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MEMBERS/SPEAKER

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TO
THE RIGHT HONOURABLE
CHARLES WOLFRAN CORNWALL,
SPEAKER
OF THE HOUSE OF COMMONS,
THE FOLLOWING COLLECTION OF PRECEDENTS,
IS,
WITH GREAT RESPECT,
INSCRIBED,
BY HIS MOST OBLIGED
AND OBEDIENT SERVANT,
JOHN HATSELL.

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PREFACE.

The following Collection of Precedents is formed upon the same plan with a work printed in the Year 1776, intituled "Cases of Privilege of Parliament" &c. &c.—In the Preface to that Book, the Compiler explained his reasons for adopting that plan, and expressed a wish, that some person, of greater leisure than himself, would select certain titles relating to Parliamentary Proceedings, and, pursuing the idea which he there suggested, would collect from the Journals, and from other Records, such matter as was referable to any of those titles, and would, from time to time, communicate those observations to the Public.

Nothing of this kind having appeared from any other quarter, the following Collection of Cases is submitted to the public inspection. The titles which {viii} compose it, happened to stand first in a Collection of Precedents, which the Compiler made several years ago for his own use; and, from that accidental circumstance, are now those which he has first compleated, with the addition of Notes and Observations, in the form in

which they now appear. There are several other Heads, which are certainly of greater importance than those which form the following Collection, viz. Lords, Impeachment, Conference, Supply, Proceedings on passing Bills, and some others. These, if he has health and leisure to proceed upon, and to compleat, will be the subjects of another volume.

It is unnecessary again to put the Reader in mind, that this Work, as well as the former of "Cases of Privilege of Parliament," are to be considered in no other light than as Indexes to refer him to the Journals at large, and to other Historical records, from whence alone can be derived a perfect knowledge of the Law and Proceedings of Parliament: It is also needless to repeat, that it never was the intention of the Publisher of this work, to insert every precedent that is to be found in the Journals under these titles; a repetition of similar cases would only swell the volume, without affording information, or suggesting any matter, from {ix} which useful observations might be drawn. Besides, since the publication of the former Work, General Indexes of the Journals, from the Restoration to the present time, have been printed, under the authority of the House of Commons, which, to those who are desirous of studying those volumes with accuracy, will prove of great use and assistance.

It will be impossible to peruse a page of the following Work, without observing the great advantage that it derives from the notes and observations of Mr. Onslow, the late Speaker of the House of Commons, which have been very obligingly communicated upon this occasion by his Son, the present Lord Onslow.

It would be impertinent in the Editor of this Collection to suppose, that any thing, which he can say, will add to the reputation of a character so truly eminent as that of Mr. Onslow; but, as it was under the patronage, and from the instructions of that excellent man, that he learnt the first rudiments of his Parliamentary knowledge; and, when Mr. Onslow retired from a public station, as it was permitted to the Compiler of this work, to visit him in that retirement, and to hear those observations on the law and constitution {x} of this Government, which, particularly in the company of young persons, Mr. Onslow was fond of communicating, he may perhaps be allowed to indulge himself for a moment in recollecting those virtues which distinguished that respectable character, and in endeavouring to point them out as patterns of imitation to all who may wish to tread in his steps. Superadded to his great and accurate knowledge of the history of this country, and of the minuter forms and proceedings of Parliament, the distinguishing feature of Mr. Onslow's public character was, a regard and veneration for the British constitution, as it was declared and established at the Revolution. This was the favourite topic of his discourse; and it appeared, from the uniform tenor of his conduct through life, that, to maintain this pure and

inviolate, was the object at which he always aimed.—In private life, though he held the office of Speaker of the House of Commons for above three and thirty years, and during part of that time enjoyed the lucrative employment of Treasurer of the Navy, it is an anecdote perfectly well-known, that, on his quitting the Chair in 1761, his income from his private fortune, which had always been inconsiderable, was rather less than it had been in 1727, when he was first elected into it.

