

them, and them to commit, and keep in the next Goal until they should either perform such Sentences, or put in sufficient Bail, to shew some reason before the Council-Table, of such their Contempt and Neglect. And the said Earl, the Day and Year last mentioned, signed and issued a Warrant to that effect; and made the like Warrants to several other Bishops, and their Chancellors, in the said Realm of *Ireland*, to the same effect.

X. That the said Earl of *Strafford* being Lord Lieutenant or Deputy of *Ireland*, procured the Customs of the Merchandize exported out, and imported into that Realm to be farmed to his own use.

And in the ninth Year of his now Majesty's Reign he having then Interest in the said Customs, (to advance his own Gain and Lucre) did cause and procure the Native Commodities of *Ireland* to be rated in the Book of Rates for the Customs (according to which the Customs were usually gathered) at far greater Values and Prices than in truth they were worth; that is to say, every Hide at twenty Shillings, which in truth was worth but five Shillings; every Stone of Wool at thirteen Shillings four Pence, tho' the same were really worth but five Shillings, at the utmost nine Shillings: by which means the Custom, which before was but a twentieth part of the true Value of the Commodity, was enhanced sometimes a fifth part, and sometimes to a fourth, and sometimes to a third Part of the true Value, to the great Oppression of the Subjects, and Decay of Merchandize.

XI. That the said Earl, in the ninth Year of his Majesty's Reign, did by his own Will and Pleasure, and for his own Lucre, restrain the Exportation of the Commodities of that Kingdom without his Licence; as namely, Pipe-staves, and other Commodities: and then raised great Sums of Money for Licences of Exportation of those Commodities, and Dispensation of the said Restraints imposed on them; by which means the Pipe-staves were raised from four Pound ten Shillings, or five Pound *per* Thousand, to ten Pound, and sometimes eleven Pound *per* Thousand. And other Commodities were enhanced in the like proportion, and by the same means, by him the said Earl.

XII. That the said Earl, being Lord Deputy of *Ireland*, on the ninth Day of *January*, in the thirteenth Year of his now Majesty's Reign, did then under colour to regulate the Importation of Tobacco into the said Realm of *Ireland*, issue a Proclamation in his Majesty's Name, prohibiting the Importation of Tobacco, without Licence of him and the Council there, from and after the first Day of *May*, *Anno Dom.* 1638. After which Restraint, the said Earl, notwithstanding the said Restraint, caused divers great quantities of Tobacco to be imported to his own use, and fraughted divers Ships with Tobacco, which he imported to his own use: and that if any Ship brought Tobacco into any Port there, the said Earl and his Agents, used to buy the same to his own use, at their own Price; and if that the Owners refused to let him have the same at Under-values, then they were not permitted to vent the same there. By which undue means, the said Earl having gotten the whole Trade of Tobacco into his own hands, he

fold it at great and excessive Prices, such as he list to impose for his own profit.

And the more to assure the said Monopoly of Tobacco, he the said Earl, on the three and twentieth Day of *February*, in the thirteenth Year aforesaid, did issue another Proclamation, commanding that none should put to sale any Tobacco by wholesale from and after the last Day of *May* then next following, but what should be made up into Rolls, and the same sealed with two Seals by himself appointed, one at each end of the Roll. And such as was not sealed, to be seized, appointing Sixpence the Pound for a Reward to such Persons as should seize the same; and the Person in whose custody the unsealed Tobacco should be found, to be committed to Goal: which last Proclamation was coloured by a Pretence for the restraining of the Sale of unwholesome Tobacco, but it was truly to advance the said Monopoly.

Which Proclamation the said Earl did rigorously put in execution, by seizing the Goods, fining, imprisoning, whipping, and putting the Offenders against the same Proclamation on the Pillory; as namely, *Barnaby Hubbard*, *Edward Cavena*, *John Tumen*, and divers others; and made the Officers of State, and Justices of Peace, and other Officers to serve him in the compassing and executing these unjust and undue Courses. By which Cruelties, and unjust Monopolies, the said Earl raised 100000*l.* *per annum* Gain to himself. And yet the said Earl, tho' he enhanced the Customs, where it concerned the Merchants in general, yet drew down the Impost formerly taken on Tobacco from six Pence the Pound to three Pence the Pound; it being for his own Profit so to do.

And the said Earl, by the same and other rigorous and undue means, raised several other Monopolies and unlawful Exactions for his own Gain, *viz.* on Starch, Iron Pots, Glasses, Tobacco-Pipes, and several other Commodities.

XIII. That Flax being one of the principal and native Commodities of that Kingdom of *Ireland*, the said Earl having gotten great quantities thereof into his hand, and growing on his own Lands, did issue out several Proclamations, *viz.* the one dated the one and thirtieth of *May*, in the twelfth of his Majesty's Reign; and the other dated the one and thirtieth of *January*, in the same Year; thereby prescribing and enjoining the Working of Flax into Yarn and Thread, and the ordering of the same in such ways, wherein the Natives of that Kingdom were unpractised and unskilful. Which Proclamations so issued, were by his Commands and Warrants to his Majesty's Justices of Peace, and other Officers, and by other rigorous means, put in execution; and the Flax wrought, or ordered in other manner than as the said Proclamation prescribed, was seized and employed to the Use of him and his Agents: and thereby the said Earl endeavour'd to gain, and did gain in effect, the sole Sale of that native Commodity.

XIV. That the said Earl, by Proclamation dated the sixteenth of *October*, in the fourteenth Year of his Majesty's Reign, did impose upon the Owners, Masters, Purfers, and Boatswains of every Ship, a new and unlawful Oath, *viz.* That they (or two or more of them) immediately after the Arrival of any Ship within any Port or Creek in the said Kingdom of *Ireland*, should give in a true

true Invoice of the outward Bulk of Wares and Merchandizes first laden aboard them, together with the several Marks and Number of Goods, and the Qualities and Condition of the said Goods as far as to them should be known; the Names of the several Merchants Proprietors of the said Goods, and the Place from whence they were fraughted, and whither they were bound to discharge: which Proclamation was accordingly put in execution, and sundry Persons enforced to take the said unlawful Oath.

XV. That the said Earl of *Strafford* traitorously and wickedly devised and contrived, by Force of Arms, and in a warlike manner, to subdue the Subjects of the said Realm of *Ireland*, and to bring them under his Tyrannical Power and Will; and in pursuance of his wicked and traitorous Purposes aforesaid, the said Earl of *Strafford*, in the eighth Year of his Majesty's Reign, did by his own Authority, without any Warrant or Colour of Law, tax and impose great Sums of Money upon the Towns of *Baltimore*, *Baudenbridge*, *Talowe*, and divers other Towns and Places in the said Realm of *Ireland*; and did cause the same to be levied upon the Inhabitants of those Towns by Troops of Soldiers, with Force and Arms, in warlike manner. And on the ninth Day of *March*, in the twelfth Year of his now Majesty's Reign, traitorously did give Authority unto *Robert Savile*, a Serjeant at Arms, and to the Captains of the Companies of Soldiers in several parts of that Realm, to send such numbers of Soldiers to lie on the Lands and Houses of such as would not conform to his Orders, until they should render Obedience to his said orders and Warrants; and after such submission (and not before) the said Soldiers to return to their Garisons. And did also issue the like Warrants unto divers others, which Warrants were in warlike manner, with Force and Arms, put in execution accordingly; and by such warlike means did force divers of his Majesty's Subjects of that Realm to submit themselves to his unlawful Commands.

And in the said twelfth Year of his Majesty's Reign, the said Earl of *Strafford* did traitorously cause certain Troops of Horse and Foot, armed in warlike Manner and in warlike Array, with Force and Arms, to expel *Richard Butler* from the Possession of the Manor of *Castle-Cumber*, in the Territory of *Idough*, in the said Realm of *Ireland*; and did likewise, and in like warlike manner, expel divers of his Majesty's Subjects from their Houses, Families, and Possessions; as namely, *Edward Oberman*, *Owen Oberman*, *John Brenman*, *Patrick Oberman*, *Sir Cyprian Horshfield*, and divers others, to the number of about an hundred Families; and took and imprisoned them and their Wives, and carried them Prisoners to *Dublin*, and there detained, until they did yield up, surrender, or release their respective Estates and Rights.

And the said Earl in like warlike manner, hath during his Government of the said Kingdom of *Ireland*, subdued divers others of his Majesty's Subjects there to his Will; and thereby, and by the means aforesaid, hath levied War within the said Realm against his Majesty and his liege People of that Kingdom.

XVI. That the Earl of *Strafford*, the two and twentieth of *February*, in the seventh Year of his Majesty's Reign, intending to oppress the said

Subjects of *Ireland*, did make a Proposition, and obtained from his Majesty an Allowance thereof, That no Complaint of Injustice or Oppression done in *Ireland*, should be received in *England* against any, unless it appeared that the Party made first his Address to him the said Earl: and the said Earl having by such usurped, tyrannical, and exorbitant Power, expressed in the former Articles, destroyed and oppressed the Peers, and other Subjects of that Kingdom of *Ireland*, in their Lives, Consciences, Lands, Liberties and Estates; the said Earl, to the intent the better to maintain and strengthen his said Power, and to bring the People into a Disaffection of his Majesty, as aforesaid, did use his Majesty's Name in the Execution of the said Power.

And to prevent the Subjects of that Realm of all means of Complaints to his Majesty, and of Redress against him and his Agents, did issue a Proclamation, bearing date the seventeenth Day of *September*, in the eleventh Year of his Majesty's Reign, thereby commanding all the Nobility, Undertakers, and others who held Estates and Offices in the said Kingdom, (except such as were employed in his Majesty's Service, or attending in *England* by his special Command) to make their personal Residence in the said Kingdom of *Ireland*, and not to depart thence without Licence of himself.

And the said Earl hath since issued other Proclamations to the same Purpose, by means whereof the Subjects of the said Realm are restrained from seeking Relief against the Oppressions of the said Earl, without his Licence; which Proclamations the said Earl hath by several rigorous ways, as by Fine, Imprisonment, and otherwise, put in execution on his Majesty's Subjects; as namely, one — *Parry*, and others, who came over only to complain of the Exorbitances and Oppressions of the said Earl.

XVII. That the said Earl having, by such means as aforesaid, subverted the Government and Laws of the Kingdom of *Ireland*, did, in *March*, in the sixteenth Year of his Majesty's Reign, in scandal of his Majesty's Government of all his Kingdoms, and in further execution of his wicked Purposes aforesaid, speaking of the Army in *Ireland*, declare, That his Majesty was so well pleased with the Army of *Ireland*, and the Consequences thereof, that his Majesty would certainly make the same a Pattern for all his three Kingdoms.

XVIII. That the said Earl of *Strafford*, for the better effecting of his traitorous Designs and wicked Purposes, did endeavour to draw a Dependency upon himself of the Papists in both Kingdoms of *England* and *Ireland*; and to that end, during the time of his Government in *Ireland*, he restored divers Fryeries and Mass-Houses (which had been formerly suppressed by the precedent Deputies of that Kingdom; two of which Houses are in the City of *Dublin*, and had been assigned to the Use of the University there) to the pretended Owners thereof, who have since employed the same to the Exercise of the Popish Religion.

And in the Months of *May* and *June* last, the said Earl did raise an Army in the said Realm, consisting of 8000 Foot, all of which, except one thousand, or thereabouts, were Papists; and the said one thousand were drawn out of the old Army there, consisting of two thousand Foot, and in their

Places there were a thousand Papists, or thereabouts put into the said old Army by the said Earl.

And the more to engage and tie the said new Army of Papists to himself, and to encourage them, and to discourage and weary out the said old Army, the said Earl did so provide, that the said new Army of Papists were duly paid, and had all Necessaries provided for them, and permitted the Exercise of their Religion; but the said old Army were for the Space of one whole Year and upwards unpaid.

And the said Earl being appointed a Commissioner within eleven several Counties of the Northern Parts of *England*, for compounding with Recusants for their Forfeitures due to his Majesty, which Commission beareth Date the 8th Day of *July*, in the fifth Year of his Majesty's Reign that now is; and being also Receiver of the Composition-Money thereby arising, and of other Debts, Duties, and Penalties, by reason of Recusancy within the said Counties, for his Majesty's Use, by Letters Patents dated the 9th Day of the same *July*; he, to engage the said Recusants to him, did compound with them at low and under Rates, and provided that they should be discharged of all Proceedings against them in all his Majesty's Courts, both Temporal and Ecclesiastical, in manifest breach of, and contrary to the Laws and Statutes of this Realm, in that Behalf established.

XIX. That the said Earl having taxed and levied the said Impositions, and raised the said Monopolies, and committed the said other Oppressions in his Majesty's Name, and as by his Majesty's Royal Command; he, the said Earl, in *May*, the fifteenth Year of his Majesty's Reign, did of his own Authority contrive and frame a new and unusual Oath, by the Purport whereof, among many other Things, the Party taking the said Oath was to swear, That he should not protest against any his Majesty's Royal Commands, but submit himself in all due Obedience thereunto. Which Oath he so contrived, to inforce the same on the Subjects of the *Scottish* Nation inhabiting in *Ireland*; and out of a Hatred to the said Nation, and to put them to a Discontent with his Majesty and his Government there; and compelled divers of his Majesty's said Subjects there to take the said Oath against their Wills; and of such as refused to take the said Oath, some he grievously fined and imprisoned, and others he destroyed and exiled; and namely, the 10th of *October*, *Anno Dom.* 1639, he fined *Henry Steward* and his Wife, who refused to take the said Oath, 5000*l.* a-piece, and their two Daughters and *James Gray* 3000*l.* a-piece, and imprisoned them for not paying the said Fines: the said *Henry Steward*, his Wife, and Daughters, and *James Gray*, being the King's liege People of the *Scottish* Nation. And divers others he used in like manner. And the said Earl upon that occasion did declare, That the said Oath did not only oblige them in point of Allegiance to his Majesty, and Acknowledgment of his Supremacy only, but to the Ceremonies and Government of the Church established, and to be established by his Majesty's Royal Authority; and said, That the Refusers to obey, he would prosecute to the Blood.

XX. That the said Earl hath in the 15th and 16th Years of his Majesty's Reign, and divers Years past, laboured and endeavoured to breed in his

Majesty an ill Opinion of his Subjects, namely, of those of the *Scottish* Nation; and divers and sundry times, and especially since the Pacification made by his Majesty with his said Subjects of *Scotland* in Summer, in the 15th Year of his Majesty's Reign, he the said Earl did labour and endeavour to persuade, incite, and provoke his Majesty to an offensive War against his said Subjects of the *Scottish* Nation. And the said Earl, by his Counsels, Actions, and Endeavours, hath been and is a principal and chief Incendiary of the War and Discord between his Majesty and his Subjects of *England*, and the said Subjects of *Scotland*; and hath declared and advised his Majesty, that the Demands made by the *Scots*, in their Parliament, were a sufficient Cause of War against them.

The said Earl having formerly expressed the Height and Rancour of his Mind towards his Majesty's Subjects of the *Scottish* Nation, *viz.* the 10th Day of *October*, in the 15th Year of his Majesty's Reign, he said, That the Nation of the *Scots* were Rebels and Traytors; and he being then about to come to *England*, he then farther said, That if it pleased his Master (meaning his Majesty) to send him back again, he would root out of the said Kingdom (meaning the said Kingdom of *Ireland*) the *Scottish* Nation both Root and Branch, some Lords and others, who had taken the said Oath in the precedent Article, only excepted: And the said Earl hath caused divers of the Ships and Goods of the *Scots* to be stayed, seized, and molested, to the Intent to set on the said War.

XXI. That the said Earl of *Strafford*, shortly after his Speeches mentioned in the last precedent Articles, to wit, in the 15th Year of his Majesty's Reign, came into this Realm of *England*, and was made Lord Lieutenant of *Ireland*, and continued his Government of that Kingdom by a Deputy; at his Arrival here, finding that his Majesty with much Wisdom and Goodness had composed the Troubles in the *North*, and had a Pacification with his Subjects of *Scotland*, he laboured by all means to procure his Majesty to break that Pacification, incensing his Majesty against his Subjects of that Kingdom, and the Proceedings of the Parliament there.

And having incited his Majesty to an offensive War against his Subjects of *Scotland* by Sea and Land; and the Pretext thereof, to raise Forces for the Maintenance of that War; he counselled his Majesty to call a Parliament in *England*: yet the said Earl intended, that if the said Proceedings of that Parliament should not be such as would stand with the said Earl of *Strafford's* mischievous Designs, he would then procure his Majesty to break the same, and by ways of Force and Power to raise Moneys upon the Subjects of this Kingdom. And for the Encouragement of his Majesty to hearken to his Advice, he did before his Majesty and his Privy-Council, then sitting in Council, make large Declaration, That he would serve his Majesty in any other Way, in case the Parliament should not supply him.

XXII. That in the Month of *March*, before the beginning of the last Parliament, the said Earl of *Strafford* went into *Ireland*, and procured the Parliament of that Kingdom to declare their Assistance in a War against the *Scots*, and gave Directions for the raising of an Army there, consisting of 8000 Foot, and 1000 Horse, being for the most part

part Papists. And confederating with one Sir *George Ratcliffe*, did, together with him the said Sir *George*, traitorously conspire to employ the said Army for the Ruin and Destruction of the Kingdom of *England*, and of his Majesty's Subjects, and of altering and subverting of the fundamental Laws and established Government of this Kingdom.

And shortly after the said Earl of *Strafford* returned into *England*, and to sundry Persons declared his Opinion to be, That his Majesty should first try the Parliament here; and if that did not supply him according to his Occasions, he might use then his Prerogative as he pleased, to levy what he needed; and that he should be acquitted both of God and Man, if he took some other Courses to supply himself, tho' it were against the Wills of his Subjects.

XXIII. That upon the 13th Day of *April* last the Parliament of *England* met, and the Commons House (then being the Representative Body of all the Commons in the Kingdom) did, according to the Trust reposed in them, enter into Debate and Consideration of the great Grievances of this Kingdom, both in respect of Religion and the publick Liberty of the Kingdom; and his Majesty referring chiefly to the said Earl of *Strafford* and the Archbishop of *Canterbury* the ordering and disposing of all Matters concerning the Parliament; he, the said Earl of *Strafford*, with the Assistance of the said Archbishop, did procure his Majesty by sundry Speeches and Messages to urge the said Commons House to enter into some Resolution for his Majesty's Supply, for Maintenance of his War against his Subjects of *Scotland*, before any Course taken for the Relief of the great and pressing Grievances wherewith this Kingdom was then afflicted. Whereupon a Demand was then made from his Majesty of twelve Subsidies, for the Release of Ship-Money only. And while the said Commons then assembled (with Expression of great Affection to his Majesty and his Service) were in Debate and Consideration concerning some Supply, before any Resolution by them made, he the said Earl of *Strafford*, with the Help and Assistance of the said Archbishop, did procure his Majesty to dissolve the said Parliament upon the 5th Day of *May* last. And upon the same Day the said Earl of *Strafford* did treacherously, falsely, and maliciously endeavour to incense his Majesty against his loving and faithful Subjects, who had been Members of the said House of Commons, by telling his Majesty they had denied to supply him. And afterwards, upon the same Day, did traitorously and wickedly counsel and advise his Majesty to this Effect, *viz.* That having tried the Affections of his People, he was loose and absolved from all Rules of Government, and that he was to do every thing that Power would admit; and that his Majesty had tried all Ways, and was refused, and should be acquitted towards God and Man; and that he had an Army in *Ireland*, (meaning the Army above-mentioned, consisting of *Papists*, his Defendants, as is aforesaid) which he might imploy to reduce this Kingdom.

XXIV. That in the said Month of *May*, he, the said Earl of *Strafford*, falsely, traitorously, and maliciously published and declared before others of his Majesty's Privy-Council, That the Parliament of *England* had forsaken the King; and that in de-

nying to supply the King, they had given him Advantage to supply himself by other Ways. And several other times he did maliciously, wickedly, and falsely publish and declare, That seeing the Parliament had refused to supply his Majesty in the ordinary and usual Way, the King might provide for the Kingdom in such Ways as he should hold fit; and that he was not to suffer himself to be master'd by the Forwardness and Undutifulness of the People. And having so maliciously slandered the said late House of Commons, he did, with the Help and Advice of the said Archbishop of *Canterbury*, and the Lord *Finch*, late Lord-Keeper of the Great-Seal of *England*, cause to be printed and published in his Majesty's Name a false and scandalous Book, entituled, *His Majesty's Declaration of the Causes that moved him to dissolve the last Parliament*, full of bitter and malicious Invectives, and false and scandalous Aspersions against the said House of Commons.

XXV. That not long after the Dissolution of the said last Parliament (*viz.* in the Months of *May* and *June*) he, the said Earl of *Strafford*, did advise the King to go on vigorously in levying the Ship-Money, and did procure the Sheriffs of several Counties to be sent for, for not levying the Ship-Money, divers of which were threaten'd by him to be sued in the *Star-Chamber*; and afterwards, by his Advice, they were sued in the *Star-Chamber* for not levying the same; and divers of his Majesty's loving Subjects were sent for and imprisoned, by his Advice, for that and other illegal Payments.

And a great Loan of a hundred thousand Pounds was demanded of the City of *London*; and the Lord-Mayor, and Sheriffs, and Aldermen of the said City were often sent for, by his Advice, to the Council-Table, to give an Account of their Proceedings in raising of Ship-Money, and furthering of that Loan; and were required to certify the Names of such Inhabitants of the said City as were fit to lend: which they with much Humility refusing to do, he the said Earl of *Strafford*, did use these and the like Speeches, *viz.* That they deserved to be put to Fine and Ransom; and that no Good would be done with them till an Example were made of them, and that they were laid by the Heels, and some of the Aldermen hanged up.

XXVI. That the said Earl, by his wicked Counsels, having brought his Majesty into excessive Charge, without any just Cause, he did in the Month of *July* last (for the Support of the said great Charges) counsel and approve two dangerous and wicked Projects, *viz.*

To seize upon the Bullion and the Money in the *Mint*.

And to imbase his Majesty's Coin with the Mixtures of Brass.

And accordingly, he procured one hundred and thirty thousand Pounds, which was then in the *Mint*, and belonged to divers Merchants, Strangers, and others, to be seized on and stayed to his Majesty's Use. And when divers Merchants of *London*, Owners of the said Bullion and Money, came to his House to let him understand the great Mischief that Course would produce here and in other Parts, and what Prejudice it would be to the Kingdom, by discrediting the *Mint*, and hindring the Importation of Bullion; he, the said Earl,

told them, That the City of *London* dealt undutifully and unthankfully with his Majesty; and that they were more ready to help the Rebels than to help his Majesty; and that if any Hurt came to them, they may thank themselves; and that it was the Course of other Princes to make use of such Monies to serve their Occasions.

And when in the same Month of *July* the Officers of his Majesty's Mint came to him, and gave him divers Reasons against the imbasing the said Money, he told them, That the *French* King did use to send Commissaries of Horse with Commission to search into Men's Estates, and to peruse their Accounts, that so they may know what to levy of them by Force, which they did accordingly levy. And turning to the Lord *Cottington*, then present, said, That this was a Point worthy of his Lordship's Consideration: Meaning this Course of the *French* King to raise Monies by Force was a Point worthy of his Lordship's Consideration.

XXVII. That in or about the Month of *August* last, he was made Lieutenant-General of all his Majesty's Forces in the *North*, prepared against the *Scots*; and being at *York*, did then in the Month of *September*, by his own Authority, and without any lawful Warrant, impose a Tax on his Majesty's Subjects in the County of *York* of Eight-pence *per diem*, for Maintenance of every Soldier of the Trained-Bands of that County, which Sums of Money he caused to be levied by Force. And to the end to compel his Majesty's Subjects out of Fear and Terror to yield to the Payment of the same, he did declare, That he would commit them that refused the Payment thereof, and the Soldiers should be satisfied out of their Estates; and they that refused it, were in very little better Condition than of High-Treason.

XXVIII. That in the Months of *September* and *October* last, he the said Earl of *Strafford* being certified of the *Scotish* Army coming into the Kingdom, and he the said Earl of *Strafford* being Lieutenant-General of his Majesty's Army, he did not provide for the Defence of the Town of *Newcastle*, as he ought to have done, but suffered the same to be lost, that so he might the more incense the *English* against the *Scots*.

And for the same wicked Purpose, and out of a malicious Desire to engage the Kingdoms of *England* and *Scotland* in a National and Bloody War, he did write to the Lord *Conway*, the General of the Horse, and under the said Earl's Command, That he should fight with the *Scotish* Army at the Passage over the *Tine*, whatsoever should follow; notwithstanding that the said Lord *Conway* had formerly by Letters informed the said Earl, that his Majesty's Army, then under his Command, was not of Force sufficient to encounter the *Scots*: by which Advice of his he did, contrary to the Duty of his Place, betray his Majesty's Army, then under his Command, to apparent Danger and Loss.

All and every which Words, Counsels, and Actions of the said Earl of *Strafford* were spoken, given, and done by him, the said Earl of *Strafford*, traitorously, and contrary to his Allegiance to our Sovereign Lord the King, and with an Intention and Endeavour to alienate and withdraw the Hearts and Affections of the King's liege People of all his Realms from his Majesty, and to set Division between them, and to ruin and destroy his Ma-

jesty, and his Majesty's said Kingdoms; for which they do further impeach him the said *Thomas* Earl of *Strafford* of High-Treason against our Sovereign Lord the King, his Crown and Dignity. And he, the said Earl of *Strafford*, was Lord Deputy of *Ireland*, or Lord Lieutenant of *Ireland*, and Lieutenant-General of the Army there under his most excellent Majesty, and a sworn Privy-Counsellor to his Majesty for his Kingdoms, both of *England* and *Ireland*, and Lord President of the *North*, during the Time that all and every the Crimes and Offences, before set forth, were done and committed; and he, the said Earl, was Lieutenant-General of his Majesty's Army in the North Parts of *England* during the Time that the Crimes and Offences, in the 27th and 28th Articles set forth, were done and committed.

Answer to the Twenty-eight Special Articles.

TO the First Article, he saith, he conceives that the Commission and Instruction differ not from those formerly granted, but refers to them; and that such Alterations and Additions as were made, were (for ought he knoweth) rather for the Explanation, than for the enlarging of the Jurisdiction: The Care whereof was left to the Secretary of that Council, and to the King's Learned Counsel, to be passed for the Good of the King's Service, and the publick Welfare of that Province. For the Legality of the Proceedings, divers eminent Lawyers were joined with the President, who, for the Legal Parts, was by them to be directed. He did not advise or procure the Enlargement of the Commission and Instructions, and he believeth nothing hath been practised since, that was not in former Times contained in former Commissions, under general Words. He believeth Sir *Conyers Darcy* was lawfully fined for Misdemeanours, as a Justice of Peace; and hath heard, he being in *Ireland*, that Sir *John Boucher* was fined for some great Abuse at the King's being at *York*, going into *Scotland* to be crowned: to the Proceedings he refers himself. He denies that he hath done any thing by that Commission or Instruction, other than he conceived he might by Virtue thereof lawfully do.

To the Second Article, He denieth the speaking of those Words: but saith, That 30, 40*l.* or more, being returned as Issues out of the *Exchequer*, against some that had compounded for Knighthood for 10*l.* or 30*l.* so as the Issues far exceeded the Composition, and yet would next time have been increased; the said Earl upon this Occasion said, That now they might see, that the Little-finger of the Law was heavier than the King's Loins; which he spake to nourish good Affections in them towards his Majesty, and not to threaten or terrify any, as the Article supposed.

To the Third Article, he saith, *Ireland* is not governed by the same Laws that this Kingdom is, unless it be meant by the Common Laws; their Customs, Statutes, Execution of Martial Laws, Proceedings at Council-Board very much differ: the Words in the Article were not spoke to any such Intent. He saith, It might be fit enough for him to remember them of the great Obligation they had to the King and his Progenitors, that suffered

them, being a conquered Nation, to enjoy Freedom and Laws, as their own People of this Kingdom: and it might be, that upon some such occasion, he said to those of *Dublin*, That some of their Charters were void and nothing worth, and did not bind his Majesty farther than he pleased; which he believes to be true, having been formerly so informed by his Majesty's Learned Counsel upon sundry occasions.

To the Fourth, he saith, That the legal and ordinary Proceedings at Council-Table are, and time out of mind have been by Petition, Answers, Examination of Witnesses, as in other Courts of Justice concerning *British* Plantations, the Church, and Cases hence recommended by the King for the time being, and in Appeals from other Courts there; and the Council-Board have always punished Contempts to Orders there made, to Proclamations, and Acts of State, by Fine and Imprisonment. He saith, That it might be, he told the Earl of *Cork*, that he would imprison him if he disobeyed the Orders of the Council-Table, and that he would not have Lawyers dispute or question those Orders, and that they should bind; but remembereth not the Comparison of Acts of Parliament: and he hath been so far from scorning the Laws, that he hath endeavoured to maintain them. The Suit against the Earl in the Castle-Chamber, was concerning the Possessions of the College of *Youghall*, worth 6 or 700*l.* which he hath endeavoured to get, by causing of unlawful Oaths to be taken, and very undue means: the matter proceeded to Examination and Publication of Witnesses; and after, upon the Earl of *Cork*'s humble Suit, and Payment of 15000*l.* to his Majesty, and his Acknowledgment of his Misdemeanours, obtained a Pardon, and the Bill and Proceedings were taken off the File: and he remembers not any Suit for breach of any Order made at Council-Table.

To the Fifth, he saith, The Deputies and Generals of the Army have always executed Martial Law, which is necessary there; and the Army, and the Members thereof, have been long time governed by printed Orders, according to which, divers, by Sentence of the Council of War, have formerly been put to death, as well in the time of Peace as War. The Lord *Mountnorris* being a Captain of a Company in the Army, for mutinous Words against the said Earl, General of that Army, and upon two of those antient Orders was proceeded against by a Council of War, being the principal Officers of the Army, about twenty in number, and by them, upon clear Evidence, sentenced to death: wherein the said Earl was no Judge, but laboured so effectually with his Majesty, that he obtained the Lord *Mountnorris*'s Pardon; who, by that Sentence, suffered no personal Hurt or Damage, save about two days Imprisonment. And as to the other Persons, he can make no Answer thereunto, no Particulars being described.

To the Sixth, he saith, The Suit had depended many Years in Chancery; and the Plaintiff complaining of that Delay, the said Earl upon a Petition, (as in such Cases hath been usual) calling to him the then Master of the Rolls, the now Lord Chancellor, and the Chief Justice of the *Common-Pleas*, upon the Proofs in the *Chancery*, decreed

for the Plaintiff; to which he refers himself: and it may be the Lord *Mountnorris* was thereupon put out of his Possession.

To the Seventh, he saith, His Majesty being intitled to divers Lands, upon an Inquisition found, Proclamation was made, That such as claimed by Patent should come in by a day, and have their Patents allowed, as if they had been found in the Inquisition; and accordingly divers were allowed. The Lord *Dillon* produced his Patent, which being questionable, he consented, and desired that a Case might be drawn; which was drawn by Counsel, and argued, and the Judges delivered their Opinions: but the Lord *Dillon*, nor any other, were bound thereby, or put out of Possession; but might have traversed the Office, or otherwise legally have proceeded, that Case or Opinion notwithstanding.

To the Eighth, he saith, That upon Sir *John Gifford*'s Petition to the King, his Majesty referred it to the Deputy and Council of *Ireland*, where the Matter proceeded legally to a Decree against the Lord *Loftus*; and upon his Appeal, that Decree, by his Majesty and his Council of *England*, was confirmed: to which Decree and Order he refers himself, believing the Lord *Loftus* was committed for disobeying that Decree, and for Continuance in Contempt committed close Prisoner. He saith, That the Lord *Loftus* having committed divers Contempts, the Council by Warrant required him to appear at the Board, and to bring the Great Seal with him; which Order he disobeyed, and was shortly after committed, and the Great Seal was delivered up by his Majesty's express Command, and not otherwise. And an Information was exhibited in the Star-Chamber, for grievous Oppressions done by the Lord *Loftus* as Chancellor; whereof he was so far from justifying, as that he submitted, desiring to be an Object of his Majesty's Mercy, and not of his Justice.

The Earl of *Kildare* for not performing of an Award made by King *James*, and of an Award made in pursuance thereof by the said Earl of *Strafford*, upon a Reference from his Majesty, was by the Deputy and Council committed: and a Letter being unduly obtained, he did not thereupon enlarge him: but upon another Letter, and Submission to the Orders, as by the King was directed, he was enlarged.

The Lady *Hibbotts*, and one *Hoy* her Son, having upon a Petition, Answer, Examination of Witnesses, and other Proceedings at Council-Board, been found to have committed foul Abuses by Fraud and Circumvention, to have made a Bargain with the Petitioner *Hibbotts*, for Lands of a great value, for a small Sum of Money; was ordered to deliver up the Writing, no Assurances being perfected, or Money paid; and it's like he threatned her with Commitment if she obeyed not that Order, but denieth that the Lands were after sold to Sir *Robert Meredith* to his use, or that by any Order by himself made, any one hath been imprisoned concerning Freeholds, but for Debts and personal things, as some have been used by all his Predecessors in like Causes.

To the Ninth, he saith, Warrants to such effects have been usually granted to the Bishops in *Ireland*, in the times of all former Deputies; but the Earl not satisfied with the Conveniency thereof, refused

to give any such Warrants in general to the Bishops as had been formerly done: but being informed that divers in the Diocess of *Downe* gave not fitting Obedience, he granted a Warrant to that Bishop, whereto he referreth, which was the only Warrant he granted of that nature; and hearing of some Complaints of the Execution thereof, he recalled it.

