and possess it. And as for the Disobedience and Defaults of his Officers, and their Surrender of the Fortresses, they neither could nor ought at all to excuse him, seeing they were all named

and chosen by himself; not by the King or his Council, and the Articles of the Surrenders sealed between them and the Enemies, were made without the Authority and Consent of the King: Wherefore by the Assent of the Earls, Barons, and other Lords temporal present in Parliament, it was assented and decreed, That the Bishop should be in the King's Mercy, (who out of his Grace would forbear to lay Hands on his Body in regard of his Function, tho' he might justly have proceeded against him as a Lay-man;) that he should be put to a Fine and Ransom, according to the Quantity and Quality of his Offence, for which his Temporalities should be seized, and whatever Monies he had received from the King, and imploy'd to his own Use, he should presently make full Payment thereof into the King's Treasury, without Delay or Difficulty. Had he been a Lay-man his Censure had proved capital, and more rigorous.

Here we have all Col. *Fiennes*'s Excuses pleaded to justify this Action: 1. The saving not of a Body of 1500, but 7000 Englishmen to serve the State, whose Lives were all endangered, not in a Garrison-Town or Castle well victualled, or ammunitioned, as those in *Bristol* were, but lying on the open Sands without Defence; and that not in their own native Soil, but beyond the Seas in an Enemy's Country. 2. Despair of timely Relief; and greater Want of Victuals than was in *Bristol*, where there was too much Plenty. 3. A Letter from the King himself, injoining the Bishop to quit the Town to the Enemy in case they wanted Victuals, as he alledged they did; whenas Col. *Fiennes* received no such Letter from the Parliament or his Excellency, to quit or yield up *Bristol*. 4. This Town was won from the Enemy by the Bishop himself, not immediately committed to him to guard by the King or Parliament, as *Bristol* was to the Defendant, who had less Right to surrender *Bristol*, than this Bishop *Gravelin*, being his own Conquest. 5. He did not yield up the Town, with all the Cannon, Arms, and Provisions in it to the Enemy; as the Defendant did *Bristol*; but only demolished it and slighted the Fortifications, departing thence with Bag, Baggage, Cannon, and his Men: yet notwithstanding all these Particulars, and the gallant Service this martial Bishop had done in this Expedition, he incurred this heavy Censure, and had his Temporalities seized divers Years for his Fine and Ransom. And if he deserved such a Censure, no doubt the Defendant deserves a far greater, notwithstanding his Excuses.

The fourth Precedent is that of Sir *William de Elmham*, Sir *John Tryvet*, Sir *Henry de Ferrers*, and Sir *William de Farendon*, Knights, and *Robert Fitz-Ralph*, Esquire, impeached in the Parliament of 7 R. II. rot. Par. n. 24. for Surrendering the Town and Castle of *Burburgh* to the Enemy, and receiving Monies for the Arms, Victuals, Prisoners, and Goods within the same. To the which Sir *William de Elmham*, and most of the others pleaded, that they were enforced to surrender the Town and Castle to the Enemy of fine Force, for the Salvation of themselves, the Garrison and People therein, the Enemy having besieged and assaulted it in very great Numbers, and set the Town on Fire within, who would have taken it by force, and taken or slain, all those within it, had they not yielded it by Agreement: And that the Monies they received, was only for the Prisoners, Victuals, and other Goods within the same, not for the Surrendering of the Town itself.

* *Walsingham Hist. Ang. p. 327. to 330. Holingshed, Speed, Grafton in an. 6. Rich. II.*

‘ Yet notwithstanding, this Excuse was adjudged insufficient, and the Parties ordered to make full Payment to the King of all the Monies received from the Enemy, to stand committed to Prison, to make Ransom at the King’s Will according to the Quantity of their several Offences; and Sir William de Farendon left to the King’s Mercy, both for his Body and Goods, to do with them what he pleased.’

Here we have a Town assaulted by a Multitude of Enemies, fired in Part, and thereupon a Surrender upon Composition, to save the Officers and Soldiers from being taken or slain by the Enemy; yea, a better Market than the Defendant made at Bristol, even a Sale of the Prisoners, Victuals, and Goods in the Town to the Enemy for Money, when endangered to be all surprized by Force; yet this was judged no Excuse: Therefore certainly the Defendant’s pretended Necessity, and Danger of forcing the Town by the Enemy, not half so real as this, cannot excuse his Crime, nor extenuate his Guilt, nor yet his Pretence of saving his Officers and Garrison’s Lives and Estates, to do the Parliament Service elsewhere.

The fifth Precedent is that famous Case of *William de Weston* in the Parliament of 1 R. II. num. 38, 39, 40. ‘ The Commons in this Parliament prayed, that all those Captains who had render’d or lost Castles or Towns thro’ their Default, might be put to answer it in this present Parliament, and severely punished according to their Deserts, by award of the Lords and Barons, to eschew the evil Examples they had given to other Governors of Towns and Castles. Whereupon John de Gomineys, (whose Case I began with) and William de Weston, then detained Prisoners in the Tower, because they had lost and rendered the King’s Towns and Castles to the Enemies, were brought by the Constable of the Tower before the Lords in full Parliament in the White-chamber; where Weston, by the Lords Command, was arraigned by Sir Richard Lescop, Steward of the King’s House, in manner following:

‘ William de Weston, you took upon you from the most puissant Prince (whom God assoil) Sir Edward late King of England, Grandfather to our Lord the King that now is, safely to keep to him and his Heirs, Kings of England, the Castle of Outhrewyke, without Surrendring it to any one but to the said Grandfather, or to his said Heirs, or by Command from him, or from his said Heirs: Have you William, who are a Liege-man of our Lord the King, in times of the same our Lord the King who now is, true Heir to the said Grandfather, delivered and surrender’d the same to the Enemies of our Lord the King, without Command from him, to the Dishonour (or Damage) of him and his Crown, and of the Estate of his Realm of England, against your Allegiance and Undertaking aforesaid? What will ye say hereunto?’

Whereupon the said William put in his final Answer in this behalf: ‘ To the most sage Council of our Lord the King, and to the other Lords and Commons of the Parliament, supplicates and sheweth William de Weston, That albeit he be accused of this, that he hath maliciously render’d the Castle of Outhrewyke, of which he had the Custody, by delivery and assignment of our Lord the King; may it please your sage and just Discretion, to have the said William excused thereof, for these Causes ensuing. First of all, May it please you to remember how that the said William was lately informed by a Spy, that a great Power of the Enemies would come upon him to besiege the said Castle, with very great and very grievous Ordnances; whereupon he the said William presently by his Attorney, and by his Letters, required of the

said Council that it would please them to re-enforce the said Castle with more Men, for the Defence and Safeguard thereof, in regard that the Garrison of the said Castle that then was, were not half sufficient in respect of Multitude to resist so great a Force in so large a Place; but in conclusion, for all this, he could not have any Succour from the said Council: And so the said William, not at all thro’ his Default, was left without People sufficient for to keep and defend the said Castle any long Time; which he beseecheth you to take into your just and benign Consideration. Also please you to know, how upon a Monday about one of the Clock the Enemies came to besiege the said Castle, to the Number of 2600 Men of Arms, and 700 Arblasters Genevoyes, and with 5000 of the Commonalty of the Country, having nine great Cannons, divers Engines, and one great Mortar-piece, beyond all Measure greater than ever they had seen any before in those Marches, and the same Hour presently a great Number of the Men of Arms and Arblasters aforesaid came before the Gates for to assault the said Castle, and at this Time a Knight of theirs was slain who was Cousin to the Lord de Clifton as was reported, and many others were likewise then slain and wrecked. And within a short Time after they began to shoot with their Ordnances and other Engines, and so continued their Assault from one Day to another, that is to say, Tuesday, Wednesday, Thursday; and then were the Walls and Houses of the Castle battered down, and bruised in many Places; and they had likewise by Force trenched the Ditches of the said Castle in three Places, so as the Water was drained out; and that Night came a great Party of them, and by fine Force made an Assault, and abated the Barricados; and the next Day (which was Friday) they came about Day-breaking with all their Forces to assault the said Castle, but with God’s Assistance they were yet repulsed with Force from their Assault, and of the one part and the other were some slain and wounded. And the same Day the Marshal of Burgoyne sent to the said William, and others of the said Castle, to render it; whereupon having consideration that the said Castle could not be kept, as well in regard of the small Number of the People, as by reason that the Walls in many Places were enfeebled by their marvellous Ordnance, there was a Treaty with the Lords to this End; That the said William and his Company might advise themselves against the next Morning; and so they departed each to his own. Also this same Night the Enemies caused all their Ordnances, Engines, Mortar-piece, Cannons, and Faggots, with Scaling-ladders, Galleries, and all other Necessaries, to be drawn up near to the very Ditch of the aforesaid Castle; and the next Day (which was Saturday) they made all Things ready plainly for to assault the Place: And then first of all sent an Herald to the said William, to know if the said Castle should be render’d to them or not? Whereupon the said William, by Advice of the wisest of his Companions, taking consideration how that the said Place was destroyed and enfeebled with their Ordnance, and also that they were too few Men for its Defence, by reason that twelve of their Companions were in this Time slain, wounded and sick, so as there remained of all the People in the Garrison in Health, but only 38 Men to defend the same; hereupon by common Assent the said Castle (which could be kept no longer) was by Force surrender’d, for to save their Lives granted to them, and their Goods. And that all these Things aforesaid are true, the said William puts himself upon his Proof, according to your most discreet Ordinances. Also it is to be remember’d,

‘ that

that when the said Castle was thus rendered as aforesaid, certain French People bargained with the said William for his Victuals, to buy them, together with certain Prisoners which the said William held imprisoned within the said Castle, for which things he received of them for his Payment 1500 Franks; of which he paid his Companions for part of their Wages which was behind unto them for one quarter of a Year and an half, 78 Franks; likewise after was paid at Calais for the Victuals of the said Castle before that time due, 442 Franks; also for the Passage of the said William, and of his Companions into England, and likewise for the Expences of the said William being at Calais, 135 Franks. And therefore the said William prayeth in this Regard your Justice and Benignity, seeing, by envious Suggestion, he hath against all Reason been accused, whereby his Estate and Name, by the grievous Sin of Misinformers, and he also, is ruined; having likewise Consideration, that out of his proper Goods he hath for the greater part paid his Companions their Wages which were due unto them as aforesaid, and also for the great Costs he hath been at before this time, for to victual the said Castle, (for which he hath given his Obligations in divers Places, and oweth great Sums, by reason whereof he is on all sides undone, if your just Benignities do not succour him) that you would be pleased for God's sake, and for Pity, to ordain likewise for him, that he may, by your discreet Nobleness, recover his Estate and Goods. Also the said William Weston sheweth, how the first Day when the Enemies came before Arde, that he went in haste to Calais unto the Captain, and desired of him more Succour and Aid of Men, for the better guarding of his Fort of Outhrewyke, and to defend it if the Enemy should come thither: and the Captain answered him briefly, that he would not deliver nor give him Aid nor Succour at the same time, because he doubted that the said Enemies would come before the Town of Calais. But notwithstanding all these Pleas, the Lords in this Parliament, together with the most valiant and discreet Knights, and other Members thereof, after good and mature Deliberation hereupon, delivered their Judgment and Resolution against Weston in form following. It seemeth to the Lords aforesaid, that you, William, who had taken upon you safely to keep the Castle of Outhrewyke, as before is said, that you have without any Duress or Default of Victuals evilly delivered and surrendered the same to the Enemies of our Lord the King, by your own Default, against all apparent Right and Reason, and against your Allegiance and Undertaking aforesaid: and having by due Information read the Case of the late Baron of Graystock, who was a Lord, and one of the Peers of the Realm, who had taken upon him safely to keep for the foresaid Grandfather the Town of Berwick; the said Baron perceiving afterwards that the said Grandfather addressed himself to go into the Realm of France, the said Baron (without Command of the said Grandfather) committed the said Town of Berwick to a valiant Esquire, Robert de Ogle, as Lieutenant to the said Baron, for to keep safe the said Town of Berwick to the said Grandfather; and the said Baron went as an Horseman to the Parts of France to the said Grandfather, and there remained in his Company; during which time an Assault of War was made upon the said Town of Berwick by the Scots; and the said Robert, as Lieutenant of the said Baron, valiantly defended the same; and at last by such forcible Assaults the said Town was taken upon the said Robert, and two of the Sons of the said Robert there

slain in the Defence of the same. Notwithstanding, because that the said Baron himself had taken upon him the Safeguard of the said Town to the said Grandfather, and departed himself from thence without Command of the said Grandfather, and the said Town of Berwick was lost in the Absence of the Baron, he being in the Company of the said Grandfather in the Parts of France, as is aforesaid; it was adjudged, by Advice of the said Grandfather, the King of Castile, who is present, the Nobles, Dukes, and Counts, Henry late Duke of Lancaster, the late Earl of Northumberland and Strafford, and Sir Walter de Manny, that the said Town was lost in default of the said Baron: and for this Cause he had Judgment of Life and Member, and that he should forfeit all that he had: and to render his Judgment in these Words, the said Sir Walter bidd a Command from the said Grandfather. Which Things consider'd, and this also, that you, William, surrender'd the Castle of Outhrewyke to the Enemies of our Lord the King aforesaid, without any Duress or Want of Victuals, against your Allegiance and Undertaking aforesaid, the Lords above-mentioned sitting here in full Parliament adjudge you to death, and that you shall be drawn and hanged. But because that our Lord the King is not yet informed of the manner of this Judgment, the Execution thereof shall be respited until the King be informed thereof: Whereupon it was commanded to the said Constable safely to keep the said William, until he had other Command from our Lord the King.