{xi} These two circumstances in Mr. Onslow's character, are of themselves sufficient to render the memory of that character revered and respected by all the world; but the recollection of them is peculiarly pleasant to the Editor of this work, who, amongst the many fortunate events that have attended him through life, thinks this one of the most considerable, that, in a very early period of it, he was introduced and placed under the immediate patronage of so respectable a man; from whose instructions, and by whose example, he was confirmed in a sincere love and reverence for those principles of the constitution, which form the basis of this Free Government; the strict observation and adherence to which principles, as well on the part of the Crown as of the People, can alone maintain this country in the enjoyment of those invaluable blessings, which have deservedly drawn this eulogium from the best-informed writers of every nation in Europe, "That as this is the only constitution which, from the earliest history of mankind, has had for its direct object 'Political Liberty;' so there is none other, in which the laws are so well calculated to secure and defend the life, the property, and the personal liberty of every individual."

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PRECEDENTS OF PROCEEDINGS IN THE HOUSE OF COMMONS

MEMBERS.

Aliens, and Persons naturalized.

1. On the 6th of December, 1606, motion made, That it might be entered for a general order, that no person naturalized should be capable of a seat in Parliament.

2. On the 23d of May, 1614, a Committee is appointed to consider of a motion of Sir Robert Phelips, "That persons naturalized may not be Members of the House of Commons."

3. On the 7th of February, 1620, a doubt is conceived, whether //1-1// Lord Falkland, a Peer of Scotland, was eligible; but no decision upon it.

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4. On the 10th of March, 1623, a question on the eligibility of Mr. William Stewart, a Scotchman, and not naturalized; and on the 28th of May following, it is resolved, That the election of Mr. Stewart, being no natural-born subject, is void; and a warrant to go, for a new writ for Monmouth.

5. On the 18th of February, 1625, a new writ issued in the room of a Scotchman "ante-natus," and not naturalized.

OBSERVATIONS.

The great number of Scots //2-1// that came into this country, on the accession of James the First, and who applied, as appears from the Journals, to be naturalized by Act of Parliament, raised a jealousy in the minds of the Members of the House of Commons, and made them wish to restrain them, as foreigners, from being eligible into the English Parliament. But, though several hints of this sort were at that time, and at many subsequent periods, frequently thrown out, no law to this purport ever passed, till, from a similar jealousy, on the approach of a similar event, viz. "the accession of a foreign Prince, to the throne of these kingdoms," it was provided by the 12th and 13th William III. ch. 2, commonly called the Act of Succession, "That no person, who should be

naturalized after the accession of the House of Hanover, should be capable of being a Member of either House of {3} Parliament." And this law was enforced by the 1st George I ch. 4, which enacts, "That no bill for naturalization shall be exhibited without such a prohibitory clause;" and this is the law at present. It has however been customary, in the case of foreign Princes marrying into the Royal Family, (as the Prince of Orange and Prince of Brunswick) to repeal this clause by a previous Act, and then to pass the Act for naturalization without any restriction; so that these Princes become immediately Englishmen, to all intents and purposes, and capable of sitting in Parliament. //3-1// By the 7th Jac. I. ch 2. all persons applying to be naturalized, are to take the oaths of allegiance and supremacy, before the Bill is read a second time; and accordingly the custom is, for the person applying for the Bill in the House of Commons, to come to the table, after prayers, //3-2// but before the Speaker takes the chair, and there to take these oaths, administered to him by the Clerk, and this between the first and second reading of the Bill. This condition of taking the oaths is also always repealed by the previous Acts, in the case of the Princes above- mentioned. By the Act 4 Queen Anne, ch. 4, the issue of the body of the Princess Sophia, and all persons lineally descending from her, born or "hereafter to be born," are declared to be, and shall {4} be, to all intents and purposes, deemed natural-born subjects of this kingdom. It should seem as if, by this law, //4-1// all the descendants of that Princess (which description would include the Houses of Prussia, Denmark, and Orange) are natural-born subjects of this realm.

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MEMBERS.

Minors.

1. On the 28th of November, 1621, in a Bill //5-1// relating to the election of Members, it was proposed to insert a clause, "that they shall be 21 years of age."

2. On the 10th of March, 1623, Sir Edward Coke says, "Many under the age of 21 years sit here by connivance, but if questioned, would be put out."

3. On the 16th of December, 1690, on the hearing of a controverted Election, the petitioner, Mr. Trenchard, is admitted by his Counsel to be a Minor, but notwithstanding, upon a question and division, is declared to be duly elected.