To the Tenth, he saith, The Lord Treasurer *Portland* offered the Farm of the Customs for 13000 *l. per Annum* in some particular Species, but the Earl of *Strafford* advanced the same Customs to 15500 *l. per Annum*, and 8000 *l.* Fine; and by his Majesty's Command became a Farmer at those Rates proposed, without addition to those Rates, as by the printed Books 7 *Car. Regis* may appear. He dissuaded the Advance of Rates lately proposed by Sir *Abraham Daves*, so as it was declined: The Rates of Hides and Wool are moderate, Consideration being had of their true Value, and of the Places whereto they are to be transported, and of the Statute made in the Time of Queen *Elizabeth*, and there in force, prohibiting the Exportation of Wool, unless they pay to the Crown 5 *s.* the Stone. The Trade and Shipping of that Kingdom are exceedingly increased.

To the Eleventh, he saith, Pipe-staves were prohibited in King *James's* Time, and not exported but by Licence from the Lord Treasurer of *England*, or Lord Deputy of *Ireland*, who had 6 *s.* 8 *d.* per 1000, and his Secretary 3 *s.* 4 *d.* for the Licence: but to restrain that Destruction of Timber, by Command of his Majesty, and Advice of his Council, for his Revenue in *Ireland*, first 30 *s.* then 3 *l.* was charg'd. The Money was paid to his Majesty, who hath thereby about 1500 *l. per Annum*; and his Lordship lost about 4 or 500 *l. per Annum*, which his Predecessors had for such Licences. This is paid by the Transporter, not by the Natives, whose Commodity nevertheless appears by the Article to be very much increased.

To the Twelfth, he saith, The Subsidies there are an Inheritance in the Crown by Act of Parliament; 6 *d.* was paid for Subsidy, and 1 *s.* 6 *d.* for Impost upon every Pound of Tobacco, and farmed at 10 or 20 *l. per Annum*. The Commons in Parliament, 10 *Car. Regis*, finding the Revenue to be short of the Expence of that Kingdom 24000 *l. per Annum*, petitioned those Grants might be applied to increase his Majesty's Revenue, without calling upon the Subject, but upon urgent Occasions. Hereupon, upon the Advice of the Committee of the Revenue, and in consideration of a Proclamation made in *England*, several Proclamations were made, and this settled in a Way, till it could be confirmed by Parliament; for which Purpose a Bill is transmitted, according to the Desire of the Commons, and the Impost of Tobacco is let to Contractors for eleven Years, at 5000 *l. per Annum* for the first five Years, and 10000 *l. per Annum* for the other six Years. And the Earl hath lent Money to forward the Business, and by his Majesty's Allowance is a Partner; but hath not as yet, in two Years last past, had any Accounts thereof, or made Benefit thereby. He knoweth of no Whipping, or other Punishment. The Farms of the Customs are better than formerly 2000 *l. per Annum*, five 8 parts whereof is yearly paid unto his Majesty: the Prices of Tobacco exceed not 2 *s.* or 2 *s.* 4 *d.* the Pound; the settling of that Re-

venue, is according to the Petition of the Commons; he hath not raised, or countenanced any Monopolies, but opposed the same.

To the Thirteenth, he saith, He endeavoured to advance the Manufacture of Linen rather than of Woollen-Cloth, which might prejudice that Trade here: he bought Flax-Seed in the *Low-Countries*, and sold it at the same Rate to such as desired it; they making their Cloths not above a Foot broad, and winding eight or ten Threads from several Bottoms together; the contrary was twined: their Flax, formerly not above a Foot, became a Yard in length: and that Soil is fit to bear it, and the People love such easy Works. He hath set up many Looms, made much Cloth, and sold it to the loss of some Thousands of Pounds; but when the State saw the Natives would not change their old Courses for new and better, the Proclamation was declined. What he did was for the publick Good, and had nothing from them that was not fully paid for.

To the Fourteenth, he saith, He refers to the Oath and Proclamation, which was set forth by the said Earl and Council of State there, at the instance of the Farmers of the Customs, to prevent the defrauding of the King's Duties, whereof his Majesty had five eight parts. He never heard any Complaint of the Oath, or of any that refused to take it; and conceived it to be lawful, divers of the Council approving it, being learned Judges of the Law, to whose Judgment, for the Legality, he submitted, as well in that, as to other Matters of the like nature.

To the Fifteenth, He denieth what is in the Article objected; but saith, That about the Year 1626, certain Agents authorized in *Ireland* were sent into *England*, and offered and agreed to pay to his Majesty 120000 *l.* in six Years, towards the Maintenance of his Army; and a like Payment of 20000 *l. per Annum*, was after agreed, and continued for three Years longer. The Assessments were made, and it was shortly after, by them and the Lord *Faulkland*, then Deputy, agreed in *Ireland*, that the Money should not be charged upon Record, but levied by Captains, by Paper-Assignments, upon Warrants from the Lord Deputy: and this Course was held four Years in the Lord *Faulkland's* time, and the four Years wherein the Lord *Loftus* and the Earl of *Cork* were Lords Justices there; and it held for the remaining Year only, after the Earl of *Strafford* came thither. But the Earl of *Cork* having spared those Towns, for the Benefit of himself and Tenants, during the time of his being Justice; the Earl of *Strafford* reduced the Assessment to what it was made by the Lord *Faulkland*, and gave way that Sir *William St. Lieger*, Lord President of *Munster*, should take the same Arrearages, in satisfaction of a Debt due unto him by his Majesty: and he is confident no Force was used in levying the same. It hath been usual to lay Soldiers to levy that Contribution, to send Soldiers to apprehend Contemners of Orders made at Council-Board, and the like; and when Out-laws and Rebels have been in the Woods, no Soldiers have in his time been laid, but by the Advice of the Council there. Touching the *Castle-Cumber*, it's a Parcel of the Territory of *Idough*, whereto the King was intitled by Inquisition, and the Possession established in a legal Way, when the

the said Earl was in *England*; and no Soldiers were sent, but only Twelve, at the intreaty of Mr. *Wancesford*, for the security of his Houses and Plantations against Rebels that then were out, and burned and spoiled Houses thereabouts: and neither *Richard Butler's*, nor any other Family, were thence expelled by the said Earl from their Estates.

To the Sixteenth, he saith, There was such a Proposition, which was just, to prevent clamorous Complaints here, which there might be redressed; but conceives, that by the Laws there, and the Articles known since, (by the Name of the Articles of Grace, made about fourteen Years since) none ought to depart that Kingdom without Licence.

Thereupon, by the Advice of the State, the Proclamations were set forth, but not with such Intent as in the Article.

He denied Licence only to Three, the Earl of *Cork*, the Lord *Mountnorris*, and Sir *Frederick Hamilton*; to the two former, in regard of Criminal Suits then against them in the *Castle-Chamber*; to the other, by special Command from his Majesty. But so soon as Sir *Frederick* said he would complain of the Earl, he made suit to his Majesty that Sir *Frederick* might come over; which was granted. He conceives such Restraint to be necessary, and if that be not continued, it will prove of evil Consequence to that Kingdom.

Parry was questioned at the Council-Board for Misdemeanours, and, to avoid Sentence, secretly went out of the Kingdom; and at his return, for that, and other Offences, was fined and imprisoned; to the Sentence thereof he refers, and knows of no other that were imprisoned, as by the Article is charged.

To the Seventeenth, he saith, It's like he might say, (for the better encouragement of the Officers and Soldiers of the old *Irish* Army, in discharge of their several Duties) that his Majesty was so well satisfied in the Way and Pains they took in using and practising of their Arms, that, in that Point, he would set them as a Pattern to be imitated: and conceives it would not be ill if they were so, they being, in the Opinion of those that have seen them exercise, very able and expert Soldiers. He spake not other Words, or to other Purpose.

To the Eighteenth, he saith, When the Earl of *Cork* was one of the Lords Justices, he seized some Houses in *Dublin*, pretending they belonged to Jesuits and Friars, without legal Proceedings; which upon Suits prosecuted at Council-Board, were, according to Justice, restored to the Owners: but how since employed, the Earl of *Straford* knoweth not, but endeavoured the utmost he could to maintain that Seizure. Touching the 8000 Men, he saith, They were raised according to the King's Warrant, and that the said Earl left the Care thereof to the Earl of *Ormond* and others; and what number are Protestants, what Papists, he knoweth not, but believeth such a Body cannot be there raised, without many Papists: the greatest number of the Captains and Officers are Protestants, chosen by the said Earl. The Thousand Men were drawn out of the old, to make Officers for the new Army; and believeth the Thousand put to the old Army are Protestants, in

regard, by his express Order, no Papist is to be admitted there a common Soldier. He never preferred any Captain, Lieutenant, or Ensign, to be of that Army that was a Papist, and conceives they are duly paid; and believes those newly raised exercise the Religion no otherwise than was practised before the Earl's coming thither. He was a Commissioner to compound with the Recusants for their Forfeitures, and endeavoured to be informed of the utmost Value of their Estates: in four Years he brought that Revenue from 2300 *l.* to be between 11 and 12000 *l. per Annum*, more than ever was raised formerly in so short a time; by which faithful Dealings for his Majesty, he procured the hard Opinion of the Recusants throughout the Kingdom: That out of those Compositions he hath paid near 100000 *l.* into the Exchequer; and they had no other Privileges than what were exercised in the Commission, and in former like Commissions, and as are in the present Commission to the Lord Treasurer, and others.

To the Nineteenth, he saith, The last Summer was twelve Months, when the *English* and *Scotch* lay in the Fields near *Berwick*, the Earl and Council of *Ireland* having a general Notion thereof, were in fear that the *Scots* in *Ulster* (being almost 100000 in number) might be drawn to side with the Covenanters; and advising how to secure that Kingdom, the Principal of the Nation of *Scotland*, living in *Ireland*, came to *Dublin*, and petitioned, That they might have an Oath whereby they might give Testimony of future Obedience to his Majesty. Whereupon an Oath was by the Advice of the Council of State framed, and cheerfully taken by those *Scotch* Gentlemen, and generally by all the Nation in *Ireland*, as the Earl conceives, to their Advantage, and the Satisfaction of others. He believes that some were sentenced for refusing it, but none were otherwise exiled. The Earl in his Vote said, That he would endeavour that all of that Nation should take that Oath, or leave the Kingdom. All which was done by his Majesty's Direction and Approbation: And it was not contrived to the Intents of the Article charged, but to prevent their adhering to the Covenanters then in open Arms, and not concerning the Ceremony or Government of the Church.

To the Twentieth, he saith, That in the Year 1638, the Earl was in *Ireland*, when Preparations were made for War, and Summons sent to the Nobility of this Kingdom. In the Year 1639, a General was appointed, and an Army drawn to the Field, and encamped near *Berwick*; whereby it appears he was not acquainted that the Article of Pacification had been broken on both Sides, and so distempered, that it was held fit an Army in *England* should be raised to suppress the Covenanters, if the Business could not with Honour and Safety be otherwise composed. The said Earl humbly advised his Majesty to call a Parliament, and used many Motives thereunto. After the Parliament was called, and before the Sitting thereof, ten of the Lords, and other of the Council for foreign Affairs, being assembled, his Majesty then present, an honourable Person related the Covenanters Demands. It was then voted by all, That they were such as might not in Honour and Safety be condescended unto by his Majesty; and if they could not be otherwise reduced, his Majesty must be constrained to bring them to it by Force. The like

like Resolution was after at the Council-Table by twenty of the Council. Whereupon his Majesty appointed a Council of War; and it was held necessary to borrow 200000*l.* upon good Security, till the Supplies by the Parliament might come in. He never said the *Scotch* Nation were Rebels, but was ever persuaded that many of them were most loyal Subjects.

Those that raised Arms, when they were at such a distance from his Majesty, he might say they were no less than Rebels and Traitors. By Warrant from the Lord Admiral he caused divers Ships and Goods to be seized, but not with an Intent to set on the War, but, as much as in him lay, to bring all to fair Accommodations without Expence of Blood.

To the Twenty-first, he saith, The Pacification was broken before he came over, as in the Answer to the former Article: he moved his Majesty for a Parliament in *England*, but not with such Intent as in the Article, but out of a Desire to have settled a right Understanding between the King and his People. It may be said, (tho' he remembreth it not) That if the Parliament would not supply his Majesty, he would serve his Majesty in any other lawful Way; being well assured that his Majesty would not imploy him, nor any Man else, in any other kind.

To the Twenty-second, he saith, According to his Majesty's Instructions, he did set forth to the Parliament of *Ireland* the State of the Affairs, as they then stood; and they freely gave four Subsidies, as an Acknowledgment of his Goodness and happy Government, as by the Act and Remonstrance appears in Print. He, by his Majesty's Direction, then gave Order for the raising of 8000 Men, who still remain in the King's Pay, and were sent into *Ulster* to secure those Parts, or to land in *Scotland*, to divert the Earl of *Argyle*, in case he joined with the Covenanters Army against the King. But it was mentioned in the King's Letter, 2 *Martii* 1639, he had purposely given out, That they should join with the King's Army at *Berwick*, to colour other Designs: But the true Cause of their levying was made known to be as aforesaid unto the Earl of *Ormond*, Sir *John Burlace*, and the Marquis of *Hamilton*, and the Earl of *Northumberland*, at the time of the writing the Letter. And he denies the Words charged in the Articles, or any other Words to such Intent and Purpose.

To the Twenty-third, he saith, The Matters of the Parliament were no otherwise referred to him than to the rest of the Council: That coming sick from *Ireland* about ten Days after the Parliament were set, and after the Treaty with the Earl of *Dumfermline* and Lord *Lowdon*, *Scotch* Commissioners, was broken off, and the Army preparing, and the Parliament not supplying Monies as his Majesty desired, his Majesty advised what might move them to prefer his Supply. In debate whereof, he humbly advised his Majesty, by a Message to the House, to lay down Ship-Money, and promise never to demand it, and give way to reverse the Judgment by a Writ of Error in Parliament, and to promise a Redress of Grievances when they should be prepared. And secondly, That they would presently agree upon such Supply as should maintain his Army for reducing the *Scots* to their Obedience, wherein their Safety and his Honour was

concerned. His Majesty assented conditionally, that he might have twelve Subsidies: The Earl besought him that it might not pass as a Condition, but to relinquish Ship-Money, and put himself upon their Affections; and drew up the Meilage in Writing, and delivered it to Mr. Secretary *Vane*, to deliver to the House of Commons. He desired to know if his Majesty would not take less than twelve. His Majesty answered, He feared less would not serve his Occasions. The Earl of *Strafford* besought his Majesty to accept of eight. So his Majesty assented, and desired Mr. Secretary to signify so much, as occasion should be offer'd: But whether he did so or not, the said Earl knoweth not. The House of Commons being in debate two Days, and not resolving, his Majesty about the 5th of *May* last called a Council at seven of the Clock in the Morning: The said Earl being sick, came late, and was told (as he remembreth) by the Earl of *Berkshire*, the King had declared his Resolution to dissolve the Parliament. The Earl of *Strafford* besought his Majesty to hear the Advice of his Council, and first of those that were Members of the House of Commons, by whom the rest might the better be guided. Mr. Secretary *Windbank* said, He feared the House would first be answered of their Grievances, and voted for a Breach of the Parliament. Mr. Secretary *Vane*, in opposite Terms, said, That there was no hope that they would give the King a Penny, and therefore absolutely voted for a Breach. And the Earl of *Strafford* conceiving his Majesty's Pleasure to have accepted eight Subsidies had been deliver'd to the House of Commons by Mr. Secretary *Vane*, did in his Turn deliver his Vote for Breach of the Parliament, which otherwise he would not have done, it being contrary to what he resolved when he came thither; and the like Opinion was delivered by the rest of the Lords, being about twenty, except two or three at the most. The Parliament being dissolved, his Majesty desired Advice of his Council how Money might be raised, affirming that the *Scotch* Army was ready to enter into the Kingdom: The said Earl, in presence of others in the Council, delivered his Opinion, That in a Case of absolute and unavoidable Necessity, which neither would nor could be prevented by ordinary Remedies provided by the Law, nor all his Majesty's other means sufficient to defend the Commonwealth, himself, or their Lives and Estates from an Enemy, without Force of Arms, either actually entred, or daily expected to invade the Realm; he conceived that his Majesty was absolved from ordinary Rules, and might use (in a moderate way, as the Necessity of the Cause would permit) all Ways and Means for defence of himself and Kingdom; for that he conceived in such Extremity, *Salus Populi was Suprema Lex*, provided it were not colourable, nor any thing demanded imployed to other use, nor drawn into Example, when Law and Justice might take place: and that when Peace was settled, Reparation was to be given to particular Men, otherwise it would be unjust. This was not officiously declared, but in Council, forced by the Duty of the Oath of a Counsellor, which is, That he shall in all things to be moved, treated, and debated in Council, faithfully and truly declare his Mind and Opinion according to his Heart and Conscience: Which Oath the said Earl took, and humbly prays their Lordship's Consideration thereof. He denies the Words in the Article, or any Words to the Intent thereby expressed.

To the Twenty-fourth, he saith, He delivered his Opinion with such Cautions and Restrictions, as in the Answer to the precedent Article; and is well assured his Discourse at all times hath been without ill Intentions to either of the Houses of Parliament, which he ever did and shall speak of with all Reverence. He denies that he knew of the publishing or printing of the Book, or who caused it to be printed or published; for at that time he was sick in his Bed, more like to die than to live.

To the Twenty-fifth, he saith, Ship-Money was levied, and adjudged to be due, before his coming over. Sheriffs were then called up as before, and not otherwise. If any were sued in *Star-Chamber*, it was without any particular Endeavour of his. It appearing at the Board that the Mayor and Sheriffs of *London* had been slow in collecting Ship-Money, he saith, They were but ministerial, and ought to exact, and not dispute the King's Writs; and that if thro' their Remissness the King should be less able to provide for the publick Safety, when any foreign Army was ready to enter the Kingdom, they might deserve to be fined and ransomed: which he spake more to hasten them, than of purpose to advise any such Prosecution. But denies the other Words, being, under favour, such Expressions as he is not accustomed unto.

To the Twenty-sixth, he saith, He advised not either of those Projects, (being then sick in Bed:) But it being debated at the Council-Table whether it were better for the King to raise Gold and Silver, or coin base Money, he (for the Reasons then given) deliver'd his Opinion for the latter. Sundry Merchants Adventurers coming to his House, desired him to move his Majesty, then at *Oatlands*, to release the Bullion, or Money: He told them he knew of no such Thing, and would not meddle with it; nor would his Health permit him to go abroad: and said, That if by their denying the King in such a publick Danger the Loan of 100000 *l.* upon good Security, the King were constrained, for the Preservation of the Land, to stay the Bullion, they might thank themselves; and the City receiving so great a Benefit by residing amongst them, they made but an unthankful Acknowledgment in such a Strait, to refuse the Loan of that Sum. The Officers of the Mint came to the Council-Board, and the Earl then shewed a Letter he received from the Earl of *Leicester*, wherein was related, That the Cardinal had appointed Commissioners to go into the Merchants Houses at *Paris*, to peruse their Shop-Books and Accompts, and cefs every Man according to his Ability, towards the Payment of the King's Army; and then said, That it was but just for us here in *England* to bless God for being under a King which could not think upon such a pressing upon the People. But the Words in the Article, or Words to any such Intent, he did not speak; and cannot sufficiently bemoan himself to have been in all his Words so ill understood, or so untruly reported as he hath been.

To the Twenty-seventh, he saith, He persuaded the Gentry of that County to allow the Trained-Bands a Month's Pay; which they yielded, and his Majesty graciously accepted. It was by Council of War (his Majesty being present) thought fit

the Trained-Bands should return, save the two Regiments under the Command of Sir *William Pennyman*, and Sir *Thomas Danby*. It was assented unto by his Majesty, and the great Council of Peers then assembled, That those spared should contribute; and the said Earl was commanded by them to see it done. Which was done accordingly by Warrants from him, and from his Deputy-Lieutenants, which was much less Charge to the Countries than otherwise. And denies the other Particular in the Article mentioned.

To the Twenty-eighth, he saith, He was Lieutenant-General to the Earl of *Northumberland*, about the 24th of *August*, of 10 or 12000 Foot, and 2000 Horse, being at *Newcastle*, under the Command of the Lord *Conway* and Sir *Jacob Astley*, and the rest of the Army at *York*. The said Earl went from *London* on the 26th of *August*, notwithstanding his extreme Weakness, and came to *York*. And having received a Letter from Sir *Jacob Astley* that *Newcastle* was fortified, and that they must be infamous Beasts to lose it, and that it was fully secured; and being acquainted with several Dispatches sent by Mr. Secretary *Vane*, by his Majesty's Directions, to the Lord *Conway*, General of the Horse, to oppose the Passage of the *Scots* over the River *Tyne*, the one dated 22 *Augusti*, the other 23 *Augusti*, another 24 *Augusti*, another 26 *Augusti*, the Substance of which Letters are particularly mentioned in the Answer to this Article: and to the same Letters the said Earl referreth himself.

The said Earl, upon sight of this and Sir *Jacob Astley's* Letter, had reason to believe that all fitting Preparation was made; and then understanding that if the *Scottish* Army should pass the River, not only *Newcastle*, altogether unfortified on the south part, would be lost, but the said Army of 11000 Foot and 2000 Horse endangered; and hearing that the *Scottish* Army was distressed for want of Victuals, and knowing the Advantage that was in opposing the Passage of such a River: Hereupon the said Earl, by a Letter dated the 27th of *August*, advised the Lord *Conway*, with all the Horse, and at least 8000 Foot, and all the Cannon, to march and fight with them, upon the Passage of the River: At which time the said Earl had no Charge of the Army. But the Truth is, the Lord *Conway* having not with him all the Horse, and not above 1500 Foot, and only some part of the Cannon, was in a posture to fight for the Passage before the said Letter of Advice came, which he received not half an Hour before the Fight began, and proceeded according to his own Judgment, and his Majesty's said general Direction. And afterwards, that is, about the 30th of *August*, and not before, the said Earl took upon him the Charge of the Army at *Darlington*, and brought it to *York* to be supplied with Necessaries that they wanted, and purposed to have staid where they were quartered. But hearing from many Hands that there was a Purpose to question him in Parliament, and his Majesty having giving him liberty of staying there, or coming away, he left the Charge of the Army with the Lord *Conway*, and other Officers, as his Majesty had directed, and came to *London* on Monday the 9th; and the 11th of *November* was put under Restraint, and so hath ever since remained. And saith, That the Town of *Newcastle* was no way under his care. And as to other Matters, whereto by Law he ought to answer, and hath not answered, he saith, He is not guilty of them, or any of them, in such manner

manner and form as in the said Article is expressed; and humbly prayeth a convenient Time for making his Proofs, and to justify and maintain his Actions in *Ireland* by sight of his Majesty's Warrants, Records, and Witnesses, in that Kingdom; and that if any Mistake be in his Answer, it may be amended.

And this the said Earl hopeth, that, upon equal Construction of his Words and Actions, he shall appear free from any great and heinous Offences wherewith he is charged: And howsoever it shall please God to dispose of him, he shall ever pray, that by their Lordship's great Wisdom and Prudence, the Affections of his Majesty, and Duty of his Subjects, may this Parliament be so surely knit together, as may by God's Blessing lastingly tend to the Prosperity and flourishing Estate both of King and People.

THE Place appointed for the Trial was the great Hall in *Westminster*, where there was a Throne erected for the King, on each Side thereof a Cabinet enclosed about with Boards, and before with a Tarras. Before that, were the Seats for the Lords of the Upper House, and Sacks of Wool for the Judges; before them, ten Stages of Seats, extending farther than the midst of the Hall, for the Gentlemen of the House of Commons: at the End of all was a Desk closed about, and set apart for the Lord-Lieutenant and his Counsel.

March 22. Monday Morning about seven of the Clock he came from the *Tower*, accompanied with six Barges, wherein were one hundred Soldiers of the *Tower*, all with Partizans, for his Guard, and fifty Pair of Oars. At his landing at *Westminster*, there he was attended with two hundred of the Trained-Bands; and went in, guarded by them, into the Hall. The Entries at *White-Hall*, *King-street*, and *Westminster*, were guarded by the Constables and Watchmen, from four of the Clock in the Morning, to keep away all base and idle Persons.

The King, Queen, and Prince, came to the House about nine of the Clock, but kept themselves private within their Closets, only the Prince came out once or twice to the Cloth of State; so that the King saw and heard all that passed, but was seen of none. Some give the Reason of this, from the received Practice of *England* in such Cases: Others say, that the Lords did intreat the King either to be absent, or to be there privately, lest Pretensions might be made hereafter, that his being there was either to threaten, or some otherwise to interrupt the Course of Justice: A third sort, That the King was not willing to be accessary to the Process till it came to his part, but rather chose to be present, that he might note and understand what Violence, Rigour, or Injustice happened.

When the Lieutenant entered the Hall, the Porter of the Hall (whose Office it is) asked Mr. *Maxwel*, whether the Ax should be carried before him or no? who did answer, That the King had expressly forbidden it: nor was it the Custom of *England* to use that Ceremony, but only when the Party accused was to be put upon his Jury. Those of the Upper House did sit with their Heads covered, those of the Lower House uncovered. The Bishops upon the *Saturday* before did voluntarily decline the giving of their Suffrages in Matters Criminal, and of that Nature, according to the Provision of the Canon Law, and Practice of the Kingdom to this Day; and therefore would not be present: yet withal they gave in a Protestation, that their Absence should not prejudice them of

that or any other Privilege competent to them, as the Lords Spiritual in Parliament, which was accepted.

The Earl of *Arundel*, as Lord High Steward of *England*, set apart by himself, and at the Lieutenant's Entry, commanded the House to proceed. Mr. *Pym* being Speaker of the Committee for his Accusation, gave in the same Articles which were presented at his last being before the Upper House; which being read, his Replies were subjoined and read also, the very same which were presented before in the Upper House. Some give the Reason of this, because the Lower House had not heard those Accusations in publick before; others that the Formality of the Process required no less: However, that Day was spent in that Exercise.

The Queen went from the House about eleven of the Clock, the King and Prince staid till the Meeting was dissolved, which was after Two. The Lieutenant was sent to the *Tower* by his Guard, and appointed to return upon *Tuesday* at nine of the Clock in the Morning. The Croud of People was neither great nor troublesome; all of them saluted him, and he them, with great Humility and Courtesy, both at his Entrance and at his Return: therefore let Fame pretend what it please about the Malice and Discontent of the Multitude, *That if he pass the Stroke of Justice, they will tear him in Pieces*; yet I see there is more in Rumour than in Sight and Appearance; and in this Report, as in all others of this Nature, more is thrust upon the Vulgar (who seem as well fearful of Punishment, as exempt from it, for all their great Number) than they do justly deserve.

March 23. On *Tuesday* in the Morning he came accompanied as before to *Westminster*; and having staid in the *Exchequer-Chamber* till nine of the Clock, the King, Queen, and Prince came, as before upon the first Day.

Then Master *Pym* being called for, aggravated the Charge, which was given the Day before, by a very ample Speech. It is impossible to call to Mind all the Hyperboles, the Flashes, and superlative Expressions that he used; the main Points were, That it was Treason far beyond the Reach of Words, that he the Lieutenant, a native Subject and a Peer of *England*, the prime Governor of *Ireland*, the Commander of his Majesty's Forces, and a Protestant in Religion, should have in such an impious and gross Manner recompensed his Majesty's Favours, abused his Goodness, and drawn all his Dominions into Hazard and Peril of their Religion, Lives, Goods, and Privileges: That one of these Faults alone had been enough, and too much, for the fulfilling of the Exorbitancy and Wickedness of any one Man; and that no Punishment could be thought upon, sufficient to expiate Crimes of such a transcendent Nature.

The Lieutenant, with no less Moderation and Wisdom than the other with Heat and Passion, spake to his own Defence; and that with such a Measure of Eloquence and Livelyhood, that his very Enemies were affected with it, and do marvellously report of it.

He modestly recounted his Services done to the King and Crown of *England*, his Endeavours for Advancement as well of the Honour as Commodity of both Kingdoms in general, but in particular that of *Ireland*; how he had engreatned and advanced the King's Revenues there, restored the Churches Maintenance, suppressed the Outlaws, established Obedience to Royal Authority, and impeded the Tyranny and Usurpation of Greater Ones

Ones over the Commons. And for the effecting of all these Actions, he mentioned himself the most weak and meanest Instrument, with a wonderful Prudence; in a middle Way, betwixt the Affectation of Baseness, or Dejectedness, and Arrogance.

Master Pym, after the Close of his Speech, told him that there were three new Articles adjoined (by an After-search) to his Charge; and desired that he might presently reply to the same.

Whereunto the Lieutenant answered, It was very strange, that after the Close of the Process; and when Matters were come to be scann'd, and examin'd by Proof, that any new Charge should be given in; yet, lest he should seem to decline the Maintenance of his own Innocency, and the just Defence of his Honour, he was most willing to hear them and have them alledged, provided that a convenient Time might be assigned him to make his Replies against them, as he had done to the other given in before.

But Master Pym excepted against this, and told him, that the House did conceive it to be dangerous to grant any farther Prorogation.

Upon this, the Lords of the Upper House (who did not think it fit as yet to voice any Particular in the Audience of the House of Commons) did retire themselves, and after a pretty time of Stay, they returned and declared, that they had found the Lieutenant's Suit to be equitable, in desiring of further Time for answering; yet seeing the Articles themselves, neither for Number nor Weight, seemed to be of that Importance, but that he might furnish out a present Answer, they thought it fitting to grant no delay.

The Lieutenant then (intreating them to pass by and pardon the Weaknesses of his extemporary Answers) desired to hear the Articles read, which were these:

First, *That he had within these two Years withdrawn Forty Thousand Pounds Sterling from the Exchequer in Ireland, and employed it to his own private Uses.*

Secondly, *That in the beginning of his Government, the Garrisons in Ireland had been maintained by the English Treasury.*

Thirdly, *That he had advanced Popish and Infamous Persons, as the Bishop of Waterford and others, to the prime Rooms in the Church of Ireland.*

To the first he answered, That Thirty Thousand Pounds were set apart for the King's late Service, at his own most special and most peremptory Commands; for which he produced the King's own Letter, already approved as his Acquittance at the Exchequer Board in Ireland.

To the second; That at the beginning of that Charge against him, as ever before his time, the Garrisons had been burdensome to the Kingdom of England; but that he had so improved it, and settled the King's Revenue there, that the like is not to be heard in all the times that are by-past: for which (if the best Endeavours of a Subject may justly expect any Reward from his King and Country) he craved leave to think that he rather deserved many Thanks, than the least Punishment.

To the third, He appealed to all the Clergy in Ireland, if ever he had taken upon him any particular meddling in advancing their Churchmen, or whether he had done any thing concerning such Affairs, but upon the special Advice and Desire of the best and wisest of their Number. For his part, when he befriended the Bishop of Waterford,

he conceived of him as a Man of Integrity and Learning; fit for such an Employment; nor was there then the least Suspicion of those monstrous Impieties; wherewith he was afterwards charged; that he had now justly suffered for the same; and that he hoped they would not lay a Necessity upon him to prophesy and divine of the future Conditions and Deportments of Men. For others of the Church, suspected of Popery, he knew none such, but should answer to the Particulars so far as they concerned him, when they should happen to be alledged.

After this the House dissolved for that Night; the King's Majesty and the Prince having staid all the time; and the Lord-Lieutenant was appointed to come thither again on *Wednesday* Morning; at which time they are to proceed to the first Article; to give an Oath to the Witnesses; and to examine all the Proofs whereon the Process was builded.

It will be a very hard Matter for him to expect every Man's Testimony, and to give his Answers; either for full Satisfaction or Diminution of all Objections; which way of Proceeding will spend at least a Fortnight, if not a greater Space of time; yet it is thought the Lower House are impatient of Delays. The Expectations are exceeding various and different about the Event of this great Action: some think it will be impossible to escape the many and great Accusations laid to his Charge; others, and that the greater Number too; are of Opinion that he will be in no Hazard of his Life, and that it will not be possible to bring him into the Compass of Treason; (*quod tam misere cupio ut non credam.*) His adverse Party is so great, and so far interested both in Point of Safety and Honour against him, that *scelere si nequeunt Superos, &c.* nothing will be left unessay'd, that may accelerate his Ruin.

He hath all this time carried himself courageously, to the Admiration (and withal so moderately, that it is to the great Satisfaction) of his very Enemies; so that he seems neither dejected with Fear, nor to affect Boldness with Confidence, but to carry himself with that Constancy and Resolution; which his Innocency and brave Parts do promise.

The *Irish* Commissioners here, have hitherto abstained from giving in any Remonstrance against the Lieutenant, and do still plead to have an immediate Dependance from the King, and not from the Parliament of *England*. There was a Report that the Parliament of *Ireland* had sent a Protestation against the Act made the last Year, for the King's Supply in his Expedition against the *Scots*; as a thing which was violently in part, and in part surreptitiously obtained from them: but I have learned this to be an Untruth. I had almost forgotten one Passage of Mr. Pym, who in the Aggravation of the Lieutenant's Faults, had this Expression, That he was like the Whore in the Proverbs, *He wiped his Mouth; and with a brazen Face said he had done no Evil.*

To this the Noble Lord replied, That he wished his Innocence might not be taken for Impudence; that he hoped shortly to clear himself of all those foul Aspersions which his malicious Enemies had cast upon him; and he was very confident that he should give the Honourable Houses full Satisfaction concerning his Life hitherto; and thought of nothing more hereafter than to retire himself from all publick Employments.

Mr. Pym gave at this a great Shout; and desired the House to take notice what an Injury he had

done to the Honourable House of Commons, in calling them his malicious Enemies.

Whereupon the Lieutenant falling down upon his Knees, humbly besought them that they would not mistake him; and withal gave a large Panegyrick of their most just and moderate Proceedings, protesting that if he himself had been one of the House of Commons, (as he had the Honour once to be) he would not have advised them to have done otherwise against his dearest Friend: but withal told them, that he might justly say he had his own Un-friends, which he hoped in time to make known. Nor did he all this time speak one bitter Word against Mr. Pym, tho' justly incensed; which hath infinitely advanced his Reputation.