This Case is very punctual, this Judgment fatal to the Defendant; wherein all his former Pleas, and far better than he could make, are over-ruled against him long since, even in full Parliament. (1.) This Weston, as soon as he heard of the Enemy's Approaches and Intent to besiege Outhrewyke Castle, lent post to the Council, and to the Governor of Calais, acquainting them with the Weakness of the Garrison, and craving present Aid, (as the Defendant pretended he sent to his Excellency) yet could receive no Supplies from either. (2.) His Garrison was not half enough to resist the Enemies great Power, neither had he Means to increase it; whereas Bristol Garrison was abundantly sufficient to resist the Enemy, and the Defendant might have doubled it had he pleased; there being six thousand or eight thousand able Men more in the Town, whom he might have employed in its Defence. (3.) There were eight thousand four hundred Enemies before it, as many or more than were before Bristol, and but fifty Men only in the Castle to defend it; whereas there were two thousand Foot and three hundred Horse at least to guard Bristol; a vast Disproportion. (4.) They had nine great Pieces of Battery, a great Ram, or Mortar-piece, greater than ever were seen in those Parts before, with many other Engines; as many or more than the Enemy had at Bristol. (5.) The Siege, Battery, and Assault thereof, continued from Monday till Saturday; whereas Bristol was besieged only from Monday till Wednesday Noon (not half so long) and then yielded upon Parley. (6.) All the Walls and Houses of the Castle were beaten down and battered exceedingly, and the Ditches drain'd of the Water by Trenches; and all their Barricado's beaten down; yet they still held it out; whereas not one Shot at all was so much as made against the Castle or Walls of Bristol, but against the Out-works only. (7.) After the Walls and Barricado's were thus broken down; and the Ditch drained, they manfully re-

pulsed the Enemy, who fiercely assaulted it, and slew divers of them, with the Loss and Wounding of some of the Garrison; whereas *Bristol* Castle, and the Body of the Town, were yielded up before the least Battery, Mine, or Assault. (8.) They made all things ready for an Assault, planting all their Ordnance, Engines, Galleries and Faggots close to the Castle Ditch, and sent two several Heralds and Messengers to him for a Parley ere he would treat; whereas the Defendant, before any Battery or Assault against the City or Castle, sent out twice to the Enemy for a Parley, with so much haste, that he would not hearken to any who would beat them out, or oppose or delay the Treaty. (9.) Twelve of his fifty Men were by this time slain, sick and wounded, so that he had only thirty-eight left to make good the Castle, thus batter'd and assaulted with so great a Power; whereas the Defendant lost but eight Men at most, and had at least two thousand three hundred Horse and Foot when he fell to Parley. (10.) He surrender'd the Castle by the Advice of a general Council of War, upon better Grounds than the Defendant yielded up *Bristol*; to wit, because the Walls were beaten down, the Garrison over-small to defend it, the Enemy very likely to force it by the Assault, no present Relief near at hand, and to save his own, with the Soldiers Lives and Goods, which else were endanger'd to be lost; none of which the Defendant can justly alledge, as we have manifested. (11.) He made the most of an ill Bargain, by selling the Victuals and Prisoners in it to the *French* for fifteen hundred Franks, with which he paid his Soldiers their Arrears of Wages, discharged the Debts of the Castle owing for Victuals, and defray'd the Charges of their Passage into *England*; whereas the Defendant yielded up all the Prisoners and Victuals to the Enemy gratis, with which Provisions the Ships that brought over the *Irish* Soldiers were victualled, and left the State to pay the Soldiers Arrears and other Debts contracted by him there, amounting to many thousand Pounds, which ought to be made good out of his own Estate. Therefore, in these Respects, he ought to undergo the self-same Judgment of Death, and to be drawn and hanged, much more justly than he.

To these Precedents Colonel *Fiennes* answer'd, 1. That these Governors had all of them Commissions under the Great Seal of *England* to keep these Towns and Castles, and that made their Offence so great; but he had no such Commission under the Great Seal of *England* to be Governor of *Bristol*: and this he conceived differenced the Cases much.

To which Mr. *Prynn* reply'd, (1.) That the Defendant was much mistaken in this Point; for these Towns and Castles lying in *France*, if the Commissions of their Governorships were under any Seal, it was under the Great Seal of *France* not of *England*, as appears by the express Statute of 14 *Ed. III. Stat. 4. & 1 H. VI. Rot. Parl. Num. 14, 15.* (2.) That the great Seal being carry'd from the Parliament when his Commission was granted, he could not expect any such Commission under the Great Seal, but from the King himself in opposition to the Parliament, to whom he surrender'd *Bristol*, perchance for want of a Commission under the Great Seal to keep it. (3.) If this were a good Plea or warrantable Distinction, then all the Governors of Towns and Castles within the Parliament's Power might treacherously or cowardly surrender them forthwith to the King

without Punishment or Danger, because they wanted a Commission under the Great Seal to keep them. (4.) He had a Commission under his Excellency's Hand and Seal to keep the City; under whose Authority he took the Custody of it for the Parliament's and Kingdom's Safety, in these distracted Times, by virtue of a Commission of both Houses granted to his Excellency: therefore his Offence is as great and capital for surrendring it contrary to his Trust, and his Excellency's Commission to keep it, as if it had been under the Great Seal. (5.) When his Commission was first granted, the Parliament had not made a new Great Seal to seal it, but since his Surrender of *Bristol* they had made one: and he durst assure the Defendant, had his Courage and Fidelity been such as to hold out *Bristol* till the new Seal was made, he would have procured him a Commission under it to keep *Bristol*, rather than he should have yielded it up cowardly to the Enemy, for want of a Commission under the Great Seal of *England*. But because he held it not till such Commission might be obtained, he must be condemned for rendering it contrary to that Commission, which he both sent for and received from his Excellency under his Seal of Arms alone.

Col. *Fiennes*'s second Answer was, That it appear'd not in these Records what other Matters and Proofs were produc'd against these Persons, besides those mentioned in them; and therefore, for ought he knew, they might be condemned for something else besides what is alledged in these Records, else the Cases might seem very hard, and the Sentences none of the justest.

To which Mr. *Prynn* reply'd, That the Defendant by this strange Answer betray'd his extraordinary Ignorance in Matters of Law and Records, into which no Depositions of Witnesses are wont to be inserted, but only the true State of the Case itself, and the Judgment given thereupon: and therefore to surmise they were condemned for any thing else, than what is expressly mentioned in the Records and Judgments themselves, is to aver against the very Records, and the Judges that gave the Sentences, and so to falsify and nullify all Records. The Cases therefore being admitted to be really such as the Records relate, in nature of a Demurrer or Confession, and the Judgments determining them to be such; this Answer must rather be deemed an ignorant Mistake than any solid Reply.

Col. *Fiennes*'s third Answer was, That the Castle of *Outbreyke, Arde* and *Burburgh*, were Places of no great Consequence or Wealth, and therefore ought to be held out to the utmost: But *Bristol* being one of the richest, chiefest Cities in the Realm, and of great Importance, ought not to be endanger'd or ruined by holding it to the utmost Extremity, as Castles and other such Places of less Concernment might be.

To which Mr. *Prynn* answer'd, (1.) That if Places of smallest Concernment ought to hold out to Extremity, and if it be Death to yield them up before; then certainly *Bristol*, and Places of greatest Consequence to the Ruin or Safety of the Realm, ought much more to be kept to Extremity, and the yielding of them up must be more capital; else he that betrayeth the greatest Trust, and doth most Mischief to the State, shall be less culpable, and undergo a milder Censure, than he that betrays the smallest Fort: yea, if this were either good Justice, Law or Logick, the Defendant might argue, that he who steals ten thousand Pounds, or murders

murders a Man, deserves not Death; but he who steals Thirteen Pence Half-penny, or strikes a Man, ought to be hang'd without Pity. The Precedent and Argument therefore held *a minori ad majus*: If these were condemned for their cowardly Surrendring of those inconsiderable Towns and Castles before utmost Extremity, which did but little Prejudice to the Republick; then much more ought the Defendant to lose his Head for yielding *Bristol* thus, a Place of highest Concernment to the Kingdom, which is almost lost in and by its Loss. And doubtless the Defendant, who would not adventure his Life to preserve such a considerable City as *Bristol* to the utmost Exigence, would never adventure it to hold out any other inferior Places till the last, but yield them up without Resistance. Since therefore it appeared by these Precedents, that the Parties impeached for Surrendring up any Forts were always detained under Custody during their Trial; he desired the Council the second time, that Col. *Fiennes* might presently be put under safe Custody, and Judgment given against him according to these Precedents and the Laws of War; the rather because they were seconded by his own late Judgment against *Yeomans* and *Butcher*, whom he condemned and executed by Martial Law only for endeavouring to deliver up *Bristol* to the Enemy before it was fully fortify'd, whereas himself thus cowardly and traitorously surrender'd it to them after it was fortify'd, and abundantly furnish'd with all Necessaries to hold out a Siege, their intentional Surrender being not so criminal or fatal to the Republick as his actual.

When we had thus made good the several Articles of our Charge, and fixed the Loss of *Bristol* and the *West* too on Col. *Fiennes*, who by his not denying it in his Answer to the fourth Article, did thereby in point of Law confess it; the Colonel to free himself from this heavy Charge, averr'd before the Council, *That Bristol and the West were not lost by him but Sir William Waller*: to prove this he produced several Allegations. Upon which Mr. *Prynn* humbly moved the Council, that a Gentleman of his Worth and Honour might not be thus publickly traduced, where he was neither present to make his Defence, nor a Party to the Articles; desiring that either he might substantially prove this palpable Slander by pregnant Evidences, or else be exemplarily punished for it.

Hereupon the Defendant first alledged, that he sent Sir *William Waller* twelve hundred Foot out of *Bristol* (to wit, Col. *Popham's* whole Regiment) very well armed, who at the Rout of Sir *William*, near the *Devises*, lost all their Arms, (not many of these Men returning to *Bristol*, and those without Arms;) the Loss of which Regiment so weakened the Garrison, that it lost both *Bristol* and the *West*, which he could not defend for want of Men.