OBSERVATIONS.

Notwithstanding, the opinion of Sir Edward Coke, as to the law, and which seems to be adopted by Mr. Justice Blackstone, in his Commentaries, vol. i. p. 162, it is certain that the practice was different. Mr. Waller, //5-2// among others, sat in Parliament before he was 17 years of age. This question is now however finally decided, by the 7th and 8th of William III. ch. 25, which makes void the election of any person who is not 21 years of age.

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MEMBERS.

Clergy.

1. In the third volume of the Parliamentary History, p. 274, is a discussion of the question, "Of the right which the inferior Clergy have, by their Representatives, to sit and vote in all questions in the House of Commons."

2. On the 12th and 13th of October, 1553, Dr. Nowell being elected a Burgess for Loo, this question is referred to a Committee; who report, "That //6-1// he, being a Prebendary of Westminster, and thereby having a voice in the Convocation House, cannot be a Member of this House." This is agreed to by the House, and a new writ is issued in his room.

3. On the 7th of February, 1620, the Committee of Elections are unanimously of opinion, against a Clerk returned for Morpeth, "because he had or might have a voice in the Convocation House," and would have fined the Town, but for its poverty; and on the 8th of February, the House resolved his return to be void, and a new writ to issue for a new election.

4. On the 9th of January, 1661, it is referred to the Committee of Elections, to examine, whether Sir Joseph Craddock {7} be in holy orders, and so disabled to sit as a Member of this House; on the 17th of January, they report, That it appeared to them, that Dr. Craddock was in holy orders, and that it was their opinion, that he was incapable of being elected a Burgess: to which resolution the House agree, and declare his election void.

OBSERVATIONS.

Mr. Justice Blackstone, in the first volume of his Commentaries, p. 175, is of opinion with Sir Edward Coke, that the Clergy are, by law, incapable of sitting in the House of Commons. Mr. Finch, in the Journal of the 11th of April, 1614, says, "None are excepted but Sheriffs, 'in orders,'

and Judges." And Sir Edward Coke, on the 8th of February, 1620, says, that when he was Speaker one was put out; and that he saw //7-1// Alexander Nowell put out, because of the Convocation House. I do not know that this question has been agitated in the House of Commons since the instance of Dr. Craddock, in 1661, at which time the Clergy taxed themselves by a subsidy, which was afterwards confirmed and carried into execution by Act of Parliament. The first Assessment Bill, in which the Clergy were included with the rest of the people, was in January, 1664. //7-2// Bishop Burnet says, in the {8} first volume of the History of his Own Times, p. 197, "That the four subsidies given by the Clergy, in 1663, were the last aid that the Spiritualty gave, and this proving so inconsiderable, yet so unequally heavy on the Clergy, it was resolved //8-1// on hereafter, to tax church benefices with temporal estates."

Whatever the 'law' may be, as to the right of persons in orders being eligible to be Members of the House of Commons, the 'fact' is, that several under that description have been elected and sat, though not bearing the habit or appearance of Clergymen: I myself remember Mr. Gordon, Member for Rochester, and some others. It is true, none of these elections have been disputed upon this ground.—A difference has been sometimes taken, between persons in Priest's or in Deacon's Orders; it is said, the first is an indelible character, the other not:—But Quaere?

{9} What alteration the practice of assessing the Clergy with the Laity, which has now continued above a century, and the admission of the Clergy to vote for Knights of the Shire, by virtue of their Glebe, //9-1// which, I apprehend, commenced about the same period, may have made in the law of this question, must be considered whenever this matter shall come to be formally decided.

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MEMBERS.

Heirs apparent of Peers.

1. On the 21st of January, 1549, it is ordered, That Sir Francis Russell, son and heir apparent of the now Earl of Bedford, shall abide in this House in the state he was before.

2. On the 9th of February, 1575, it is ordered upon motion, That John Lord Russell, son and heir apparent of the Earl of Bedford, shall continue a Member of this House, according to the precedent in the like case of the said now Earl, his father.—Vide the 10th of February.