I have been a daily Hearer of these Proceedings against this great Personage now upon the Stage, therefore do presume I can give a reasonable Account thereof. The Book of his Charge is extant in Print, so it shall be needful for me only to name the Articles, as they were canvassed; and those designed by the House of Commons to be his Accusers, which were these that follow:

The Names of his Accusers.

Pym, Glyn, Maynard, Whitlock, Lord Digby, St. John, Palmers, Sir Walter Earle, Stroud, Sel-den, Hampden, &c.

One of these began the Speech; the rest, after their Colleague hath done, follow in their Turn: so that he hath all of them to wrestle against, and yet sufficiently able for them all; tho' by his Agitation his Spirits are much exhausted.

Mr. Glyn, after a large Flourish, on *Wednesday*, told the Lords, That the Lord *Strafford* was impeached, not with simple, but accumulative Treason: For tho' in each particular Article, such a monstrous Crime could not be comprehended, yet when all was conceived in the Mass, and under one View, he should be undoubtedly found the most wicked and exorbitant Traytor that ever was arraigned at the Bar. He added, That his Charge was for intending to subvert and change the Fundamental Laws, Liberties, and Privileges of both the Kingdoms, and to introduce an Arbitrary and Tyrannical Form of Government. This, he said, could not appear but by the Fruits, which were either in Expression or Action. The Expressions were four:

First, That before several Witnesses he had said at *York*, *That the King's Little-finger should be heavier to them than the Loins of the Law.*

To this the Lieutenant replied, That having spoken sufficiently before to his Justification in general, he would moreover add these few Words, by their Favours: That it did strike them to the Heart to be attached of such a wicked Crime, by such honourable Persons; yea, that it wounded him deeper, in regard that such Persons who were the Companions of his Youth, and with whom he had spent the best of his Days, should now rise up in Judgment against him: yet he thanked God for it, it was not Guilt, but Grief, that so much troubled him. He added, That it was a Wonder how he had gotten Strength sufficient in such Infirmity of Body, and such Anguish of Mind, to collect his Thoughts, and say any thing at all for himself; but the Almighty God, who knows him to be innocent, had furnished him with some Abilities to give Testimony to the Truth, and to a good Con-

science: He therefore intreated, that if either in Judgment or in Memory he should at any time fail, it might be imputed to his great Weakness. And altho' the Gentlemen his Accusers should seem more ready in their Accusations, than himself in his Defence, yet that might not prejudice his Cause; who, in very unequal Terms, had to do with learned and eloquent Lawyers, bred up a long time and inured to such judiciary Pleadings, and whose Rhetorick, he doubted not, might present many things to their View in a Multiplying-Glass. He told them farther, That for these many Years he had been weary of publick Service, and that now it was his Resolution, after he had vindicated his Honour, to retire himself, and enjoy his much long'd-for Privacy: and yet he could not but tell them so much, that it had been his hearty Wish and Desire, rather voluntarily to have resigned his Places of Honour, like a ripe Fruit fallen from the Tree, than to be violently pulled from thence, as a fruitless and unprofitable withered Branch.

To the Charge of Treason, he said, That under Favour he conceived that altho' all the Articles contained in his Impeachment were verified against him, yet they would not all amount to Treason; neither simple nor accumulative: For (said he) I do not understand by what Interpretation of Law, the Diversion of Justice can be called a Subversion of the same; or the exceeding of a Commission, the Usurpation of a new Power. To the Particular he replied, That his Words were clearly inverted, for that his Expression was. *That the Little-finger of the Law (if not supported by the Regal Power, in granting Pardons for Penalties of the same) was heavier than the King's Loins.* That this was his Expression, he verified:

First, By the Occasion: for he spake the Words a long time since, to some Men who had lain imprisoned at *York*, and were then by the King's Favour set at Liberty; whom he incited to Thankfulness (by this Expression) towards his Majesty.

Secondly, By Witnesses produced by him. In the Examination of their Witnesses he convinced one of them of Untruth, by interrogating him where he was when the Speech was heard, and how far distant from him: when the Man replied, that he was twelve Yards from him; he answered, that it was impossible for him to hear a Man three Yards off, by reason of a Deafness that had held him fourteen Years: which being found true, the Witness was rejected.

Another Witness (*Sir David Foulis*) was brought against him; against whom he excepted, as his known and professed Enemy: 'twas told him, that he himself did not use to admit of Exceptions against Witnesses, and therefore was to expect the same Measure.

He replied, That Master *Pym* might one Day perhaps be attached, for persuading the House of Commons to commit the same Crime that was laid upon him as a Charge of Treason. But for all this, the Witness was received, because in Matter of Treason a Man's Enemy may witness against him *pro Domino nostro Rege*: tho', I suppose, the King's Advice was never asked for the present. This was all that was done for that time.

On *Thursday* he was charged with the second Expression; *That he said Ireland was a conquered Kingdom, and that the King might prescribe them what Law he pleased.*

This they aggravated as a primè Note of his Tyrannical Will and Affection, that would permit no Law to bound the Subject, but what himself, and such as he, might draw up by finistrous Informations, from a gracious and well-meaning Prince: and if this were admitted, the whole Power and Liberty of the Republick would be utterly lost.

To this he replied, That neither was the Expression in those words, nor in that sense spoken or meant by him. The first part of it (said he) cannot be denied: to the second, that he had said only, *That the King was the Law-giver*, which he hoped none could deny without incurring the Crime of Treason; and that *the King's Sentence was a Law in matters not determined by Acts of Parliament*, which all but disloyal Subjects would grant. And that it had ever been his endeavour to have the Liberty of the Subject and the Royal Prerogative follow both in one Channel; if either of them crossed other, we could expect nothing but a Subversion of the Commonwealth, either by Tyranny or Rebellion: That the Prerogative was like the first, the Liberty of the Subject like the second Table; either both or neither can be preserved. That in his Duty he stood obliged first to the King, as God's Anointed; then in the second place to his Country, if it did not cross the Regal Power. And therefore hoped, that what he had spoken was so far from being Treason, that he thought a thousand such Expressions would not make up one Felony.

March 26. On Friday the two other Expressions were followed; That he said, *He would not suffer his Ordinances to be disputed by Lawyers, before inferior Judicatories, and that he would make an Act of State equivalent to an Act of Parliament.*

To the first he said, That he had often said (more than once) that he would not suffer his Ordinance to be contemned; because, in him, his Master's Honour was wounded.

To the second, He thought a proportionable Obedience was due to Acts of State, as well as to Acts of Parliament; otherwise they were made in vain, if that both did not bind in one kind.

The Lord *Cork* (tho' his mortal Enemy) was now examined, and admitted as a Witness; whom in his Deposition he convinced of two shameful Oversight: for *Cork* had declared upon his Oath, that the Lieutenant had caused to be interlined an Ordinance against himself, and had caused some words to be scraped out; which words were notwithstanding still found to be in the Sentence, by an authentick Copy under the hand of Sir *Paul Davison*, Clerk to the Council-Board of *Ireland*.

Then *Cork* alledged, That he had advanced a Groom of his to be a Preacher; who by a Testimony from the University of *Dublin* he verified to have been a Master of Arts ten or twelve years before his Advancement: adding withal, that my Lord of *Cork* was an excellent Scholar, who was able to breed such Grooms.

Upon Saturday, having done with his Expressions, they canvassed the first Article about his Actions:

Against the Lives of the King's Subjects, both in the Case of the Lord *Mountnorris*, and also of another of the King's Subjects, both of whom he had sentenced to death by Martial Law, contrary to all Law, and to the manifest Subversion of the Privileges of Subjects, *Magna Charta*, and the Petition of Right.

To the Lord *Mountnorris's* Case, he replied,
1. That tho' that Sentence had been unjustly given and rigorously prosecuted against him, yet the greatest Crime that he could be charged withal; would but amount to Manslaughter, or Felony at the most.

2. That he hoped (tho' this were true) to obtain a Pardon from his gracious Master the King's Majesty, as well as *Conway* and Sir *Jacob Astley* had lately done, for exercising Martial Law in the Northern Army.

Then he replied to all the Parts of the Charge; which were four:

1. That he had exercised Martial Law in time of Peace.

To this he answered,

(1.) That all Armies have been, and must be; governed ever by Martial Law.

(2.) That there is a standing Army in *Ireland*; and therefore the Case is all one in time of Peace or War; and that the Army might be undone, if they should not use Martial Law, but were to expect Remedy for the settling of a Mutiny, or Assurance of Obedience, from the Common Law.

(3.) That it had ever been the Practice of the Deputies, particularly of *Wilmot*, *Falkland*, *Chichester*; yea *Cork* himself; and therefore was no new thing brought in by him. This he proved, both by the Production of the military Ordinances, and by divers Witnesses who knew Sentences given in that kind by them.

(4.) That he had a particular Warrant in his Commission for this Power.

(5.) That in the Lord *Mountnorris's* Case, he was commanded to exercise the same; by the King's particular Letter: both which he caused to be read.

The second Charge was, That he was both Party and Judge in the Lord *Mountnorris's* Cause.

To this he replied, That he had sitten in Judgment, because he was one *sine quo non*, the Judgment could not proceed without him: but that he was not Judge, but Party, appeared,

1. Because he sat uncovered all the time.

2. Because he refused to give his own Opinion.

3. Because he did not give his Suffrage one way or other.

4. Because he removed his Brother Sir *George* from having a hand in the Process, in regard of Interest of Blood.

The third Charge was, That he proceeded summarily in the matter of the Lord *Mountnorris*.

He replied, First, That he was not Judge in it, and that the Council of War was to be answerable in the Justification of their own Proceedings.

Secondly, That after a long Reasoning he had heard them say, that no delay could safely be granted in Martial Courts.

The fourth Charge was, That he had not heard the Exceptions made by *Mountnorris* against his Witnesses.

To this he answered, as before, That he was not Judge in the Case, and that he remembers no Exceptions made against any Witnesses. To which he added, That as he had been regulated in his Proceedings, so he had been moderate in the Execution of that Sentence: for tho' the Lord *Mountnorris* justly deserved to die, yet he had obtained him the King's Pardon, for the saving of his Life; and protested, that he intended nothing by that Sentence, but in some measure to repair his own

Honour, and to give *Mountnorris* fair reproof, who was known to be of an exorbitant and licentious Tongue and Spirit. Adding, that if the House of Commons would go on the same way with him, and assure him that the Issue of his Charge should be nothing else but to admonish him for the time to come, he would thank them heartily for it, and study Amendment in all pretended Oversight. And whereas *Mountnorris* complained that he had jeeringly told him, when the Sentence was passed and pronounced against him, That ere he lost his Head, himself would lose his Hand; he answered, That he had been thought to be very insolent and haughty, yet he was never so impertinent to use this Expression: If any fault were, it was for undervaluing himself, in saying, That ere a Hair of *Mountnorris's* should perish, he would lose his Hand. And truly (said he) if *Mountnorris* would say so to me now, even in the worst sense that can be conceived, That ere I died he would lose his Hand, I would take it very kindly from him.

For the other Man, he avouched that he himself had voiced to hang him, both because he was an errant Thief, and also had fled from his Colours, which by the Common Law (and to this effect he cited a Statute 20 *Hen. 6.* and 7 *Hen. 7.*) is Felony. He concluded, That seeing he was not necessary to the Sentence against *Mountnorris*, had not sat there as Judge, had a power to keep Martial Courts by his Commission, had not exercised the same till a new Command came from his Majesty, had done no more than ever was practised in *Ireland* before his time, and had at last obtained *Mountnorris's* Pardon; he hoped there was nothing accusable in him, but his too remiss and too moderate Proceedings.

Master *Glyn* bitterly replied, That he knew the time when the Earl of *Strafford* was no less active and stirring to enlarge the Liberty of the Subject, and advance the Petition of Right, than now he is for extending his own Arbitrary and Tyrannical Government.

To this he replied, without the least Semblance of Passion, That if at any time he had done the least Service to the House of Commons, he thought his whole Life well spent; nor could they ever so graciously reward him, as to give Commission to that Gentleman to express so much before that Honourable Assembly: But withal, if ever any such thing was done by him, he intreated it might now be remembered, and might now serve to overbalance some slight and mean Oversight committed by him; which he hoped should never make him guilty of Treason, unless it were Treason for a Man to have no more Wit and Prudence than God and Nature had bestowed upon him. And so much for *Saturday*.

March 29. Upon *Monday* he was charged with the sixth Article; That he had used a Tyrannical Government, not only over the Lives (as appeared by the last) but also over the Lands and Goods of the King's Subjects, as appeared by this Article; wherein he was charged to have dispossessed the Lord *Mountnorris* of a Tenure of Lands, by a Summary Process before himself, contrary to all Law: and therefore had failed,

1. Against the Act 7 *Hen. 6.* which provides all Matters to be determined by the ordinary Judges.

2. Against the Cautions sent to *Ireland* by King *Tames*, expressly forbidding such Power hereafter to be exercised.

3. Against the King's late Proclamation.

4. Against the Practice of all Deputies before that time.

Withal they added, That it was a Tyranny that could not be expressed, to exercise this Power over the Persons of the Peers of the Land, and their Goods.

To this he replied, That for his part, in matter of Justice (under favour he spake it) he thought there was no distinction to be made betwixt a Peer of the Land and one of the Commons, except they did think that either Fear or Faction should do something, which had no Place in him.

To the Particulars:

1. That the Act of *Hen. 6.* answered itself sufficiently, both because it excepted the Court of Requests (and that his Proceedings were nothing else in *Ireland*) and also makes an express Reservation of the King's Prerogative; which he said was his Strength, because he derived his Commission from the King, and that the Act was the most express Warrant in the World for him.

2. That he had not failed against the Cautions given by King *James*.

(1.) Because they were not charged upon him.

(2.) Because they were never observed, nor could be by the Deputies to whom they were given; which he proved both by Witnesses and Writings.

(3.) Because the Caution made rather for him than against him, in that it contained the Word *hereafter*, which manifestly implied that the Power had been sometimes before exercised in *Ireland*, and not only by himself; and therefore thanked them for that Testimony and Hint.

(4.) That tho' the Cautions had been given to him, yet he had received an express Command from the King his Master to put that Power in use: causing the King's Letter, for that purpose, to be read; and professing withal, That he was tender to exercise that Power, till the King (induced by the humble Remonstrance of the meaner sort of People) had most peremptorily, and upon most just Reasons, commanded him.

3. That he could not obey the King's Proclamation five Years before it came out; and that he wished from his heart, that they would but respect the King's Commands and Commissions with that Tenderness of Affection and Obedience, as he did his Proclamations.

4. He proved it to be the constant Practice of all Deputies that went before him.

It was objected, That other Deputies had indeed upon Suits of Equity determined themselves, as to Matters of Debt, but never of Land.

He replied, First, That the same Authority reacheth as well to the one as to the other. Secondly, That neither he nor they had ever given Sentence, or determined any thing concerning Matters of Inheritance; but only concerning violent Intrusion, which fell directly within a Suit of Equity. To which he added,

First, the Equity of that Court; that it proceeds upon the same Grounds and Evidences as that of the Common-Pleas, and that he had the Assistance of two of the learned Judges in deciding the Controversy.

Secondly,

Secondly, The Profit of that Court, which dispatcheth the Poor in a Day or two; whereas the Common Law would keep them so many Years; which they are not able to sustain.

Thirdly, The Necessity of that Court in that Kingdom, which ever hath been governed by that way, and therefore impossible to debar the Natives from it, without great inconvenience; for it would utterly undo them; and none is prejudiced by it but the Lawyers. And therefore seeing that he had done nothing but what was customary, necessary, and equitable, being commanded to it, and the Sentence just; he hoped rather for Thanks from the State, than a Charge for his ill Deportment. Withal, he shewed with what Extortion and Violence the Lord *Mountnorris* had taken seizure of that piece of Land, and made the playing of his Game to be very foul. And at last he added, That he had done no more in *Ireland*, than the Court of Request in *England* usually doth, and that the Chancery Court in *Ireland* doth the same daily; and the last Chancellor was never charged (said he) for such Proceedings, tho' this his Power and Authority was less than mine: but the difference of the Person, and his Authority (it seemeth) differeth the matter. And this was the Business on *Monday*.

On *Tuesday* they passed by the 7th Article, and the two first Parts of the 8th, and insisted on that Part about the Lady *Hibbot's* Land; That he had violently thrust her from her Possession by this summary way of Justice, and afterwards purchased the Land to his own use, by borrowing the Name of Sir *Robert Meredith*.

In this Probation, the Testimony of the Gentlewoman's own Son was used, of the Lord *Cork*, and the Lord *Mountnorris*, all his Back-friends, or professed Enemies: And yet they prove very little, but what they took upon Hear-says. Their prime Allegation was,

First, That tho' the major part of the Council-Board had voted for the Lady, yet the Lord-Lieutenant had given Decrees against her.

Secondly, That all was done to his own behoof.

To the First, He produced the Sentence under the Hand of the Clerk of the Council-Board, subscribed by the major part.

To the Second, He attested that he had no Under-dealing with *Meredith*; for the Lady had got her own Lands back from the said Sir *Robert Meredith*. He also declared, at length, with what Fraud and Deceit the Lady had come to her Lands; and upon what Reasons they were restored.

After this Article they fell upon the 9th, about the giving of Commission to the Bishop of *Downe* and *Connor*, for apprehending all such Persons, and presenting them before the Council-Board, as contemned the Ecclesiastical Ordinances. This was aggravated as a Point mainly against the Liberty of the Subject. To this he replied:

First, He produced the Primate of *Ireland's* Testimony under his Hand, (he being himself sick) that the same Course had been used in *Ireland* before; and that Bishop *Mountgomery*, his Predecessor in the Bishoprick of *Meath*, had had the same.

Secondly, He shewed the Equity that such Assistance should be given to Churchmen; who otherwise, because of Papists and Schismatics, either to God or the King, would have no Respect or Obedience given them in that Kingdom.

Thirdly, He proved by two Witnesses that such Warrants were in use before his time.

Fourthly, He said, he had never granted any but that one; and had presently, within some few Months, called the same in again. What (said he) was the Bishop of *Downe's* Carriage in it, he had no reason to answer for: But he presumed the Bishop could give a satisfactory Answer for himself; when he should be called in question. And so he concluded; that a Matter so just, so necessary, so customary and practical before, he hoped should not be charged upon him as an Introduction of a new and tyrannical Form of Government; and therefore submitted himself to the Mercy of God, and the Equity of his Peers in his Trial. And this was the Work on *Tuesday*.

The Ability of this brave Gentleman ravished his Hearers with Admiration, tho' he be infinitely spent both in Body and Mind by the continued and almost uninterrupted Agitation.

After the 9th Article was passed against the Commission issued in favour of the Bishop of *Downe* and *Connor*; upon *Wednesday* Mr. *Glyn* proceeded to the 10th Article. The Charge was, That the Earl of *Strafford* having established an arbitrary and tyrannical Government over the Lives, Lands; and Liberties of the King's Subjects, his next Desire was to make Intrusion upon the Crown itself; that by applying to his own use the publick Revenues, he might be the more enabled to accomplish his disloyal and traitorous Intentions. To which end; having by a new Book of Rates enhanced the Customs, he had gotten by Advantage of his Lease above Twenty-six thousand Pound yearly. This (they added) was a Crime of a higher nature than those contained in the preceding Articles, because in those there was some Colour or Pretext of Justice; here none; those in particulars, this in general; those against the Subject only, this against the King himself.

For the Proof of the Charge, they produced the Lease of the Duke of *Buckingham*.

Which was read and compared with that Lease to the Dutchess of *Buckingham*, (which the Lieutenant hath now by Assignment) and some Differences shewn, arising to the Sum of Two thousand Pounds in the Duke's Lease; only the Moiety of concealed and forfeited Goods were due to him, but the whole Goods to the Dutchess in her Lease. Again, the King's Ships of Prizes did not pay Custom in the Duke's Lease; in the Dutchess's they did. Again, the Impost of the Wines (then belonging to the Earl of *Carlisle*) was not in the Duke's Lease; in the Dutchess's it was. Lastly, Whereas the Earl of *Strafford* paid but Fourteen thousand Pounds *per Annum* for the Custom; it was worth to him, as was apparent by the Books of the *Exchequer*, Forty thousand Pounds.

Witnesses were examined.

First, Sir *James Hey*, who deposed, That the Earl of *Carlisle* had an Advantage of One thousand six hundred Pounds *per Ann.* by his Lease of Wines.

Secondly, The Lord *Ranelagh*, who deposed; That by the Inspection of the Books of Accompts, he had found the Customs to be *Anno 1636* Thirty-six thousand Pounds; *Anno 1637* Thirty-nine thousand Pounds; *Anno 1638* Fifty-four thousand Pounds; *Anno 1639* Fifty-nine thousand Pounds.

With the Proof they concluded the Charge, That notwithstanding the Lord *Strafford* pretended a great Measure of Zeal and Honesty in his Majesty's Service

vice, yet it is evident he had abused the Trust put upon him; and by withdrawing so great Sums of Money from the Crown, had weaken'd the King, prejudiced the Subjects of the Protection they were to expect from him, and had been the Cause that the extraordinary way of Impost and Monopolies had been undertaken for supplying of the Royal Necessity. And that this Act therefore ought to be enough to make the Charge and Impeachment of High-Treason laid against him.

The Lieutenant's Reply was, That he conceived he had given full Satisfaction to all hitherto brought against him about that pretended arbitrary Government; nor would he spend Time in vain Repetitions: For the present Article, tho' in all its Parts it were granted to be true, yet he could not perceive by what Interpretation of Law it could imply the least Act of Treason; and when it should be directly charged upon him as a point of Misdemeanour, Oppression, or Felony, he made no doubt but he should be very able to clear himself abundantly in that Point also; yet, lest any Prejudice might stick to his Honour by these bold Assertions, he was content to step so far out of the way, as to give answer:

First, That it concerned him nothing what Particulars in the Lease had pass'd betwixt the King and the Dutchess of *Buckingham*, or whether she had obtained a more easy Condition than the Duke her Husband, especially seeing that same was granted some Years before his coming to that Government: yet thus much he could say, That the Dutchess had paid Thirty thousand Pound Fine; and therefore no marvel her yearly Rent was the less.

Secondly, For the Book of Rates (wherein the chief Matter of Oppression and Grievance seemed to rest, the same was there established by the Deputy *Falkland*, Anno 1628, three Years before his going into *Ireland*; and therefore it was exceeding strange in his Apprehension, how that could rise up in Judgment against him.

Thirdly, That he had his Interests in the Customs by Assignment of a Lease from the Dutchess, which was given her before his Government: Nor did he ever hear it alledged as a Crime of Treason, for a Man to make a good Bargain for himself.

Fourthly, That not of his own Accord, but at the King's special Command, he had undergone that Charge, in hopes, that upon the Enquiry into the Worth thereof, the Customs might be improved for the Benefit of the Crown, and the true Value thereof discovered. This he proved by the Lord *Cottington* and Sir *Arthur Ingram*.

Fifthly, That when a new Book of Rates was recommended to him by the Council-Board of *England*, in the time of his Lease, he so far preferred a Fear he had that the Trade of *Ireland* might thereby be discouraged before his own Commodity, as he presumed, in all humility, to refuse the said Book of Rates, and tendered his Reasons thereof to the Kingdom and Council-Board of *England*.

Sixthly, That he never understood that the Customs could arise to those great Sums alledged: But tho' they should, yet his Advantage was but small. For first dividing the Fourteen thousand Pounds he paid to the King; then five parts of eight, which was yearly given in upon Oath (and that procured first by himself) at the *Exchequer*-Board; the other three parts divided amongst four of them which were equal Sharers in the Lease, would not amount

to any great Sum of Money. And therefore, except it were Treason for him to have improved the King's Revenue, encouraged the Trade, and refused the new Book of Rates, he could, in his own weak Judgment, discern none there; nor could he think it a Crime for him to take an Assignment of a Lease granted before his time, and to insist on the Book of Rates used before his coming over. And therefore was confident the Lord would rather take his Accusation as an exercise of Rhetorick in the Gentlemen his Adversaries, than as a Thing spoken in good earnest by them.

The same Day the 11th Article, concerning Tobacco, was charged on him by the same Man, Mr. *Glyn*, after this manner; That for the farther Advancement of his tyrannical and avaritious Designs, he had of himself established a Monopoly for the Restraint of Tobacco in that Kingdom: where they offered five Particulars to the Proof;

1st, That he had restrained the Importation of Tobacco.

2dly, That in the mean time he had brought in a great Quantity himself, and sold the same at exorbitant Prices.

3dly, That of Tobacco already imported, he had forbidden any to be sold but what was first sealed by his Officers.

4thly, That upon a pretended Disobedience he had punished a great Number of People by Seizures, Imprisonments, Fining, Whipping, Pillory, and such like cruel and inhuman Usages.

5thly, That by these Means he had gained One hundred thousand Pounds yearly.

For Proof hereof.

First, The Proclamation for restraining Tobacco was read.

Secondly, The Proclamation about the sealing of the same.

Thirdly, Some Witnesses, who declared that Ships had been restrained from landing Tobacco.

Fourthly, Others, who had known some Tobacco seized on as forfeited.

Fifthly, The Remonstrance of the House of Commons in *Ireland*, declaring that the Earl had sold 500 Tun of Tobacco, which, sold at 2 s. 6 d. per Pound, amounts to 100000 l.

They concluded the Charge, That he had sucked up the Blood, and eaten up the King's liege People; and had, by this one Point of Oppression, raised greater Sums to himself, than all the King's Revenue in that Kingdom extended unto. And therefore was liable to the Crime of Treason, for troubling the Peace, and bereaving the People of their Goods, who were intrusted to his Care and Government.

The Lieutenant's Reply was,

That his most secret Thoughts were conscious of nothing but a sincere Intention and Endeavour to promote and advance the Welfare of that Kingdom: And withal, he conceived (by their leaves) that nothing in that Charge could have the least reference to Treason; yet, as he said before, for removing of all Prejudice, he was contented to answer:

First, That long before his coming to *Ireland* the same Restraint had been of Tobacco, and the same Impost of Eighteen-pence per Pound enjoined by King *James*.

Secondly, That at that time the Tradesmen for this Commodity paid but Twenty Pounds a Year to the Crown for the Impost, but now 400 l.

Thirdly,

Thirdly, That the Parliament in *Ireland*, 1628, had petitioned to have this Impost settled by an Act of State for ever afterwards, as a part of the Revenue of the Crown.

Fourthly, that he had express Command from the King for issuing those Proclamations; and therefore could not imagine more danger in them, than in others for Monopolies in *England*, in the worst Sense.

Fifthly, that the Proclamations were not put forth by himself alone, but by the whole Council-Board of *Ireland*.

Sixthly, That for the Contract of Tobacco, he was so tender of it, that it was sent over hither, and seen and approved of by the Council-Board of *England* before it was condescended to in *Ireland*.

For the Proclamations, he told them it was his own Opinion, (and if he failed in it, he humbly craved Pardon, and hoped that it should not be Treason to have no more Judgment than God had bestowed on him,) that the King was endued by God with a Power to make temporary Laws, and cause the same to be promulgated for the Good of his People, upon sudden emergent Occasions; to which Laws Obedience is due, till they be abrogated by ensuing Parliaments. That he restrained no Man from importing Tobacco, who was willing to pay the appointed Impost. That for his part, he had never traffick'd in all his time in that kind, nor had any part with the Contractors: And if any Tobacco was seized on, it was upon contempt of the Proclamations. And if any Person were censured to the Pillory or Whipping, it was for known Perjury, the ordinary and usual Punishment in such a case. Concerning the Tobacco imported, (he said) no Consideration was taken of the Prices given for the Tobacco beyond Seas, of the King's Revenue of four thousand Pound, of the Merchants Pains and Danger in bringing the same home. For his part, if any Advantage were made, surely it was not his; nor could he annual every Contract or Lease made by the King. And therefore, seeing his Interest was none, he had done nothing but at the King's Directions, and at the Advice of the Council-Board; seeing the same Impost was in King *James's* Time, and petitioned for by themselves in *Ireland*; he hoped his Carriage in the Business should be so far from a Crime of Treason, that it should rather be thought no Crime at all. So much for *Wednesday*.

April 1. Upon *Thursday* he was charged with the 12th Article, concerning Flax, by Master *Maynard*, on this manner; That the Flax, being the native and principal Commodity of that Kingdom, was by him (the Lieutenant) restrained, and the Subjects put to that which was unknown, yea, impossible for the *Irish* to make the same into Yarn. Here they complain'd of three Things:

First, That by Proclamation he had restrained selling of Flax.

Secondly, That he had ordered the making of Yarn of such and such Lengths and Numbers of Threads.

Thirdly, That the native *Irish* being unacquainted with such Customs, upon pretended Disobedience, had all their Flax and Yarn seized on to his use; whereby a great many Families were reduced to such Penury, that they died by great Numbers in the Fields for want of Food.

For proof hereof, they brought;

First, The Proclamation about the Restraint.

Secondly, The Warrant for seizing the forfeited Goods.

Thirdly, The Execution of the Warrant proved by Sir *John Clotworthy*, and Lord *Ranelagh*.

Fourthly, The Remonstrance from the House of Commons in *Ireland*, That upon the rigorous Course and Execution of this Warrant many Persons died for want of Food. They concluded the Charge therefore, Tho' the Article did not individually imply Treason, yet it did make very much for the Accumulation of Treason.

The Lieutenant's Reply was,

That, as before, he would, and must ever repeat it, that nothing was in the Charge that contained Treason. To the Matter itself he answered,

First, That the Proclamations issued forth were grounded not only upon Convenience, but upon Necessity; because that, except some way had been taken for ordering of Yarn, the Merchants had absolutely given over the Linen-Trade in that Kingdom.

Secondly, That the Council-Board was as liable to the Charge as himself, amongst whom were at that time the Primate of *Ireland*, the Archbishop of *Dublin*, Chancellor *Loftus*, and the Lord *Mountnorris*, all Subscribers to the Proclamation, Men to them of known Integrity and Judgment.

Thirdly, That nothing was more common than for the Council-Board of *Ireland* to give Orders for reducing the Natives to the *English* Customs, and to fine them for drawing their Horses by the Tails, during their Corn, and such like; and he conceived that to be a thing of the same nature.

Fourthly, That the special Thing inducing him to it was, because he perceived the Trade of Wool to increase much in that Kingdom. He dissuaded by all means the making of Woollen-Cloth, because of the infinite Detriment that might happen thereby to the Kingdom of *England*; and therefore thought this the best way to encourage the wear of Linen-Cloth. For the Warrant to seize upon the Goods he affirmed the same to be necessary, because there should be no Contempt to Proclamations: But that any part thereof did accrue to him, he flatly denied. If any Rigour was used in the Execution, he said, not he, but his Officers were to answer for it; for this might happen in the most just and necessary Commands; nor was there ever any Complaint presented to him of any such matter. For his part, he had lost three thousand Pound in the Manufacture, established by himself for the Encouragement of others.

To that, that Persons died by that means, he replied, That it was more then ever he heard, or could think possible; yea, that he was cleared by the Allegation itself, which saith, that the same happened since his coming from *Ireland*.

To the Remonstrance of *Ireland*, he conceived, That a Charge was but a slender Proof of a Charge; and that especially upon Interrogatories, not upon Oath, seeing that Privilege was not due to the House of Commons neither here nor there; that he might say it in Truth and Modesty, he deserved much better of that People, and might take up that in the Gospel, *For which of all my good Deeds, &c.* yet he hoped to be better understood shortly both here and there. And for his part tho' his Pursuit had been very hot, yet God was his Witness he never intended to take the least Impression of Revenge for those Discontents and Affronts which had been eagerly put upon him; or to carry anything hence with him from that Bar, where so many foul Aspersions had been unjustly thrown upon him, but only *gratuitas cicatrices*.

The same Day a fresh Man (Master Palmer) enter'd the Lists against him; who having pass'd by, for want of Proof, the thirteenth, fourteenth, and part of the fifteenth Articles, insisted only upon the second Part, for giving Warrant to Serjeant Savil for seizing and laying Soldiers upon the Subjects. He charged thus; That the Lord Strafford, having by a tyrannical Power inverted the ordinary Course of Justice, and giving immediate Sentence upon the Lands and Goods of the King's Subjects, under pretence of Disobedience, had used a military Way for redressing of the Contempt, and laid Soldiers upon the Lands and Goods of the King's Subjects, to their utter Ruin. This Article (he said) of itself did contain an individual Treason; so that if there were no more than this, it were more than sufficient to convince him of his Impeachment.

Here he offered two Things;

First, The Proof of the Point.

Secondly, By what Statute this Act of Tyranny directly, and by itself, implied Treason. For the first, Serjeant Savil was called, who produced the Copy of the Warrant upon which he had settled the Soldiers.

At this the Lieutenant rose, and humbly intreated the Lords no Evidence should be received against him upon an Article of such Importance, but what might be thought authentick; and such a one, under favour, he conceived that Copy not to be:

First, Because no Transcript, but the Original only, can make Faith before the King's-Bench in a Matter of Debt; therefore far be it from them to receive a most slender Testimony in Matter of Life and Death, before the supreme Judicatory of the Kingdom.

Secondly, If Copies be at any time received, they are such as are given in upon Oath, to have been compared with the Originals, which are upon Record: such an one was not that Copy.

It was replied by Master Glyn, (for all of them spake as occasion served) That the House had but the Day before admitted Copies as Evidences, much more should they do this, when it was produced by the Officer himself, who best knew it, having executed the same.

To this the Lieutenant answered, That all other Copies ought to be received upon Oath, to have been compared with the Original, as right Reason requireth; but that this was not so: and for the Officer himself producing it, that was the best Argument he could use, why it should not be admitted. For (said he) Master Savil may be charged with Treason, for censing Men of War upon the King's Subjects; he hath nothing for his Defence, but a pretended Warrant from me. Now what he swears to my Prejudice, is to his own Advantage; nor can a Man, by any Equity in the World, be admitted to testify against another, *in suam justificationem*.