To which Mr. *Prynn* answer'd, (1.) That *Bristol* was not lost for want of Men; and that this Regiment was fully made up and supply'd by the Defendant's own Confession, with a great over-plus; Sir *William Waller* not receiving above seven or eight hundred Foot out of *Bristol*, in lieu whereof the Defendant raised 1100 or 1000 at the least, besides those from *Malmesbury*. (2.) That when he sent forth that Regiment he had an independent Commission, and could not be enforced

to it, nor ought to have sent them if the City were thereby endanger'd, without special Command from the Parliament or his Excellency: His sending out then of this Regiment being his own voluntary Act, (as his own Letter to Col. *Popham* attests, and he confessed) it is clear that himself only was the Loss both of *Bristol* and the *West*: and if there were no other Evidence, this alone would endanger his Head, it being Capital by all Laws of War for any Governor to send out his Garrison, or to absent himself from his Charge, without special Command, if the Place be by this Means lost or surprized, as was adjudged in Parliament in the Case of the Baron of *Greystock*, cited in *Weston's* Case; of the Earl of *Northumberland**, *Henry Percy*, in 7 R. 2. and others. Upon which Ground we find the Governor of *Calais* refused to part with any of his Garrison for the Defence of *Outhrewyke* Castle: And the reason is apparent, because if Governors might draw out their Garrisons, or desert their Charges at their Pleasure, their Forts might be easily surprized, betrayed, and a Gap opened to infinite Treacheries.

2. He produced his Cousin Capt. *Temple* to testify, that a Gentlewoman of his Acquaintance, and of Kin to Col. *Fiennes*, overtook another Gentlewoman upon the Highway, newly come from *Oxford*; of whom asking what News, she answer'd, that the greatest News now at *Oxford* was, that tho' Sir *William Waller* had occasioned the Loss of *Bristol* and the *West*, yet Col. *Fiennes* was like to suffer for it, and become his Sacrifice; who being the great *Diana* of the People, and so necessary a Man to the Parliament, now in the Field with an Army, they would forbear to question him, and sacrifice Colonel *Fiennes* to humour him and his Party.

To which Mr. *Prynn* answer'd, (1.) That this extravagant Report, testify'd only at the third or fourth hand, was no Evidence at all, and favoured rather of a direct Plot to traduce Sir *William Waller* than to justify Col. *Fiennes*. (2.) That all the Western Gentlemen had a quite contrary Opinion of this Business, that *Bristol* and the *West* were lost by the Defendant, not by Sir *William*, as appear'd both by their extraordinary Respects unto him, and present Employment of him to regain the *West*. (3.) Admit this fabulous Report to be bruited in *Oxford*, (to asperse Sir *William* and the Parliament, and justify the Defendant) yet it signify'd no more, but that Col. *Fiennes* had better Friends and Respect at *Oxford* than Sir *William Waller*, perchance for his good Service in Surrendring up *Bristol* to them at so easy a Rate in so short a time, (enough to purchase him both Friends and Favour at the Court) where Sir *William* was not so grateful, because he never did them so great a Courtesy, or good Piece of Service, nor the Republick so grand a Mischief.

3. Col. *Fiennes*, for a Conclusion of his Defence, informed the Council, *That this Trouble, Prosecution, and Disgrace had never befallen him, but for that constant Affection and Service which he and his Family had always shewed to his Excellency and his Army, for which Sir William Waller and his Party did malign him.*

To which Mr. *Prynn* reply'd, That this was a most false, scandalous and seditious Speech, discovering who they were that raised and fomented the late unhappy Differences between his Excellency and Sir *William*, and to what sinister end; that nothing could

* *Walling. Hist. Angl.* p. 337. See 56 E. 3. n. 23.

could be utter'd more effectual to set all the Parliament's several Armies into a Faction against one another, instead of joining against the publick Enemy; and therefore having neither the least Ground nor Proof to justify this Calumny, he desired he might be exemplarily proceeded against for it.

In fine, after some hear-say Proofs, what Opinion the Enemies had of his valorous Defence of *Bristol*, and the Intenability thereof, and a Recapitulation of all the Heads of his Defence, he concluded with this Peroration.

' My Lords, I have at last ended my Defence,
' and (as I hope) sufficiently cleared both my Ho-
' nour, Valour, and Fidelity to the State in the
' Defence of *Bristol*: And now I beseech you to
' consider, whose Honour or Life can be in Safe-
' ty if Lawyers (see'd by their own Malice) may
' sift and turn up all his Actions, and snarl at his
' Words; if such who are no Soldiers, may upon
' the Information of Attorneys, and Testimony of
' Shop-keepers, Ale-Wives, Enemies, but of no
' Soldiers at all, (except such who appear out of
' particular Spleen) be brought thus upon the Stage
' for their Lives, and the great Privileges of Par-
' liament broken by such an Impeachment of a
' Member of it, which could not be parallel'd but
' by that Accusation of the five Members. Where-
' fore I desire, that as I have served my Country
' faithfully, and done many good Services for it,
' so I may by this honourable Council be justified
' in my Faithfulness, and repaired against the Pro-
' secutors in my Honour, more dear unto me than
' my Life; that so after all my publick Services, I
' may not now be cast behind the Door like a Dish-
' clout, unfit for any further Employment.'

To which Mr. *Prynn* reply'd, (1.) That he wonder'd much why the Defendant should thus except against him as an unfitting Prosecutor, since himself (without his Privity or Desire) had by a Proclamation under his Excellency's Hand and Seal, posted up at *Westminster* and the *Exchange*, selected him and Mr. *Walker* by Name to prosecute this Business against him: if then we were unmeet Prosecutors, it was his own, not our Error, and he must blame only his own Judgment in the Choice, not us. (2.) That tho' he were but a common Lawyer, yet he deemed one of that Profession a very fit Prosecutor of him who had betrayed his Trust, and in it the Kingdom, contrary to Law: And whereas the Defendant scandalously objected, that he was see'd by his own private Malice, he protested that there was never any Malice, nor Cause thereof between them; that he formerly honour'd the Defendant for his Pen, but never for his Sword, and bestowed some Courtesies on, tho' he never received any from him; that he was born not far from *Bristol*, bred up some Years therein, had many Friends and Kindred in or near it, who lost much, and himself not a little, by its Surrender; that nothing had engaged him in this Prosecution but the Defendant's own Summons, nor see'd him but the publick Service of the Parliament, and Security of the Realm: and altho' he had lost and suffer'd much for the Church and State, yet he never received nor expected the least Recompence, much less Reward from either, nor ever had any Pay for publick Services, whereas the Defendant received good Wages for all his Services, and for losing *Bristol* too: that himself had never lost any thing of the State's, as he had done, but only what was his own, (his Liberty, Calling,

Estate, Members) and that only for doing the Church and Kingdom Service, none of all which the Defendant had parted with for the publick. And therefore whereas the Defendant boasts of his publick Actions, he could without Vanity or Prejudice truly affirm, he had done ten times more Service for Church and State, and suffer'd a thousand-fold more for both, not only *gratis*, but even with the Loss of all his earthly Comforts, than this Boaster had done upon Pay; and that he doubted not, thro' God's Assistance, he should be able to do the Church and State as good or better Service for the future as he: wherefore he had little Reason to extol himself so much, or depress him so low, as not to be a fitting Prosecutor of such an unworthy Action. That tho' he were no professed Soldier, yet he doubted not but he had read as many or more Treatises of Military Affairs than himself; that he had for eight Years Space of his Restraint in the Tower of *London* and *Mount-Orgueil* Castle, conversed with old Soldiers, (and by Name with Sir *William Balfour* for five Years in the Tower) from whom he gained so much Experience in Martial Affairs, as he would have undertaken to have kept the City and Castle of *Bristol* till this Day, had he been Governor there as the defendant was, notwithstanding their pretended Intenability, and the Enemy's Power: That in the managing of this very Business before this Honourable Council, he had in sundry Particulars manifested himself, if not a better, yet at least as good a Soldier as the Defendant, (for which he appealed to the Council) and in regard of his long Suffering and Restraint in Castles was the antienter Soldier of the two: That the Defendant had confessed to the Lieutenant Colonels *Paleologus* and *Andrews*, when he first undertook the Government of *Bristol*, That he was no Soldier; and his yielding it up in a short Time, before Extremity, upon such poor Conditions, manifested him in truth to be no Man at Arms; and therefore tho' he were no professed Soldier, yet why he should not be a Soldier sufficient to prosecute him, who, by his own Confession and Action, is no real Soldier, he could yet discern no Reason. For his Witnesses, whom he here vilified and traduced, they were many of them Persons of Quality and Honour, some of them Members of Parliament; others more expert Soldiers, and Persons better versed in martial Affairs, than any of the Defendant's Witnesses; all of them Persons of good Fame and Conversation disinterested, and disengaged in the Cause, against whom no Exceptions can be taken: when all his material Witnesses were his own Officers, Brother, Kinsmen, Servants, Creditors, and Parties in the Cause, most of them involved with him in the self-same Guilt. That his Life and Honour were now drawn in question only by himself, upon his own Motion and Engagement of us; and if he lost them (as he lost *Bristol*) he might thank himself for interesting us in this publick Service, for our Country's Honour and future Security, the only thing we aimed at in this present Prosecution. That his pretended Breach of Privilege of Parliament was but a Fancy, already answered and over-ruled in the Commons House, who referred him to a Trial before a Council of War, by two several Orders, upon his own Motion and pretended voluntary waving of his Privilege, before any Impeachment put in against him; which Impeachment was first tendred to the House of Commons, who upon the reading of it, with one unanimous Vote referred it to his

his excellency, to be proceeded on by a free and fair Hearing before this honourable Council: and if the Proceedings on this Impeachment upon his own Motion, by the Commons Direction, be a Breach of Privilege, it is only in himself and the Parliament, not in us; and it hath no more Resemblance to the Case of the five Members, than an Ape to a Lion. That he was now questioned, not for his faithful but unfaithful Service to the Republick and Parliament, in the Surrender of *Bristol*, in which he presumed he durst not manifest himself so far a Papist as to plead a Justification by Works, or Absolution by preceding Merits. That he needed not to crave Reparation of his Honour and Reputation from us or any other in this Case, since they were both impaired and ruined by himself thro' this ignoble Action: That he had given the whole Kingdom an incurable fatal Wound, an irreparable Loss, (which the Loss of his Head and Estate could no way recompense) by this Surrender, for which in the whole Kingdom's behalf we here demand Judgment against him according to the Quality of his Offence: That our Services for the Republick were every way equivalent to, if not transcending his, our Credits, our Reputations, as dear to us as his to him, which he hoped should no ways suffer for our Zeal and Fidelity in this publick Prosecution upon our own Expences, without Thought of Recompence. That if the Defendant should be pronounced Guiltless by this honourable Council, after so full a Charge and Hearing, he was obliged to us for bringing him to such a publick Vindication of his suspected Fidelity, which else would have lain eclipsed under a black Cloud of Jealousies: But if he were pronounced guilty of the Impeachment, (as we made no doubt he would, the Evidence being so clear, the Proofs and Precedents in point so punctual) we should deserve Thanks, if not from him, (who pretended a Desire to be tried to the uttermost) yet at least from the Parliament, Kingdom, and our native Country, for bringing such a grand, politick, daring Delinquent to his Trial and condign Judgment; who by surrendring *Bristol* hath endanger'd the Loss of three whole Kingdoms, and of our Laws, Religion, Liberties, Lives, and present Parliament.

And now (my honoured Lords and Gentlemen) lest we should incur your just Censure (according to the Defendant's Doctrine) for stouting out this Cause over-long, which by the Defendant's Tedioufness hath lasted nine Days Dispute, (tho' the City's Siege continued not three full Days) we shall close up all in a Word or two: We render you many hearty Thanks, in our own and the Kingdom's Names, for your nine Days Pains, Patience, and that fair, honourable, impartial Hearing, you have afforded both Parties in the Trial of this great publick Cause, in which the whole Realm is interested, and whereon their Eyes are fixed; not doubting but as you have granted us a most full, fair, indifferent Hearing, so you will in due Season (after serious perusal of your Notes and the Evidence on both sides) give such a just and equal Sentence as shall chronicle your Justice

to, and make this Case a leading Precedent for all future Times, to deter all Governors of Towns or Castles from cowardly, traitorly, or unworthy Surrenders of them.