3. On the 3d of December, 1708, it was moved, "That the eldest sons of the Peers of Scotland were capable, by the laws of Scotland, at the time

of the Union, to elect or be elected Commissioners for Shires or Boroughs to the Parliament of Scotland, and therefore, by the treaty of Union, are capable to elect or be elected to represent any Shire or Borough in Scotland, to sit in the House of Commons of Great Britain." It passed in the negative. And the next day a new writ is issued for the Shire of Linlithgow.—See the petition of Sir J. Mackenzie, on the 26th of November, and of the Freeholders of Aberdeen, on the 27th of November, 1708.

4. On the 17th of December, 1709, a new writ is ordered for Dysert, in the room of Mr. Sinclair, who, being the eldest son of a Peer of Scotland, is declared to be incapable to sit in this House. See also, on the 18th of November, 1755, a new writ, in the room of Lord Charles Douglas.

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OBSERVATIONS.

I do not recollect to have met with any thing in the history of England, or to have found any instance in the Journals, prior to that in 1549, relative to this subject; it is however highly probable, from this being at that time made a question, though decided in favour of Lord Russell, that formerly the same law existed in England as //11-1// in Scotland. Perhaps the reason for this might have been, to prevent the influence which the great Nobility would by this means have acquired in the House of Commons: it is, however, a fortunate circumstance for this country, that, if it ever was the law here, it exists no longer. It is of great importance that young Noblemen should pass through the House of Commons to the House of Lords; it is a school, wherein they hear the first principles of the constitution ably and freely debated; and, from this attendance, they acquire ideas of freedom and independence, //11-2// and contract habits of business, {12} which tend to render them the support and best ornaments of the other House.

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MEMBERS.

Embassadors, or Foreign Ministers.

1. On the 9th of February, 1575, it is resolved, That any person being a Member, and in service of Ambassade, shall not be amoved during such service.

2. On the 19th of November, 1606, a Committee is appointed to consider of the case of several persons, who had received employments from the King, since the last Session; and on the 22d, they report, and it was adjudged upon question, That Sir Charles Cornwallis, Embassador in Spain, Sir George Carew, Embassador in France, and Sir Thomas

Edmunds, Embassador with the Arch-Duke, should still stand in their several places.

3. On the 15th of February, 1711, the election of Sir Henry Belasyse is declared void; he having, since his election, accepted the office of one of the Commissioners appointed to enquire into the number and quality of the forces in her Majesty's pay, in Spain and Portugal, and to examine into several accounts relative to those forces.—See the Proceedings on the 9th and 14th of February, upon this question.

4. On the 5th of March, 1713, several writs are issued in the room of Mr. Herne, Mr. Murray, and Sir Joseph Martyn, they having accepted the offices of Commissaries, for treating with Commissaries on the part of France, for settling the trade between Great Britain and France.
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5. On the 17th and 19th of April, 1714, a question was moved, Whether this office of Commissaries, to treat with Commissaries from France, was a new-created office, within the meaning of the Act of 6 Queen Anne? and passed in the negative.

6. On the 7th of July, 1715, on a question, Whether Mr. Carpenter, having been appointed Envoy to the Court of Vienna, is thereby included in the disability of the 6th Anne, ch. 7? it passed in the negative. //14-1//

OBSERVATIONS.

The question decided in 1606 was upon a message sent from the Lord Chancellor to the Speaker, desiring to know the sense of the House upon these appointments; and, though it sometimes happens, that the Boroughs for which Foreign Ministers are elected are, from the long residence of their Representatives abroad, deprived as it were of the privilege of sending a Member to Parliament, yet, from other considerations, this was a wise and proper determination. //14-2// If it had been different, {15} James the First, and Charles the First, when they were endeavouring to overturn the privileges of the House of Commons, would, amongst other measures, have availed themselves of this, and would, by such appointments, have vacated the seats of Sir Edward Coke, Mr. Selden, Mr. Pym, and those Members who were most strenuous in opposing the arbitrary attempts of the Court. This is not mere conjecture: On the breaking-up of the famous Parliament in 1621, King James having committed Sir Edward Coke, Sir Robert Phelips, //15-1// Mr. Selden, Mr. Pym, and Mr. Mallory, to prison, sent Sir D. Digges, Sir Thomas Crewe, Sir

Nathaniel Rich, and Sir James Perrot, into Ireland, in commission with others, to execute some publick business. This, Mr. Hume says, was "as a lighter punishment; for the King at that time //15-2// 'enjoyed,' at least 'exercised,' the prerogative of employing any man, even without his consent, in any branch of the publick service." //15-3//

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MEMBERS.