The Point seemed exceeding weighty, and in Effect was the Ground-work of the whole Article; which not proved, nothing could evince him to have been necessary to the Consequence. The Upper House therefore adjourned themselves, and went up to their own Court; and after a very hot Contestation between the Factions, and above an Hour's Stay, they returned, and declared that the Lords, after mature Deliberation, had resolved that the Copy should not be admitted; and desired them to proceed to other Proofs: which after a little Pause they did.

First, the Lord Ranelagh affirms, that he heard of a such a Warrant, and knew sometimes three, sometimes five Soldiers billeted by it.

Secondly, Master Clare declares the very same.

Thirdly, Another deposeth he hath seen such a Warrant under the Deputy's Hand and Seal. And so much for the Proof.

For the Statute, they alledged one of Edward 3. 6. That whosoever should carry about with them English Enemies, Irish Rebels, or Hooded-Men, and cefs them upon the Subject, should be punished as a Traytor. Another of Hen. 6. 7. That whosoever should cefs Men of War in his Majesty's Dominions, should be thought to make War against the King, and punished as a Traytor. They concluded, It was evident the Lord Strafford had incurred the Penalty and Breach of both the Statutes, and therefore desired the Lords should give out Judgment against him as a Traytor.

The Lord Lieutenant's Reply was, That in all the Course of his Life he had intended nothing more than the Preservation of their Lives, Goods, and Welfare of the King's Subjects; and that he dared profess, that under no Deputy, more than under himself, had there been a more free and uninterrupted Course of Justice.

To the Charge he answered, First, That the Customs of Ireland differed exceedingly from the Customs of England, as was clear by Cook's Book; and therefore thought censing of Men might seem strange here, yet not so there.

Secondly, That even in England he had known Soldiers pressed upon Men by the Presidents of York and Wales, in case of known and open Contempts; and that both in Point of Outlawry and Rebellion, and also even for Sums of Debt between Party and Party, there is nothing more ordinary than these Censings to this Day in Scotland, whereby the chief House of the Owner is seized upon.

Thirdly, That to this Day there hath been nothing more ordinary in Ireland, than for the Governors to appoint Soldiers to put all manner of Sentences in Execution; which he proved plainly to have been done frequently, and familiarly exercised in Grandison's, Falkland's, Chichester's, Wilmot's, Cork's, Evers's, and all preceding Deputies times; and had even for Outlawries, for the King's Debts in the Exchequer, of Collection, of Contribution-Money, (and which comes home to the Point) for petit Sums of Money between Party and Party: so that he marvelled, *qua fronte*, or with what Boldness it could be called an Arbitrary Government lately brought in by him.

To this the Lord Dillon, Sir Adam Loftus, and Sir Arthur Teringham deposed; the last of whom told, that in Falkland's time he knew twenty Soldiers censed upon a Man for refusing to pay sixteen Shillings Sterling.

Fourthly, That in his Instructions for executing his Commissions, he hath express Warrant for the same, as were in the Instructions to the Lord Falkland before him, both of which were produced and read.

Fifthly, That although these Precedents were not, yet it were not possible to govern the Kingdom of Ireland otherwise, which had been from all times accustomed to such summary Proceedings.

Sixthly, That no Testimony brought against him can prove that ever he gave warrant to that Effect; and for the Deeds of the Serjeant at Arms, he did not conceive himself to be answerable for it.

As for the Acts of Parliament, he had reserved them to the Dispute of his Lawyers; but was content to say thus much for the present:

First, That it is a Ground in the Civil Law, that where the King is not mentioned, there he cannot be included: But (with all Deference to his sacred Person be it spoken) he conceived himself to be in his Master the King's Place (for so his Commission did run) in that Kingdom of *Ireland*.

Secondly, The Words of the Statute are not applicable to him; for God knows, he never went about in Person to lay Soldiers upon any of the King's Subjects.

Thirdly, That the King's own Soldiers, requiring in a customary Way Obedience to his Orders, could in no Construction be called *Irish Rebels*, *English Enemies*, or Hooded-Men.

Fourthly, That the Use and Custom of the Law was the best Interpreter thereof; and for that he had already spoken enough.

Fifthly, That it favoured more of Prejudice than Equity, to start out such an old Statute against him, and none others, though culpable of the same Fact, to the Overthrow and Ruin of him and his Posterity.

Sixthly, That (under Favour he conceived) for any *Irish* Custom, or upon any *Irish* Statute, he was to be judged by the Peers of *Ireland*.

Seventhly, That Statute, of what Force soever, was repealed;

1st, By the tenth of *Henry VII.* where it is expressly declared, nothing shall be reputed Treason hereafter, but what is so declared by the present Statute: now not a Word there of any such Treason.

2dly, By the eleventh of *Queen Elizabeth*, where expressly Power is given to the Deputy of *Ireland* to cels and lay Soldiers, although the same be reputed Treason in any other.

To the Statute of *Henry VI.* he replied, That a slender Answer might serve: He hoped that no Man would think him so inconsiderate, to war against the King of *Britain* and *Ireland*, by the celsing of five Soldiers; that he had been charged by many for taking Arms for the King, but to that time never for taking Arms against him; and that he heartily wished, that no Man in all his Majesty's Dominions had more Practices with Rebels and rebellious Designs against the King than himself. So much for *Thursday*.

At the Close he desired the Intermision of a Day, that he might recollect his Spirits and Strength against the next Quarrel; and with some Difficulty obtained Rest till *Saturday*.

April 3. Upon *Saturday* Mr. *Palmer* proceeded to the sixteenth Article, and charged thus; That the Lord *Strafford* having established a Tyrannical and Independent Authority, by giving summary Decrees and Sentences, had deprived the Subject of all just Remedy; for in that Kingdom there was none supreme to himself, to whom they might appeal: and lest their just Grievances might be made known to his Majesty, he had obtained a Restraint, that no Complaint should be made of Injustice or Oppression done there, till the first Address had been made to himself, and that no Person should come out of that Kingdom but upon Licence obtained from himself.

For Proof of this, First, The Instructions were read, whereby that Restraint was permitted.

Secondly, The Proclamation, That all Noblemen, Gentlemen, Undertakers, Officers, or other Subjects that should resort into that Kingdom, should not come from thence without a Licence from him.

Thirdly, That he had restrained the Earl of *Desmond*, because of a Suit in Law depending between the Earl and himself, till Publication of the same was passed.

Fourthly, That the Lord *Roch* being informed against before the Star-Chamber, he would not licence him to come into this Kingdom, till the Sentence was passed against him.

Fifthly, That one *Marchatee* having pretended a Mind to travel, was denied a Licence.

Sixthly, That the whole Committee for the Parliament was restrained this last Year by Deputy *Wansford*, which they said might be interpreted to be his Fact, both because they had such Intelligence the one from the other, as also by the Proclamation issued by him before.

Seventhly, That one *Parry*, Servant to Chancellor *Loftus*, was fined Five Hundred Pounds at his Return, for departing *Ireland* without Licence.

Eighthly, That the *Irish* Remonstrance complained of this, as the greatest Innovation and Thraldom put upon them since the time of the Conquest.

They concluded the Charge, That by this Means having taken off that Intelligence which should be between the King and his People, and having deprived them of that Remedy which in Reason they might expect from so just and so gracious a Prince, he had taken upon him a Royal and Independent Power, and had faulted highly both against King and State.

The Lieutenant's Reply was, That he hoped to make it clear, that he had done nothing in that Particular, but what was usual, necessary, and just; and that he should be very well able (by the Grace of God) not only of that, but of all other his publick Actions, to give a reasonable Account, though not free from much Weakness, yet certainly from all Malice and Treason.

To the Particulars:

First, For Instructions laid upon him, he was not so much chargeable as those of the Council of *England*, whereof there was a great many present who could witness their Commands; but lest any thing should seem unjustly enjoined by them, or embraced by him, he desired that the Reasons of their Instructions might be read: which were, *That it were Injustice to complain of Injuries, of Oppression done in that Kingdom, till first the Deputy's Judgment was informed, and trial made of his Integrity; That it would much discourage the Ministers of State there, and expend the Monies of that Kingdom, if upon every trifling Business Complaints should be admitted in England; and that if Justice were there denied by the Deputy, it should be lawful for any Man to come over.*

Secondly, For the Proclamation, that the same was builded upon the Statute of that Kingdom, the 25th *Hen. 6.* which contained the same Restraint *verbatim*.

Thirdly, That *Anno 1628*, the Agents for the *Irish* Nation had petitioned for the same from the King.

Fourthly, That the Deputy *Falkland* had set forth the same Proclamation.

Fifthly, That he had the King's express Warrant for it, *Annos 1624*, which was read.

Sixthly, That he had received the Warrant in *January*, yet the Proclamation issued not out till *September* after.

Seventhly, That the whole Council-Board of *Ireland* had not only condescended, but also pressed him to it.

Eighthly, The Necessity of the Kingdom required the same; for if the Gentlemen had the Ports open to go to *Spain*, and their Scholars to *Doway*, *Klein*, or *St. Omers*, it were likely that at their return they would put fire both in Church and State, and produce very sad Events, by practising to discomper both.

Ninthly, He conceived that the King, as great Master of the Family, might restrain whom he pleased from departing his Kingdom without his privy: and here it was not lawful for any to go from *England* without Licence; how much more necessary was this from *Ireland*.

To the Proofs he answered, First, For *Diamond*, he granted he was restrained indeed, but not for any Suit of Law betwixt them, but because at that time he stood charged with Treason before the Council in *Ireland*, for practising against the Life of one *Sir Valentine Cott*.

Secondly, For the Lord *Kilb*, he had oftentimes marvelled with what reason the Man at that time could seek a Licence, seeing he was a Prisoner for Debt in the Cattle of *Dublin*; and if he had granted a Licence to him then, it had been a far more just Charge of Treason than now.

Thirdly, For *Marchatce*, he was afraid of his going to *Spain*; and if he had intended to go for *England*, and complain of himself, he would not have refused him Liberty, as he never did to any.

Fourthly, That the Committee of *Iris* was not restrained by him, and therefore did not concern him at all.

Fifthly, That for *Perry*, he was fined indeed, but that it is expressly said in his Sentence, that it was not for coming over without Licence, as is suggested: but for sundry Contempts against the Council-Board in *Ireland*.

Sixthly, That he had replied in the last Article, a Remonstrance was no Proof at all. He concluded, that he hoped the least Suspicion of Treason could not accrue to him from the Article: For Oppression or Misdemeanour, when it was laid to his Charge, he made no doubt but he should be able to answer it.

The same Day a new Man was hurried out against him, (*Mr. W'birch*) who having paid over the 17th and 18th Articles, resteth on the 19th, about the Oath administered to the *Scots* in *Ireland*, and charged thus:

That it was the Height of his Tyranny, not only to domineer over the Bodies, but also over the Consciences of Men; to which purpose, he had enjoined an Oath to the *Scots* in *Ireland*: and because some out of Tenderness of Conscience did refuse to take the same, he had fined them in great Sums of Money, banished a great number from that Kingdom, called all that Nation Traytors and Rebels; and said, if ever he returned home from *England*, he would root them out both Stock and Branch.

For Proof of this, First, *Sir Jammy Mountgomery* was produced; who declared at large how that Oath was contrived.

Secondly, *Sir Robert Maxwell* of *Orchiardon*, who spake to the same purpose.

Thirdly, *Sir John Clotworthy*, who declared, that a great number had fled the Kingdom for fear of that Oath.

Fourthly, One *Mr. Samuel*, who deposed, that upon the 10th of *October*, 1638, he heard the Deputy say these Words, *That if he returned, he would root them out Stock and Branch*.

They concluded, That this was a Point of the most Tyrannical and Arbitrary Government, that before this time was ever heard of, not only to lord it over the Fortunes, but also over the Souls of Men: and that it rested only in the Parliament, which hath the Legislative Power, to enjoin Oaths. And that therefore this was one of the chief Points he had done against the Privilege and Liberty of the Subject.

The *Heads* next replied, That every new Article amounted to him with a new Treason; that if he had conceiv'd any thing in all his Life acceptable to the King as *Country*, he conceiv'd it to be this.

To the *Peers* thus; First, He desired the Lords would call to mind the Condition of those Times; no Man (pointing to my Lord Steward) knows better than your Lordship, who had then the chiefest Place in his Majesty's Service. I would be very sorry to rub said he old Sores, especially seeing I hope things are in a fair way to a firm Peace, and I wish that I may not be deceived, that is, that it may be so; only thus much I may say, we had then greater Fears and Apprehensions in *Ireland*, lest the *Scots* in the Kingdom (who were above One hundred thousand Souls) might have joined with their Countrymen at home, for the disturbance of our Peace: mean time we detected a Treason of betraying of the Castle of *Keshings* to a great Man in that Kingdom, (whose Name I now spare) by one *Fremont*, who upon the discovery was executed.

The Council-Board therefore in *Ireland* resolved to prescribe the *Scots* an Oath, whereby they might declare their Discontent at their Countrymens Proceedings, and oblige themselves to the King's Service: but while we were about this, they of their own accord came to *Dublin* to petition for it, and took it with a wonderful Alacrity and Heartiness; so that it is a marvellous Falshood for any Man to say it was invented, or violently enjoined by me.

Secondly, About the same time the same Oath, *verum corbo*, was by the Council of *England* prescribed to the *Scots* at *London*, and elsewhere; which was no small Encouragement to us in *Ireland*.

Thirdly, I had, (said he) which I never shewed, because I had no need before this time, a special Warrant from the King, all written with his own Hand, to that effect: and when the King commands a matter not contrary to Law, truly I (said he) do conceive it both contrary to Law and Conscience not to yield him all due Obedience. For the Proof brought against him, there was nothing seemed to be of any moment but the Words.

For the first Words, *That he had called all the Nation Rebels and Traytors*, he said there was no Proof at all, nor indeed could there be any: for if I had said it, (quoth he) I had been perfectly out of my wits; and, he thanked God, such irrational Speeches used not to escape him. He honoured that Kingdom very much, because it was the native Soil of our dread Sovereign, his gracious Master;

Master; and because he knew a part, yea (he hoped) the greatest part of them, had been, and ever will be, as loyal and dutiful to the King as any other of his Subjects: and of those too who had subscribed that unhappy Combination, he knew a great many had done it against their Hearts and Wills, and would be ever ready upon occasion to remonstrate the same, by adhering to the King's Service. So that this Accusation was nothing but a wresting and perverting his Words and Meaning, of purpose to make him odious, and irritate a whole Nation against him.

For the other words, they were proved only by one Witness, which could make no sufficient Faith; and that Witness too he would evince, if not of Perjury, yet of a notable Mistake: for he had sworn positively that he had spoken these words the tenth of *October*, whereas he was come out of *Ireland* into *England* the twelfth of *September* before, and was at *London* the one and twentieth.

For those that had fled the Kingdom because of that Oath, he knew none such; and if they did, they fled into *Scotland*, which might sufficiently argue their Intentions and Resolutions. For his part, if they were not willing to give that Testimony of their Loyalty to their Prince, although he had known of their Departure, he would have been very loth to have kept them against their wills, but should have been gladly rid of them, and have made them a Bridge to be gone, rather than stay.

April 5. Upon *Monday*, Master *Whitlock* proceeded to the 20th Article, and told him, That because the Matter was intervenient, & *consimilis naturæ*, they had resolved to join the five next Articles together, because all of them tended to one Point or Period; that is, to shew what bad Design he had, to have subdued the Kingdoms both of *England* and *Scotland* by Force of Arms, and to reduce them to that Arbitrary Government he had lately introduced into *Ireland*.

The Lieutenant intreated that they would proceed according to the Order prescribed by the House, which was Article by Article: he said, five Articles were many, the Matter weighty, his Memory treacherous, his Judgment weak.

It was bitterly replied by Master *Glyn*, That it did not become the Prisoner at the Bar to prescribe them in what way they should give in their Evidences.

The Lieutenant modestly answered, That if he stood in his place, he would perhaps crave the like Favour, unless his Abilities did furnish him with more Strength than he could find in himself: for his part he was contented they should proceed any way, always provided they would grant him a competent time for replying.

Then *Whitlock* went on, and told the Lords, That something in those Articles concerned the *Scottish*, something the *English* Nation. That which concerned the *Scottish*, he reduced to five Heads:

First, That the Deputy had said at the Council-Board, *That the Scots Demands contained sufficient Matter to persuade to an offensive War.*

Secondly, *That the same Demands did strike at the Root and Life of Monarchical Government, and were only to be answered by the Sword.*

Thirdly, That he caused some *Scottish* Goods and Ships to be seized on in *Ireland*.

Fourthly, that he had engaged the *Irish* Parliament, by their Declaration, in that War against the *Scots*.

Fifthly, That by all possible means he had put bad Thoughts and Suspicions into his Majesty against his *Scottish* Subjects, and laboured to make a National Quarrel between them and *England*; which, if the King's Piety, and the Prudence of better-affected Statesmen had not prevented, could not have been sodder'd up again without much Blood.

Concerning *England*, his Speeches were either before or after the Parliament.

First, Before his Creature and Bosom-Friend Sir *George Ratcliff*, he had said to Sir *Robert King*, when he was doubting how the King might have Monies to pay his Armies, *That the King had Four Hundred Thousand Pounds in his Purse, Thirty Thousand Men in the Field, and his Sword by his side; and if he wanted Money afterwards, who will pity him?*

Secondly, That his Brother Sir *George Wentworth* had said to Sir *Robert Barington*, upon the Dissolution of the last Parliament, *That seeing the English would not grant Supply to the King, it seems they were weary of their Peace, and desired to be conquered a second time.*

Thirdly, That he himself, upon a Discourse with the Primate of *Ireland*, had said, *That he was much of the mind of those English Divines, who maintained it lawful for a King, having tried the Affection and Benevolence of his People, and then denied their Help, upon an inevitable Necessity and present Danger of the Kingdom, that he might use his Prerogative for his own Supply, and the Defence of his Subjects.*

Fourthly, To the Lord *Conway*, in a Discourse, he had said, *That if the Parliament (meaning the last Parliament) should not grant a competent Supply, that then the King was acquitted before God and Man, and might use the Authority put into his hands.*

Fifthly, That he did say at the Council-Board, *If the Parliament should deny to help the King, he would take any other way he could for his Majesty's Service and Assistance.*

His Expressions after the Parliament were two: First, *That the Parliament had forsaken the King, and that the King should not suffer himself to be overmastered by the Forwardness, Obstinacy, and Stubbornness of his People.*

Secondly, *That if his Majesty pleased to employ Forces, he had some in Ireland that might serve to reduce this Kingdom.*

The Proofs for the *Scots* Particulars, were these:

First, The Lord *Traquair*, who was indeed very favourable to the Lord-Lieutenant, and spake nothing to his disadvantage but what was skrewed from him: with much difficulty he told them, That when he gave in the Demands, he heard him say, *That it was high time for the King to put himself into a posture of War*; but that first all the Council of *England* said the same as well as he. 2dly, That it was a double Supposition: 1. That the Demands were truly given in. 2. That there was no other Remedy left but Arms, to reduce them.

Secondly, The Earl of *Morton's* Testimony (being sick himself) was produced, and it was one and the same with the Article.

Thirdly, Sir *Henry Vane* was examined, who declared, That he had heard the Lieutenant to advise the King to an Offensive War, when his own Judgment was for a Defensive.

Fourthly, The Testimony of the Earl of *Northumberland* was produced, which was the very same with Sir *Henry Vane's*.

Fifthly, The Treasurer of *England* deposed the same with *Traquair*.

Sixthly, One *Beane* from *Ireland*, told, That he had known Ships seized on there; but by whose Procurement or Warrant, he knew not.

To the Articles about *England*:

First, Sir *Robert King* and the Lord *Ranelagh* deposed the same, That Sir *Robert King* and the Lord *Ranelagh* had heard Sir *George Ratcliff* speak those words in the Article.

Secondly, Sir *Robert Barington*, of Sir *George Wentworth*.

Thirdly, The Primate's Testimony (who is sick) was the same with the Article.

Fourthly, the Lord *Conway* deposed the same with the Article.

Fifthly, Sir *Henry Vane* deposed, he had heard those words spoken at the Council-Board.

For the Words spoken after the Parliament:

To the first, Sir *Tho. Jermyn*, Lord *Newburg*, Earl of *Bristol*, Earl of *Holland*, were examined. *Bristol* did mince the matter, but *Holland's* Testimony was exprefs, because of the exceeding great Love he carried to the Man.

For the last, which were the most dangerous Speeches, (about reducing of this Kingdom) there was only Sir *Henry Vane's* Testimony; who declared only thus, That he had heard either those words, or the like.

Here some of the Lieutenant's Friends shewed themselves:

1. The Lord *Savil*, who desired of Sir *Henry Vane* to know whether he said *their*, or *this*, or *that Kingdom*; and withal said, It was very hard to condemn a Man for Treason upon such petit Circumstances.

2. The Earl of *Southampton* desired to know, whether Sir *Henry Vane* would swear those words positively or not. Sir *Henry Vane* said, positively either them or the like. The Earl replied, That under favour *those or the like* could not be positive.

3. The Earl of *Clare* desired to know what could be meant by *this Kingdom*; for his part (he said) he thought it meant of the Kingdom of *Scotland*, to which the Word *this* might very well be relative, that Kingdom being only mentioned in the preceding Discourse: And that he was the more ready to be of that Opinion, because he could not see by what Grammatical Construction it could be gathered from his Words, that he meant to reduce *England*, which neither then was, neither is now (God be thanked) out of the way of Obedience, nor upon rebellious Courses.

They at last concluded the Charge, That the Words were so monstrous, that to aggravate them, was to allay them; and therefore they would simply leave them to the Judgment of the Lords.

The Lieutenant's Reply was;

Thattho' the heaping up of those Articles had put him to a great Confusion, yet he would endeavour to bring his Answer into the best Method he could; and first he would reply to the Proof, then add something in general for himself, in what a hard Taking and lamentable Condition he was, to have his private Discourses, his most intimate and Bosom-Friends search'd and sifted to the least Circumstance, that he might seem guilty of that which, by God's Assistance, he should never be.

To the Lord *Traquair's*, and the Deputy's Depositions, he thought their Proofs did not much

stick upon him. For upon the Suppositions, *First*, That the Demands were true; *Secondly*, That they were not justifiable; *Thirdly*, That no other Course could prevail: He could not see what other Advice he could possibly give the King, than to put himself into a Posture of War, especially seeing then there were frequent Reports of the *Scots* invading or entering into *England*; nor was he of any other Mind than all the rest of the Council-Board.

For that of *Morton's*, he doth not positively remember the Words, but if the Demands were read, perhaps they would imply nothing less; and if so, how otherwise to be answered but by the Sword, and other Means being first essayed, which is ever to be supposed?

For Sir *Henry Vane's* and *Northumberland's* Testimony, about persuading of an Offensive War, he said, He remembered it very well, and thought it as free for him to give his Opinion for an Offensive, as they for a Defensive War: Opinions, said he, if they be attended with Obstinacy or Pertinacy, may make an Heretick, but that they ever made a Traitor, he never heard it till now; nor (under favour) should I be an Heretick either, (said he) for as I was then, so am I now, most willing to acknowledge my Weakness, and correct my Errors, whereof no Man hath more, or is more sensible of them, than I myself; yet if that Opinion of mine had been followed, it might perhaps have spared us some Money (said he) and some Reputation too, of which we have been prodigal enough.

For the last, about the Ships, it proves nothing: but he would willingly confess, that some Ships were there detained, and that by himself, and his own Direction, as Vice-Admiral of *Connaught*, but it was at the Command of the Lord Admiral the Earl of *Northumberland*; and produced his Letter to that purpose.

To the *English* Proof: He marvelled much how Sir *George Ratcliff's* Words could be put upon him; Sir *George* (tho' alledged to be his Bosom-Friend, yet) had Thoughts of his own, and he (the Earl) might have other Thoughts in his Bosom, and use other Expressions than Sir *George Ratcliff*: No Man (said he) can commit Treason by his Attorney; and should I, by my Friend Sir *George*, as by a Proxy?

For his Brother; he never knew him before so rash; but that was nothing to him, except they could prove a nearer Identity than Nature had instituted, and that his Brother's Words and his were all one: yet withal he conceived, that his Brother's Words might be very well understood of the *Scots* conquering *England*, but not at all of the *Irish*; and so he wished with all his Heart, that he had not spoken something which is like a Prophecy.

To the Primate's Testimony (with all Reverence to his Integrity be it spoken) he is but one Witness, and in Law can prove nothing: Add to this, (said he) that it was a private Discourse between him and me, and perhaps spoken by me *tentandi gratia*; and how far this should be laid to a Man's Charge, let your Lordships judge.

Yea, this seems to me against Humanity itself, and will make the Society of Men so dangerous and loathsome to us, that our Dwelling-houses will be turned to Cells, and our Towns to Desarts: That which God and Nature (our Tongues) have bestowed upon us (for the greater Comfort of venturing our own Conceptions, or craving the Advice

of wiser and learned Men) should become Snares and Burdens to us, by a curious and needless Fear; yet if my Words be taken, said he, with all that went before and followed after, I see no danger in it.

To the Lord *Conway* I may reply the same, with this Addition, That it is a very natural Motion for a Man to preserve himself; every Creature hath this Privilege, and shall we deny it to Monarchy, provided this be done in a lawful, tho' in an extraordinary way? This Grain of Salt must be added to season all my Discourse.

To that of Sir *Henry Vane*, of offering my Service to the King, I thank him for the Testimony, and think he hath done me much Honour thereby; but if he or any body else do suspect that his Majesty will employ me in unlawful Enterprizes, I shall think them more liable to the Charge of Treason than myself.

To the subsequent Testimonies, I shall not need to wrestle about them much, only the last of Sir *Henry Vane's* pinches, and lies fore upon me; but to that which the Earl of *Clare* (and I thank him for it) hath said already, give me leave to add this, That the Testimony of one Man is not a sufficient Witness, nor can a Man be accused, much less condemned, of Treason, upon this; and for that read the Stat. *Hen. 7. 12.* and of *Edw. 6. 5.*

Now, my Lords, (said he) to give you further Satisfaction, I shall desire all the Lords of the Council, which were then present (only to the Number of Eight) may be examined whether they heard these Words or not; for the Archbishop and Sir *Francis Windebank* they cannot be had: Sir *Henry Vane* gives the Testimony, I deny it; four only remain.

First, The Earl of *Northumberland's* Testimony, which was read, had declared expressly, that he had never heard those Words, nor any like them, from the Lord *Strafford*, but he spake with great Honour and Regard to the Kingdom of *England*.

Secondly, The Marquis *Hamilton*, who declared upon his Oath, that he had never heard such Words, but that he had heard the Lieutenant often say, that the King was to rule his Royal Power *candide & caste*; that it would never be well for this Kingdom, till the Prerogative of the Crown, and the Privilege of the Subject, went in one pace together; and that Parliaments were the happiest way to keep a Correspondence between the King and People.

The very same was delivered by the Lord Treasurer, and the Lord *Cottington*.

Now, my Lords, you may marvel how these Words rested only on the Ears of Sir *Henry Vane*: but, my Lords, (said he) that I may remove all Scruple from you, I will make it evident, that there was not the least Intention that the *Irish* Army should set a Foot in *England*; and then, I hope, you will conceive that I had no Meaning to reduce this Kingdom.

This he made clear by the Testimony of *Northumberland*, the Oaths of Marquis *Hamilton*, Lord *Cottington*, Lord Treasurer, Sir *Thomas Lucas*, who only were privy to that Matter.

For other of my Words, my Lords, (said he) I desire you would not take them by halves; if so, who should be free from Treason? Certainly, if such a Precedent take footing, *Westminster-Hall* shall be more troubled with Treason than with Common-Law; look therefore to the Antecedents and Consequents of my Speeches, and you shall find the State of the Question clearly altered: the

Antecedents were upon an absolute or inevitable Necessity, upon a present Invasion, when the Remedy of a Parliament cannot be expected; the Consequents, for the Defence of the Kingdom, which accompts afterward to the Parliament. The Qualifications too in a lawful, convenient, and ordinary Way, so far as the present Necessity can permit. Add but these, and which of you are not of my Mind? Is the King endowed with no Power from the Lord? Is he not *publicus Inspector Regni*? Stands it not him in hand to do something on present Necessities?

And that these were his Words, he often proved, over and over again, by the Marquis, by the Lord Treasurer, *Cottington*, Sir *Tho. Fermynne*.

My Lords, what I have kept to the last (said he) is this, and I would intreat you seriously to think of it: If a Man's Table, his Bed, his House, his Brother, his Friends (and that too after they have given an Oath of Secrecy) are to be rack'd to find out Treason against him, who never knew what it meant, what earthly Man shall pass free from Treason? Let my Misfortune, my Lords, be your Advertisement: your wise Ancestors were glad to put Bands and Limits to this Lion, Treason; if you give him the large Scope of Words to range into, he will at last pull you or yours all to pieces.

But, my Lords, I did never think till now, that Matter of Opinion should be objected as Matter of Treason.

For, *First*, Opinions are free, and Men may argue both *Pro* and *Con*, in all Faculties, without any Stain of Reputation, otherwise all Consultations would be vain.

Secondly, I may be of another Judgment than I declare myself to be, of Opinion, perhaps, to gain better Arguments for the Maintenance of my own Grounds.

Thirdly, Many, and myself oftentimes, have propounded my Opinion; yet, upon hearing better Judgments, have presently changed it.

Fourthly, We use to strain our Opinions too high sometimes, that we may meet in a just Moderation with those whom we conceive in the other Extremity to be too low.

Fifthly, It is expressly commanded by the Stat. *Hen. 6. 9.* That tho' a Man should say, the King is not lawful Heir to the Crown, and may be deposed, yet he is not to be charged with Treason, but only with Felony; and I hope, my Lords, those Words are of a more transcendent and superlative nature, than any alledged by me to be spoken. But, my Lords (said he) lay it to your Hearts, it must come to you, you and your Posterity are they whom God and Nature, Birth and Education have fitted to beautify the Royal Throne, and to sustain the weighty Affairs of the Kingdom; if to give your Opinions in Political Agitations should be accounted Treason, who will be willing to serve the King, or what a Dilemma are you in? If, being sworn Counsellors, you speak not your Minds freely, you are convict of Perjury; if you do, perhaps of Treason. What Detriment, what Incommodity shall fall to King and Kingdom, if this be permitted? Which of you hereafter will adventure, yea dare adventure so much as to help by your Advice, unless you be weary of your Lives, your Estates, your Posterity, yea your very Honour? Let me never live longer than to see this Confusion; yea, I may say it, this Inhumanity in *England*. For my part (my Lords) I here confess my self, I ever have, and ever shall speak my Opinion

pinion freely in any thing that may concern the Honour and Safety, either of my gracious King, or my dear Country, tho' the Sword be two-edged; fearing rather him that killeth the Soul, than him whose Power reaches only to the Body.

Nor do I see how I am culpable of Treason, unless it be Treason for not being infallible; and if it be so, my Lords, you have this Rag of Mortality before you, loaden with many Infirmities; tho' you pull this into Shreds, yet there is no great Loss; yea, there may be a great Gain, if by the same I may seem to have dared too far, to give a Testimony to the World of an innocent Conscience towards God, and a resolute Loyalty towards my Prince, [which have ever been my only Pole-Stars in the whole Course of my Life:] and if by spilling of mine, there be not a Way found how to trace out the Blood of the Nobility (which I hope your Lordships will look to) there is no Disadvantage at all suffer'd by the Loss of me. (You have his very Words as near as I could recollect.)

Tuesday was a Day of Rest.

April 7. Upon *Wednesday* *Whitlock* charged thus; That the preceding Articles were of so high a Consequence, and of so transcendent a Nature, that nothing wanted to make up the perfect Measure of the most horrid Treason, and monstrous Attempt that ever, by a Native was intended against his King and Country, by putting these designed Projects into execution; which had undoubtedly happened to the Ruin and Subversion both of Church and State, had not the Clemency and Goodness of the Prince, and the Piety and Carefulness of the well-affected Peers timously foreseen and prevented the same: That still the Principles of Tyranny and Oppression had lodged within his Bosom, and therefore had burst forth into these Expressions and Advices contained in the following Articles; where first, in the twenty-fifth they charged him with three things.

First, That he had advised the King to a rigorous and unlawful Exaction of Ship-Money.

Secondly, That he had given Counsel, That if the Sheriffs should deny their best Endeavours and Assistances to that Effect, they should be sent for, and be fined and imprison'd by the Star-Chamber.

Thirdly, That when the Aldermen of *London* had in all Humility represented the Causes why the Ship-Money could not be collected amongst them, and had given in the Reasons why they refused to give in a List of their Names, within their City, who were able to afford the Loan-Money; he in a contemptuous and tyrannical manner, in the face of the Council-Board, had said to the King: *Sir, these Men, because of their Obstinacy and Frowardness, deserved very well to be fined, ransomed, and laid by the Heels; and it will never go well with your Service, until some of them be hanged up for Examples to others.*

The Proofs were these.

First, The Bishop of *London*, Lord Treasurer, who declared, That he remembered the Words very well, that the Lord-Lieutenant had advised the King to cause the Ship-Money to be gathered in; but he remembered withal, that both himself and all the Council had done the like; and that it was upon a present Necessity, and Defect of Money for entertaining the Army, which (the

Condition of the Times considered) they all conceived, was by any means to be kept on foot.

Secondly, Alderman *Wiseman* declared, that upon an humble Remonstrance made to the Council-Board, the City would take it ill, if a Tax-Roll should be delivered of their Estates, who were thought able for the Loan-Money; the Lord *Strafford* said, They ought to be fined, ransomed, and laid by the heels: but for Words of hanging them up, he heard not at all.

Thirdly, The Earl of *Berkshire* declared that the Lord *Strafford* had said, That upon the Refusal of such a Service enjoined by the Kings peremptory Command, it was his Opinion they might be fined.