This ended the long Debate of this great Cause, begun on *Thursday* the 14th of *December* 1643, and concluded on *Saturday* the 23d of *December*. After which both Parties were ordered to attend the Council again on *Friday* following, being the 29th of *December*, to hear Sentence, the Council desiring so much Respite to peruse their Notes and prepare their Judgment. Who sitting again, and we attending them, on the designed Day, the Council first delivered their several Judgments of the Cause among themselves in private; after which Colonel *Fiennes* was disarmed at the Council-Chamber-door, (whereat he was much appalled) and then he and we being called in, the Judge-Advocate read his Sentence out of a Paper *in hec verba*.

Colonel Nathanael Fiennes, you have been arraigned and convicted before this honourable Council, for Surrendring and Delivering up the Town and Castle of Bristol, with the Forts, Magazines, Arms, Ammunition, Vittuals, and other things thereunto belonging, and for not having held the same to the utmost Extremity, according as by your Duty you ought to have done: For which Offence this honourable Council hath adjudged you to be executed according to the Tenor of the Articles of War, by having your Head cut off. God have Mercy on your Soul.

The Defendant, astonished at this Sentence, told the Council, that he little expected such a Sentence from them; and demanded upon what Grounds and Reasons they thus condemned him? and whether they did allow of our Paper-Witnesses, or disallow the Testimonies of his Officers? Whereupon all being commanded to withdraw for a short Space, and then called in again, the Defendant was told, *it was against the Style and Honour of the Council, to be demanded the Reasons of their Judgment after it was once pronounced.* Upon this the Defendant alledged, that he was a Parliament-man, and claimed his Privilege; that he ought not to be condemned without the Privy of the Commons House, to which he appealed against this Sentence, and desired his Appeal might be entred.

To which Mr. *Prynn* answered, That he had formerly appealed from the Parliament (the ancient proper Judge of his Cause) to a Council of War, and by his own voluntary Motion waves his Privilege to put himself upon this Trial, as appeared by two Orders of the House; therefore he could not now appeal back again to the House, or resume or claim his waved Privilege after Judgment. Notwithstanding, upon his Request, his Appeal was entred; yet Guard was set upon his Person at his Lodging: and upon better Consideration he sent to withdraw his Appeal that Night. *He was afterwards pardon'd by the Lord Generall.*

Cases of Cowardice, refer'd to in the foregoing Trial, as stated from the Records by Mr. Prynne.

BY the ^a Laws of King Edward the Confessor, he who flieth from his Lord or Fellow-Soldier for fear of War, or Death; in the Conduct of the Heretock (or Captain) in any Expedition by Sea or Land, let him lose all that is his, and his very Life, and the Lord may lay Hands on the Land which he had formerly given to him. And he who shall be slain in War before his Lord, be it in the Land or elsewhere, let his Reliefs be pardoned, and his Heirs enjoy his Money and Land without any Diminution, and divide it among themselves.

By the Statutes of 18 Hen. VI. c. 19. 7 Hen. VII. c. 1. 3 Hen. VIII. c. 5. 2 Ed. VI. c. 2, 4 & 5 Phil. & Mary, c. 2, 3. 5 Eliz. c. 15. It is made no less than Felony and Death for any Soldiers to depart from their Captains without their License under Hand; for which many Soldiers have been condemned and executed, Coke's 6 Rep. f. 27. in the Case of Soldiers: And before these Statutes, Thomas Earl of Lancaster was ^b proclaimed a Traitor by the whole Army, in the twelfth Year of King Edward II. for departing in Discontent from the Army at the Siege of Berwick, by means whereof it was not taken, and the Siege raised.

Henry de Essex's Case, 2 Hen. II.

Henry de Essex ^c, Standard-bearer to the Kings of England by Right of Inheritance, was accused of High-Treason in the second Year of King Henry II. by Robert de Montford his near Kinsman, and vanquished by him in a Duel at Reading for his cowardly abandoning and throwing down the Standard-Royal in North-Wales, in the Battle against Prince Owen, amidst the Mountains, and flying when fiercely assaulted by the Welsh, whereby the King's Army was endanger'd to be routed: Whereupon tho' his Life was pardoned, yet his Lands were seized into the King's Hand, and he shorn and shut up a Monk in the Abbey of Reading, where he died.

Thomas Katrington's Case, 50 Ed. III.

Sir ^d John Annesly, Kt. in the Parliament of 50 Ed. III. (commonly stiled, *The good Parliament*) had accused Thomas Katrington, Esq; of Treason for selling and delivering up the Castle of St. Saviour's (built by the Lord John Chaudois within the Isle of Constantine) to the French, for an inestimable Sum of Money, whenas he wanted neither Means of Defence, nor Victuals: which Castle, had it not been thus traitorously alienated, had descended to the said Sir John in right of his Wife, being next-Heir to the Lord Chaudois, offering to make good this Accusation, and try it out by Duel: whereupon the said Thomas Katrington was then apprehended and imprisoned; but soon after, by Means of the Duke of Lancaster and the Lord Latimer, (who then did what they pleased) released, being formerly their Instrument and Creature in Peace and War, in all just and unjust, in true and false Things; neither could the said Sir John obtain the Effect of his Suit till the Parliament of 3 R. II. An. 1380. some Men affirming, *That it was against*

the Laws of the Realm for any Man of the Realm to fight such a Duel for such a Cause; many who feared the like Tax and Accusation did most of all hinder this Trial: but at last, in this Parliament, the antientest and Truth-speaking Knights of the Realm being assembled, it was resolved, that for a foreign Cause, such as the present was, which arose not within the Limits of the Kingdom, and for the Possession of transmarine Things, it was lawful for any Man to fight a Duel, if the Cause were before certified to the Constable and Marshal of the Realm, and the Duel accepted by the Parties in their Presence. Whereupon a Day of Battle, and Lists were appointed them in the Court at Westminster, where this Duel being solemnly fought on the 7th of June between these two Champions, in the Presence of the King, Nobles, and an infinite Multitude of People; the traitorous Esquire was vanquished by the Knight, to the Joy of the Common People, and to the Grief of Traitors: The Esquire who fainted in the Place, died the next Morning.

Gomeney's and Weston's Case, 1 Ric. II.

In the Parliament Rolls of 1 R. II. Num. 38, 39, 40. The Record is thus: *Item, ' Whereas it ' was prayed by the Commons, that all those who have ' rendered or lost Castles or Towns thro' the very De- ' fault of the Captains, might be put to answer it to ' this Parliament, and severely punished according to ' their Desert, by Award of the Lords and Berou- ' nage to eschew the evil Examples which they ' have given to others who are Governors of ' Towns and Castles, it was commanded to Sir ' Alexander de Buxhall, Constable of the Tower of ' London, that he should cause to come before the ' Lords in Parliament at Westminster, on Friday ' the 27th of November, in the Year aforesaid, Sir ' John de Gomeney, and William de Weston, appre- ' hended and detained in the said Tower by the ' Command of our Lord the King, because they ' had lost and rendered Castles and Towns to the ' Enemies of our Lord the King, to answer there- ' unto, upon the Articles which shall be surmized ' against them for the said Cause, on the Behalf of ' our Lord the King. Upon which Day of Friday ' the said John and William, being brought by the ' said Constable before the Lords aforesaid in full ' Parliament, sitting in the White-Chamber, they ' were severally arraigned at the Commandment ' of the said Lords, by Sir Richard Lescrop, Kt. ' Steward of the House of our Lord the King, in ' manner as ensueth.*

' William de Weston, you took upon you from ' the most Puissant Prince, whom God assoil, Sir ' Edward late King of England, Grandfather of ' our Lord the King that now is, safely to keep to ' him and his Heirs, Kings of England, the Castle ' of Outbreyke, without surrendering it to any one ' but to the said Grandfather, or to his said Heirs, ' or by Command from him or from his said Heirs: ' Have you, William, who are a Liegeman of our ' Lord the King, in Times of the same our Lord

^a Lambard. Arch. fol. 1, 5. De Heretochiis. ^b Walsingham Hist. p. 89. Holingshed, Grafton, Stow, Speed, Truffel, in 12 R. II. ^c Dan. p. 18. Speed, p. 502. Holin and Stow, An. 2. H. 2. ^d Walsing Hist. Aug. p. 245 to 248.

the King who now is, true Heir to the said Grandfather, deliver'd and surrender'd the same to the Enemies of our Lord the King, without Command from him, to the Dishonour (or Damage) of him and his Crown, and of the Estate of his Realm of England, against your Allegiance and Undertaking aforesaid? What will you say hereunto?

* Whereupon the said William said, that he had put his Answers in Writing, and produced before them a Schedule containing many things comprized within the same, and came and read the said Schedule in full Parliament. Whereupon it was demanded of him by the said Steward, if he presented before them this Schedule for a final Answer in this Behalf, or not? And hereupon the said William prayed that this Schedule might be re-delivered to him, and that he might put in his final Answer; which Schedule, for the Cause aforesaid, was re-deliver'd to him; and after the said William deliver'd the said Schedule, with an Addition put thereunto in full Parliament for his final Answer in this Behalf; the Tenor of which Schedule is such as followeth. *To the most sage Council of our Lord the King, and to the other Lords and Commons of the Parliament, supplicates and sheweth William de Weston, That albeit he be accused of this, that he hath maliciously rendered the Castle of Outhrewyke, of which he had the Custody by Delivery and Assignment of our Lord the King; may it please your sage and just Discretion to have the said William excused thereof, for these Causes ensuing. First of all, may it please you to remember, how that the said William was lately informed by a Spye that a great Power of the Enemies would come upon him to besiege the said Castle, with very great and very grievous Ordnances; whereupon he the said William presently, by his Attorney and by his Letters, required of the said Council, that it would please them to reinforce the said Castle with more Men for the Defence and Sofeguard thereof, in regard that the Garrison of the said Castle that then was, were not half sufficient in respect of Multitude to resist so great a Force in so large a Place; but in Conclusion for all this, he could not have any Succour from the said Council. And so the said William, not at all thro' his Default, was left without People sufficient for to keep and defend the said Castle any longer time, which he beseecheth you to take into your just and benign Consideration. Also, please you to know, how upon a Monday about One of the Clock the Enemy came to besiege the said Castle, to the Number of about 2600 Men of Arms, and 700 Arblasters Genevoyes, and with 5000 of the Commonalty of the Country, having nine great Cannons, divers Engines, and one † Mortar-piece, beyond all measure greater than ever they had seen any before in those Marches; and the same Hour, presently a great Number of the Men of Arms, and Arblasters aforesaid, came before the Gates for to assail the said Castle; and at this time a Knight of theirs was slain, who was Cousin to the Lord de Clifson as was reported, and many others were likewise then slain and wrecked; and within a short time after they began to discharge and shoot with their Ordnances, and other Engines, and so continued their Assault from one Day to another, that is to say, Tuesday, Wednesday, and Thursday, and then were the Walls and Houses of the Castle batter'd down and bruised in many Places; and they*

had likewise by force trenched the Ditches of the said Castle in three Places, so as all the Water was drained out; and that Night came a great Party of them, and by fine Force made an Assault and abated the Barricadoes; and the next Day, which was Friday, they came about Day-breaking with all their Forces to assault the said Castle, but with God's Assistance they were yet repulsed with Force from their Assault, and of the one Part and other there were some slain and wounded. And the same Day the Mareschal of Burgoyne sent to the said William and others of the said Castle to render it. Whereupon having Consideration that the said Castle could not be kept, as well in regard of the small Number of the People, as by reason that the Walls in many Places were enfeebled by their marvellous Ordnances, there was a Treaty with the Lords to this end, that the said William and his Companions might advise themselves against the next Morning; and so they departed each to their own. Also this same Night the Enemies caused all their Ordnances, Engines, Mortar-piece, Cannons, and Faggots, with Scaling-Ladders, Galleries, and all other Necessaries to be drawn up near to the very Ditch of the aforesaid Castle; and the next Day, which was Saturday, they made all things ready plainly for to assault the Place; and then first of all they sent an Herald to the said William, to know if the said Castle should be rendered to them or not? Whereupon the said William by Advice of the wisest of his Companions, taking Consideration how that the said Place was destroyed and enfeebled with their Ordnances, and also that they were too few Men for its Defence, by reason that twelve of their Companions were in this time slain, wounded, and sick, so as there remained of all the People of the Garrison in Health but only thirty eight Men to defend the same: Hereupon by common Assent the said Castle which could be kept no longer, was by Force surrendered for to save their Lives granted to them, and their Goods. And that all these things aforesaid are true, the said William puts himself upon his Proof, according to your discreet Ordinances. Also it is to be remembered, that when the said Castle was thus rendered as aforesaid, certain French People bargained with the said William for his Victuals to buy them, together with certain Prisoners which the said William held imprisoned within the said Castle, for which things he received of them for his Payment fifteen hundred Franks; of which he paid to his Companions for part of their Wages which was behind unto them for one Quarter of a Year and an Half seventy eight Franks; likewise after was paid at Calais for the Victuals of the said Castle before that time due, four hundred forty two Franks; also for the Passages of the said William and of his Companions unto England, and likewise for the Expences of the said William being at Calais, one hundred thirty five Franks: And therefore the said William prayeth, in this regard, your Justice and Benignity, seeing by envious Suggestion he hath against all Reason been accused, whereby his Estate and Name, by the grievous Sin of Misinformers, and he also are ruined; having likewise Consideration that out of his proper Goods he hath for the greater Part paid his Companions their Wages which were due unto them as aforesaid, and also for the great Costs he hath been at before this Time for to victual the said Castle, (for which he hath given his Obligations in divers Places, and oweth great Sums, by reason whereof he is on all sides undone, if your just Benignity does not succour him; that you would be

* Num. 39.