Attorney General, and Attendants on the House of Lords.

1. On the 17th of February, 1575, upon sundry motions, it was concluded, That, according to old precedents, Mr. Serjeant Geoffrey, returned one of the Knights for Sussex, may have voice, and give his attendance as a Member, notwithstanding his attendance in the higher House, as one of the Queen's Serjeants, for his Counsel there; as the place where he hath no voice, nor is any Member of the same.

2. On the 22d of November, 1606, on a report from the Committee appointed to enquire into the cases referred by the Lord Chancellor to the Speaker, there was much dispute and confusion touching the case of Sir Henry Hobart, Attorney-General; //16-1// at last, it was by voice over-ruled, that no question should be made of it, but that the matter should rest. And on the 24th, Mr. Attorney came in of himself, and continued, by connivance, without other order.

3. On the 8th of April, 1614, this question is again much debated, and a Committee is appointed to search precedents: They report on the 11th, and the House resolve, upon question, That the Attorney-General //16-2// shall for this Parliament remain, but that no Attorney-General shall serve as a Member after this Parliament.

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4. On the 7th and 8th of February, 1620, the same case occurring again, it was determined, upon the grounds of the last instance, that a new writ should issue.

5. On the 9th and 10th of February, 1625, a new writ is ordered in the room of Sir Robert Heath, Attorney-General, according to the precedent of 1614.

6. On the 29th of January, 1640, a new writ is ordered in the room of Mr. Herbert, who was Solicitor when he was returned a Burgess, and is now made Attorney-General, and in that respect, is //17-1// to sit as an assistant in the Lords House.

OBSERVATIONS.

Upon what distinction the House of Commons have excluded the Attorney-General, and admitted the Solicitor-General, and {18}
the King's Serjeants, to sit, I do not know; //18-1// they have all writs of summons to attend the House of Lords. At present, however, none of the attendants on that House are excluded, but the Judges; the Attorney-General, Solicitor-General, King's Serjeants, and Masters in Chancery, are frequently Members of the House of Commons.

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MEMBERS.

Sheriffs; Returning Officers.

1. On the 2d of December, 1601, Mr. Fretchville, Knight of the Shire for Derby, is chosen Sheriff for that County, and is therefore licensed to depart home.—D'Ewes's Journal, p. 665.

2. On the 25th of May, 1604, a question is moved, touching the Case of Mayors, whether they may be of the House; and on the 25th of June, it is resolved, "That no Mayor should be elected, returned, or allowed to serve as a Member of this House;" and this to continue as an Act or Order of the House, for ever.

3. On the 23d of January, 1605, Sir J. Peyton, Knight of the Shire for Cambridge, and since chosen Sheriff; resolved, upon question, he shall attend his service here. //19-1//

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4. On the 9th of April, 1614, Sir George Selby, Sheriff for Durham, elected Knight of the Shire for Northumberland, and his election declared void, and a new writ issued.

5. On the 14th of April, 1614, Berry, Bailiff of Ludlow, having returned himself, is removed, and a new choice; and also resolved, upon question, "That all Mayors and Bailiffs, that are in Berry's case, be removed." So in the instance of the Mayor of Cambridge, 22d of March, 1620.—Vide 18th of February, 1625, the case of Mr. Gay.

6. On the 10th of February, 1625, the King sends a message by the Chancellor of the Exchequer, taking notice, that Sir Edward Coke, being Sheriff of Buckinghamshire, was elected Knight of the Shire for Norfolk, and therefore hopeth the House will do him that right, as to send out a new writ; this is referred to the Committee of Privileges. On the 27th of February, Sir J. Finch reports from that Committee a great deal of learning

upon the subject, but no opinion. This matter is adjourned from day to day, and the Session is put an end to, without the House coming to any determination upon it; but it does not appear that Sir Edward Coke ever took his seat in this Parliament. On the 9th of June, 1626, a few days before the Parliament was dissolved, it was resolved, upon question, "That Sir Edward Coke, standing *de facto* returned a Member of this House, shall have privilege."