Fourthly, Alderman *Garway* attested the preceding Words; and withal added, that the Lord Lieutenant, to his best Remembrance, had said, *It were well for the King's Service if some of them were hanged up.*

They closed the Charge, That by such undutiful Expressions he had injured the Propriety of the Subject and had put such Discontent upon the City, that they were the less willing upon any occasion to concur for the Advantage of the King's Service.

The Lieutenant replied,

First, That tho' all the Charge were in the most strict and rigid way or sense verified against him, yet he could not conceive by what Interpretation of Law it could be reach'd home to High-Treason: and to that common Objection, [That the Treason was not individual, but accumulative,] he replied, That under favour, he thought, talking in that manner, were as much as to say, no Treason at all. Because,

1st, That neither in Statute Law, Common Law, nor Practice, there was ever, till this Time, heard of such a matter as accumulative Treason, or a Treason by way of Consequence; but that it is a Word newly coined to attend a Charge newly invented, such an one as never was before.

2^{dly}, That Treason was a Thing of a simple and specificative nature, and therefore could not be so by Accumulation; but either must be so in some or either of the Articles, or else could not be so at all.

3^{dly}, He did conceive that it was against the first Principles of Nature, and false, That an Heap or Accumulation should be, and not be, of homogeneous Things; and therefore that which in its first Being is not treasonable, can never confer to make up an accumulative Treason. *Cumulus*, an Heap of Grain, so called, because every, or at least some of the Individuals, are Grain; if otherways, an Heap it may be, but not an Heap of Grain. Just so, perhaps, these Articles may make up an Heap of Felonies, Oppressions, Errors, Misdemeanours, and such like, (and to the Thing itself I shall give an Answer, when under that Name they shall be charged against me;) but they can no ways confer to the making up of Treason, unless some at the least, be Treason in the Individual.

Secondly, That the Testimonies brought against him were all of them single, not two one way; and therefore could not make Faith in matter of Debt, much less in matter of Life and Death; yea, that it was against the Statute expressly, to impeach a Man of High-Treason under the Evidence of two famous Witnesses, much less to adjudge and convince him upon Attestation of one.

Thirdly,

Thirdly, To the Lord Treasurer's Testimony, he did with all his Heart condescend unto it; but upon these Grounds only, That there was a present Necessity of Money; that all the Council-Board had so voiced with him, yea, before himself, and he always thought it Presumption in a Man not to follow the wiser and more judicious: and that there was then a Sentence of the Star-Chamber for the Right of paying Ship-Money. For his part, he would never be more prudent than his Teachers, nor give Judgment against the Judges. And therefore he thought it not far amiss to advise the King for the collecting of that, which by Law was his own, in such a present and urgent Necessity. And altho' his Opinion (and it was no more) had been amiss, he hoped that tho' in case of Religion, being attended with Stubbornness and Pertinacy, it might come home to Heresy, yet in his case Opinion could not reach so far as Treason; unless it be Treason for a Man to speak his Judgment freely, when he is upon his Oath to do the same.

Fourthly, For the Words about fining, he had already acknowledged them in his general Answers to be true; but with these Qualifications, That it was his Opinion only; that it was upon the Refusal (as he conceived) of a just Service that he had spoken them, by no means to prejudice the Citizens, but to make them the more quick and active in the King's Service; that no ill Consequence happen'd upon them; that they were Words might have been spared indeed, but innocently, tho' suddenly spoken, which he hoped might proceed from a Man of such a haily and incircumspect Humour as himself, (made so both by Nature and his much Infirmity of Body) without any mind at all to Treason; and that if all cholerick Expressions of that nature should be accounted treasonable, there would be more Suits of that kind fly up and down *Westminster-Hall* than Common-Law.

Fifthly, To those Words attested by the Alderman, he positively denied them; and hoped they should never rise up against him in Judgment, because the Testimony was single, and not positive, but only to his best Remembrance; and that it was exceeding strange that no Man, neither of the Council or other Aldermen, were so quick to observe them, but only Alderman *Garway*; which he thought sufficient to nullify that single Testimony, except he could demonstrate himself to have some rare and singular Faculty of hearing.

In the close, he desired the Lords, from his Misfortune, to provide for their own Safety, and seriously to consider what a Way was chalked out to ruin them both in their Lives and Estates, if for every Opinion given in Council, or Words suddenly or haily spoken, they (who are born to wield the great affairs of the Kingdom) should be arraigned and sentenced as Traytors.

Then they went to the 26th Article, and charged thus:

That the Lord *Strafford*, having by his wicked Advices exhausted the King's Treasury, did also counsel him,

First, To imbase the Coin by an Allay of Copper-Money.

Secondly, To seize upon all the Bullion in the Mint.

Thirdly, That in Discourse with some of the Aldermen about that Business, he had said, The City was more ready to countenance and relieve the Rebels than the King; and that the King of

France did use to manage such Businessses, not by Treaties or Requests, but by sending forth his Commissaries to take account of Mens Estates, accompanied with Troops of Horses.

The Proofs were;

First, Sir *Thomas Edwards*, who declared, That in Discourse with the Lord *Strafford*, having remonstrated unto him that their Goods were seized on beyond Seas, because of the Money taken out of the Mint, he told him, *That if the Londoners suffered it, it was deservedly, because they had refused the King a small Loan of Money upon good Security; and that he thought them more ready to help the Rebels than the King.*

Secondly, Mr. *Palmer* declared that he spake something about the King of *France*; but whether with relation to *England*, or not, he did not remember.

Thirdly, Sir *William Parkin* attested in the same Words; and withal, that the Lord *Cottington* was then present, and could declare the whole Business.

Fourthly, Sir *Ralph Freeman* declared that in a Discourse with the Lord *Strafford* he had said that the Servants in the Mint-House would refuse to work the Copper-Money; and he replied, *That then it were well to send those Servants to the House of Correction.*

They closed the Charge, That by such undutiful Counsel and Words, he had given more than sufficient Proof of his Design and Purpose to subdue this Kingdom, and subvert the fundamental Law and Privileges of the same.

The Lieutenant's Reply:

First, That he expected some proofs about the two first Particulars, but did hear of none; and that it was no small Disadvantage to him to be charged with a great many odious Crimes by a Book, printed and flying from hand to hand thro' the whole Kingdom, yet when they came to prove, there should be no such thing laid against him.

Secondly, About the Speeches: He ingenuously confessed, that some such thing might perhaps have escaped the Door of his Lips, when he saw their Backwardness to his Majesty's Service; and as the Times were then conditioned, he did not think it much amiss to call that Faction by the Name of Rebels; but yet he thought he had abundantly satisfied for that Oversight (if it was any) at *York*: For having understood there, that the City of *London* were willing to make a Loan of Money, he there, before the great Council of the Peers, expressed himself to this Sense, *That the Londoners had sufficiently made up all their Delays hitherto by their self: that the King was obliged to their Forwardness; and that he himself should be as ready to serve them as any poor Gentleman in England.* About the other Words, he said, That being in conference with some of the *Londoners*, there came at that time to his hands a Letter from the Earl of *Leicester*, then at *Paris*, wherein were the *Gazettes* inclosed, reporting that the Cardinal had given some such Order, as to levy Money by Forces. This, he said, he only told the Lord *Cottington*, standing by, without the least Application or Intention concerning the *English* Affairs. *Cottington*, being examined upon this, declared the same in the same manner.

Thirdly, To Sir *Ralph Freeman*, he said, That his Testimony did not concern the Charge at all; nor did he think any thing amiss in it, tho' he had said it: If the Servants of the Mint refused to work

according

according to Directions, they did deserve the House of Correction; nor was it treasonable to say, the King might use that House for the Correction of his Servants, as well as any Man in the City for theirs.

Fourthly, He said that there was no great Likelihood that he had committed real Acts of Treason, when his adverse Party was content to trifle away so much Time about Words; neither was there any Treason in them, tho' they had been fully verified: and therefore in that (as in all other Articles) he reserved a Power for his Counsel to dispute in Matter of Law.

They went to the 27th Article, and charged thus; That immediately after his Appointment to be Lord-Lieutenant of the Army here in *England*, he shewed what Principles of Arbitrary Government lurked within his Bosom; for by his own immediate Authority, without and against Law, he had laid an Impost of Money upon the King's Subjects. Where they mention three Particulars:

First, That he had imposed *8d. per diem* upon the County of *York*, for entertaining the Trained-Bands there one whole Month.

Secondly, That he had sent out Warrants for collecting the same, and threatened to imprison such as should refuse to pay.

Thirdly, That he said, *That it was a Crime nigh to the Crime of High-Treason, not to pay the same.*

Fourthly, They added, That in his general Replies he had brought two Things for his Defence: 1st, That this Money was freely and voluntarily offered by those in *Yorkshire*. 2dly, That the great Council of the Peers had notice of the same.

To the first they answered, That a Petition was indeed preferred by the *Yorkshire* Men, and a Month's Pay offered; but that the Lord *Strafford* had refused to present the same upon this Exception only, because in the same they had petitioned for a Parliament: Whereby he evidently declared what little Inclination he had to that way.

To the second, They appealed to all the Lords present, whether any such Order did pass before the Council of the Peers at *York*.

The Proofs were;

First, A Warrant issued by Colonel *Pennyman* for this Money, and another by Sir *Edward Osborne*.

Secondly, Sir *John Burrows*, who declared that he was Clerk to the great Council, but did remember of no Order; and withal added, that it might have passed at that time, when he attended at *Rippon*.

Thirdly, Mr. *Dunston*, who declared that he had known that Money levied by some Musqueteers.

Fourthly, By Sir *William Ingram* who declared that he had heard the Lieutenant say, *That to refuse the same, came nigh to the Crime of High-Treason.*

They concluded the Charge, That by these Particulars it was more than evident what unhappy Purpose and traitorous Designs he had to subdue this Kingdom, and subvert the Fundamental Laws and Privileges.

The Earl replied, First, To the Petition, That it was true, a Petition was drawn up by the *Yorkshire* Gentlemen; and as true, that he had refused to present the same, because of that Clause about the Parliament. But the Matter was thus: At his Majesty's coming to *York*, it was thought necessary for the Defence of that Country to keep the Trained-Bands on foot, because the Enemy was upon the Borders; and therefore the King directed him to

write to all the Freeholders in *Yorkshire*, to see what they would do for their own Defence.

The Time and Place were designed by the King; but the Night before the Meeting, a small Number convented, and in a private and factious Way did draw up that Petition. Upon the Morrow, at their appointed Dyet, in Presence of the whole Number, the Petition was presented to him; where he did advise them to leave out that Clause, and that because he knew the King out of his own gracious Disposition, had intended to call a Parliament, which he desired should rather be freely done, than upon the Constraint and Importunity of Petitions: Moreover, it would seem a mercenary Thing in them, at one and the same Time to offer a Benevolence, and withal to petition for his Favour. Upon this Remonstrance, they were all willing to recal the Petition, and directed him by Word of Mouth to offer unto the King the Month's Pay in their Names; which he did accordingly, in the Presence of Forty of them, to their no small Advantage.

This he proved by Sir *William Pennyman*, Sir *Paul Neale*, Sir *George Wentworth*, Sir *William Savile*, Sir *Thomas Danby*, who all of them declared as much in ample Terms; and withal added, That nothing was done upon better Grounds of Necessity and Obedience than the Offer of that Money, and that they never had heard any Man grudge against it to this time.

For the Second, about the Council of Peers, he alledged, that he never made mention of any Order of theirs; but he remembered very well it was twice propounded before them, that the King had approved it at that time a just and necessary Act, and none of the Council had contradicted it; which he conceived as a tacit Approbation, and an Order in Equivalence.

But tho' that had not been, yet there was nothing done in the Business, but at the special Desires of the Gentlemen themselves, and for their necessary Defence and Protection; yea, tho' he had done it by himself alone, yet he conceived he had so much Power by his Commission, (causing the Commission to that effect to be read) That albeit he should mistake his Commission, and do some inferior Act beyond it (because military Proceedings are not always warranted by the Common Law) yet it should not be imputed as an Act of Treason to him. (And to this Effect he read a Statute of the Seventh of *Henry the Second*.)

To the Proofs; First, Colonel *Pennyman's* Warrant, or Sir *Edward Osborne's*, it nothing concerned him; and he doubted not but these worthy Gentlemen could justify their own Act, and that he had enough to do to answer his own Misdemeanours.

Secondly, For Sir *John Burrows*, he was at *Rippon* when the Proposition was made.

Thirdly, That as the Warrant, so neither the Execution, troubled him at all.

Fourthly, For Sir *William Ingram*, he was but a single Testimony, and that such an one too, as he could produce an Evidence to testify he had mistaken himself in his Testimony upon Oath, if it were not to disadvantage the Gentleman.

He concluded, That he had done nothing in that Business but upon the Petition of that County, the King's special Command, the Connivance at least of the great Council, and upon a present Necessity, for the Defence and Safety of the County.

And so much for *Wednesday*.

Upon

Upon *Thursday* the Committee for the Charge declared that they had done with all the Articles, and were content to wave the last, for Reasons best known to themselves: only Sir *Walter Earles* added, That he had some Observations to bring forth upon the two and twentieth Article, which he conceived might do much to prove the Earl of *Strafford's* Designs for landing the *Irish* Forces in *England*.

And they were, first, That in his Commission he had Power to land them in *Wales*, or in any Part of *England*, or in *Scotland*; which were altogether superfluous, unless there had been some Purpose for the same.

Secondly, That within two Days before the Date of the Commission, Letters were sent to the Lord *Bridgewater* and *Pembroke* from Sir *Francis Windexbank*, to assist the Earl of *Worcester* in levying Forces for the King's Service; and these might be supposed to have intended a joining with the *Irish*.

Thirdly, That the Lord *Ranelagh*, at the raising of the *Irish* Army, did fear such a Design as this.

Fourthly, That the Town of *Ayre* in *Scotland*, where the Lord *Strafford* pretended he would land those Forces, was fortified with a Bulwark, a Garrison, and Block-house, which would prohibit landing there; and the Earl of *Argyle's* Bounds were divided thence by the Sea, and that the Bar or Entry into the Town was very dangerous and shallow.

The Proofs were only the Reading of the Commission granted to the Lord *Strafford*.

The Lieutenant replied, First, That his Commission was the same *verbatim* with *Northumberland's* for *England*, and that it was drawn up by the Council-Board here, and sent over unto him; so no more Design in him than in the Gentlemen of the *English* Army, nor no larger than that was put upon him.

Secondly, That this was the first time he heard of any such Letters, nor did they concern him more than any of the House.

Thirdly, That he was not bound to purge the Lord *Ranelagh* from all his Fears, and that he had his own Fears too, which God forbid should be Evidence of Treason against any Man whatsoever.

Fourthly, That it seemed the Gentleman had better Information from that Kingdom than himself; yet he would not be confident to say, at *Ayre* there was never such a thing as a Block-house or Garrison. But to remove all Scruples, (for indeed the Road or Landing-place is not there safe) he declared that it was his Intention to have landed some Miles above *Ayre*, and made only his Magazine of that Town.

To the Earl of *Argyle's* Bounds, he hoped the Gentleman knew they came not on foot out of *Ireland* but had Ships to waft and transport themselves, and that one of his prime Houses (*Rosneeth*) was within some few Miles of the same Frith.

The Lord *Digby* finding Sir *Walter Earles* on Ground, did handsomely bring him off, and told the Lords, That all their Proofs for that Article were not yet ready, and that this was a Superfétation only of the Charge; and that in such a Business as the Plotting of Treason, they must be content sometimes with dark Probabilities.

Then Mr. *Glyn* desired the Lieutenant to resume his Defence, that they might give a Repetition of

their Charge; and so close the Process so far as concerned the Matter of Fact.

He replied, That in this Case all Slackness is Speed enough; the Matter touched him narrowly, even in his Life and Estate; yea, in that which he esteemed above them both, his Honour and Posterity; and therefore he confessed he had no Desire to ride Post in such a Business. That he knew the Gentlemen of the Bar, if they were in his Case, would think the time little enough, except their more able Judgments could sooner dispatch the Matter in Hand; and therefore he humbly intreated, that that Day might be granted to him for strengthening himself, and recollecting his Thoughts and Spirits, and To-morrow he would be ready with his last Replies for himself: which after a little Ceremony and Contestation, was condescended unto by the House of Commons.

Upon *Friday* Morning, about eight of the Clock, the Lieutenant of the *Tower*, and my Lord's Chamber-Groom came to the Hall, and gave Information to the House upon Oath, That the Lord *Strafford* was taken with an exceeding great Pain, and Fit of the Stone, and could not upon any Condition stir out of his Bed.

Mr. *Glyn* replied, That it was a Token of his Wilfulness, not his Weakness, that he had not sent a Doctor to testify the same.

The Lord Steward made answer, That a Doctor could not be had perhaps so soon in a Morning, nor was it possible for any Physician to give a certain Judgment concerning a Man's Disability by the Stone, because there is no outward Symptoms that appear.

Mr. *Glyn* excepted, That if he did not appear upon *Saturday* Morning, he should lose the Privilege to speak in his own Defence afterwards, and they permitted to proceed.

The Lord Steward replied, That the Lords had appointed four of their Number to go to the *Tower*, and learn the just Cause of his Stay; and if by any Means he were able, he should be obliged to come then; if not, Humanity and common Equity would excuse him.

In the Afternoon it was Reported that he was dead, of which there can be no better Reason given than the Humour and Genius of the Times, that dally with nothing oftner than Untruths and Calumnies: and certainly there are many Men of shallow Understandings and weak Affections, who either will not, or cannot understand the Gentleman's Worth; but out of fearful and needless Apprehensions are so desirous to hear of his Ruin any Way, that their busy Tongues will dare to anticipate the Stroke of Justice.

Mr. *Glyn* proffers new Proofs concerning the two and twentieth Article.

Upon *Saturday* Morning, *April* 10, he presented himself at the Bar, where he expected nothing but Repetitions of Charges and Defences; but mean while Mr. *Glyn* proffers some new Proofs concerning the two and twentieth Article, which the noble Lord refusing, alledging the Process was closed. Mr. *Glyn* answered, The Process is not closed, as long as the Business stands unrepealed; and that it did not become a Prisoner at the Bar to prescribe a Method of Proceeding to the House of Commons in *England*.

It was answered by the Lord-Lieutenant, That he thought it stood him in hand as nearly to maintain his Life, as it did any to pursue him for it; yet he was willing they should bring in new Proofs; provided that he might have time to make new Replies, and withal use some new Witnesses in some Articles that concern his Justification.

The Lord *Newark*, upon these Motions, desired the House might be adjourned: after two Hours Stay, and a hot Conflict among the Lords, they returned, and the Lord Steward commanded the Order to be read, which consisted of two Articles:

First, That as it was granted unto them to bring in Proofs concerning the two and twentieth Article: so it was to the Lord *Strafford* to make his Replies, and use his Witness concerning the same.

Secondly, That if they went to no more Articles, no more should the Lord *Strafford*; but if they did, that he might pitch upon any one Article as he pleased.

The House of Commons presently declined all other Articles, and conceived the Order expressly for them, restraining him from all other Articles, except that only.

He conceived the Order was for him, and said, That seeing they had pick'd out their Article, it was against all common Equity to tie up his Hands, and not admit of a common Rule for them both. They replied, That when the Article was canvassed they reserved Witnesses till another time. He answered, That he had done the same upon every Article. They replied, That the House had refused his Reservation. He answered, Nor had they passed an Order for theirs.

Upon this new Contestation the House rose again and was adjourned. It is supposed that the House of Commons had the better Ground, because they had particularly named their Witnesses in their Reservation, the Lord *Strafford* not so; they pressed but one Article, he many. But such was the Pleasure of the Lords, that tho' the Matter did not deserve to be much stood upon, yet after two Hours vehement Agitation of the Business in the Upper House, they returned, and the Order was in favour to this Effect:

First, That both of them should wave their new Proofs and go immediately to that which follows.

Secondly, If they would not do so, the Lords conceived themselves common Judges to both, and therefore would not deny *Strafford* the Liberty of pitching upon what Article he pleased, as they had done.

Thirdly, That both of them should name their Witnesses at the Bar instantly.

The Commons were much grieved at this, yet desired him to nominate his Witnesses, if he would make any Benefit of the Order. He answered, That he would nominate after them, because they were first in Order. They replied, That he knew their Article, they not his. He said, He was to bring Proofs about the second, fifth, thirteenth, and the fifteenth Articles, and did desire them that they would now proceed to Nomination.

But they told him, they could not embrace the Order without Advice of the whole House. Then on a Sudden a mighty Noise followed of the whole House, *Withdraw, Withdraw!* and was in so uncouth and tumultuous a Confusion, that it produceth both Admiration and Fear in the Beholders, wherein we might easily feel the Pulse of a distempered State. Both the Houses brake up, not ap-

pointing so much as the next Dyet; each Man's Countenance spake Anger and Discontent, and nothing founded in our Ears all *Sunday* but Terrors and Affrightments of a present Division and Breach between the two Houses: That the House of Commons would declare him a Traytor, and all such Lords too as were his Adherents; that he should be no more heard in publick, that (tho' Parties, and not his Peers) they would vote in his Sentence: That a Bill of Attainder should presently be drawn up against him, and that nothing should content them but present Execution.

Big Words flew up and down all *Monday, April 12*. That whole Day was spent in a Conference betwixt the Houses, without any meeting in the Hall; but the Lords (who had learned, as it seems, to foresee their own Ruin by his Misfortune, and now conceive that Monarchy and Nobility are of such Identity, that one and the same is the Diminution of both) kept fast to their Conclusion, and would not pass from their Order, notwithstanding all the many Dangers represented: so that the House of Commons were constrained at last to give way, and embrace the first Part of the Order, by waving Witnesses on both Sides.

This hath been no small Discouragement to his Enemies; for a more real Demonstration of his Party amongst the Lords could not have been shewn.

Upon *Monday*, some of the Lords went so high in their Heat, as to tell the House of Commons, That it was an unnatural Motion, for the Head to be govern'd by the Tail; That they hated Rebellion as bad as Treason; That the same Blood that ennobled their Ancestors, did move also in their Veins, and therefore they would never suffer themselves to be suppressed by a popular Faction.

After a great deal of Storm, all was (as well as might be) sodder'd up again, and *Tuesday* appointed to be the Day for the Lieutenant to resume his Defences, and they their Charge, without any more Proof to be used on either Side.

Upon *Tuesday, April 13*, the Lord Steward at the Entry told them, the Lords had order'd that both their Testimonies should be waved, that they should proceed immediately to what followed, so that that Day might put an End to what concerned the Matter of Fact.

The Lord-Lieutenant replied, That in all Humility and Obedience he would submit himself to that, or any other their Decrees whatsoever, tho' it should reach as far home unto him as his own Life; but withal humbly begged, That if hereafter he should be troubled (for they were to speak last) with new Matter, or with supplemental Proof, he might have leave to speak something in his own Defence.

The Lord Steward answered, It was all the Reason in the World.

The Lieutenant went on thus:

My Lords,

THIS Day I stand before you charged with High-Treason, the Burden is heavy, yet far the more, in that it hath borrowed the Patrociny of the House of Commons; if they were not interested, I might express a no less easy, than I do a safe Issue and good Success to the Business: But
let

let neither my Weakness plead my Innocence, nor their Power my Guilt. If your Lordships will conceive of my Defences, as they are in themselves, without reference to either, (and I shall endeavour so to present them) I hope to go away from hence as clearly justified, as I am now in the Testimony of a good Conscience by myself. My Lords, I have all along my Charge watched to see that poisoned Arrow of Treason, that some Men would fain have to be feathered in my Heart, and that deadly Cup of Wine, that hath so intoxicated some petty mis-alledged Errors, as to put them in the Elevation of High-Treason; but in truth it hath not been my Quickness to discern any such Monster yet within my Breast, though now, perhaps, by a sinistrous Information, sticking to my Clothes. They tell me of a twofold Treason, one against the Statute, another by the Common-Law; this direct, that consecutive; this individual, that accumulative; this in itself, that by way of construction.

For the first, I must, and do acknowledge, that if I had the least suspicion of my own Guilt, I would spare your Lordships the pains, cast the first Stone at myself: and pass Sentence of Condemnation against myself: and whether it be so or not, I refer myself to your Lordships Judgment and Declaration. You, and only you, (under the favour and protection of my gracious Master) are my Judges: under favour, none of the Commons are my Peers, nor can they be my Judges. I shall ever celebrate the Providence and Wisdom of your noble Ancestors, who have put the Keys of Life and Death (so far as concerns you and your Posterity) into your own hands, not into the hands of your Inferiours; none but your own selves know the Rate of your noble Blood, none but yourselves must hold the Ballance in dispensing the same.

I shall proceed in repeating my Defences, as they are reducible to these two main Points of Treason: and for Treason against the Statute, (which is the only Treason in effect) nothing is alledged for that, but the fifteenth, two and twentieth, and twenty-seventh Articles. [Here he brought the Sum of all his Replies made to these three Articles before, and almost in the same Words as before; only that Testimony of Sir *Henry Vane's*, because it seemed pressing, he stood upon it, and alledged five Reasons for the nullifying thereof.]

First, That it was but a single Testimony, and would not make Faith in a Matter of Debt, much less in a Matter of Life and Death; yea, that it was expressly against the Statute to impeach (much less to condemn) him upon High-Treason, under the Testimony of two famous Witnesses.

Secondly, That he was dubious in it, and express'd it with an *as I do remember*, and *such or such like Words*.

Thirdly, That all the Council of Eight, except himself, disclaim the Words; as if by a singular Providence they had taken hold of his Ears only.

Fourthly, That at the time the King had levied no Forces in *Ireland*, and therefore he could not be possibly so impudent as to say to the King, *That he had an Army there, which he might employ for the reducing this Kingdom*.

Fifthly, That he had proved by Witnesses beyond all Exceptions (*Marquis Hamilton*, the Lord Treasurer, the Earl of *Northumberland*, Lord *Cottingham*, Sir *William Pennyman*, and Sir *Arthur Ter-*

tingham) that there was never the least Intention to land those Forces in *England*.

[He went on:]

So much for the Articles that concern Individual Treason.

To make up the Constructive Treason, or Treason by way of Accumulation, many Articles are brought against me, as if in a heap of Felonies or Misdemeanours (for in their conceit they reach no higher) some prolific Seed, apt to produce what is treasonable, could lurk. Here I am charg'd to have designed the Ruin and Overthrow both of Religion and State. The first seemeth rather to have been used to make me odious than guilty; for there is not the least Proof alledged concerning my Confederacy with the Popish Faction, nor could there be any indeed; never a Servant in Authority beneath the King my Master was ever more hated and maligned by those Men than myself, and that for an impartial and strict executing of the Laws against them.

Here your Lordships may observe, that the greater number of the Witnesses used against me; either from *Ireland* or from *Yorkshire*, were Men of that Religion: But for my own Resolution (I thank God) I am ready every Hour of the Day to seal my Dissatisfaction to the Church of *Rome* with my dearest Blood.

But, my Lords, give me leave here to pour forth the Grief of my Soul before you: these Proceedings against me seem to be exceeding rigorous, and to have more of Prejudice than Equity, that upon a supposed Charge of my Hypocrisy or Errors in Religion, I should be made so monstrously odious to three Kingdoms; a great many thousand Eyes have seen my Accusations, whose Ears shall never hear, that when it came to the upshot I was never accused of them. Is this fair dealing amongst Christians? But I have lost nothing by that: Popular Applause was ever nothing in my conceit; the Uprightness and Integrity of a good Conscience was, and ever shall be, my continual Feast; and if I can be justified in your Lordships Judgments from this grand Imputation, (as I hope I now am, seeing these Gentlemen have thrown down the Bucklers) I shall account myself justified by the whole Kingdom, because by you, who are the Epitome, the better Part, yea the very Soul and Life of the Kingdom,

As for my Design against the State, I dare plead as much Innocency here, as in Matter of my Religion: I have ever admired the Wisdom of our Ancestors, who have so fixed the Pillars of this Monarchy, that each of them keep a due Proportion and Measure with the other, and have so handsomely tyed up the Nerves and Sinews of the State, that the straining of any one may bring danger and sorrow to the whole Economy. The Prerogative of the Crown, and the Propriety of the Subject, have such mutual Relations, this takes Protection from that, that Foundation and Nourishment from this: And as on the Lute if any one String be too high or too lowly wound up, you have lost the Harmony; so here the Excess of a Prerogative is Oppression; of pretended Liberty in the Subject, Disorder and Anarchy. The Prerogative must be used as God doth his Omnipotency, upon extraordinary Occasions; the Laws (answerable to that *Potentialigata in Creaturis*) must have place at other times. And yet there must be a Prerogative, if there must be extraordinary Occasions;

sions; the Propriety of the Subjects is ever to be maintained, if it go in equal pace with this: They are Fellows and Companions, that are and ever must be inseparable in a well-governed Kingdom; and no way so fitting, so natural to nourish and entertain both, as the frequent Use of Parliaments; by those a Commerce and Acquaintance is kept betwixt the King and Subject. These Thoughts have gone along with me these fourteen Years of my publick Employments, and shall, God willing, to my Grave: God; his Majesty, and my own Conscience, yea, and all those who have been most necessary to my inward Thoughts and Opinions, can bear me witness that I ever did inculcate this, That the Happiness of a Kingdom consists in a just Poize of the King's Prerogative and the Subject's Liberty; and that Things would never go well, till they went hand in hand together.

I thank God for it, by my Master's Favour, and the Providence of my Ancestors, I have an Estate, which so interesteth me in the Common-wealth, that I have no great mind to be a Slave, but a Subject; nor could I wish the Cards to be shuffled over again, upon hopes to fall upon a better Set: nor did I ever nourish such base mercenary Thoughts, as to become a Pander to the Tyranny and Ambition of the greatest Man living. No, I have, and ever shall aim at a fair, but a bounded Liberty; remembering always that I am a Freeman, yet a Subject; that I have a Right, but under a Monarch. But it hath been my Misfortune now, when I am grey-headed, to be charged by the Mistakers of the Times, who are now so highly bent, that all appears to them to be in the extreme for Monarchy, which is not for themselves. Hence it is, that Designs, Words, yea Intentions, are brought out for real Demonstrations of my Misdemeanours: such a Multiplying-Glass is a prejudicate Opinion.

The Articles contain Expressions and Actions; my Expressions either in *Ireland* or *England*, my Actions either before or after these late Stirs.

[In this Order he went thro' the whole Charge, from the first Article to the last, in an excellent Method, and repeated all the Sums and Heads of what was spoken by him before; only added in the twenty-eighth Article, If that one Article had been proved against him, it contained more weighty Matter than all the Charge besides: and it had not only been Treason in him, but also Villany, to have betrayed the Trust of his Majesty's Army. Yet because the Gentlemen had been sparing (by reason of the Times) to insist upon that Article, tho' it might concern him much, he resolved to keep the same Method, and not utter the least Expression that might seem to disturb the happy Agreement intended, tho' he wished the same might deceive his Expectation: Only thus much he admired, how himself, being an Incendiary against the *Scots* in the twenty-third Article, is now become their Confederate in the twenty-eighth Article; or how he could be charged for betraying *Newcastle*, and for fighting with the *Scots* at *Newborne* too, seeing fighting with them was no possible Means for betraying the Town, but to hinder their Passage thither.

That he never advised War farther, than (in his poor Judgment) concerned the very Life of the King's Authority, and the Safety and Honour of his Kingdoms: Nor saw he what Advantage could be made by a War in *Scotland*, where nothing

could be gained but many hard Blows. For his part, he honoured the Nation, but he wished they might be ever under their own Climate, and had no desire they should be too well acquainted with the better Soil of *England*: But he thought that Article had been added in jest, or as a Supernumerary; and he very little suspected to be reckoned a Confederate with the *Scots*, and wished (as he hoped it was) that every *Englishman* were as free from that Imputation as himself: closing his Defence with this Speech.]

My Lords, You see what may be alledged for this Constructive, rather Destructive Treason. For my part, I have not the Judgment to conceive that such a Treason is agreeable either with the fundamental Grounds of Reason or Law: not of Reason, for how can that be Treason in the Lump or Mass, which is not so in any of the Parts? Or how can that make a Thing treasonable, which in itself is not so? Not of Law, since neither Statute, Common-Law, nor Practice, hath from the beginning of this Government ever mentioned such a Thing; and where, my Lords, hath this Fire, without the least appearance of any Smoke, lien hid so many hundred Years, and now breaks forth into a violent Flame to destroy me and my Posterity from the Earth? My Lords, do we not live by Laws, and must we be punished by Laws before they be made? Far better were it to live by no Laws at all, but to be governed by those Characters of Discretion and Virtue, that Nature hath stamped in us, than to put this Necessity of Divination upon a Man, and to accuse him of the Breach of Law, before it be a Law at all. If a Waterman upon the *Thames* split his Boat by grating upon an Anchor, and the same have a Buoy appending to it, he is to charge his own Inobservance; but if it hath none, the Owner of the Anchor is to pay the Loss.

My Lords, If this Crime, which they call Arbitrary Treason, had been marked by any Discerner of the Law, the Ignorance thereof should be no Excuse for me; but if it be no Law at all, how can it in rigour or strictness itself condemn me? Beware you do not awake these sleeping Lions, by the searching out some neglected Moth-eaten Records, they may one Day tear you and your Posterity in pieces: It was your Ancestors Care to chain them up within the Barricadoes of Statutes; be not you ambitious to be more skilful and curious than your Forefathers in the Art of killing.

My Lords, It is my present Misfortune, for ever yours; and it is not the smallest part of my Grief, that not the Crime of Treason, but my other Sins, (which are exceeding many) have presented me before this Bar; and except your Lordships Wisdoms provide for it, it may be, the shedding of my Blood may make way for the tracing of yours: you, your Estates, your Posterities, lie at the stake. If such learned Gentlemen as these, whose Tongues are well acquainted with such Proceedings, shall be started out against you; if your Friends, your Counsel denied Access unto you; if your professed Enemies admitted to witness against you; if every Word, Intention, or Circumstance of yours, be sifted and alledged as treasonable; not because of a Statute, but because of a Consequence, or Construction of Lawyers pieced up in a high Rhetorical Strain, and a number of supposed Probabilities; I leave it to your

Lordships

Lordships Consideration; to foresee what may be the Issue of such dangerous and recent Precedents.