† Trebuchet.

pleased for God's sake, and for Pity, to ordain likewise for him, that he may, by your discreet Nobleness, recover his Estate and Goods. Also the said William Weston sheweth, how the first Day when the Enemies came before Arde, that he went in haste to Calais unto the Captain, and desired of him more Succour and Aid of Men for the better guarding of his Fort of Outhrewyke, and to defend it if the Enemies should come thither. And the Captain answer'd him briefly, That he would not deliver, nor give him Aid nor Succour at the said time, because he doubted that the said Enemies would come before the Town of Calais. And the same Schedule being viewed and read in full Parliament, immediately after was the said John brought thither by the said Steward in the manner following.

John Lord of Gomenays, you took upon you to the most Puissant Prince, whom God assoil, Sir Edward late King of England, Grandfather to our Lord the King that now is, safely to keep to him and his Heirs, Kings of England, the Town and Castle of Arde, without surrendring the same to any Person, except to the said Grandfather and his Heirs, or by Commandment of him or of his Heirs. These have you, Lord of Gomenays, in time of our Lord the King that now is, true Heir to the said Grandfather, deliver'd and surrender'd to the Enemies of our Lord the King without Commandment from him, to the Dishonour of him and of his Crown, and of the Estate of the Realm of England, against your Undertaking aforesaid: What will you say thereunto? Whereupon the said John answered, That the said Town and Castle of Arde were so weak, that he could not well keep them against so great a Power of the Enemies, which was then ready to assail the same Town and Castle; and therefore he caused to assemble all the Knights, Esquires, and others, being in the said Town, and informed them of the Perils of the said Town, and Force of the said Enemies; and by common Counsel and Assent of the said Knights, Esquires, and others, he issued out to the Enemies to treat with them, for to save the Lieges of our Lord the King, being within the said Town and Castle of Arde; without that, that he ever took any thing for to surrender the said Town and Castle of Arde. Upon which one Geoffry of Argenton Kt. said in full Parliament to the said John, that he the said Geoffry was at that time in the said Town in company of the said John, and that the Town and Castle of Arde were never deliver'd nor surrender'd by his Counsel nor Assent, but that he was always ready to die and live upon the Safeguard of the same; and the said Geoffry offer'd to prove it, if any would deny it. And further, it was demanded of the said John, if he would say any thing else? and he said he would not. Whereupon the said Constable was charged with the safe Custody of the said John and William until the next Day, the Saturday next ensuing, and to bring them again safe before the said Lords in the said Parliament, at the Place and Day aforesaid. At which Day of Saturday, that is to say, on the 20th Day of November in the Year aforesaid, it was shewed unto them severally by the said Steward on the same Day, by the Commandment of the Lords aforesaid, how upon the Answers that the said John and William had given in the said Parliament, as before is said, the Lords of the said Parlia-

ment, that is to say, the King of Castile and of Leon, and Duke of Lancaster, Edmund Earl of Cambridge, Edmund Earl of March, Richard Earl of Arundel, Thomas Earl of Warwick, Hugh Earl of Stafford, William Earl of Suffolk, William Earl of Salisbury, Henry Earl of Northumberland, John Lord Nevil, Roger Lord Clifford, and many other Lords, Barons, and Bannerets being in the said Parliament, who had assembled and advised together from the time that the said Answers were given in Parliament the Friday, until this Saturday at three of the Clock, of Things touching the Answers aforesaid, and came and examined diligently the said Answers and other Articles touching those Matters, and taking thereupon good and mature Deliberation, and due Information of the most valiant and most discreet Knights, and others, being in the said Parliament, it was thus said. First of all, in manner as followeth, to the said William by the Steward, reciting the Things aforesaid touching the said William: It seemeth to the Lords aforesaid, that you, William, who had taken upon you safely to keep the Castle of Outhrewyke, as before is said, that you William, have without any Durefs or Default of Victuals, evilly deliver'd and surrender'd the same to the Enemies of our Lord the King by your own Default, against all apparent Right and Reason, and against your Allegiance and Undertaking aforesaid: and having by due Information read the Case of the late Baron of Graystock, who was a Lord, and one of the Peers of the Realm, who had taken upon him safely to keep to the aforesaid Grandfather the Town of Berwick; the said Baron perceiving afterward, that the said Grandfather addressed himself to ride into the Realm of France, the said Baron, (without Command of the said Grandfather) committed the said Town of Berwick to a valiant Esquire Robert de Ogle, as Lieutenant to the said Baron, for to keep safe the said Town of Berwick to the said Grandfather, and the said Baron went as an Horseman to the said Parts of France to the said Grandfather, and there remained in his Company. During which time, an Assault of War was made upon the said Town of Berwick by the said Scots, and the said Robert, as Lieutenant to the said Baron, valiantly defended the same; and at last by such forcible Assaults the said Town was taken upon the said Robert, and two of the Sons of the said Robert there slain in the Defence of the same. Notwithstanding, because that the said Baron himself had taken upon him the Safeguard of the said Town to the said Grandfather, and departed himself from thence without Command of the said Grandfather, and the said Town of Berwick was lost in the absence of the Baron, he being in the Company of the said Grandfather in the Parts of France, as is aforesaid; It was adjudged by Advice of the said Grandfather, the King of Castile, who is present, the Nobles, Dukes, and Counts, whom God assoil, Henry late Duke of Lancaster, the late Earls of Northampton and Stafford, and Sir Walter de Manny, that the said Town was lost in Default of the said Baron; and for this Cause he had Judgment of Life and Member, and that he should forfeit all that he had: And to render this Judgment in these Words, the said Sir Walter had a Command from the said Grandfather. Which Things consider'd, and this also, that you, William, surrender'd the said Castle of Outhrewyke to the Enemies of our Lord the King aforesaid, without any Durefs or Want of Victuals, against your Allegiance

and Undertaking aforesaid, the Lords above-named sitting in Parliament, adjudge you to Death, and that you shall be drawn and hanged: But because that our Lord the King is not yet informed of the manner of this Judgment, the Execution thereof shall be respited until the King be informed thereof. Whereupon it was commanded to the said Constable safely to keep the said William, until he had other Command from our Lord the King. And as to the said John Lord of Gomenays, touching his Answers aforesaid, it was shewed unto him by the said Steward, how the said Lords had assembled and consider'd of the said Answers as afore is said; and moreover it was shewed to him, how that in the time that Sir Ralph de Ferrers, Knight, had the Custody of the said Town and Castle of Arde, the said Town of Arde was not half so strong as it was at the time the said John surrender'd the same; and the said Ralph had a Command from the said Grandfather to surrender the same for the Feebleness thereof, before that the said Ralph would put himself into very great Peril for Safeguard thereof; notwithstanding the said Ralph valiantly defended and maintained the same against a very great and strong Assault of War. And thereupon, and the Things aforesaid, and other Evidences touching the Answers of the said John in this Behalf; it was said in manner as followeth to the said John, being in Parliament, by the said Steward, reciting all Things aforesaid touching the aforesaid John; and also the forecited Judgment of the said Baron, and the Cause thereof in manner aforesaid, That it seemed to the Lords aforesaid, sitting here in Parliament, considering your Answers in this Behalf, and the Examinations and Informations had thereupon as before, and having regard also to this, that there were lately sent unto you to the said Town and Castle of Arde, above the number of Men with which you had at another time undertaken the safe guarding of the said Town and Castle, twenty Men of Arms, and twenty Archers to enforce the same, according to your Request then made to certain Lords, late being upon a Message at Calais on the Behalf of the said Grandfather; and this also, that at that time it was said unto you by the King of Castile, who is here present, that if you could not well keep them, you ought in no manner to undertake to keep the same, and that another should have and keep them, who would take upon him safely to keep the same to the said Grandfather and his Heirs aforesaid; and thereupon you undertook to keep them safely without surrendring them to any, except in manner as aforesaid; and now you, John, without Durefs or Default of Victuals or Artillery, or of other things necessary for the Defence of the said Town and Castle of Arde, without Command of our Lord the King, have evilly delivered and surrendered the same to the Enemies of our Lord the King, by your own Default, against all Appearance of Right or Reason, and against your Undertaking aforesaid; wherefore the Lords aforesaid, here in full Parliament, adjudge you to Death; and because that you are a Gentleman and a Baronet, and have served the said Grandfather in his Wars, and are no Liegeman of our Lord the King, you shall be beheaded, without having other Judgment; and because also that our Lord the King is not yet informed of the manner of this Judgment, the Ex-

cution thereof shall be put in respite, until our Lord the King be informed thereof. Whereupon the aforesaid Constable was commanded safely to keep the said John until he had other Command from our Lord the King*.

Cressingham and Spikesworth's Case, 7 Ric. II.

In the Parliament-Rolls of 7 R. II. Num. 17. there is this Case; *Item*, Upon the Complaint which hath been made to the King, of Pierce de Cressingham and John de Spikesworth Esqrs; concerning this, That whereas there were made in the said Voyage (to wit, of the Bishop of Norwich into Flanders with an Army) Captains and Guardians of the Castle of Drinkham in Flanders, which was gained from the Enemies, and after that well and sufficiently stored with Victuals and other Necessaries, and strong enough to be held against the Enemies, that they left and rendered the said Castle to the said Enemies, receiving of them for this Delivery and Surrender, by Treaties made with the Enemies, a Sum of Gold, and that by Covenant made with the King's Enemies, without the Will and Command of our Lord the King himself, or of his Lieutenant: for which the said Esquires were arrested by command of the King, and after put to their Answer in Parliament. And the said John Spikesworth excused himself before the King in Parliament in this manner, *That he had never the Custody of the said Castle, nor any thing to do therewith, save only that as he was riding into the Country, somewhat near the said Castle of Drinkham, to make his best Advantage upon the Enemy, by force of the said Enemies he was there chased to the said Castle, then being in the Custody of the said Pierce de Cressingham; and soon after he saith, That upon an Assault made to the Barbican there, by the Enemies, he was unhappily routed, and one of his Vassals slain in the Garrison very near him, where he remained continually until the said Pierce render'd the same, and otherwise he had never any thing there to do, neither as a Soldier thereof, nor in any other manner whatsoever; praying, that therefore it would please our Lord the King to have him well excused.* To whom it was answered on the behalf of the King, that if any Man knoweth not to say more against the said John, contrary to his said Answer now made, that the King will hold him well excused, and wills that he shall be discharged, and suffered to go at large. And the said Pierce of Cressingham well knowing that he had the Guard of the said Castle, said, That as soon as the Enemies were come before Burburgh, in which were the Lord Beaumont, Sir William of Elingham, Sir Thomas Tryvet, Sir William Farinden, and many other Englishmen; and the Town and Castle of Burburgh being surrender'd to the Enemy, of all the Soldiers which he had with him at Drinkham, none would there continue with him upon the Safeguard of the said Castle, but only five Persons in all; by reason of which great Necessity he was forced, in Safeguard of his own Person and his People, to make a Treaty with the Enemies, for to deliver up the said Fort, and thereupon he did it, and not for any other Cause, nor in any other Manner, but only by constraint of the Power of the

* Geoffrey Martin, Clerk of the Crown, made this very Record, and delivered it written in this present Roll, with his own Hand.