7. On the 20th of January, 1628, motion made, That Mr. Lynn, being chosen Mayor of Exeter, might be discharged, and a new writ; but ruled, That being a Member before he was elected Mayor, he ought to serve here, and he is to be sent for to attend accordingly.

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8. On the 21st of April, 1640, the House, in an order for producing instructions from the Privy Council, take notice of Members who 'are now' Sheriffs.

9. On the 16th of November, 1675, resolved, That it is a breach of privilege, for any Member to be made a Sheriff, during the continuance of the Parliament; and a Committee is appointed to consider of a proper way of superseding the Commission.—See the case of Sir Robert Bradshaw, on the 25th of November, 1678.

10. On the 27th of March, 1677, the petition of Mr. Hatcher, Sheriff of the County of Lincoln, claiming to be duly elected for the Town of Stamford, is rejected; he having himself returned another person, as duly elected for the said Town.

11. On the 2d of June, 1685, it is resolved, That no Mayor, Bailiff, or other Officer, to whom the Precept ought to be directed, is capable of being elected to serve in Parliament for the Borough of which he is Mayor, Bailiff, or Officer, at the time of the election.—See the case of Hythe, on the 3d and 4th of June; on the 6th of June, and the 17th of November, Town of Callington; 15th of June, Town of Honiton; all in 1685.—See also the case of Mr. Burridge, Mayor of Lyme, on the 3d of February, 1727.

12. On the 7th of January, 1689, resolved, *nem. con.* That the nominating any Member of this House to the King, to be made a Sheriff, is a breach of privilege; and the House address the King to appoint another Sheriff, in the room of Sir Jonathan Jennings, High Sheriff of Yorkshire; which, as appears on the 18th of January, the King complies with.

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OBSERVATIONS.

The necessity which Sheriffs are under of residing in their Counties during great part of the time of their Sheriffalty, was, //22-1// I suppose, the reason that induced the House of Commons not to permit them, as in No. 4, to be elected Members, even for other Counties; or, being already elected, not to allow their being 'appointed' Sheriffs: the earlier cases use the expression of being 'chosen' Sheriffs; but it is well known, that though formerly they were elected by the Freeholders of the several Counties, as Coroners are to this day, yet this has ceased ever since the 9th of Edward II. and they are now appointed by the King.

The activity with which old Sir Edward Coke had opposed the arbitrary measures of James the First, and that amazing fund of constitutional knowledge with which he supported the Privileges of the House of Commons, was a sufficient reason for Charles the First to endeavour, by appointing him Sheriff, to exclude him from a seat in that House; and this measure so far succeeded, that, though the House of Commons would not come to any decision upon the question, he certainly never sat in the second Parliament of Charles the First. It should seem from No. 8, that the House, perhaps alarmed at this measure of the King's, did not afterwards adhere so strictly to the precedent of No. 4, but admitted Sheriffs to be elected.

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It seems now settled, by the Case of No. 12, that it is not lawful for a Member of the House of Commons to be appointed Sheriff of a County, that is, 'by the King;' where they are eligible, as for Middlesex, 'by the people,' it is still very customary; and indeed, in this instance, the two services, being both in the same County, are not, as in other cases, incompatible with each other.

The question, Whether a person, who is Sheriff for a County, is eligible for any Borough within that County, came to be decided, in the case of Abingdon, in the year 1775, before a Committee appointed under Mr. Grenville's Bill. In that case, and in the instance of Mr. Fleming, who was Sheriff for Hampshire, and returned for the Town of Southampton (both which cases are reported in that excellent collection of cases of Controverted Elections, published by Mr. Douglas) //23-1// there is much curious learning on this subject, particularly in the very ingenious arguments of the Counsel.—The conclusion to be drawn from these instances, particularly that of Abingdon, seems to be, that a Sheriff of a County is not eligible for any Town or Borough within that County, where

the election proceeds by virtue of his own precept; but that this doctrine does not extend to the case of those Cities or Towns (though within his County) which are Counties within themselves, and have Sheriffs, or Returning Officers, to whom the writ issues immediately from the Office of the Clerk of the Crown, without passing through the hands of the Sheriff of the County at large, or requiring the intervention of his Precept.

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MEMBERS.

Sick.