These Gentlemen tell me they speak in defence of the Commonwealth, against my Arbitrary Laws; give me leave to say it, I speak in defence of the Commonwealth, against their Arbitrary Treason: for if this Latitude be admitted, what Prejudice shall follow to King and Country, if you and your Posterity be by the same disabled from the greatest Affairs of the Kingdom? For my poor self, were it not for your Lordships Interest, and the Interest of a Saint in Heaven, who hath left me here two Pledges on Earth, [*At this his Breath stopp'd, and he shed Tears abundantly in mentioning his Wife, which moved his very Enemies to Compassion*] I should never take the pains to keep up this ruinous Cottage of mine; it is loaden with such Infirmities, that in truth I have no great pleasure to carry it about with me any longer: nor could I ever leave it in a better time than this, when I hope the better part of the World would perhaps think, that by this my Misfortune I had given a Testimony of my Integrity to God, my King, and Country. I thank God, I count not the Afflictions of this present Life comparable to that Glory, which is to be revealed in the time to come.

My Lords! my Lords! my Lords! Something more I had to say, but my Voice and Spirits fail me: only I do in all humility and submission cast myself down before your Lordships Feet, and desire that I might be a *Pharos* to keep you from Shipwreck; do not put such Rocks in your own Way, which no Prudence, no Circumspection, can eschew or satisfy, but by your utter Ruin. And whether your Judgments in my Case (I wish it were not the Case of you all) be either for Life or Death, it shall be righteous in my Eyes, and received with a *Te Deum laudamus*: (and then he lifted up his Eyes, and said) *In te, Domine, confido, ne confundar in aeternum.*

This he spake with an inimitable Life and Grace. You have his very Words as near as I can remember, only with so much loss and detriment as hath perished by transcribing the Copy from his own Mouth. But you desire Impartiality, and indeed you have it, and with some Grains too of Allowance; for I was so afraid of my own Affliction to the Gentleman, that I rather bowed to the other Extremity, and therefore have set down his Defences rather to his Disadvantage by my rude Pen, than in the native Colour, to his eternal Glory, and the Confusion of his Enemies.

The Repetition of the Charge did not spend much time; they proceeded orderly Article by Article, in the very same Words and Matter as before: only there was some remarkable Flashes that passed from Mr. *Glyn* (who was the Man) in the time of their handling.

He told them, That he should represent the Lord *Strafford* as cunning in his Replies, as he had been crafty in his Actions; that he waved all that was material, and insisted only upon the secondary Proofs; that it was more than evident throughout all his Charge, how he had endeavoured to bring in an Arbitrary and Tyrannical Form of Government over the Lives, Lands and Liberties of the King's Subjects; yea, had exercised a Tyranny over their Consciences too, by the Oath administered in *Ireland*: And tho' his malicious Designs had taken

no effect, yet no Thanks to him, but to the Goodness of the King, and the Vigilancy of the Peers. Had they pleased, it had been too late to have punished him; for no Rule of Law had been left whereby to censure him, after the Death and Expiration of the Laws. And if the Intention of *Guido Faux* might be thought Treason, tho' the House was not blown up, then this Intention of his may admit the same Censure.

He closed; That throughout all his Defences he had pretended either Warrants from the King, or else the King's Prerogative: and what was this else but to draw up a Cloud, and exhale the Vapour for the eclipsing of the bright Sun, by the Jealousies or Repinings of his Subjects, if the strength of his Piety and Justice should not dispel all these Mists, and send them down to their Original? That the very standing and falling of these three Kingdoms stood upon this Process; all of which do conceive their Safety so far interested in his just Punishment, that no settling of their Peace or Quiet could be expected without this: That they hoped the Law should never protect him, who had gone about to subvert all Law; nor the Nobility (who had the same Blood moving in their Veins) by submitting themselves to his base Tyranny, lose that Privilege and Liberty, which their Ancestors had bought with their dearest Lives. Tho' there was no Statute for this Treason, was it the less monstrous? For there were none for many hundreds of Years that durst ever venture upon such Insolences, to occasion such a Statute. And were not the fundamental Grounds and Rules of Government sufficient to rise up in Judgment against him, without the making a particular Statute? This, he said, he left to the Dispute of the Law; and concluded, that seeing they had found out the *Jonah*, who these many Years had tossed and hazarded the Ship of the Commonwealth with continual Storms and Tempests, there could be no Calms expected, but by casting him out into the Seas; which, in all justice, they must, and do expect from their Hands, who are intrusted by the Body of the Kingdom to do the same. The Aggravation of the Offence, he said, he had left to Mr. *Pym*, who here spake that Speech which is now in Print.

It was a Sport to see how Mr. *Pym* in his Speech was fearfully out, and constrained to pull out his Papers, and read with a great deal of Confusion and Disorder, before he could recollect himself; which failing of his Memory was no small Advantage to the Lieutenant: because, by this means, the House perceived it was a premeditated Flash, not grounded upon the Lieutenant's last Answer, but resolved on before, whatsoever he should say for his own Justification. But the Lieutenant was not suffered to reply a Word, either to *Glyn* or *Pym*, because the last Word must be theirs. And so with *Tuesday* ended the Matter of Fact.

On *Thursday* the Dispute in Law is expected.

Upon *Wednesday, April 14*, we were big with Expectation for the Matter of Law, having done before with Matter of Fact; but it seems the House of Commons had perceived a great Defection of their Party, and a great Increase of the Lord *Strafford's* Friends in both the Houses, occasioned by his insinuating, honest, and witty Defences, and therefore resolved of no more hearing in publick: therefore it was thought upon by his Accusers to draw

draw up a Bill of Attainder, and present the same to the Lords; whereby, First, the Matter of Fact should be declared to have been sufficiently proved; and then in the Matter of Law, that he had incurred the Censure of Treason, for intending to subvert the fundamental Laws of the Kingdom: For tho' (said they) he cannot be charged by the Letter of the Statute of the Twenty-fifth of *Edward* the Third, yet he is within the Compass of the *Salvo*, whereby it is provided, That the King and Parliament hath power to determine what is treasonable, and what not; and that they were confident the Lords would ratify and approve of this Bill of theirs, and give Judgment accordingly.

The Motion was stoutly opposed by three great Lawyers, (all Members of the House) *Selden*, *Holborne* and *Bridgeman*, who made it manifest, that the *Salvo* of 25 *Edward* 3. was repealed, and that no Man could now be convicted of Treason, but by the Letter of that Statute: But being put to Voice, it was carried for the Bill, and a Committee appointed for to draw it up.

This gave occasion of much talk abroad, and they who were otherwise the Lord *Strafford's* Enemies, could not find Equity enough in the Bill of Attainder. Some could not conceive what difference imaginable was betwixt the Bill and the Charge presented before; for in the Charge he was accused of Treason, and the Bill (tho' they had not the Legislative Power) seemed nothing but an Affirmation of the same. Others (who would have the Bill understood of a definitive Sentence, because it was consecutive to the Proofs) were not satisfied, but that it was against all Practice, that the Commons should give Sentence upon the Death of a Peer; and that it was against common Equity too, that the Complainers should be admitted to be Judges, and that the Party accusant should give the Judgment. A third sort gave it out, That this was no Sentence against the Lord *Strafford*, but only a passing of a new Act of Parliament, about a Matter not hitherto declared treasonable: But yet these doubted, that by declaring the Matter of Fact to be approved, and applying the Censure to it, in reference to the Lord *Strafford*, it would ever be thought a Sentence against him, to blemish his own Fame, and the Blood of his Posterity. Moreover, that if they were about to make a new Act, it were strange to punish a Man for the Breach of such a Statute as was not yet extant *in rerum natura*; which should in reason refer only to future Obedience: And (what is more strange) tho' there were a new Statute, yet by what Authority can the Parliament declare any individual or accumulative Act to be treasonable, which was not so before; for it must be Treason by virtue of a Statute, or else no Treason at all. Now there is none can be brought, except the Twenty-fifth of *Edward* the Third, whereof the Letter of that Statute cannot, by their own Confession, nor was not so much as once alledged against the Lord *Strafford*: And for the *Salvo* or *Proviso* (which they mainly insisted on) the same stands repealed by two posterior Acts of Parliament.

You have the Mutterings of all sorts of People.

The Lords fearing the proceedings, as a beaten Path trodden out to the Ruin of their own Lives and Estates, told the House of Commons in their Conference upon *Thursday*, *April* 15, That they would go on the same way they did already; and, according to the Order of the House, give full Au-

dience to the Lord *Strafford's* Counsel in Matter of Law, and that they themselves, as competent Judges, would by themselves only give Sentence in the Cause; nor was there any other Course suitable to the Practice and Statutes of the Kingdom, the Safety of the Nobility, or to Equity or common Justice.

It was replied by them of the Lower House, That they were resolved to go on with their Bill, and if the same should be rejected by the Lords, they feared a Rupture and Division might follow, to the utter Ruin and Desolation of the whole Kingdom; that no Content would be given to the Subject, (and this was a strong argument indeed, yet better befitting Partiality and Violence, than the pretended Justice and Piety of the Times) unless the Man who had so much intruded upon their Right, and discontented the People, might be punished as a Traytor; and for the Practice of the Kingdom, that no Man had ever found such a favourable Hearing; and that the Procces against *Essex*, *Norfolk*, *Somerset*, were all of them closed up in one Day.

Upon *Friday*, *April* 16, the Lords gave Answer, That they could expect nothing from the House of Commons, but what should tend to the Peace and Preservation of the Kingdom: nor was there a more forceable way than to preserve the Laws and Customs thereof, lest Innovation, so much complained of by them, might unhappily be found among themselves: That the Subjects should have all that Justice could afford, but that an Act of Injustice would never give Satisfaction to the World, nor Safety to themselves; the Eyes of all foreign States being fixed upon the Business now in agitation, and the Wisdom of our Nation either to be much advanced or depressed by their Judgments in this Case: That the Procces against *Norfolk* and *Essex* (for *Somerset* was convicted only of Felony, and had not so much Animadversion to save himself by his Book) were for direct and formal Treasons, comprised in one or two individual Acts; but this against the Lord *Strafford* only arbitrary and accumulative, to be pickt out of Twenty-eight Articles: And therefore that it was impossible to have a full examination of them all to give Sentence against him. And those Noblemen were charged with some actual Breach of Statutes, formerly made; but here a new Statute was to be made or else he to be found guiltless. They concluded, that they had given order for his Appearance on *Saturday* and that in the great Hall at *Westminster*, where the House of Commons might, if they pleased, be present.

After some Deliberation with the House, the Conferrers answered, That since the Lords had so resolved, they would not deny to be there present, and to hear what his Counsel could say for him, but to reply any more in publick they neither could nor would, because of the Bill already past: only if the Lords should take any scruple in the Matter of Law, they would be ready to give them Satisfaction by a private Conference. (So they willingly declined to do what indeed they could not possibly do, that is, to give publick Satisfaction in the Matter of Law.)

Upon *Saturday*, *April* 17, they convened in the great Hall, but they that were of the Committee for the great Charge, did not stand at the Bar, as before, but sat promiscuously with the rest of their Fellows: so that a Mouth was not opened

in the behalf of the House of Commons all that Day. After they were sat, the Lord Steward told the Lieutenant, That the Lords had resolved to give him a fair Hearing in the Matter of Law, and therefore desired that the Counsel might keep that Distance, Moderation and Respect to the Judiciary that was fitting, and not at all to meddle with the Matter of Fact.

The Lieutenant replied, That in all Humility he did acknowledge that Favour from the Lords; and that it was such an one too, as he could not but expect from such honourable Peers and just Persons in whose Integrity and Goodness (under that which he had placed above) he had reposed his chiefest Confidence; for his Counsel, they knew much better than himself what concerned the Point of Discretion and Reverence; and that he doubted not but that they would give all Satisfaction and Obedience.

Then his Counsel were called to the Bar, Mr. Lane, the Prince's Attorney; Mr. Gardiner, Recorder of London; Mr. Loe, and Mr. Lightfoot. Mr. Lane spake, and much to this Sense and Purpose:

My Lords, there is a heavy Charge lieth on me and my Fellows, nothing less than to defend the Life, the Estate, the Reputation, yea the Posterity of this Honourable Person at the Bar; if therefore we shall be more pressing, we hope your Lordships will interpret this our Forwardness to be for Honour and Conscience-sake, in a Matter that concerneth both so nearly: But it shall be our Endeavour to carry ourselves with our best Respects to your Lordships, and with all Content and Satisfaction to the Honourable House of Commons. And because your Lordships mentioned the Matter of Fact, one thing I dare be bold to say, That all the Time of this Noble Lord's Defences, he did not so much as crave any one of our Opinions; yea, or acquainted us with any thing that tended that way. And for the Matter of Law, those Statutes cited by himself were none of our Stock, but taken up at his own adventure: nor do I speak this to derogate from the Pertinency of those Statutes (for they shall be the Subject of my Discourse) but that the Nobleman be not disappointed of your right Conceptions, and his own due Praise.

My Lords, it is your pleasure we meddle not with Matter of Fact, and indeed we need not meddle at all with it, because we hope it is already done, and that sufficiently to our hands; yet the Matter of Law doth so naturally rise out of the Matter of Fact, that of necessity (under your Lordships Favour) we must somewhat grate on this, if we speak on that; nor do I conceive it possible for us to speak advantageously enough for the Lord *Strafford's* just Defence, unless the whole Matter of Fact be determined, either as proved or not proved, or at least some states of Questions agreed upon, where we may fix and settle our Arguments. And therefore it is, my Lords, that I have chosen not at all to touch the Matter of Law (until your Lordships shall be pleased to chalk me out a way) unless it be to clear your Judgments in one Statute only, *viz.* 25 *Edw.* 3. Because when the same was alledged by the Lord *Strafford* in his own Defence, that not being convicted of the Letter thereof, he could not be convicted of Treason; I remember the *Salvo* of that Statute was much insisted upon by those from the House of Commons, as much conducing to their own ends. My Lords, I will first speak of the

Statute itself, and then of its *Salvo* or Provision. The Statute is, *That if any Man shall intend the Death of the King, his Queen, their Children; kill the Chancellor, or Judge upon the Bench; imbase the King's Coin, or counterfeit the Broad-Seal, &c. he shall be convicted and punished as a Traytor.* That the Lord *Strafford* comes within the Letter of this Statute, is not so much as once alledged, not indeed can it be with any reason: All that can be said, is, That by Relation, or by Argument *a minori ad majus*, he may be drawn thither; yet that this cannot be, I humbly offer these Considerations.

First, This is a Declarative Law; and such are not to be taken by way of Consequence, Equity, or Construction, but by the Letter only; otherwise they should imply a Contradiction to themselves, and be no more Declarative Laws but Laws of Construction, or Constitutive.

Secondly, This is a Penal Law, and such (if our Grounds, hitherto unquestioned, hold good) can admit of no Constructions or Inferences; for Penalties are to persuade the keeping of known Laws, not of Laws conjectural, ambiguous; and by consequence, which perhaps the most Learned may not in their Disputes question; much less the Subject (who is not obliged to interpret the Statute) doubt of in the Point of Obedience; yea rather without any Doubt, he is to obey the Letter of the Statute, and conceive (and that truly) that he is not liable to the Penalty.

Thirdly, We have a notable Law, 13 *Eliz.* cap. 2. whereby it is declared that the bringing in of Bulls from *Rome* to stir up the Subject to Mutiny and Rebellion shall be punished as Treason. Now if by Interpretation, or by Consequence, this Sense might have been thrust upon the preceding Statutes, the making of this had been superfluous; yea, the Persons then charged with that Crime, might have been impeached of Treason, even before the making of this Act.

Anno 21 *Ed.* III. We have a Statute declaring, That for a Servant to kill his Master, is an Act of Treason: And in the three and twentieth Year of the same King, a Process of Treason was framed against a Man for killing his Father, grounded upon the same Argument, *a minori ad majus*: But it was found (and the Sentence is yet in the Records) that altho' in the one and twentieth Year of *Edward* the Third, that Argument might have been admitted; yet in the twenty-seventh it could not, by reason of the Declarative Law intervening in the twenty-fifth Year: And this Case comes very home to the Point in Law.

My Lords, I will not demand what kind of Offence it may be, for a Man to subvert the Fundamental Laws of a Kingdom; the Crime doubtless is unnatural and monstrous, and the Punishment must keep the same Proportion: only I presume to offer these few Things to your Lordships Considerations.

First, that one or more Acts of Injustice, whether maliciously, or ignorantly done, can in no Sense of Law be called the Subversion of the Fundamental Laws; if so, as many Judges (perhaps) so many Traytors. It is very incident to Man's Nature to err; nor doth the Lord *Strafford* plead his Innocency in Over-sights, but in Treason.

Secondly, I do remember the Case of *John de la Pool*, Duke of *Suffolk*: This Man in the twenty-eighth of *Henry* the sixth, was charged by the House

House of Commons with Articles of Treason, and those too very like to these against my Lord *Strafford*.

1. That he had given the King bad Advices.
2. That he had embased his Coin.
3. That he had cessed Men of War.
4. That he had given out summary Decrees.
5. That he had imposed Taxes.
6. That he had corrupted the Fountain of Justice.
- 7 That he had persuaded the King to unnecessary War, and to the giving over of *Anjou* in *France*, *Orum Ovo*.

And for all these, tho' he was charged with High-Treason, for wronging the Right of the Subject, and subverting the Fundamental Laws of the Kingdom; yet, after a long Agitation, the Matter was found by the Lords of Parliament, not to imply Treason, but only Felony. Add to this another, who in the Twenty-third of *Henry* the Eighth, was charged for subverting the *English* Laws, and yet no Treason charged upon him. Add to both the Charge of *Richard Larks*, pleaded at the *Common-Pleas*, who was charged with Treason for subverting the Law, but convicted only of Felony: By which you may see, my Lords, what to this time hath been subverting the Laws.

Thirdly, It is very considerable, that the Lord *Strafford* is not charged to have subverted, but only to have intended to subvert the Fundamental Laws: And this I conceive, if there were no more, might keep him free from that Statute of the twenty-fifth of *Edward* the Third. For although, as touching the King, his Queen and Children, Intention is Treasonable; yet in all other things there mentioned, there must be Action beside Intention: for it is not said, If a Man do intend to kill a Chancellor, it shall be Treason; but only, if he do kill him; and if he doth actually counterfeit the Broad-Seal. And although a Man should prepare a Furnace, make ready his Stamp, melt his Bullion, yet if he gives not the King's Impression upon the Coin, all his Intentions, yea, his Preparations will not serve to make up a Treason.

And this (under Favour) may serve to answer the Case of *Guido Faux*, lately objected; unless it be alledged, that the Lord *Strafford* had as real an Intention against the King's Life as *Faux* had: For tho' the Intention in that Case be Treason by the Statute, yet in all other things there is no Treason without the Action; so immense and vast a Difference both is, and ought to be, betwixt a Project against the Royal Blood, and all things else of a lower and under Nature.

You see therefore, my Lords, that the Body of the Statute cannot stick against the Lord *Strafford*, neither in Letter, nor in Consequence; this is not, that must not be: All that can be said, is, That this Fact may be Treason by the Common Law. For my Part I profess my Ignorance, who ever thought the Common Law might declare, but never make a Treason; that is, it might be presupposed that there is a Statute whereupon to build a Declaration; and therefore to say there is no Statute for it, is to say it is no Treason at all. The Statute ever makes the Treason; and to be declared to be Treason, either by Common Law, or by Parliament, are but two different Ways of Proceedings, and must both resolve into one Principle: yea, which comes home to the Point, in the one and twentieth of *Edward* the Third, to

kill a Man imployed in the King's War, was Treason; and the twenty-third, to kill the King's Messenger, was Treason by Declaration of the Common Law, but always by Reason of the Statute; yet none of these are now Treasons, but Felonies only, by Reason of the intervening Statute, the twenty-fifth of *Edward* the Third: such hath ever been thought the Force of its Letter and Declaration. and so I will leave it, and speak a Word or two of the *Salvo*, which is this; That because all Particulars could not be then defined, therefore what the Parliament should declare to be Treasonable in time to come, should be punished as Treason.

And according to this Reservation, in the eighth Year of *Richard* the Second, one who was charged before the *King's-Bench*, was afterwards referred to the Parliament; and there, though the Fact was not contained in the Body of the Statute, yet because of the *Proviso* afore-mentioned, it was adjudged Treason.

In the eleventh Year of the same King, the Duke of *Ireland*, and *Nevil* Archbishop of *York*, were impeached of High-Treason by *Gloucester*, *Arundel*, and *Warwick*; and notwithstanding the Statute, were convicted thereof by the *Salvo*. But in the one and twentieth of the same *Richard* the Second, the Tide turned, and the King had such a Hand with the Parliament, that the Sentence was recalled, and those three Noblemen themselves adjudged Traytors. Again, in the first of *Henry* the Fourth, his Successor, that Revocation of the one and twentieth of *Richard* the Second was repealed, and the Sentence of the eleventh of his Reign established. Such were the Tossings to and fro of Treason, and all because of that uncertain *Proviso*.

Therefore it was, that in the same Parliament, the first of *Henry* the Fourth, a Petition was preferred by the Nobility to have Treason limited with some Statute; because they knew not what to speak, or what to do, for fear thereof. And in the tenth Chapter an Act was made upon this Petition, that the *Salvo* should be holden repealed in all times to come, and nothing esteemed Treason but what was literally contained in the Statute of the twenty-fifth of *Edward* the Third: And therefore it is said in the Records, That there was great Joy at the making of this Act, in that the drawn Sword hanging over every Man's Head, by this slender Thread of a Consequence, or Illation, was moved by that Act. Add to this, That in the first of *Queen Mary*, the first Chapter, the same is repeated, *That no Man shall be punished in Life or Estate as a Traytor, but for the Crime contained in the Statute 25 Edw. 3.* without the least mention of a pretended *Salvo*.

The Earl of *Northumberland's* Case comes nigh to the Point; he was charged with Treason, the first of *Henry* the Fourth, and if the Statute of the fifth of *Henry* the Fourth, the first Chapter, whereby this *Proviso* is repealed, had not intervened, no doubt he had been condemned of Treason: but he was only convicted of Felony, and that because he could not be drawn within the Letter of the Statute of the twenty-fifth of *Edward* the Third. And I dare confidently say it, That since that Act was made, the first of *Henry* the Fourth, the first Chapter, whereby the *Proviso* is repealed, no Man hath ever been declared a Traytor, either by King or Parliament, except it were upon that, or some other

other Statute, literally and declaratively taken. These two things I do offer to your Lordships Considerations; That the Lord *Strafford* cannot be impeached of Treason by the Statute of the twenty-fifth of *Edward* the Third, and that the *Salvo* contained in the same stands repealed almost two hundred Years ago: And this is all I conceive to be necessary for that Statute which was alledged by the Lord *Strafford* in his Defence for Matter of Fact.

Then the Recorder spake some few Words to this Purpose; That what was spoken upon the Statute, was because it seemed inseparable from the Matter of Fact, that they could proceed no farther, till a State were afforded them; that to do otherwise, they conceived, might be very prejudicial unto my Lord *Strafford*:

First, In that they should suppose that to be done, which is not proved to be.

Secondly, That the Matter of Law ariseth so naturally from the Matter of Fact, that it will be impossible to separate one from the other.

Thirdly, That it is the Course of all Judicatories, first to settle the Verdict, and upon that to fix the Arguments, otherwise he could conceive no possible Way of Proceeding; and therefore, in the Lord *Strafford's* Name, he most humbly intreated, that the Lords would either wholly determine the Matter of Fact (not whether it was Treason or no, for then all other Proceedings in the Law were unnecessary, but whether done or not done) or else to give them some States of the Question whereunto they might confine themselves.

Upon this Motion the House was adjourned for that Day, nor hath it met since; for the House of Commons are returned to their old Biass, and will hear of nothing but the Bill of Attainder; but the Lords seem to be more resolute than before, because they find that they have no Authority to declare a Treason in a Fact already past, the *Salvo* of the twenty-fifth of *Edward* the Third being repealed; withal, that if the Bill of Attainder should proceed, the King hath as great Power to hinder that at the last Blow, as any other Statute: but I hope the Lords will disburden him of that Envy.

All they which stand obliged to the Lord *Strafford*, in Blood, Affection or Deserving; and all who have been interested with him in the King's Service, and many too, who both hate his Person, and dislike his Proceedings; will doubtless look upon it, and tender their own Safety, all of them in Likelihood being subject to the Charge of Treason, if ever they chance to be called to do the King Service in any Place of Importance.

I cannot express how much the Voice of the Multitude is now altered from what it was lately, nothing now talked of what should be done, but only of what must be done: So that if the Lord *Strafford* dies, his very Enemies will confess, that it is done more for Necessity, than for Justice; and rather for the Satisfaction of rancorous Apprehensions, than for any Guiltiness in the Cause.

Thursday last, viz. *April* 29, was designed for the Agitation of the long intermitted Business concerning the Lieutenant; and the Way was this:

The Lords did meet at the great Hall at *Westminster* about Nine of the Clock, not in their Robes, nor did the Lord Steward sit upon his Sack, but with the rest promiscuously; nor did the Committee for the House of Commons stand at the Bar,

but sat with the rest of their Fellows; and the Earl of *Strafford* sat behind the Place where he used to sit before; the Reason of these Changes was, because the Dyet was appointed not for a Meeting, but for a Conference: so curious are we (and that's all) about Formalities. The King, Queen, and Prince were there, according to their Custom: not a Man spake a Word in the House all the time, but only Mr. *St. John*, the King's Solicitor, one of the Committee; whose Drift and Purpose was to furnish the Lords with Reasons, why the House of Commons had proceeded with a Bill of Attainder: and withal, to reply to what the Lord *Strafford* had spoken, either by himself or his Council, in Matter of Law. The Speech is in Print.

Upon the Close of Mr. *St. John's* Speech, the House dissolved; nor was there a Word spoken but by Mr. *St. John*: only the Lord-Lieutenant used the last Part of his Rhetorick, and by a dumb Eloquence, *manibus ad sidera tenfis*, all along Mr. *St. John's* Speech, made his Replies with a deep Silence.

Upon *Friday, April* 30, he petitioned the Lords to be heard again, and that because his Lawyers had not fully spoken at their last Meeting; but this was denied him, because the House were to have the last Speech, nor were they content to speak again.

Upon this Information, or what else is not known, the King (it seems, fearing the Inconstancy of the Lords) came to the House on *Saturday, May* 1, at Ten of the Clock, and having called for the House of Commons, spake much to this Effect.

The King's Speech to the House of Commons.

‘ THAT he had sincerely, without Affection
‘ or Partiality, endeavoured to inform him-
‘ self concerning the Lieutenant's Charge; and
‘ had, at length, seriously pondered with himself,
‘ both concerning the Matter of Fact, and the
‘ Matter of Law: and now it stood him in hand
‘ to clear their Judgments, than to exonerate his
‘ own Conscience. For them, he had two things
‘ to declare:

‘ *First*, That there was never such a Project;
‘ nor had the Lord *Strafford* ever offered such Ad-
‘ vice, for the transporting of the *Irish* Army into
‘ *England*; so that in nothing the Lieutenant had
‘ been more misunderstood than in that: which
‘ Imputation did in no small Measure reflect on
‘ himself (*the King*) as if he had intended to make
‘ War upon his own Subjects; which Thought (*he*
‘ *said*) was far enough from his Breast, nor could
‘ any Man in Probability think so unworthily of
‘ him, who had perceived how graciously he had
‘ dealt with his Subjects elsewhere, that had de-
‘ served a great deal worse.

‘ *Secondly*, That the Lieutenant had never ad-
‘ vised him to establish an Arbitrary Government;
‘ nor, if he had, should he have escaped condign
‘ Punishment: nor would any of his good Subjects
‘ ever think otherwise, unless they conceived him
‘ either to be a Fool or a Tyrant; that he either
‘ could not, or would not discern such Wicked-
‘ ness. He was well content (*he said*) with that
‘ Authority and Power which God had put into
‘ his Hands; nor should he ever think it his Pre-
‘ rogative

rogative, to intrude upon the Propriety of the Subject.

For himself, and his own Conscience, (he said) he was now to declare, That, in his own Judgment, there was nothing in the Process against the Lieutenant that deserved the Censure of Treason. Oversight and Misdemeanours there were, in such a measure, that he confessed the Lord *Strafford* was never worthy hereafter to bear any Office in his Kingdoms, no, not so much as of a Constable; but was to be answerable for all his Errors, when they were to be charged upon him; and to this none of them should concur with greater Alacrity than himself. That he hoped none of them would deny to give him the Privilege of the first Voice, which was, That he would never, in Heart nor Hand, concur with them to punish this Man as a Traytor; and desired therefore, that they would think of some other way how the Business might be composed: Nor should it ever be less dear to him (tho' with the Loss of his dearest Blood) to protect the Innocent, than to punish the Guilty.*

Upon Saturday, May 8, the Bill against the Lord *Strafford* pass'd the Lords; there were Forty-five present, of which Nineteen voiced for him, and Twenty-six against him. The greatest part of his Friends absented themselves, upon Pretence (whether true or supposititious) that they feared the Multitude; otherwise his Suffrages had more than counterpoised the Voters for his Death.

Sunday all the Day the King was resolute never to give way to the Bill against the Lord *Strafford*, telling them withal, That it seemed strange to him that the Man could not die, unless he, and he only, by giving Sentence the King's legislative way, should condemn him.

The same Day the King received the following Letter from the Earl*.

I hath been my greatest Grief in all my Troubles, to be taken as a Person that should endeavour to prevent, and set Things amiss between your Majesty and your People, and to have given Counsel tending to the Disquiet of your Majesty and your three Kingdoms.

Most true it is, that such an Attempt (my private Condition consider'd) had been a great Madness, seeing, thro' your gracious Favour, I was so provided, as I could not expect in any kind to mend my Fortune, or to please my Mind, more than by resting where your bounteous Hand had placed me; nay, the Business is most mightily mistaken; for unto your Majesty it is well known, that my poor and humble Advices concluded still in this, That your Majesty should never be happy, till there were a right Understanding procured betwixt you and them: No other Means to effect and settle this Happiness, but by the Counsel and Assent of the Parliament; and no way to prevent the growing Evils of this State, but by putting yourself intirely upon the Loyalty and good Affection of your Subjects.

Yet (such is my Misfortune) the Truth finds little Credit, the contrary (it seems) generally believed, and myself reputed the Cause of this great Separation betwixt you and your People: Under a heavier Censure than this, I am persuaded no Gentleman can suffer; and now I understand, that the Minds of Men are the more incensed against me, notwithstanding your Majesty hath declared, That in

your Princely Opinion I am not guilty of Treason; nor are you satisfied in Conscience to pass the Bill. This brings me into a great Streight. Here is before me the Ruin of my Children and Family, bitter to untouch'd in all the Branches of it with any foul Crime. Here are before me the many Evils which may befall your sacred Person, and the whole Kingdom, should yourself and the Parliament be less satisfied the one with the other than is necessary for the King and People. Here are before me the Things most valued, most feared by mortal Men, Life and Death: To say, Sir, there hath not been a Conflict within me about these Things, were to make myself less Man than (God knows) my Infirmities will give me leave; and to call a Destruction upon myself and my young Children, where the Intentions (at least) of my Heart have been innocent of this great Offence, (may be believed) would find no easy Consent from Flesh and Blood.

But, out of much Sadness, I am come to a Resolution of that which I take to be best becoming me, that is, To look upon that which is principally to be consider'd in itself, and that is, doubtless, the Prosperity of your sacred Person and the Commonwealth, infinitely to be preferred before any Man's private Interest: And therefore, in few Words, as I have put myself wholly upon the Honour and Justice of my Peers, and so clearly as I wish your Majesty had been pleas'd to have spared that Declaration of yours on Saturday last, and to have left me intirely to their Lordships; so now, (to set your Majesty's Conscience at liberty) I do most humbly beseech you, for the preventing of such Mischiefs as may happen by your Refusal to pass the Bill, by this Means to remove (praised be God I cannot say this accursed, but I confess) this unfortunate Thing forth of the Way towards that blessed Agreement, which God, I trust, shall for ever establish betwixt you and your Subjects. Sir, my Consent herein shall acquit you more to God than all the World can do beside. To a willing Man there is no Injury done; and, as by God's Grace, I forgive all the World, with a Calmness and Meekness of infinite Contentment to my dislodging Soul, so, Sir, I can give the Life of this World with all Chearfulness imaginable, in the just Acknowledgments of your exceeding Favours, and only beg, that in your Goodness you would vouchsafe to cast your gracious Regard upon my poor Son and his three Sisters, less or more, and no otherwise, than their unfortunate Father shall appear more or less guilty of this Death. God preserve your Majesty,

Your Majesty's most Humble,

And Faithful Subject and Servant,

Tower, May 9,
1641.

STRAFFORD.

Upon the Receipt whereof, and after they had wrestled him breathless, at last *victus dedit manus*; being overcome with such uncessant Importunities, he yielded. And about nine of the Clock at Night the King promised to sign both the Bills the next Morning; which was accordingly done, and a Commission drawn up for his Execution, which was on the Wednesday following.

HAVING mounted the Scaffold, he made his Obeifances, and began to take his last Farewell of his Friends, who appear'd much more concern'd than himself; and observing his Brother, Sir

* Clar. Hist. Vol. I. p. 202.