‘ said Enemy as aforesaid. And further he saith,
 ‘ that he never received any thing from the said
 ‘ Enemies by way of Gift, or in any other man-
 ‘ ner; whereupon he conceiveth, that no Man
 ‘ ought to impute any manner of Blame, nor of Re-
 ‘ proach unto his Person. But if it shall be thought
 ‘ that he hath done ill in any manner, he puts him-
 ‘ self most humbly into the Grace of his Liege
 ‘ Lord. And because that this Excuse seemed not
 ‘ at all to be sufficient, he was committed to Prison,
 ‘ there to remain until the King our Lord had o-
 ‘ therwise declared his Pleasure concerning him.’

The Case of the Bishop of Norwich, 7 Ric. 2.

In the same Parliament of 7 Ric. 2. Num. 22. The Bishop of *Norwich*, General of the Forces sent over into *Flanders*, having four Articles exhibited against him in this Parliament, touching that Expedition, and the Surrendring of *Graveling* to the Enemy, to which he had given some former Answer, (see Num. 15, 17, 20, 21.) upon his second Arraignment had this Proceeding. ‘ At which
 ‘ Day the said Bishop rehearsing the four Articles
 ‘ surmised against him formerly in Parliament, and
 ‘ in presence of the King himself, gave there his
 ‘ Answers, such almost as before, concerning all
 ‘ the things aforesaid; adjoining thereunto, that
 ‘ the time when he heard the News that the Van-
 ‘ guard of the Host of *France* was entered the
 ‘ Country of *Flanders*, and that thereupon the said
 ‘ Siege of *Ipre* was thereby removed, he took a
 ‘ Resolution to have encountered the Vanguard,
 ‘ for to have fought with them; which Purpose of
 ‘ his he could not perform by reason that the Cap-
 ‘ tains of his Host would not assent thereunto, but
 ‘ those Captains and others of his Host contraried
 ‘ him, insomuch that of Necessity, and for doubt
 ‘ of the Enemies they ought to depart, and betake
 ‘ themselves to their Fortresses; and thereupon
 ‘ the said Bishop returned to the Town of *Grave-
 ling*, and the same would he have held out well
 ‘ enough against all Men, and did hold out until
 ‘ the other Captains and rendered their Forts to
 ‘ the *French*; and after that, until that some *Eng-
 lish* might come unto him incontinently, altho’
 ‘ there were well-nigh about six or seven thousand
 ‘ *English* lying upon the Sands near *Calais*, who
 ‘ were made to come out of the said Forts ren-
 ‘ dered, to their great Mischief and Prejudice,
 ‘ because they had not wherewith to live, neither
 ‘ could they have Entrance into the Town of
 ‘ *Calais*. And forasmuch as the Truce made be-
 ‘ fore that time ought to cease within two or
 ‘ three Days then next ensuing, the *French* had a
 ‘ Purpose to run upon them and slay them all, as
 ‘ soon as the said Truce was ended; which Slaugh-
 ‘ ter, if it had been made, would principally have
 ‘ turned upon the said Bishop, and after on the
 ‘ other Captains, to far greater Villany and Mis-
 ‘ chief than any other thing could bring. The
 ‘ Bishop was thereupon required and charged on
 ‘ the behalf of the King himself, that he should
 ‘ render the Town to the Enemies, or else de-
 ‘ molish it, and go his way to succour the said
 ‘ People, and after that towards *England*, in Sal-
 ‘ vation of himself and others of his Host; for
 ‘ they said, that if any thing else but Good had
 ‘ happen’d to the said People, lying on the Sands.
 ‘ they would have truly called the said Bishop to

‘ an Account before the King himself: Where-
 ‘ upon it behoved him the said * Bishop to abate
 ‘ and void the said Town of *Graveling*, as it was
 ‘ lawful for him to do at his Pleasure, being
 ‘ gained by his proper Conquest from the Enemy.
 ‘ And for this, and for the other Reasons formerly
 ‘ alledged by him, as also because that a Letter
 ‘ from our Lord the King came to him before,
 ‘ commanding him, that if there were great want
 ‘ of Victuals in the said Town, as in verity there
 ‘ was, that then in Salvation of himself, and of
 ‘ the said People, he should void the Town
 ‘ and succour the said People, and after return
 ‘ into *England*; it seems to him, that he ought
 ‘ to be well excused of whatever is surmised a-
 ‘ gainst him.’ To which the said † Chancellor re-
 ‘ plied and the said: ‘ Master Bishop, as to this your
 ‘ last Reason, it is true that you had sufficient
 ‘ Victual when this Letter came unto you; and
 ‘ besides this, the King sent you other Victuals in
 ‘ great Plenty; and also with it other good Let-
 ‘ ters, containing, how he had appointed his Uncle
 ‘ of *Spain* to come speedily to you for your Aid
 ‘ and Succour; and all this notwithstanding, you
 ‘ departed thence, leaving the said Town to the
 ‘ Enemies, against the Form of your Indenture,
 ‘ by the which the King hath given and granted
 ‘ you whatever you might conquer, not at all
 ‘ to render, sell or leave the same to the Enemy,
 ‘ but to hold and possess. And also to that which
 ‘ you have said in your first Answer, that by your
 ‘ said Voyage Truces had been agreed between the
 ‘ Realms, and happy Offers of Peace made by the
 ‘ Adversaries of *France*, which you say shall be
 ‘ an Introduction to a good and final Peace, which
 ‘ God grant, it contains no Truth at all: for
 ‘ true it is, that the News spread in the Army of
 ‘ *France* of the coming of our Lord the King,
 ‘ and of Monsieur of *Lancaster*, who was at the
 ‘ Sea-side ready to pass for your Succour, was the
 ‘ principal Cause of the Truce and Profers aforesaid,
 ‘ and of the Treaty to be commenced; for it is no
 ‘ probable thing at all, nor in any wise agreeable
 ‘ to Reason, that you who were with your People
 ‘ chased by Force of the Enemies out of the Field,
 ‘ and afterwards besieged by them within your
 ‘ Fortresses, should be the Cause of the said
 ‘ Treaty by any way. And so as to this, nor yet
 ‘ as to any other of the Reasons before alledged,
 ‘ nor for the Rebellion of your Captains or other
 ‘ of your Retinue, nor any other Defaults which
 ‘ you have or may surmise unto them, (considering
 ‘ that you had them all of your proper Choosing
 ‘ and Election, and not at all by the Nomi-
 ‘ nation of our Lord the King, or of his Council)
 ‘ you neither can or ought to be at all excused of
 ‘ the Damages, Deceits, Villanies, Contempts, and
 ‘ the other Losses and Misprisions surmised to you,
 ‘ nor in especial of the Treaty made with the En-
 ‘ mies upon the Deliverance of the said Fortresses,
 ‘ of which there are certain Indentures made and
 ‘ drawn between you and your Captains on the one
 ‘ Part, and the Enemies of the King on the other
 ‘ Part, sealed with their Seals, and the Seals of the o-
 ‘ ther Captains, without the Authority or Consent of
 ‘ the said our Lord the King, as before is said. And
 ‘ moreover the said Chancellor said in the behalf
 ‘ of the King, Sir Bishop, altho’ the King our Lord
 ‘ might clearly handle and judge you as a tempo-
 ‘ ral

* See the History of this Treaty and Abatement of the Town in Walsingham Hist. Angl. p. 327 to 330. and in Holinshed, Speed, Grafton. † Num. 27.

'ral Person of his Realm, because you have be-
 'haved and carried yourself as a temporal Person;
 'for you expressly obliged your self to the King
 'our Lord by your Indentures, to be a Soldier of
 'the King, to govern the Christian People after
 'the Term of your *Crossado* ended, and you used
 'commonly to have your Sword carried before
 'you; and you did many other such like things
 'every Day publickly as a Lord Temporal, a-
 'gainst the common Custom of the Estate of a
 'Prelate of *England*: Notwithstanding, by rea-
 'son of your Estate, the King our Lord, of his
 'Grace, will forbear for the present to lay his
 'Hands upon your Body. But forasmuch as he is
 'informed, that you yourself have complained to
 'many Lords of the Realm, that Wrong hath
 'been lately done you on the last Day, af-
 'firming by your Words, that that which was
 'done passed not at all by Assent or Knowledge
 'of your Peers of the Realm, this is greatly to
 'be marvelled of you, and of these your Words,
 'seeing the ill Success touched nothing at all your
 'Perality, but only certain Misprisions which you
 'have made and perpetrated as a Soldier of the
 'King, against the form of your Indentures and
 'Covenants which you have made with the King
 'our Lord, to the great Damage of the King
 'as before is said, whereof the Connissance and
 'Punishment of common Right and antient Cus-
 'tom of the Realm of *England*, only and totally
 'appertaineth to our Lord the King, and to no
 'other. And true it is, that you have not at all
 'by this your last Answer any whit amended your
 'matter in Excuse of yourself, upon the Things
 'furnished against you, but as it seems have more
 'greatly impaired the same. *Wherefore by the*
 '*Assent of the Earls, Barons, and other Lords tem-*
 '*poral present in this Parliament*, it is assented and
 'accorded, that you shall be in the Mercy of the King,
 'and put to a Fine and Ransom for your Misdoing, ac-
 'cording to the Quality and Quantity thereof. And to
 'do this you shall be compelled and constrained by the
 'Seizure of the Temporalities of the Bishoprick of
 'Norwich. And the King commands you, that from
 'henceforth you shall not cause nor suffer any Sword
 'to be carried before you, as it hath been done, under
 'the Peril which shall follow. And it is expressly ac-
 'corded in this Parliament, that whatsoever hath been
 'expended on your Use of the said Franks of Gold,
 'you shall make full Payment thereof in the Treasury
 'of our Lord the King, without Delay or Difficulty.'

Upon this Judgment the Temporalities of this
 Bishop were immediately seized into the King's
 Hands, and detained in them a long Time for this
 his Surrender of *Graveling*; as *Walsingham*, *Holin-*
shed, *Grafton*, *Speed*, *Truffel*, in their Histories,
 and *Godwin* (in the Life of this Bishop) attest.

The Earl of Northumberland's Case, 7 Ric. II.

In the same * Parliament, 7 R. II. News came
 from the Northern Parts, that the Castle of *Ber-*
wick was taken by the *Scots*, whose Custody *Henry*
Piercy Earl of *Northumberland* then possessed by
 antient Right: The *Scots*, for Money, fraudulent-
 ly getting Entrance into the said Castle by one who
 had the Custody of it at the second-hand, under
 the Earl. Hereupon, by Duke *John's* Procurement,
 (as was reported) the said Earl on the fourth of
December, for the Loss of the said Royal Castle,

by the Judgment of the Lords, and of the King
 then present in the said Parliament, had a Sentence
 of Condemnation publickly pronounced against
 him, notwithstanding that the said Earl had been
 summoned to the said Parliament by the King's
 Writ, and would rather have tarried at home for
 the Defence of his Country. But the Execution of
 the said Sentence was soon after released by the
 King, and the Earl by his Indulgence restored to
 his Life and Possessions, which he was adjudged
 to lose. Whereupon he posted into the North,
 and calling his Forces and Friends together, strong-
 ly besieged the said Castle, and in few Days took
 it by Composition, he giving the Besieged their
 Lives, Movables, and two thousand Marks to
 surrender it.

The Case of Sir William de Elmham, and others,
7 Ric. II.

In the Parliament-Rolls of 7 Ric. II. num. 24.
 there is this Record. *Item, Sir William de Elmham,*
Sir Thomas Tryvet, Sir Henry de Ferriers, and Sir Wil-
liam de Farndon Knights, and *Robert Fitz-Ralph*
 Esq; who by the said Charge formerly given in Par-
 liament, had been with the Chancellor, and acknow-
 ledged and confessed to him, How that they had
 received certain Sums of Franks of Gold of the
French, in lawful and due manner, and not other-
 wise. To which they said, 'First of all, that is
 'to say, the said Sir *William* of *Elmham*, *Thomas*
 '*Tryvet* and *William Farndon*, in one Parcel three
 'thousand Franks of Gold. *Item*, In another
 'Parcel, &c. *Item*, the said Sir *William Elmham*
 'received another Parcel of the *French* for the
 'Castle of *Burburgh*, whereof Master *William de*
 '*Hoo* was then Captain, and for the Victuals of
 'the said Master *William de Hoo*, being in the said
 'Castle of *Burburgh*, two thousand Franks, where-
 'of the said *William de Elmham* presently paid, as
 'he said, one thousand Franks to the said Master
 '*William de Hoo*, and the other thousand Franks
 'he promised to pay at a certain Term to the
 'same Master *William de Hoo*, &c. *Item*, There
 'is another great Misprision that some Lieges of
 'the King rendered and delivered to the said
 'Enemies of the King, Castles, Fortresses, Vic-
 'tual, Armour and other Refreshment, without
 'special Command and Authority of the King,
 'or of his Lieutenant; but yet it is far worse to
 'sell or alien to the said Enemies any Fort, Vic-
 'tuals, Armour or other Refreshment, by re-
 'ceiving Money or other Goods of the said Ene-
 'mies, without Authority of the King, or of the
 'same his Lieutenant. And, Sirs, you know well,
 'and cannot deny, That by certain Covenants
 'made between the said *French* Enemies, and
 'you the said Sir *William de Elmham*, *Thomas*
 '*Tryvet*, *Henry de Ferriers*, and *William de Farn-*
 '*don*, and others, of which there are certain In-
 'dentures made and sealed with your Seals, you
 'lately made a Treaty with the said Enemies,
 'without the Will or Authority of the King, or
 'of his Lieutenant; and by this Treaty, and your
 'Sale of the said Forts, Victuals and Arms, you
 'received the said Sums of Gold; and by this,
 'and by other your Affairs, and Rebellions made
 'to your General, the said Host was spoiled and
 'destroyed, to the grievous Damage, Villany,
 'and Contempt of the King our Lord, and very
 'great

* *Walsing Hist. Angl.* p. 337.

great Profit and Comfort of the said Enemies,
 for which you are worthy to undergo Reproach and
 grievous Punishment. For you Sir William de Elm-
 ham, received of the said Enemies the said two
 thousand Franks, for the Sale and Surrender of
 the said Castle of *Burburgh*, and of the Victuals,
 Arms, and other Goods therein, then being to
 a great Number and Value, without the Leave
 and Authority of the King our Lord, and the
 Consent of the said Master William de Hoo, Cap-
 tain of the same, altho' that the said Castle was
 well able to have held out for a long time against
 all Men. And also you the said William de Elm-
 ham, Thomas Tryvet, and William de Farndon, re-
 ceived to your proper Use in common the said
 three thousand Franks of the Gift of the said
 Enemies, for your Consent and Aid to the said
 Treaty, made upon the Voydance of the Eng-
 lish out of that Country, and the Deliverance of
 the Town of *Graveling*, and of the other For-
 tresses then occupied in those Parts, &c. And
 you the said Sir William Farndon are in another
 very great Default, because you would not carry
 back to the said Enemies the five thousand
 Franks by you left at *Graveling*, against the
 Will and Command of the said Bishop your
 Chieftain, &c. And the said Sir William de Elm-
 ham saith, That altho' he hath so received the
 Sums aforesaid, yet it was done for Victuals,
 Prisoners, and other Goods which he had with-
 in the Fortres of *Burburgh*, and elsewhere in
 those Parts, and which, with the said Fortres,
 he render'd by the said Treaty, as of fine Force
 he ought to do for the Salvation of himself and
 his People; for otherwise the Town of *Bur-*
burgh, where the Lord *Beaumont*, Sir *Thomas*
Tryvet, Sir *William Tryvet*, Sir *William de Elm-*
ham, and a great number of the People of their
 Army were besieged, and assaulted by the Ene-
 mies in very great number, and the Town with-
 in set on fire, had been taken by them by force,
 and all those within it taken or slain: and there-
 fore he conceiveth, that in doing this, he hath
 done nothing amiss. But notwithstanding, if it
 appears to the King our Lord that he hath done
 any thing amiss, he puts himself upon his no-
 ble Grace, &c. And the said Chancellor, in
 replying to the said Sir William de Farndon, Hen-
 ry, and Robert, saith, &c. And certainly as to
 this which you Sir William de Farndon say, That
 it had been better to cast the said Gold into the
 Sea, than to have sent it back to the said Ene-
 mies: This is not true; for it had been better
 that the Enemies had received their own Gold,
 than any Traitor of the King our Lord: and he
 who shall hereafter sell the Fortresses of the
 King to the Enemies for Gold, or other Goods,
 may excuse himself in such manner as you would
 now excuse yourself. And after these Matters,
 thus by the same Persons alledged for their Ex-
 cuse, being considered, and held and adjudged in-
 sufficient for their Excuse in this behalf; the said
 Chancellor, in behalf of the King, spake thus,
 It is accorded in Parliament, that you Sir Wil-
 liam de Elmham, Thomas Tryvet, Henry Fer-
 riers, William de Farndon, and Robert Fitz-
 Rauf, shall make Agreement and full Payment to
 our Lord the King of whatsoever you or any of you
 have so received and taken of the Enemies aforesaid;
 and further, that all you the said Sir William
 de Elmham, Thomas, Henry, and Robert, be
 committed to Prison, and there ransomed at the

Will of the King for your Misdeeds aforesaid, hav-
 ing due Consideration of the Quality and Quantity
 of that Deed which every one of you hath done.
 And that you, Sir William de Farndon, because
 that you have received of the said Enemies divers
 Sums of Gold, and have given them Horses to their
 great Refreshment, for which you had no License
 of the King, nor of his Lieutenant, shall be in the
 Mercy of the King, Body and Goods, to do with
 them what he pleaseth.

The Duke of Suffolk's Case, 28 Hen. VI.

In the Parliament of 28 Henry VI. Rot. 50, 51,
 52. the Commons preferred divers Articles of
 High-Treason to the King and Lords against the
 Duke of *Suffolk*, among others these ensuing, That
 he being Ambassador for the King of England to
 Charles, calling himself French King, promised to
 Reynor King of Sicily, and to Charles Dangers his
 Brother, Enemies to the King, the Release of *Angeou*,
 with the Deliverance of the County of *Main*, and the
 City of *Mault* or *Mauns*; which Promise, after his
 Return, he caused to be performed, to the King's Dis-
 inheritance and Loss irrecoverable, and to the strength-
 ning of his Enemies, and Feeblishment of the Dutchy
 of *Normandy*. To the which Article he answered,
 That his Commission was, to conclude and do all Things
 according to his Discretion, for the obtaining of a
 Peace; and because, without Delivery of those Coun-
 tries, he perceived the Truce could not be obtained,
 he agreed to the Release and Deliverance of them.

Item, The said Duke, within this your Realm,
 hath untruly counselled you to grant fro you, with-
 out due Consideration, the Castle of *Mawlyon* de
Sool, and full many divers other great Lordships,
 Seignouries, Places, Offices, Profits, Revenues, Ca-
 sualties, and Commodities within your said Dutchy of
Guyen, whereby your Power there to support your
 Wars and Arms, and to pay the Wages of your great
 Counsellors, Captains and Soldiers, hath been so en-
 feebled, that your People of the same Dutchy, neither
 your Land there, might in no wise be defended.

Item, The said Duke of *Suffolk*, without Deli-
 beration and Advice of your Council, hath caused
 your Highness to grant to divers Persons, many Cap-
 tains, Offices, Towns, Lordships, Places, Interests,
 Profits and Revenues within your Realm of *France*,
 and Dutchy of *Normandy*, to such Persons as were
 not to you profitable, nor able, nor convenient to
 have or govern any of the Premises, nor ever had
 deserved to obtain of your Grace any such Grant;
 which hath been done by him for his great Avail and
 Lucre, and hath been one of the greatest Means of
 the Loss of the said Realm of *France*, and Dutchy
 of *Normandy*.

The Duke upon these Articles was committed to
 the Tower for one Month's Space, to pacify the Peo-
 ple, and then released by the Queen's Means, who en-
 tirely loved him: whereupon the Commons were so
 far from being pacified, that they were more enraged;
 openly denouncing, that it was a Shame to all the
 whole Realm to see such a Person, guilty of so many
 Misdeeds, either to rule about a Prince, or to be had
 in Honour, or suffered to go unpunished. Upon this
 the Commons rising up in divers Places of the Realm
 in Companies under Captain *Blewbeard*, the Com-
 mons in Parliament earnestly beseeched the King, that
 such a Person as assented to the Release of *Angeou*,
 and Deliverance of *France*, &c. might be extremely
 punished and tormented; and to be privy to this
 Fact, they accused as Principal the said Duke of
Suffolk,

Suffolk, with John Bishop of Salisbury, Sir James Fines, Lord Say, and others. Whereupon, the King plainly seeing, that neither Glossing would save, nor Dissimulation appease the continual Clamour of the importunate Commons against the Queen's Darling and his Complices; to begin a short Pacification of so long a Broil, First, he sequestred the Lord Say, being Treasurer of England, from his Office, (who for the same Offence was after committed to the Tower, and after that beheaded by Jack Cade, and the Kentish Mutineers, at the Standard in Cheap-side, who carried his Head about the Streets of London fixed on a Pole, &c.) And then by his own Authority, assembling all his Lords Spiritual and Temporal together, on the 17th Day of March, in a Chamber over the Cloysters at Westminster, he arraigned and banished the said Duke for five Years, against the Lords and Commons Consent, who would have capitally proceeded against him; meaning by this Exile, to appease the present furious Rage of the People, and that pacified, to recal him to his old Estate, as the Queen's chief Friend and Counsellor. But Fortune would not that he should so escape; for when he was shipped in Suffolk, intending to be transported into France, he was encounter'd by a Ship of War appertaining to the Duke of Exeter, of which the Constable of the Tower of London was Captain, who entering the Duke's Ship with small Fight brought him to Dover Road, and there on the Side of a Cockboat cut off his Head as a Traitor, and there left his Body and Head upon the Sands. Such was the End of these two ill Counsellors, only for advising this weak King himself thus dishonourably and cowardly to surrender up these Towns, Forts, and Territories in France, to his Enemies, to purchase an unhappy Peace, to the King's and Kingdom's irreparable great Damage, Dishonour, and Weakning, and the Enemy's extraordinary Advantage, Strengthening and Encouragement.

The Lord Wentworth's Case, 1 Eliz.

The Lord *Wentworth*, Governor of *Calais*, delivering up that Town to the *French*, (after they had taken the Castle by force, made a Breach in the Town-Walls, and slain above fourscore of the Garrison at one Assault when they took the Castle, together with Sir *Anthony Ager*, Marshal of the Town, and his Son and Heir) and that upon

dishonourable Terms, not without some Suspicion of Treachery; he was thereupon indicted in *Queen Mary's Days* for his cowardly and treacherous Surrender of this Town, contrary to his Trust; and after that was arraigned at *Westminster*, in the first Year of *Queen Elizabeth*, the Marquis of *Northampton* being his Judge, and Lord chief Steward of *England* for that Day. But that Nobleman so nobly defended himself, that he was acquitted by his Peers.

Van Hemert's Case, 29 Eliz.