Sir *George Wentworth*, to weep excessively, Brother, (said he, with a chearful Briskness) What do you see in me to deserve these Tears? Doth any indecent Fear betray in me a Guilt, or my innocent Boldness any Atheism? Think now that you are accompanying me the third time to my Marriage-bed: Never did I throw off my Clothes with greater Freedom and Content than in this Preparation to my Grave: That Stock [pointing to the Block] must be my Pillow; here shall I rest from all my Labours: No Thoughts of Envy, no Dreams of Treason, Jealousies or Cares for the King, the State, or myself, shall interrupt this easy Sleep; therefore, Brother, with me, pity those who, besides their Intention, have made me happy; rejoice in my Happiness, rejoice in my Innocence.

Then kneeling down, he made this Protestation: I hope, Gentlemen, you do not think that either the Fear of Loss, or Love of Reputation, will suffer me to bely God and my own Conscience at this time. I am now in the very Door going out, and my next Step must be from Time to Eternity, either of Peace or Pain: To clear myself before you all, I do here solemnly call God to witness, I am not guilty, so far as I can understand, of the great Crime laid to my Charge, nor have ever had the least Inclination or Intention to damnify or prejudice the King, the State, the Laws, or the Religion of this Kingdom; but with my best Endeavours to serve all, and to support all: *So may God be merciful to my Soul.*

Then rising up, he said, he desir'd to speak something to the People, but was afraid he should be heard by few, in regard of the Noise: but having first fitted himself to the Block, and rising again, he thus address'd himself to the Spectators.

MY Lord Primate of *Ireland*, and my Lords, and the rest of these noble Gentlemen, It is a great Comfort to me to have your Lordships by me this Day, because I have been known to you a long time, and I now desire to be heard a few Words. I come here, by the good Will and Pleasure of Almighty God, to pay that last Debt I owe to Sin, which is Death; and by the Blessing of that God, to rise again thro' the Merits of Jesus Christ to Righteousness, and Life eternal. [Here he was a little interrupted.]

My Lords, I am come hither to submit to that Judgment which hath passed against me, I do it with a very quiet and contented Mind; I thank God I do freely forgive all the World; a Forgiveness that is not spoken from the Teeth outward, (as they say) but from the very Heart: I speak it in the Presence of Almighty God, before whom I stand, that there is not a displeasing Thought arising in me towards any Man living. I thank God I can say it, and truly too, my Conscience bearing me witness, that in all my Employments, since I had the Honour to serve his Majesty, I never had any thing in the Purpose of my Heart, but what tended to the joint and individual Prosperity of King and People, altho' it hath been my ill Fortune to be misconstrued.

I am not the first that hath suffered in this kind; it is the common Portion of us all, while we are in this Life, to err; righteous Judgment we must wait for in another Place, for here we are very subject to be misjudged one of another. There is one Thing that I desire to free myself of, and I am

very confident [speaking it now with much Chearfulness] that I shall obtain your Christian Charity in the Belief of it. I was so far from being against Parliaments, that I did always think the Parliaments of *England* were the most happy Constitutions that any Kingdom or Nation lived under, and the best Means, under God, to make the King People happy.

For my Death I here acquit all the World, and beseech the God of Heaven heartily to forgive them that contrived it, tho' in the Intentions and Purposes of my Heart I am not guilty of what I die for: And, my Lord Primate, it is a great Comfort for me, that his Majesty conceives me not meriting so severe and heavy a Punishment, as is the utmost Execution of this Sentence. I do infinitely rejoice in this Mercy of his, and I beseech God to return it into his own Bosom, that he may find Mercy when he stands most in need of it.

I wish this Kingdom all the Prosperity and Happiness in the World; I did it living, and now dying, it is my Wish. I do most humbly recommend this to every one who hears me, and desire they would lay their Hands upon their Hearts, and consider seriously, whether the Beginning of the Happiness and Reformation of a Kingdom should be written in Letters of Blood; consider this when you are at your Homes, and let me be never so unhappy, as that the least Drop of my Blood should rise up in Judgment against any one of you: But I fear you are in a wrong Way.

My Lords, I have but one Word more, and with that I shall end. I profess that I die a true and obedient Son to the Church of *England*, wherein I was born, and in which I was bred. Peace and Prosperity be ever to it.

It hath been objected (if it were an Objection worth the answering) that I have been inclined to Popery; but I say truly from my Heart, that from the time that I was One and twenty Years of Age, to this present, going now upon Forty-nine, I never had in my Heart to doubt of this Religion of the Church of *England*, nor ever had any Man the Boldness to suggest any such thing to me, to the best of my Remembrance. And so being reconciled by the Merits of Jesus Christ my Saviour, into whose Bosom I hope I shall shortly be gathered, to those eternal Happinesses which shall never have end; I desire heartily the Forgiveness of every Man for any rash or unadvised Words, or any thing done amiss. And so, my Lords and Gentlemen, farewell; farewell all Things of this World.

I desire that you would be silent, and join with me in Prayer, and I trust in God we shall all meet and live eternally in Heaven, there to receive the Accomplishment of all Happiness; where every Tear shall be wiped away from our Eyes, and every sad Thought from our Hearts: And so God bless this Kingdom, and Jesus have Mercy on my Soul.

Then turning himself about, he saluted all the Noblemen, and took a solemn Leave of all considerable Persons upon the Scaffold, giving them his Hand.

After that, he said, Gentlemen, I would say my Prayers, and intreat you all to pray with me, and for me; then his Chaplain laid the Book of *Common-Prayer* upon the Chair before him as he kneeled down, on which he prayed almost a Quarter of an Hour, and then as long, or longer,

without the Book, and concluded with the *Lord's-Prayer*.

Standing up, he spies his Brother, Sir *George Wentworth*, and calls him to him, saying, Brother, we must part; remember me to my Sister, and to my Wife, and carry my Blessing to my Son, and charge him that he fear God, and continue an obedient Son to the Church of *England*, and warn him that he bear no private Grudge, or Revenge, toward any Man concerning me; and bid him beware that he meddle not with Church-Livings, for that will prove a Moth and Canker to him in his Estate; and wish him to content himself to be a Servant to his Country, not aiming at higher Preferments.

‘*Aliter.*] To his Son, Mr. *Wentworth*, he commends himself, and gives him charge to serve his God, to submit to his King with all Faith and Allegiance in Things temporal, to the Church in Things spiritual; chargeth him again and again, as he will answer it to him in Heaven, never to meddle with the Patrimony of the Church; for if he did, it would be a Canker to eat up the rest of his Estate.’

Carry my Blessing also to my Daughters, *Anne* and *Arabella*, charge them to serve and fear God, and he will bless them; not forgetting my little Infant, who yet knows neither Good nor Evil, and cannot speak for itself; God speak for it and bless it. Now, said he, I have nigh done; one Stroke will make my Wife husbandless, my dear Children fatherless, and my poor Servants masterless, and will separate me from my dear Brother, and all my Friends; but let God be to you and them all in all.

After this, going to take off his Doublet, and to make himself unready, he said, I thank God I am not afraid of Death, nor daunted with any Discouragement rising from any Fears, but do as cheerfully put off my Doublet at this time, as ever I did when I went to Bed: Then he put off his Doublet, wound up his Hair with his Hands, and put on a white Cap.

Then he called, Where is the Man that is to do this last Office? [meaning the Executioner] call him to me; when he came and ask'd him Forgiveness, he told him, he forgave him and all the World. Then, kneeling down by the Block, he went to Prayer again himself, the Primate of *Ireland* kneeling on the one side, and the Minister on the other: To the which Minister, after Prayer, he turned himself, and spake some few Words softly, having his Hands lifted up, and closed with the Minister's Hands.

Then bowing himself to lay his Head upon the Block, he told the Executioner, That he would first lay down his Head to try the Fitness of the Block, and take it up again before he would lay it down for good and all; and so he did: And before he laid it down again, he told the Executioner, that he would give him Warning when to strike by stretching forth his Hands; and presently laying down his Neck upon the Block, and stretching forth his Hands, the Executioner struck off his Head at one Blow; and taking it up in his Hand, shewed it to all the People, and said, *God save the King*.

His Body was afterwards embalmed, and appointed to be carried into *Yorkshire*, there to be buried amongst his Ancestors.

An Act for Reversing the Earl of Strafford's Attainder.

WHEREAS *Thomas* late Earl of *Strafford* was impeached of High-Treason, upon pretence of endeavouring to subvert the Fundamental Laws, and called to a publick and solemn Arraignment and Trial before the Peers in Parliament, where he made a particular Defence to every Article objected against him; insomuch that the turbulent Party then seeing no hopes to effect their unjust Designs, by any ordinary Way and Method of Proceedings, did at last resolve to attempt the Destruction and Attainder of the said Earl, by an Act of Parliament, to be therefore purposely made, to condemn him upon *Accumulative Treason*, none of the pretended Crimes being Treason apart, and so could not be in the whole, if they had been proved, as they were not: and also judged him guilty of *Constructive Treason*, (that is, of levying War against the King) tho' it was only the commanding an Order of the Council-Board in *Ireland*, to be executed by a Serjeant at Arms and three or four Soldiers, which was the constant Practice of the Deputies there for a long time. To the which end, they having first presented a Bill for this Intent to the House of Commons, and finding there more Opposition than they expected, they caused a Multitude of tumultuous Persons to come down to *Westminster*, armed with Swords and Staves, and to fill both the *Palace-Yards*, and all the Approaches to both Houses of Parliament, with Fury and Clamour, and to require *Justice, speedy Justice*, against the Earl of *Strafford*; and having by those and other undue Practices obtained that Bill to pass the House of Commons, they caused the Names of those resolute Gentlemen, who in a Case of innocent Blood had freely discharged their Consciences, being Fifty-nine, to be posted up in several Places about the Cities of *London* and *Westminster*, and stiled them *Straffordians*, and Enemies to their Country; hoping thereby to deliver them up to the Fury of the People, whom they had endeavoured to incense against them. And then procured the said Bill to be sent up to the House of Peers, where it having some time rested under greater Deliberation; at last, in a time when a great part of the Peers were absent by reason of the Tumults, and many of those who were present protested against it, the said Bill passed the House of Peers: and at length his Majesty, the late King *Charles* I. of glorious Memory, granted a Commission for giving his Royal Assent thereunto; which nevertheless was done by his said Majesty with exceeding great Sorrow then, and ever remembered by him with unexpressible Grief of Heart; and out of his Majesty's great Piety, he did publickly express it, when his own Sacred Life was taken away, by the most detestable Traytors that ever were.

For all which Causes, be it declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lord's Spiritual and Temporal, and Commons in this present Parliament assembled, That the Act, intituled *An Act for the Attainder of Thomas Earl of Strafford of High-Treason*, and all and every Clause and Article, and Thing therein contained, being obtained

obtained as aforesaid, is now hereby repealed, revoked, and reversed.

And to the end that Right be done to the Memory of the deceased Earl of *Strafford* aforesaid, be it farther enacted, That all Records and Proceedings of Parliament, relating to the said *Attainder*, be wholly cancelled and taken off the File, or otherwise defaced and obliterated; to the intent the same may not be visible in After-Ages, or brought into example, to the Prejudice of any Person whatsoever.

Provided, That this Act shall not extend to the future questioning of any Person or Persons, however concerned in this Business; or who had any hand in the Tumults, or disorderly procuring the Act aforesaid; any thing herein contained to the contrary thereof notwithstanding.

A Copy of the Paper posted up at the Corner of the Wall of Sir William Brunkard's House, in the Old Palace-yard in Westminster, Monday May 3. 1641.

The Names of the *Straffordians* posted.

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| <ol style="list-style-type: none"> 1. Lord <i>Digby</i>. 2. Lord <i>Compton</i>. 3. Lord <i>Buckburst</i>. 4. Sir <i>Robert Hatton</i>. 5. Sir <i>Thomas Fanshawe</i>. 6. Sir <i>Edward Alford</i>. 7. Sir <i>Nicolas Slaning</i>. 8. Sir <i>Thomas Danby</i>. 9. Sir <i>George Wentworth</i>. 10. Sir <i>Peter Wentworth</i>. 11. Sir <i>Frederick Cornwallis</i>. 12. Sir <i>William Carnaby</i>. 13. Sir <i>Richard Winn</i>. | <ol style="list-style-type: none"> 14. Sir <i>Jarvis Clifton</i>. 15. Sir <i>William Withrington</i>. 16. Sir <i>William Pennyman</i>. 17. Sir <i>Patrick Curwent</i>. 18. Sir <i>Richard Lee</i>. 19. Sir <i>Henry Slingsby</i>. 20. Sir <i>William Portman</i>. 21. Mr. <i>Jarvis Hollis</i>. 22. Mr. <i>Sydney Godolphin</i>. 23. Mr. <i>Cooke</i>. 24. Mr. <i>Coventry</i>. 25. Mr. <i>Benjamin Weston</i>. 26. Mr. <i>William Weston</i>. 27. Mr. <i>Selden</i>. 28. Mr. <i>Alford</i>. 29. Mr. <i>Lloyd</i>. 30. Mr. <i>Herbert</i>. 31. Captain <i>Digby</i>. 32. Serjeant <i>Hyde</i>. 33. Mr. <i>Taylor</i>. 34. Mr. <i>Griffith</i>. 35. Mr. <i>Scawen</i>. 36. Mr. <i>Bridgeman</i>. 37. Mr. <i>Fettiplaf</i>. 38. Dr. <i>Turner</i>. 39. Captain <i>Charles Price</i>. 40. Dr. <i>Parry</i>, Civilian. 41. Mr. <i>Arundel</i>. 42. Mr. <i>Newport</i>. 43. Mr. <i>Holborne</i>. 44. Mr. <i>Noel</i>. 45. Mr. <i>Kirton</i>. 46. Mr. <i>Pollard</i>. 47. Mr. <i>Price</i>. 48. Mr. <i>Trevanian</i>. 49. Mr. <i>Jane</i>. 50. Mr. <i>Edgecombe</i>. 51. Mr. <i>Chicheley</i>. 52. Mr. <i>Mallery</i>. 53. Mr. <i>Porter</i>. 54. Mr. <i>White</i>, Secret. E. D. 55. Mr. <i>Warwick</i>. |
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XL. *The Trial of Colonel Nathanael Fiennes**, before a Council of War at St. Albans, for cowardly surrendring the City and Castle of Bristol, the 14th of December 1643. 19 Car. I. Taken out of the Account given thereof by Mr. Prynne and Mr. Walker.

COLONEL *Fiennes* having been taxed with a cowardly Surrender of *Bristol*, thought proper to justify himself by a set Speech in the House of Commons, and also by a printed Relation of the Fact, in both which he desired that the Affair might be examined in a Council of War, for which Purpose he obtained an Order of the House.

To this Relation Mr. *Walker* published an Answer, and Mr. *Prynne*, in a Book intituled *Rome's Masterpiece*, stiles this Action, *the most cowardly and unworthy Surrender of Bristol*.

Hereupon Mr. *Prynne* and Mr. *Walker* were summoned to the Council of War, to make good what they had alledged against Colonel *Fiennes*. Mr. *Prynne* and Mr. *Walker* being thus made Parties, petitioned his Excellency the Lord General † to appoint a proper Time and Place within *London* or *Westminster* for the Trial and Examination of this Affair: They also drew up Articles of Impeachment against Col. *Fiennes*, and presented them, together with a Petition, to the House of Commons, who upon reading the Petition came to the following Resolutions.

Die Mercurii 15 Novembris 1643.

THE humble Petition of Clement Walker and William Prynne Esquires, concerning Mr. Nathanael Fiennes, and the Surrender of Bristol, was this Day read in the House of Commons; and Articles of Accusation of the said Mr. Fiennes touching the Surrender of the said City of Bristol, and Castle, were this Day likewise presented to the said House. A Letter from Mr. Prynne to Mr. Nathanael Fiennes was likewise read.

Ordered by the House of Commons, that as they shall be careful that there shall be a fair and equal Trial of Mr. Nathanael Fiennes, so they will take the Petition of the Petitioners, and the Articles, after the Trial, into Consideration, inasmuch as it shall concern my Lord General and the Council of War, and as it shall concern the Privilege of Parliament.

Resolved, &c.

That the Articles, entituled, *Articles of Accusation and Impeachment against Colonel Nathanael Fiennes, late Governor of the City and Castle of Bristol, touching the dishonourable Surrender thereof to the Enemy, contrary to his Trust and Duty, by Clement Walker, and William Prynne Esquires, shall be now read. The said Articles and Impeachment were accordingly read.*

The Petition and Articles were signed Clement Walker, and William Prynne; and they were both called in, and at the Bar being demanded, whether the Names subscribed were of their own Hand-writing, did avow the Names to be of their own Hand-writing, and did avow the said Petition and Articles.

Ordered that a Copy of these Articles, attested under the Clerk's Hand, be forthwith sent to my Lord General.

H. Elsyng, Cler. Parl. D. Com.

Soon after these Resolutions, viz. on Thursday December 14, came on the Trial before the Council of War at *St. Albans*.

The Council being assembled in a Room adjoining to the Town-Hall, Mr. *Prynne* and Mr. *Walker* appeared there, when Dr. *Dorisslaus*, Judge-Advocate of the Army, there demanded of them, whether they had any Articles of Impeachment drawn against Colonel *Fiennes*? To which Mr. *Prynne* replied, that he being a Member of the House of Commons, they had exhibited their Articles to that House, who by Order had sent a Copy of them to his Excellency, upon which they were to proceed. Which the Advocate thereupon acknowledging, my Lord *Roberts*, President of the Council of War, commanded him to read the said Order, and Articles sent together with it. As soon as the Order was read, Mr. *Prynne* tendred a Copy of the Articles of Impeachment under Mr. *Walker's* and his own Hands, agreeing with those deliver'd to the House, which he averred they were there ready to make good in each Particular; desiring the Council to proceed upon them, because the other was but a Copy which they had not subscribed, but this they now tendered an Original; which was assented to.

Upon this Dr. *Dorisslaus* the Judge-Advocate was commanded to read the Articles; but Mr. *Prynne* then perceiving the Doors kept close, contrary to Expectation, and all Persons, Auditors, but themselves alone, excluded; and fearing that by this Means a Door would be opened to misreport the Proceedings of this Trial, before the Reading of the Articles made this Request to the Council, that this Hearing might be as publick as the Cause itself, and as that Place could afford, the Door set open, and none excluded; the rather, because himself and Mr. *Walker* (being no Challengers, but challenged) were engaged in this Prosecution, not in their own particular Interests but the Republick's, and that by special Order of Parliament (the representative

* Rush. Col. Vol. 3. p. 153, 284. Clar. Hist. Vol. 2. p. 315.

† The Earl of Essex.

representative Body of the Kingdom) which had ordered a *fair and equal Trial*, which they humbly conceived to be a free and open one, agreeable to the Proceedings of Parliament, and all other Courts of Justice in the Realm; which stand open to all, and from whence no Auditors are, or ought to be excluded.

Colonel *Fiennes* opposing this Motion, alledged, That we suspected the Integrity of that Court, as appeared by this Request for an open Trial, and our Endeavours to appeal therefrom by several Petitions to the Parliament, for a Trial before the House in *London* or *Westminster*; whereas he had cast himself freely and clearly upon their Justice, (which he no ways suspected) to whom the Cognizance of such Causes properly belonged; and therefore desired the Hearing might be private, according to the Proceedings used in such Courts. Upon which Dr. *Doriflaus*, Judge-Advocate, intervening, told the Prosecutors and Council that it was against *the Stile and Course of a Court Martial* to be publick and open: therefore it might not be admitted upon any Terms.

To which Mr. *Prynn* replied, That he no ways distrusted the Justice or Integrity of this Honourable Council, for then he would not have appeared before them at this Place and Time to crave Justice from them: That he was a Common Lawyer, and by his Profession, his late Protestation, and *solemn Covenant*, bound to maintain the fundamental Laws of the Kingdom and Liberty of the Subject: That the Members of this Honourable Council, as well as himself, had not only taken the like solemn Protestation and Covenant, but also put themselves in Arms, to maintain and defend the said Laws and Liberties of the Subject to the uttermost: That by the Laws and Statutes of the Realm, all Courts of Justice ever have been, are, and ought to be held openly and publickly, not close like a Cabinet-Council; witness all Courts of Justice at *Westminster*, and elsewhere, yea, all our Assizes and Sessions, wherein Men, tho' indicted but for a private Felony, Murder, or Trespass, (which nothing near concerns the Republick so highly as this dishonourable Surrender of *Bristol*) have always open Trials: And if such petty Causes, then much more this of most general Concernment to the whole Realm, recommended to a *fair Trial* by the Parliament itself, ought to be as open and publick as possible, to satisfy both the Parliament and People: That not only in Courts of Common Law, but in the Admiralty itself, and all other Courts, proceeding by the Rules either of the Civil or Canon Law, the Proceedings have ever been publick, the Courts open. And even in late Proceedings by martial Law before a Council of War, the Trials of Delinquents in *England* have been publick, as appears by the Trials of *Yeomans* and *Butcher* at *Bristol*, before Colonel *Fiennes* himself, which were publick; and by the Trial of Mr. *Tomkins*, *Chal-loner*, and others since, before a Council of War at the *Guild-Hall* of *London*, in presence of both Houses of Parliament and the whole City, no Comers being thence excluded. Wherefore this Case being of the same publick Nature, and as much or more concerning the Kingdom as theirs, ought to receive as publick a Trial as theirs did.

To which *Doriflaus* answered, That himself protested against the open Trial of *Tomkins* and *Chal-loner*, as a breach upon the Council of War's Privileges; but was over-ruled therein, to give the

Parliament and City Content: adding, that all Councils of War in foreign Parts were ever private, and ours now used not to be guided by Common or Statute Laws, or the Course of other Courts, but by their own Orders; and this being a Council, it was against the Nature and Constitution of it to be publick.

To which Mr. *Prynn* rejoined: First, That there was as great cause to give the Parliament, City, and Kingdom Satisfaction in this, as in the other fore-named Case, it being of as publick Concernment. Next, That we of *England* are not to be guided by foreign Laws or Precedents, but by our own domestick: That the Common Law, the Statutes of the Realm, and constant Practice of all our other Courts of Justice, ought to regulate the Proceedings of the Council of War, not the Council of War's to repeal and controul them; especially in an Army which hath taken up Arms, which are waged by the Parliament of purpose to defend the fundamental Laws and Subjects Liberties, not to thwart them: That it was both against the Laws and Subjects Liberty (as he humbly conceived) to deny any Prosecutor or Subject an open Trial, and thus to chamber up or restrain Justice *intra privatos parietes*, in any, much more in this publick Cause. That the Judge-Advocate could produce no one Precedent for such a close Trial within our Realm in any former Age; and therefore he should make no such new Precedent now. That all Cases of this nature, touching the cowardly surrendring of Towns and Castles, were, in former Times, tried only in full Parliament, as appears by the Cases of *Gomines*, *Weston*, the Bishop of *Norwich*, and others, and that upon very good reason; since Cases, which concern all, are fittest to be determined in that highest Court which represents all the Realm. That this Council of War had a double Capacity and Consideration; First, as a Council of War only, to deliberate of things necessary for the regulating and managing of military Affairs; and in this regard it ought to be secret in all such Debates, and not communicate their Councils: But in this Capacity we were not new before it. Secondly, as a Court of Justice, to proceed criminally against Malefactors; and in this Respect it ought (as he believed) to be publick and open to all Comers. To put this out of doubt, he would instance only in one Example: The High Court of Parliament is both the *supremest great general Council* for Peace and War, and the *highest Court of Justice* in the Realm: as it is a Council to consult, debate, or deliberate of the military or civil Affairs of the Kingdom, so it is always private, none but the Members and Officers of either House being admitted to their Consultations or Debates. But as it is a Court of Justice to punish Malefactors, so the Proceedings of both or either House are always open and publick; as appears by the late Trial of the Earl of *Strafford* in *Westminster-Hall*; and infinite other Precedents of antient and present Times. If then this supremest Council of all others, as it is a Court of Justice, stands ever open unto all, and the Proceedings of it be always publick, without any Infringement of its Privileges as a supreme Council of War and Peace; then certainly this honourable Council of War (inferior to it both in Power and Jurisdiction) as it is now a Court of Justice, may and ought to hold their Proceedings and Sessions publickly in this common Cause, without any violation of its Privileges

as a Council. What therefore the Peers in Parliament once answered the Prelates in a Case of *Bastardy*, he hoped this honourable Council would now answer the Advocate in this Case of our Impeachment, * *Nolumus leges Angliæ mutare, quæ hucusque usitatae sunt & approbatae*; and so allow us a publick Trial, to satisfy both the Parliament and People, whose Eyes are fixed on it; else, if it should be private, they would be apt to report, *it was huddled up in a Corner*: For which innocent Expression, as we intended it, (St. *Albans* and this Council, in respect of *London* and the Parliament, being but a *Corner*) so much Exception was taken in the House against our Petition. In fine, he alledged, that Colonel *Fiennes* himself, who had made such publick Professions of his Innocency, both before the House of Commons, his Excellency, and the World, in printed Speeches, Relations, and Letters, had most cause to desire, and least reason to decline an open Trial, *since Truth and Innocency seek no Corners*: And his Honour, his Honesty now openly charged, could not otherwise than openly be discharged; no Trial being publick enough for him who presumes his Innocency able to endure, and professeth a Desire to bring it to the touch, that it may be cleared. And if he should now decline an open Trial, after so many publick Bravadoes in *London* and elsewhere, it would draw upon him a just Suspicion of Guilt in most Mens Opinions, *since no Man fleeth the Light, but he whose Works are evil*.

Upon this, the Lord *Roberts* demanded of Mr. *Prynn*, what he meant by a publick Trial? whether only the reading of the Articles, Answers, producing of Witnesses, and managing the Evidence to make good the Articles; or else, the Council's private Debates of the Cause among themselves, after the Hearing? To which Mr. *Prynn* replied, That he meant only the former of these, the Judges Debates many times in Cases of difficulty being private after Hearings, till they come to deliver their Resolutions in publick. Hereupon all were commanded to withdraw; and then one of the Council, after a short Debate, was sent to his Excellency to know his Pleasure, whether the Trial should be publick, as the Prosecutors desired, or private? Who returned answer, that it should be private; with which Resolution the Prosecutors (being called in) were acquainted.

Mr. *Prynn* upon this Answer desired, that he might put in writing the Reasons he had suddenly offered to the Council for an open Trial, that so they might be presented to his Excellency; for that (as he conceived) he had not been made acquainted with them, who upon consideration of them, might happily alter his Resolution. Upon which Motion, the Council ordered the Judge-Advocate and Prosecutors to repair to his Excellency, to acquaint him with the former Reasons by word of mouth, which they did very briefly: But the Advocate informing his Excellency, that it was against the Privileges of the Council that the Trial should be open; he answered that he would not infringe the Privileges of the Council, whom he thought the Prosecutors seemed to distrust by demanding a publick Trial.

The manner of the Trial being thus settled, the Articles of Impeachment were first read, and then his Answer delivered in writing unto them.

Articles of Accusation and Impeachment against Colonel Nathanael Fiennes, late Governor of the City and Castle of Bristol, touching his dishonourable Surrender thereof to the Enemy, contrary to his Trust and Duty; exhibited by Clement Walker and William Prynne Esquires, in the behalf of the Commonwealth of England.

1. **I**mprimis, That he, the said Colonel *Nathanael Fiennes*, did suddenly apprehend, imprison, and remove Colonel *Thomas Essex*, late Governor of the said City and Castle, from his Government there, upon pretence that he intended to deliver up the same (not then fully fortified, or sufficiently provided to withstand any long Siege) into the Hands of the common Enemies of the Kingdom and Parliament, contrary to the Trust reposed in him; and that hereupon, he, the said Colonel *Fiennes*, obtained the Government of the said City and Castle for himself, and undertook to defend and keep the same, to the uttermost Extremity, against the said Enemy, for the use of the King and Parliament, and not to surrender the said City and Castle, or either of them to the said Enemies, or to any other Person whatsoever, without the previous Consent, and Order of the Parliament.

2. *Item*, That the said Colonel, soon after he became Governor of the said City and Castle, did, by martial Law, apprehend, condemn, and execute some chief Citizens thereof; namely, Mr. *Yeomans*, Mr. *Butcher*, and others, only for intending to deliver up the same to Prince *Rupert*, when he came first before *Bristol*, (not then fully fortified and stored) tho' they did not actually surrender the same.

3. *Item*, That he, the said Colonel, did put the Parliament, Kingdom, Country, and City to a vast Expence, in fortifying and furnishing it, and the Castle thereof, with Forts, Sconces, Cannons, Ammunition, Arms, Victuals, Provisions of all sorts, and with Garrisons sufficiently able to defend and maintain the same for three Months space or more, against all the Power of the Enemies, that might or did come against the same; and did likewise promise and undertake to divers Gentlemen and Inhabitants thereof, to defend the same for so long space or more, in case they should be besieged.

4. *Item*, That he, the said Colonel, notwithstanding the Premises, when the Enemy came before the said City and Castle, with no extraordinary Forces or Ammunition able to force the same, and besieged them not above three Days at the most, did, before ever the Enemy had taken any of the Out-Forts, or Sconces about the same, or had made so much as the least Battery or Assault upon the Walls of the said City or Castle, or any Mine or Breach into any of the Forts thereof, contrary to his former Trust, Promises, Duty, and the Honour of a Soldier, most dishonourably, cowardly, and traiterously deliver up the said City and Castle, with all the Prisoners, Cannons, Ammunition, Artillery, Arms, military Provisions,

sions, Magazines, Victuals therein, and the very Colours too, without and against the Consent of the Parliament, or his Excellency their General, into the Hands and Power of Prince *Rupert*, and other common Enemies of the Kingdom and Parliament, to the extraordinary great Danger, Dishonour, Loss and Prejudice of the whole Kingdom and Parliament, the evil Example of other Governors and Towns, the Loss of most of the Western Parts of *England*, and great encouraging, enriching, and strengthening of the said Enemies, both by Land and Sea; and that upon very dishonourable Articles, to which he was no ways necessitated, and had no care to see them punctually performed by the Enemy, when Complaint thereof was made to him for Relief; to the great Prejudice and impoverishing of the Inhabitants and Garrison-Soldiers there.

5. *Item*, That the said Colonel, without the Privity or Consent of any general Council of War, did, of his own Head, send out for a Parley with the Enemy, when divers Officers and Soldiers advised and persuaded the contrary, and would have repulsed the Enemies, and defended the said City and Castle to the utmost: That the surrendering up of the same was principally occasioned by the earnest Persuasion, Advice, and Cowardice of the said Governor, contrary to his Trust and Duty to keep the same. And that the said Governor, when as the Council of War unanimously voted upon the Parley, that it was neither safe nor honourable for them to depart the Town, unless they might march thence with half their Arms at least, and with their Colours; thereupon, after some private Conference with Colonel *Gerrard*, one of the Enemies Commissioners, in the Garden, without the Privity, and contrary to the Vote, of the said Council, did make and insert the last Article, That they should leave all their Cannon and Ammunition, with their Arms and Colours, behind them; and returning to them out of the Garden, told them plainly, that they must now deliver up all to the Enemy, but what was expressed in the Articles he then produced, and leave their Arms and Colours behind them, to the said Council's and Soldiers great Discontent. And whereas by those very Articles, the said Town and Castle were not to be delivered up till Nine of the Clock the next Morning, nor the Enemies to enter them till the Soldiers, and other Gentlemen were marched out; the said Governor was so over-hasty to surrender up the same, that he delivered them up to the Enemy above one Hour or more before the Hour agreed on; and suffered the Enemies to enter and possess them before the Soldiers were marched out: whereby many of the Soldiers were pillaged in the Castle and Town, and divers of the Inhabitants best affected to the Parliament, were plundered before the Hour of Surrender came, to their great Loss and Undoing.

6. *Item*, That he the said Colonel, during the three Days Siege of the said City and Castle, did not give any such Encouragement to the Soldiers and Officers (who bravely defended the same, and slew near one Thousand of the Enemies best Men, by his own printed Relation, with the Loss only of eight Persons) as his Duty and Place required, and they expected, which much discouraged them: And that when a small Number of the Enemies, not two Hundred (who gave themselves for lost)

had entred the Line of Communication at the weakest Place, which was worst guarded, on *Wednesday* Morning the 26th of *July* last, (being bravely repulsed by the Soldiers with great Loss in all Places else;) he the said Colonel, for two Hours Space or more (during which time no more Enemies entred or approached the said Breach) both neglected and refused to command or encourage the Officers and Soldiers who offered to beat them out in due time, as he was advised and pressed to do by Captain *Bagnall*, Lieutenant-Colonel *Davison*, and divers others, who would have undertaken that Service; and instead of encountering the said Enemies (against whom the very Women offered to go on with their Children to dead the Cannon, if the Soldiers were afraid, rather than the City and Castle should be yielded) called off the Soldiers and Officers from the Line and Out-works (that the Enemies might the better enter them without Resistance) upon pain of Death, much against their Wills, who should and would have hindered and repulsed the Enemies; and discouraged and hindered such as were forwards to have cut them off, sounding a Parley when the Enemies were so beaten, that they threw down their Arms and cried for Quarter: insomuch that divers of the Soldiers and Inhabitants cried out they were betrayed, and some of the Soldiers brake their Arms in discontent, swearing they would serve the Parliament no more.

7. *Item*, That the said Governor, notwithstanding his Promises to defend the said City and Castle, and dispute it to the last, had yet a real Intention to deliver up the same to the Enemies before ever they were besieged by them, and no thought at all to defend them to the uttermost, or till they might be relieved by his Excellency; as appears by the premised Articles, by the said Governor's refusal to send the Prisoners, formerly taken, out of the said Castle, before the Enemy approached, when moved to it by Sir *William Waller*; saying to him and others, that he would detain those Prisoners still there, to make his own Conditions, and Composition the better with the Enemies, if they came before it; by his commanding Mr. *Haffard*, the Master-Gunner there, to lay aside a Reserve of thirty Barrels of Powder, with Match and Bullet answerable, to which when he was reduced he would then treat with the Enemy; (which he did long before he was reduced to this large Reserve) by other Speeches to the like Effect; and by his moving Sir *William Waller* to depart from *Bristol* before it was besieged, who otherwise would have adventured his Life in its Defence.