*Meteranus**, *Grimstone*†, *Thianus*, and others, relate, Anno 1587. 'That Van Hemert, a very ' wise and brave young Nobleman, one of the chief ' Houses of the Netherlands, and Governor of the ' Town of Grave, together with two of his Captains, ' Du Banck and Korfe, were imprisoned, condemn- ' ed by a Council of War, and then beheaded and ex- ' ecuted at Bommel, by Command of Robert Dudley ' Earl of Leicester (Governor of the Low-Countries ' under Queen Elizabeth of famous Memory) for ' that they surrendered the said Town of Grave to ' the Prince of Parma, when he had besieged it above ' three Months Space, with a puissant Army, and ' beaten down the Walls of it level to the Ground, ' with perpetual Batteries and Assaults: And altho' ' there appeared no Treachery at all, nor any Intel- ' ligence held with the Enemy, in this Case; and ' that the Governor condescended to a Treaty, and ' surrendered the Town to the Enemy only upon the ' Citizens Importunity, who earnestly intreated him ' upon their Knees with Tears in their Eyes to em- ' brace a Parley, for the saving of their Lives, ' Estates, and Liberties, which were granted them ' upon the Articles of Agreement; and altho' the ' Garrison-Soldiers likewise marched away with ' their Arms, [which they left behind them at ' Bristol] and had all the Articles punctually ful- ' filled; and altho' himself and his potent Friends ' earnestly besought the Earl of Leicester, that he ' might serve the Queen of England either by Sea or ' Land at his own Charges, and by his Valour and Fi- ' delity make Recompence of his Fault; committed only ' thro' want of Understanding and martial Policy, con- ' trary to the Will and Intent of the Earl then Gover- ' nor-General under the Queen; yet the Earl, for up- ' holding martial Discipline, and to prevent all future ' Surrenders of this kind, would on no wise dispense ' with the Execution; whereupon they were all three ' openly beheaded at Bommel, June 28, 1587.'

* Belgica Hist. Universalis, l. 13, p. 402, 403, 404.

† Pag. 827, 828.





XLI. *The Trial of Dr. WILLIAM LAUD, Archbishop of Canterbury, for High-Treason, which began March 12. 1643. 19 Car. I. Wrote by himself during his Imprisonment in the Tower**

ON the 16th of December 1640, upon the Condemnation of the new Canons in the House of Commons, as being against the King's Prerogative, the fundamental Laws of the Realm, the Liberty and Property of the Subject; and containing divers things tending to Sedition, and of dangerous Consequence; the Archbishop of Canterbury was there accused to be the Author of, and chief Actor in them, and was order'd to be impeach'd of High-Treason: whereupon a special Committee was appointed to inquire into all his Actions, and prepare a Charge against him, which is thus enter'd in the Journal of the House of Commons.

December 16. 1640. This Committee is to prepare the several Votes concerning the new Canons, and to make them ready for this House to present the same to the Lords, and to consider and examine who were the Promoters of these new Canons, and who the principal Actors, and what Execution hath been made upon them, and by whom; and to consider how far the Lord Archbishop of Canterbury hath been an Actor in all the Proceedings of them; and further, to examine how far he hath been an Actor, in the great Design of the Subversion of the Laws of the Realm, and of the Religion and to prepare and draw up a Charge against him, and such others as shall appear Offenders in these Particulars, and have Power to send for Parties, Witnesses, Papers, Books, Records, and to do any other Act, which they in their Judgments should think fit to conduce to the Business, and are to meet at four a-Clock this Afternoon in the Star-Chamber.

On Friday the 18th of the same December, the Archbishop was impeached in the House of Commons of High-Treason, and voted by the whole House to be a Traitor, thus enter'd in their Journal.

December 18. 1640. Resolved upon the Question, that a Message shall be sent from this House to the Lords, to accuse William Laud, Archbishop of Canterbury, of High-Treason, in the Name of this House, and of all the Commons of England, and to desire that he may be sequester'd from Parliament, and committed; and that within some convenient time, this House will resort to their Lordships with particular Accusations and Articles against him; and that Mr. Hollis go up with the same.

Upon this Accusation, divers remarkable Speeches were made against him in the House of Commons; among others one by Mr. Harbottle Grimstone, as follows.

Mr. Speaker, There hath been presented to the House a most faithful and exact Report of the Conference we had with the Lords yesterday, together with the Opinion of the Committees that we employed in the Service, That they conceived it fit that the Archbishop of Canterbury should be sequester'd; and I must second the Motion. And with the Favour of this House I shall be bold to offer my Reasons, why I conceive it more necessary we should proceed a little further than the Desire of a bare Sequestration only.

Mr. Speaker, Long Introductions are not suitable to weighty Businesses: We are now fallen upon the great Man, the Archbishop of Canterbury: Look upon him as he is in Highness, and he is the Sty of all pestilential Filth, that hath infested the State and Government of this Commonwealth: Look upon him in his Dependancies, and he is the only Man, the only Man that hath raised and advanced all those that, together with himself, have been the Authors and Causes of all our Ruins, Miseries, and Calamities we now groan under. Who is it but he only that hath brought the Earl of Strafford to all his great Places and Employments? A fit Spirit and Instrument to act and execute all his wicked and bloody Designs in these Kingdoms. Who is it but he only that brought in Secretary Windebank into this Place of Service, of Trust, the very Broker and Pandar to the Whore of Babylon?

Who is it, Mr. Speaker, but he only that hath advanced all our Popish Bishops? I shall name but some of them, Bishop Manwaring, the Bishop of Bath and Wells, the Bishop of Oxford, and Bishop Wren, the least of all these Birds, but one of the most unclean ones. These are the Men that should have fed Christ's Flock; but they are the Wolves that have devour'd them: The Sheep should have fed upon the Mountains; but the Mountains have eaten up the Sheep. It was the Happiness of our Church, when the Zeal of God's House eat up the Bishops, glorious and brave Martyrs, that went to the Stake in Defence of the Protestant Religion; but the Zeal of our Bishops have been only to persecute and eat up the Church.

Who is it, Mr. Speaker, but this great Archbishop of Canterbury, that hath sat at the Helm, to steer and manage all the Projects that have been set on foot in this Kingdo: this ten Years last past? And rather than he would stand out, he hath most unworthily trucked and chaffered in the meanest of them. As, for Instance, that of Tobacco, whereby Thousands

* See Clar. Hist. Vol. I. p. 60, 118, 141. Vol. II. p. 440, &c. To make this Trial the more complete, what was wanting is supplied out of Rushworth's Collections, Vol. V. p. 763. &c. and Pryn's Compl. History of this Trial. The additions are inserted in their proper Places, but to preserve the Archbishop's own Account entire, are distinguished by a different Character within Crotchets.

of poor People have been stripp'd and turned out of their Trades, for which they have served as Apprentices. We all know he was the Compounder and Contractor with them for the Licenses, putting them to pay Fines and a Fee-farm Rent to use their Trade. Certainly, Mr. Speaker, he might have spent his Time much better, and more for his Grace in the Pulpit, than thus sberking and raking in the Tobacco-Shops. Mr. Speaker, we know what he hath been charged withal in this House, Crimes of a dangerous Consequence, and of a transcendent Nature, no less than the Subversion of the Government of this Kingdom, and the Alteration of the Protestant Religion; and this is not upon a bare Information only, but much of it is come before us already upon clear and manifest Proofs: And there is scarce any Grievance or Complaint come before us in this Place, wherein we do not find him intermentioned, and, as it were, twisted into it; like a busy angry Wasp, his Sting is in the Tail of every Thing. We have this Day likewise heard the Report of the Conference Yesterday, and it is the Accusation which the Scotch Commissioners have charged him withal; and we do all know he is guilty of the same, if not more, here in this Kingdom.

Mr. Speaker, He hath been the great and common Enemy of all Goodness and good Men; and it is not safe that such a Viper should be near his Majesty's Person, to distil his Poison into his sacred Ears; nor is it safe for the Commonwealth that he sit in so eminent a Place of Government, being thus accused. We know what he did in the Earl of Strafford's Case: This Man is the corrupt Fountain, that hath corrupted all the Streams; and till the Fountain be purged, we can never expect nor hope to have clear Channels. I shall be therefore bold to offer my Opinion; and if I err, it is the Error of my Judgment, and not my want of Zeal and Affection to the publick Good: I conceive it is most necessary and fit that we should now take up a Resolution to do somewhat, to strike while the Iron is hot, and to go up to the Lords in the Names of the Commons of this House, and in the Names of the Commons of England, and to accuse him of High-Treason; and to desire their Lordships, his Person may be sequestred, and that in convenient Time we may bring up his Charge.]

December, 18. 1640, being Friday. Upon this Day, Mr. Denzil Hollis, second Son to John Earl of Clare, by Order from the House of Commons, came up to the Lords, and accused me of High-Treason; and told the Lords, they would make proof thereof in convenient time: but desired in the mean time, that I might be committed to safe Custody. This was strange News to my Innocency; for this I can say of myself, without Falshood or Vanity, that to the uttermost of my Understanding I served the King, my gracious Master, with all Duty and Faithfulness; and without any known or wilful Disservice to the State there-while. And this I did, with as true and free a Heart, as ever any Man did, that served a King. And, I thank God, my Care was such for the Publick, that it is well known I much neglected my own private Fortunes there-while. The more was I amazed at the first Apprehension of this heavy and undeserved Charge.

Upon this Charge, I was commanded to withdraw. But I first desired leave to speak a few Words: and I spake to this effect, That I was heartily sorry for the Offence taken against me; and that I was most unhappy, to have my Eyes

open to see that Day, and mine Ears to hear such a Charge: But humbly desired their Lordships, to look upon the whole Course of my Life, which was such, as that I did verily persuade myself, not one Man in the House of Commons did believe in his Heart that I was a Traitor. Here my Lord the Earl of Essex interrupted me, and said, *That Speech of mine was a Scandal put upon the whole House of Commons, that they should bring me up charged with so high a Crime, which themselves did not believe.* I humbly desired then, that I might be proceeded with in the antient Parliamentary Way of England. This the Lord Say excepted against; as if I would prescribe them how they should proceed. So I withdrew, as I was commanded, and was presently called in again to the Bar; and thence delivered to Mr. James Maxwell, the Officer of the Black Rod, to be kept in safe Custody, till the House of Commons should farther impeach me.

[December 18. 1640. It is this Day order'd, that the Lord Archbishop of Canterbury (being accused of High-Treason by the House of Commons in their own Names, and in the Name of the whole Kingdom of England) be committed to the safe Custody of the Gentleman Usher attending this high Court, and that he be sequestred from the said House, until his Grace shall clear himself of the Accusation that shall be laid against him by the said House.]

The Lords further order'd, that no Member of the House should visit the Archbishop without leave of the House.]

Here I humbly desired leave, that I might go home to fetch some Papers necessary for my Defence. This was granted me with some Difficulty; and Mr. Maxwell was commanded to attend me all the while I should stay. When I was gone to Lambeth, after some little Discourse (and sad enough) with my Steward, and some private Friends, I went into my Chapel to Evening-Prayer. The ^b Psalms for that Day gave me much Comfort, and were observed by some Friends then present, as well as by myself. And upon the Comfort I then received, I have every Day since (unless some urgent Business prevented me) read over both these Psalms; and, God willing, purpose so to do every Day of my Life. Prayers being ended, I went with Mr. Maxwell, as I was commanded; Hundreds of my poor Neighbours standing at my Gates to see me go, and praying heartily for my safe Return to my House: for which I blessed God, and them.

Upon Friday, Feb. 26. 1640. I had been full ten Weeks in restraint, at Mr. Maxwell's House: and this Day, being St. Augustine's Day, my Charge in general Articles was brought up from the House of Commons to the Lords, by Sir Henry Vane the Younger. It consisted of fourteen Articles. These Generals they craved time to prove in particular; and that I in the mean time might be kept safe. Upon this I was presently sent for to the House, and the Articles were read to me at the Bar. [They were carried up by Mr. Pym, Mr. Hampden, and Mr. Maynard.]

And Mr. Pym coming to the Lords Bar to present them, spake as followeth.