8. *Item*, That he the said Governor, when he surrendered the said Castle to the Enemy, had at least sixty Barrels of Powder therein; (besides what was in the City and Forts) being above twenty more than were in *Gloucester* when it was first besieged, five hundred Cannon-shot, fifty great Grana- does, fourteen hundred Weight of Match or more, great Store of Musket-Bullets, and Tin to make more; a Match-maker, a Bullet-maker, with Materials to make Match and Bullets; and all manner of Provisions and Victuals, sufficient to maintain one thousand Men for three or four Months Space at least; eleven Cannons therein mounted; (besides forty-four Cannons mounted in the City and Forts) all which were surrendered to the Enemy before any Battery or Assault made

against the said Castle (tho' he had Men more than enough by his own Relation to defend it) contrary to his Promise made to divers Inhabitants of the said City, best affected to the Parliament, to defend the same to the uttermost, and dispute every Foot thereof with the Enemy, and to keep it, or to lay his Bones therein; who thereupon sent their Estates with Provisions for them and their Families, for three Months space or more, into the said Castle, where the said Colonel promised to secure and defend the same, most of which their Estates were there seized on by the Enemy to their undoing; by reason the said Colonel admitted the Enemy into the said Castle, and deliver'd up the Keys thereof unto them, before the Hour agreed on in the Articles, such was his extraordinary haste to quit the same.

9. *Item*, That the said Colonel, to aggravate this his dishonourable Action, hath presumed to justify the same; not only before the honourable House of Commons, by word of mouth, but likewise before the whole Kingdom and World, in printed Relations and Letters; wherein he hath laid an extraordinary great Blemish both upon the honourable Houses of Parliament, and his Excellency the Earl of *Essex*, their Lieut. General, by publishing in print, that had he manfully held out the said City and Castle to the last; yet he could not have expected any Relief from them in six or eight Weeks space at the least; when as *Glocester*, since besieged with far greater Force than *Bristol*, was yet relieved by them in less than half the time (as *Bristol* doubtless might and would have been) and held out a full Month's Siege or more as *Bristol*, might have done: tho' he the said Colonel, to add to his former Offence, and hinder or anticipate the Relief of *Glocester*, that it might be lost as *Bristol* was, gave out in Speeches to some Members of the House of Commons and others, and namely to Master *Samuel Browne*, and Master *John Sedgwick*, that he would lose his Head, or be hanged, if *Glocester* could or would hold out three days Siege, if the Enemy once came before it, or Words to the like effect.

10. *Item*, That the said City and Castle were so cowardly and unworthily deliver'd up to the Enemies, that they have since published in Print, and given out in Speeches, *That the said Colonel Fiennes did bestow the same upon his Majesty; that they were deliver'd up to them beyond their expectation, and that they could not have taken the same had it been defended by the Governour; who eventually at least, if not intentionally, did but strongly fortify, and plentifully store the same with all manner of Provisions to make it tenable; at the Kingdom's and the Country's extraordinary expence, to render up the same to the Enemies with greater Advantage to them, and far more Prejudice and Damage to the Commonwealth, as soon as it was made defensible.*

Clement Walker.

William Prynn.

The Answer of Col. *Nathanael Fiennes*, to the Articles exhibited by *Clement Walker*, and *William Prynn*.

1. **T**O the first Article, Colonel *Fiennes* denieth, that he did suddenly apprehend, imprison, and remove from the Government of the City and Castle of *Bristol*, Col. *Thomas Essex*,

the Governour thereof, upon pretence that he intended to deliver up the same into the Hands of the common Enemies of the Kingdom and Parliament; or upon any pretended Cause whatsoever, or that Col. *Thomas Essex* was ever Governour of the said City or Castle; but doth acknowledge that soon after his coming to *Bristol*; by an express Order from his Excellency, written all with his own Hand, he did send unto him Col. *Thomas Essex*, who at that Time commanded a Regiment in that City: and as he is well assured that his Excellency had very good Cause to send that Order to him, altho' he knew nothing before it came unto him; so he did not put it in Execution, but upon mature deliberation and advice with most of the wisest and best affected Gentlemen to the Parliament, and of the best Quality in the Town and Country, and upon good cause appearing unto him; and that for the Security and Preservation of that City, which in all probability could not otherwise at that time have been secured. And he doth further deny, that thereupon or at any Time after, he did seek or desire the Government of that City for himself: But on the contrary; that he did seek and endeavour to be freed from that Employment, and that not in compliment, but really, earnestly, and frequently, as he is ready to make good by Proof. And lastly, he doth deny, *That ever he undertook to the Parliament; or my Lord General, to make good that City or Castle; or that ever he had any Charge of the Castle as a Fort, or otherwise than he had of any Church or House in the City: But on the contrary, That he did from time to time declare, that he could not keep the City in the Condition it was, and that it would certainly fall into the Hands of the Enemy, unless better provision were made for it; and that he would not be answerable for it, unless certain propositions which he sent to the Parliament, or something equivalent thereunto might be granted unto him, which he could never obtain.* And further he affirmeth, *That he never did undertake not to surrender the said City or Castle, both or either of them, without the previous Consent and Order of the Parliament, or that the Parliament ever did, or in reason and justice could require any such Undertaking of him, or that he ever did or would have undertaken it.* All which he is ready to make good by proof.

2. To the second Article, Col. *Fiennes* doth acknowledge, that not many days after his sending away Col. *Essex*, by the Blessing of God upon his Care and Vigilance, he discovered and defeated a wicked Conspiracy, plotted between divers Inhabitants of the City of *Bristol* and some of the Officers of Col. *Essex* his Regiment, for the delivering up of the City into the Hands of Prince *Rupert*, and other common Enemies of the Kingdom and Parliament; and thereupon apprehending and imprisoning divers of the Conspirators, and thereby disappointing the design of the Enemy, he was a means, under God, at that Time of preserving that City, for which he received publick thanks by a Letter from both Houses of Parliament, which he hath to shew: and after, by virtue of a Commission from his Excellency, by Order of both Houses of Parliament, he called a Council of War, whereof himself was appointed President by the said Commission, and by that Council of War divers of the Conspirators, after due Trial were condemned, and the Sentence of Death passed upon them, which Sentence Col. *Fiennes* did forbear to put in Execution till such time as he had acquainted

acquainted the House of Parliament, and his Excellency therewith, and the Grounds thereof; and then by his Excellency's Command, according to a Vote of the House of Commons, he did execute two of the principal Conspirators, (*viz.* M. *Yeomans* and M. *Butcher*) notwithstanding the Importance and most earnest Intercession of the Mayor and Aldermen, and divers of the City to the contrary, and the *Threats and desperate Speeches given out by the Malignants*, altho' it so happened at that time, that a *considerable Strength was drawn forth of that Town to the Assistance of Sir William Waller*; insomuch that some ill-affected Persons in the Town conceiving us so weak that the *Malignants were able to master us*, had procured his Majesty to send a Trumpeter with a Letter from himself to the City, to stir them up, and command them to rise and rescue the said Conspirators, and to kill and slay all those that should oppose them therein: yet for all this Col. *Fiennes*, in Obedience to the Parliament and his Excellency, did put the Sentence in Execution, and that at mid-day, and in the middle of the Town; in all which he conceiveth that he discharged his duty faithfully, temperately, and resolutely.

3. To the third Article, he answereth, that notwithstanding, that without any, or very little Help at all, by his own proper Industry, and incessant Travel and Pains, he endeavoured to fortify and furnish that Place in such sort that it might be in posture of Defence, *and that without troubling the Parliament at all*; he had well nigh brought a Line or Rampart of Earth round about the Town; whereupon there were some small Works or Redoubts, which in this Charge are called Forts and Sconces; and that he had procured some proportion of Powder, Artillery, Guns, Granadoes, and other Provisions, whereof he found the Town very much destitute: yet he denies that there ever was, or that he ever did, or could raise a sufficient Garrison to defend and maintain that City against all the Power of the Enemy, that might or did come against it, *for the space of three Months or more, or for three Days*; or that he did undertake or promise to any Gentlemen or Inhabitants of the same, to keep it for so long Space, in Case that they should be Besieged.

4. To the fourth, He denieth, that he did deliver up the City or Castle of Bristol, with all the Arms therein; or that he did deliver the same up, with all the Prisoners, Cannons, Ammunition, &c. against the Consent of the Parliament, or his Excellency their General; or that he did deliver them up Traitorously, Cowardly, or Dishonourably, or contrary to any former Promise of his, or contrary to his Trust or Duty, to the extraordinary great Danger, Dishonour, Loss, or Prejudice of the whole Kingdom and Parliament; and the evil Example of other Governors, and Towns, upon dishonourable Articles, to which he was no ways necessitated; or, that he had no care to see the Articles agreed upon, punctually performed by the Enemy, when Complaint was made to him for Relief, to the great Prejudice and Impoverishment of the Inhabitants and Garrison-Soldiers there: But on the contrary, is ready to justify, that over and above his former good Services, in sending away Col. *Essex* without Disorder or Blood-shed, in discovering and preventing that wicked Conspiracy, and preserving the City thereby, notwithstanding a Proclamation set forth of Purpose by

the King, wherein he offered Pardon to all, both Soldiers, Citizens, and others (except himself) within the City of *Bristol*, at that Time, in case they would peaceably yield up the said City: And over and above, his great Pains and Care to put the City in as good a Posture of Defence as possibly he could; *and notwithstanding, he never undertook to make good the City or Castle, or either of them, declaring that he could not, nor would not undertake it*; and that also he could never obtain a sufficient Garrison for the Defence of that Place for any considerable Time, or Monies to maintain it, or Means to raise it; *Yet he did defend that Town and Castle to the utmost Point, not only of Duty, but also of Honour, that any Soldier could, or ought to have maintained the same*: And that he surrendered them upon good and honourable Conditions, in respect to the State he was in: And that he did take all the Care that any Governor could or ought to do; that they might be punctually performed; and that the breaking of them was not any Fault of his, but principally by the failing and unfaithfulness of the Enemy, and partly by the disobedience and disorder of some of his Soldiers; all which he is ready to justify in every Particular. *Notwithstanding that after the Line or principal Rampart of the Town was entered, and the Enemy lodged within it, he did surrender the Town and Castle, with all the Prisoners, Cannons, Ammunition, Artillery, Military-Provisions, Magazines, Victuals, and part of the Arms therein, 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, (which had none at all on that Part against which the Enemy then lay, nor at all defensible in any Part on that Side the Town) or upon the Walls of the Castle, or any Mine or Breach into any the Forts thereof*: All which (nor the Castle) could not prevent the Enemy being lodged in the Suburbs by *Froome-Gate*, from immediately entering the Town by force. *And neither could, nor ought to have been kept in the Condition that Things then stood, to the prejudice of the City and Garrison, and the Surrender thereof upon Terms of Composition, but ought to have been surrendered together with it, 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, for the Honour, Profit, and best Advantage of the Kingdom and Parliament.*

5. To the fifth Article, he answereth, that he did not of his own Head, without the privity of any Council of War, send out for a Parley with the Enemy, when the Officers and Soldiers advised and dissuaded the contrary, and would have repulsed the Enemy, and defended the City to the uttermost: And that the surrendering of the Town was not principally, or not at all could possibly be, by his earnest Persuasion or Advice, nor that it was by his Advice or Cowardice, contrary to his Trust and Duty to keep the same: But on the contrary, he was advised to the Treaty by the far major part, if not by the unanimous Consent of his whole Council of War, and of the Gentlemen there present, unless it were Mr. *Strode* (who also, to the remembrance of many present, was not heard to give any Dissent when the Question was put; and all that he said, tended only to a deferring, rather than a denial of the Treaty, without any good Reason, that he either then did, or yet can give for his Opinion;) and that by many Expressions and

other clear Evidences, it did, *at the time of the first Proposition of the Treaty appear, that Col. Fiennes had for his principal Aim therein, the Honour and Advantage of those by whom he was intrusted.* And he doth deny that when the Council of War unanimously voted upon the Parley, that it was neither safe nor honourable for them to depart the Town, unless they might march thence with half their Arms at least, and their Colours, he did thereupon offer some private Conference with Col. Gerrard, one of the Enemies Commissioners, in the Garden; at which, without the Privy, and contrary to the Vote of the said Council, he did make and insert the said Article, that they should leave all their Cannons, and Ammunition, with their Arms and Colours behind them, and returning to them out of the Garden, told them plainly, that they should now deliver up all to the Enemy, or that it was expressed in the Articles he then produced, that they should leave their Arms and Colours behind them, to the said Council's and Soldiers great Discontent: But on the contrary, he doth affirm, and will justify, that he bid the Soldiers make Conditions for themselves, the Gentlemen of the Country for themselves, and the Citizens for themselves, which was done accordingly: And after, when upon the Treaty the Gentlemen of the Country, and Citizens were satisfied with their Demands; Colonel *Fiennes* was the first and the chief, if not the only Man that took exception at the Condition for the Soldiers; the Commissioners of the Enemy standing upon it, that they would allow only the Officers their Horses and Arms; and he on the other Side standing as peremptorily for all their Horses and Arms, and Colours: whereupon he was about to break off the Parley, and the Commissioners of the Enemy ready to return to the Army, but by the earnest Persuasion of the Mayor and Citizens, the Commissioners of the Enemy were persuaded to walk into the Garden, and to leave us at the Council of War to debate amongst ourselves concerning that point of the Arms and Colours: Whereupon Col. *Fiennes* stood very stifiy, till at length he was persuaded by the Council of War to rest satisfied with half Arms, and our Colours, if we could obtain them; whereunto Col. *Fiennes* expressed a great deal of Resolution to adhere, and he had done it to the End, had the Soldiers upon their Guards done their Parts as well as he did; but returning into the Garden with this Resolution, many of his Officers following him, and it being free for any to enter, openly and before the Mayor and divers of his Officers, he began to insist upon his former Propositions for all his Arms and Colours; whereupon they yielded that our Troopers should have their Horses and Swords, and then Col. *Fiennes* descended to the Propositions of half Arms and our Colours, but being not able to obtain it, he yielded so far to the Intreaty of the Mayor and Citizens, that he would not break upon that point of his own Head without the Advice of his Officers; and thereupon withdrawing into a Room, with all his Officers that there were present, he debated the Matter a good while with them, and could not be brought to yield thereunto, till six or seven of his Officers came out of the Town, and told him, that they could not get six Men a-piece of their Companies together, they ran so fast over the Key to the Enemy: Whereupon, altho' with much reluctancy, he was content to yield to that Condition, for fear of putting ourselves

into a far worse Condition; and after calling in the Commissioners of the Enemy, we fell to set down all the Articles in Writing, there being Liberty to any Man to take his Exceptions upon the Penning of them: At which time Captain *Birch* coming in, and desiring a more clear Expression for the Citizens and Inhabitants to have Liberty to carry away their Estates, which Col. *Gerrard* boggling at, Col. *Fiennes* rose up, and with great earnestness protested, *That he would rather die than not provide for his Friends and their Estates, as well Citizens as Soldiers;* whereupon Col. *Gerrard* consented to it: and it was further expressed, that they should have three Days Liberty, to resolve whether they would stay or depart with their Goods; and the last Article was no new Article inserted at the latter End, but only a clear Expression of what was before agreed upon, and fully contained in the first Article, as by the Article itself doth appear. And lastly, Col. *Fiennes* doth deny, that he was so over-hasty to surrender up the Town and Castle, that he delivered them up to the Enemy one Hour or more before the Time agreed, or that he suffered the Enemy to enter and possess them before the Soldiers were marched out. But on the contrary, that he gave Order to all his Officers that came to him for Orders, to keep their Soldiers upon their Guards, until one Hour before we were to march out of the Town: at which Time having given Order to his Captain Lieutenant *Stokes* with his Company to stay in the Castle, and to keep it till Prince *Rupert* sent to demand it, and then to deliver it up unto him according to the Articles, he gave Order to the rest of his Officers to draw their Men into the Marsh, whither he did repair unto them, and about nine of the Clock marched out with the greatest Part of them to the Gate which leadeth to *Warminster*, where he stayed within the Town for an Hour or two after: *But the Enemy did enter the Town, contrary to their Faith, and the Articles agreed upon, an Hour or more before nine of the Clock, about the Time that we were drawing off to a Rendezvous, and fell upon our Men, disarming, dismounting and pillaging them, by means whereof, and by no Fault of Col. Fiennes, many, both Soldiers and Citizens, were Pillaged and Plundered.*

6. To the sixth, he acknowledgeth and owneth the Clause mentioned to be in his printed Relation, and that the Enemy having entred in one Place on *Wednesday* Morning the 26th of *July*, were valiantly repulsed in all Places else with great Loss; but doth deny, that to his Knowledge any Women made any such Offers as in the Articles is expressed, or that he should have thought it a fit means to dead the Cannon-bullets, or that any such Speeches were given out, or any such Actions done by any Inhabitants or Soldiers to his Knowledge, as that they brake their Arms, and said they were betrayed; or that he would have suffer'd them unpunished, if he had heard or known any such thing: and for the rest of the Articles he denieth it in the whole, and in every part thereof; and on the contrary affirmeth, and is ready to prove, that during the whole Siege, he did both by his Words and Actions encourage the Soldiers and Officers to do their Duty, thanking some, praising others, stirring up others, sending them Bread, Wine, Victuals, and giving them Monies, and promising them further Rewards, but especially by his own Example, going constantly the

round at all hours of the Night, sometimes in the beginning of the Night, and sometimes in the latter end thereof, and repairing upon all occasions to the places of most Danger, and standing most usually with his Troop, in the Place of greatest danger, and by all other ways and means that could be expected from any Governor. And he further affirmeth, that the place where the Enemy entred, was not a likely place for the Enemy to enter by, was weakliest assaulted; could not have been better guarded without drawing Forces from other places, which were in more apparent danger and more strongly assaulted, was more strongly guarded than some other places that were more strongly assaulted, and yet the Enemy repulsed, and that the Enemy might have been in all probability repulsed there also, had the Guards of Foot or Horse that were to second them done their duty, as well as they did elsewhere, or had Colonel *Stephens* or his Major sent down some Foot together with the Governor's Troop when they went to charge the Enemy, out of the Men that were under their Command upon the next adjoining Guards, which they might and ought to have done, and could only well do it. And he further affirms, that when the Enemy first enter'd they were at the least two hundred; that soon after they dug down the Rampart of Earth all flat for their Horse and Foot to enter, and that then immediately they possessed themselves of Walls, Houses, *Effex-Fort*, and other places of advantage; that within one hour's space at the farthest, after the entry of the first, there entred at least 300 Foot more, and a Regiment of Horse with Ordnance, and after both Horse and Foot entred as fast as they could; that Col. *Fiennes*, so soon as he had notice of the entry of the Enemy at that place, made all the haste he could to repair thither, but that before he got thither, his Men were come off the Lines for half a Mile together, and his own Troop (unto which he was going up) beaten off also: that afterwards both by his Commands and his own Person, he used the best, the safest, the speediest, and the most effectual means that any then could, or yet can shew for the securing of the City, the safeguard of his Soldiers, and for the repulsing of the Enemy, but divers of his Soldiers did disobey, and other of the Soldiers and Commanders did refuse to yield ready Obedience to his Commands, especially Major *Lewes*, to whom he was constrained to send an Order upon pain of death to yield obedience before he would do it; and by his and others Diobedience, the Service was hindred and retarded, that a Sally could not be made so seasonably as otherwise it might have been, and with better Success than it was, altho' when it was made, it was performed with such Resolution, that it gave a stop to the Enemy, who otherwise had, in all probability, entred the rest of the Town by force, being already possessed of two of the greatest Works thereof; and Col. *Fiennes* did not cause any Parley to be sounded till such time as his Men were beaten back again with fresh Regiments of Foot and Horse brought down upon them, but was still ready to have seconded them with his own Company, had there been any hopes to have beaten them off, and till such time as going round the Town with his Lieutenant Colonel, he speak with great earnestness to all his Officers that he could meet to get their Men to their Colours again; commanding them to repair to the Marsh, and that there should be Victuals, and Twelvepence a Man given them, which accordingly was

given to as many as came together, but could never get together, or to their Guards, two hundred, of ten or twelve hundred of the Men that were on that side the Town: whereupon by the Advice of his Council of War, he sent forth a Parley; all which he is ready to prove.

To the seventh, he answereth, that notwithstanding he declared that he could not keep the Town with the Force he had in it, yet he denieth that he had a real Intention to deliver up the same to the Enemy before ever it was besieged by them, or that he had no thought at all to defend it to the uttermost, or till it might be relieved by his Excellency, or that he refused to send the Prisoners, formerly taken, out of the Castle before the Enemy approached, or that he commanded Mr. *Hazard* the Master-Gunner, to lay aside a Reserve of thirty Barrels of Powder, with a purpose to treat when he was reduced thereunto; or that he moved Sir *William Waller* to depart from *Bristol*; or that Sir *William Waller* would otherwise have adventured his Life in its Defence; or that it doth appear by any of the premised Articles, or any Speeches of his concerning the Prisoners, or a Reserve of Powder, of Sir *William Waller's* Departure from *Bristol*, or any other Speeches of his, that he had not a real Intention to keep the Town and Castle to the uttermost, that in Honour, Wisdom, and Faithfulness, unto those by whom he was intrusted, he ought to have done: but that the contrary doth appear by very many Deeds and Speeches of his, and by those very Particulars instanced in, so far, and in such a manner as they were spoken and done by him. And he further affirmeth, that he did often move Sir *William Waller* to free him from the care and danger of so many Prisoners, but could never obtain it; but when he thought neither Town nor Castle safe enough to keep them, he spoke to him to send them away to a Place of more safety, but neither shewed him the means how to do it, nor offer'd to take any of the most considerable with him, altho' he had an absolute Command over them at all times, whensoever he pleased to signify his Pleasure concerning the Discharge or Disposal of them, as he did discharge Major-General *Bret*, and divers others (whereof some led on those that assaulted us at *Bristol*.) That Colonel *Fiennes* spoke to Sir *Arthur Haslerigge*, when he took leave of him, to take some of the Prisoners away with him in the Ship, but he refused it: that he spake to Captain *Birch* (who seemed forward to undertake such a matter) to see if he could find means to send them away speedily and safely by Sea, and that he would contribute his best Assistance thereunto, but he also gave it over: That he commanded *Hazard* the Master-Gunner, when the Enemy was approaching the Town, to lay apart a Reserve of thirty Barrels of Powder, and to keep it private, that every Man might be careful to husband that which appeared, and to make no waste thereof; and that in case he was forced to retreat into the Castle before he came to Treaty, he might have wherewith to defend himself: but Mr. *Hazard* did so over-do his Command, that tho' afterward at several times he commanded him to give a perfect Account of all his Ammunition to his Brother Colonel *John Fiennes*, who was to have the chief care thereof over him, yet he did conceal from him this Reserve; insomuch that when Col. *John Fiennes*, was required to declare at the Council of War, what store of Ammunition was left, he informed us that he had taken a particular

cular Account thereof, and that there was not above three or four hundred weight of Match, and between twenty and thirty Barrels of Powder (as indeed he knew of no more;) and that they were spending of that too: whereby (as by like Speeches of the Master-Gunner to the like purpose) Col. Fiennes did believe he had broken up his Reserve, and that he was spending of that also, and that there was not above twenty Barrels of Powder left; and did not certainly know the contrary, till such time as he was come to London, and had particularly informed himself by Mr. Hassard of the truth: and that the Enemy knew not of more Powder in the Castle than twenty Barrels, for divers Weeks after the surrender of the Town, he is able to prove. And lastly, he doth affirm, that Sir William Waller was so far from needing to be stirred up to depart the Town, that on Friday, the Day after he came to Bristol, commanding some of his Officers to draw forth some of their Men into the Marsh, and they conceiving that it would not be possible to do it till the next Morning, he replied, that then it might be too late: and the next Day drawing them out upon Durdam Down, where Col. Fiennes there asked, in case the Enemy should advance towards Bristol, how he would dispose of himself and his Horse, he answer'd, that he must retreat. And it is evident in many respects, that it was necessary for him to draw out of the Town; for it is most likely, that had he not done it, the Town would have been left sooner than it was, and the Dishonour and Loss of the State been greater; and that if he had, when he first came to Bristol, followed the Advice given him by Col. Fiennes and his Officers, or done according as he promised Col. Fiennes, when he took his leave of him, he would have done better Service, both for the preservation of that City, and the rest of England, than by the course he took: all which he is ready to prove and justify.

8. To the eighth Article, he doth deny that there were sixty Barrels of Powder in the Castle when it was surrendered, or that he did promise to any Inhabitant of the City to defend the same, but in case he was forced to retreat into it; nor any longer than he thought fit, for the honour and best advantage of them by whom he was intrusted; or that there was in it all manner of Provision and Victuals sufficient to maintain One thousand Men for three Months space; or that he deliver'd up the Keys of the Castle before the Hour agreed on in the Articles; or that by reason thereof many Inhabitants of the City, or any other Person whatsoever, had their Estates which they brought into the Castle seized upon: But on the contrary he affirmeth, *That there were but fifty Barrels in the Castle when it was surrendered, and that was thirty more than either he or his Council of War knew of before they came to London; and that therewith he was less able to defend the Town four Days, or the Castle fourteen Days, then Gloucester might with the like proportion be defended twenty-four Days: That there were about eleven Cannons mounted in and about the Castle, and that there was need of more, to supply the many defects and universal weakness thereof; but that there was never any one amongst them all, or in the Town, fit for Battery, or to hinder the approach of the Enemy in any effectual way; but he had sent to London for three to that purpose, and that they were at hand, but not yet come to him: that altho' he had no Charge of the Castle, more than of any House in the Town, nor was obliged to hold it further than he judged it for the good of the Publick, yet he did resolve to*

*make use of it for the advantage of the State, and of their Friends and Soldiers; as also he did, by making the Terms of Composition the better by the Countenance thereof, which was the best use he could make of it in that Condition he was in, and would have been as ready to have done it by the Defence thereof, if he had been forced therunto, or that it had been fit in Wisdom and Justice to have taken this Course; as if Succours had been at hand, and in some other Cases it might have been. And for this, and divers other Reasons, he did take some pains, and was at some cost, for the strengthening of it, and furnishing of it with great and small Shot, and Granadoes, and Provision of Victuals, and other Necessaries, whereby what was the quantity of each Sort he is uncertain; but is certain, that none was employed but where there was occasion, nor should have been spared, if there had been occasion to use them: but doth affirm, that he never gave order to the Commissary of Victuals, to make provision of Victuals for more than One thousand Men for a Month, wherein he aimed at a double Proportion to what he thought he should have need of; or that he ever hoped to keep the Castle for more than a Fortnight, or three Weeks at the farthest: That he was content, for divers good Reasons, to suffer the best affected Persons to carry into the Castle some of their principal Goods, but was very angry when he saw them offer to carry in their Lumber, and straitly forbad it. That a special Article was made for them that carried in their Goods, that they might have free Liberty to carry them out at leisure: That the Citizens themselves, being divers of them upon the Guard in the Castle, that had their Goods there, made such haste to get them out on Thursday Morning, that leaving their Guards, and Major Wood, and others that had charge of the Soldiers in the Castle, suffering their Soldiers to go from their Guards without and against order, the Passage into the Castle was so thronged, that none could pass in nor out, and by that means some of the Prisoners got loose in the Castle, and grew disorderly, and some of the Enemies got in before the time; but Col. Fiennes coming thither, and seeing this Disorder, with his Sword in his Hand beat back the People that thronged the Draw-Bridge, drew up the Bridge, and got some of his Soldiers to their Guards again, put their Arms into their Hands, and had drawn all his Soldiers into it, had he not received News while he was doing this, that the Enemy was broken into the Town, contrary to the Articles, and were dismounting, disarming, and pillaging our Men: Whereupon he gave order unto his Captain-Lieutenant Stokes, to keep the Castle with his Company, and to deliver it up to Prince Rupert when he sent to demand it; and was forced himself to go into the Marsh with Captain Teringham, one of the Enemies Hostages, with him, for the Safeguard of his Soldiers, both Horse and Foot, and of his Friends in the Town, as is expressed in answer to the fifth Article. And lastly, he doth affirm, and will justify, *That the Castle was in no sort tenable, neither in respect of the Strength thereof, or of the Provision wherewith it was furnished, for one quarter of the space, wherein possibly he could have had Succours; nor for half the quarter of the time, where, in possibility, he could have expected them: And that if it had been tenable, yet neither by the constant Practice or Maxims of War in all Places, nor by the Rules of Honesty or Christianity, that he ought to have held the same; or that it had been for the Honour and Advantage of those by whom he was intrusted so to have**

have done; and therefore ought to surrender it together with the Town, without disputing it at all, as he did.

9. To the ninth, he denieth that he hath done any dishonourable Action, or that he hath said or done any thing amiss, or unduly, or untruly, in the Justification which he made of the Surrender of the City and Castle of *Bristol* in the honourable House of Commons, or any other ways. And the rest of the Article he denieth in the whole, and in every part thereof; and doth affirm, and doubteth not but to make appear to any that are vers'd in military Affairs, that without detracting any thing from the worthy Governor, who did as much as the Enemy put him to, and as honourably as any Man could do, that he had a harder Task to hold *Bristol* in the condition it was in, and in the manner that it was assaulted four Days, than Col. *Massy* had to defend *Gloucester* four Weeks: and that he was so far from declaring that *Gloucester* would not hold out three Days, that he often declared, that if they had Ammunition enough, they might do well enough, and hold out till relief came to them; but oft he feared they might be strained therein, as having good cause to know it: for had he not supplied them with ten Barrels of Powder; and had they not had two or three more out of *Berkley* Castle, which he sent thither but a Week or two before, the Town had been lost for want of Powder. And, in this respect, he desired those whom it concerned to relieve them, not to be too confident of their holding out, and to hasten relief unto them; so far was he from desiring to hinder relief to be sent unto them, that it might be lost as *Bristol* was.

10. To the tenth he answereth, that it is an Article without a Charge, an Argument without a Proof; for that the Testimony of the Enemy can make nothing against him, it being their Parts to dishonour and disgrace their Enemies as much as they can; but the Testimony of an Enemy, tho' it be of no Validity against him, yet it is strong for him: and as he doth deny, that those that are Soldiers on the Enemies Side have any such sense of the Action, so he doth affirm that they had, and have expressed the contrary.

The first Day's Hearing upon the three first Articles.

THE Articles and this Answer to them being read, the Prosecutors proceeded presently to the Proof of their Articles: And whereas they conceived the Defendant would have granted the three first Articles, being but introductive to the Impeachment, yet he put the Prosecutors to their Proofs;

First, *That Colonel Essex was ever Governor of Bristol.*

Secondly, *That he ever removed or sent Colonel Essex thence.*

Thirdly, *That himself was ever Governor of Bristol.*

And then bid Mr. *Prym* prove these Particulars ere he proceeded farther.

Mr. *Prym* thereupon replied, that he much admired how a Man of his Birth and Breeding should so much forget himself, as to deny that in private before the Council, which himself had not only confessed, but professed before the House of Com-

mons, (the representative Body of the Realm) the City of *Bristol*, and published in print to all the World in publick: But since he denied these Particulars, he would easily make them good against him.

(1.) For the first it is clear, that Colonel *Essex* was both acknowledged and styled *Governor of Bristol*, by the Parliament, his Excellency, the Committees of *Somersetshire*, *Gloucestershire*, *Wiltshire*, the Citizens and Garrison of *Bristol*, and all the Gentlemen of those Parts, and by Col. *Fiennes* himself at his first coming to *Bristol*, who gave him the Title of *Governor*.

(2.) That he made out his Warrants, Commands, and ordered all Things for the City's Defence and Fortification, as Governor, having the Command in chief of the City, Castle, and Forces there, as absolutely as any Governor whatsoever.

(3.) That in the Book, intituled, *A full Declaration of Colonel Fiennes's March to, and Proceedings at Bristol*, compiled and published by himself, or his Major *Langrish* with his Approbation, pag. 3, 4, 10, 12 to 16. Colonel *Essex* is both acknowledged and styled *Governor of Bristol*, and that by himself, in his own printed Letter to his Father to justify his Removal; and the Depositions which he took and published against him, attest him to be the Governor. Therefore he must even blush to deny all these pregnant Evidences, and to put us thus to prove that only now, which he ever confessed before.

Whereupon Colonel *Fiennes* said, *I confess he was a Governor de facto, but not de jure.*

To which Mr. *Prym* replied; First, that he was sent thither, and placed there, by his Excellency's special Command, and the Parliament's Approbation; therefore he was as much Governor *de jure* as himself or any other. Secondly, that he was obeyed as a rightful Governor till he sent him thence, and so esteemed by the Parliament, his Excellency, the Garrison, City, and Committee. Thirdly, if he was not Governor *de jure*, then all his Commands and Acts there done, during his Government, were injurious, unwarrantable, which he presumed the Defendant durst not affirm.

Then he replied, that Colonel *Essex* had no Commission, and therefore was no rightful Governor.

To which Mr. *Prym* rejoined, First, that for ought he knew he had a Commission. Secondly, that his Excellency's sending of him thither, to take in command the City, and his confirming him there as Governor, with the Parliament's Consent, was a Commission sufficient to make him Governor *de jure*. Thirdly, that if his Excellency commanded an Officer by Word of Mouth alone, without a Commission under Seal, to lead any Brigade out upon Service, or to take in any Town or Castle, (as he had lately commanded Major *Skippon* to take in and fortify *Newport-Pannel*) this was warrant enough to make him Governor both of the Brigade, Town and Fort; and if he should betray, or basely deliver up that Brigade, Town, or Fort, when taken in, he should be condemned for it by martial Law as a Traitor, and the want of a Commission would be no excuse to acquit him from being a Governor, and betraying his Trust.

Secondly, *That he removed and sent away Colonel Essex from Bristol.*