1. On the 11th of November, 1558, where suit is made, that some Burgesses, being sick, might be removed, and writs for other in their places; the House doth resolve, That they shall not be amoved, notwithstanding their sickness. Yet it appears from D'Ewes, p. 126, that on the 29th of October, 1566, a new writ was issued in the room of a Member 'reported' to be lunatick.

2. On the 9th of February, 1575, it is resolved, That no person, visited with sickness, shall be amoved from his place in this House, nor any other elected during such sickness.

3. On the 9th of November, 1605, two cases occur of Members sick; and the House in one of them decide, that the Member shall continue to serve; and in the other (he being weak, and by reason of age not able to serve, and not likely to recover) that he be removed, and a new writ is issued in his room. //24-1// So on the 2d of March, 1609, on a certificate of the great sickness of a Member for Coventry, a warrant is ordered for a new writ.

4. On the 8th of March, 1623, Sir Thomas Gerrard petitions to be discharged, in respect of his infirmity of health. It appears, from the further Proceedings in this case, that this was only an excuse, he being unwilling to take the Oaths. But Sir George Moore says, "Members once chosen are not to be discharged without some very great cause, 'as a disease incurable.' "

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5. On the 18th of August, 1641, a motion is made for a new writ, in the room of a Burgess who is very infirm from great age; but it would not be granted by the House.

6. On the 7th of March, 1715, Mr. Pryse writes a letter //25-1// to the Speaker, desiring to be excused attending, on account of the ill state of his health, and that a new writ may issue in his room. The House do not

comply with his request, but order him into custody for not attending; and on the 23d of March, he, continuing to abscond, is expelled.

OBSERVATIONS.

The impossibility of ascertaining the degree of infirmity under which a Member may labour, and of pronouncing that he is incurable, is a sufficient cause for not removing him, though to all appearance he may never be able to attend again; besides, that such a practice would open a door for Members to quit their seats, under this pretence; and therefore, "when they are once chosen, they are not to be discharged, but by operation of law."

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MEMBERS.

Outlaws, and in Execution.

1. On the 9th of February, 1575, it is resolved, That no Member be removed, though in execution.

2. On the 22d of March, 1603, a motion was made on behalf of Sir Francis Goodwin, who had been elected Knight of the Shire for the County of Bucks; but, the Clerk of the Crown refusing to accept the return of his Election, "quia Utlagatus," Sir John Fortescue had been elected on a second writ. The House immediately entered into an enquiry of this matter; the proceedings upon which were printed by order of the House of Commons, in 1704, under the direction of the Speaker, Mr. Harley; and are to be. found in the 5th vol. of the Parliamentary History, p. 57. //26-1//

3. This question upon Sir Francis Goodwin produced a Bill "to disable all outlawed persons, and persons in execution, //26-2// and all recusants convicted, to be of the Parliament;" but upon the third reading, on the 18th of April, 1604, this Bill was upon the question, dashed, 'and not one Yea,' and ordered to be so entered.

4. On the 28th of May, 1624, resolved, upon question. That Mr. Huddlestone may serve as Knight of the Shire for {27} Cumberland, notwithstanding he be outlawed.—See also the case of Mr. Smythe, on the 24th of February, 1558; when it is determined, on a division, "That he shall continue a Member."

5. On the 22d of March, 1625, it is referred to a Committee to examine into the election of Sir Thomas Monke; who report on the 24th; and the House being informed, that he was in execution before, and at the time of his election, order a new writ to issue for a choice in his room.

6. On the 17th of February, 1667, information being given, that Sir H. Vaughan, being elected for the County of Carmarthen, was a person outlawed, after judgment, for a debt due on a bond; and the question being, Whether he can regularly be continued a Member of the House; it is referred to the Committee of Elections; who on the 11th of April report, "That there was nothing objected against Sir H. Vaughan, to impede his sitting in Parliament, or that he was not duly elected a Member;" to which resolution the House agreed.

7. On the 16th of February, 1676, information being given to the House, that Sir Robert Holt, a Member, was detained prisoner in the Fleet; the matter is referred to the Committee of Elections; who report, on the 2d of April, "That Sir Robert Holt, being taken in execution out of privilege of Parliament, be not discharged from his imprisonment:" And, "That the outlawry, after judgment, is another good cause why he ought not to be discharged." To both which resolutions the House disagree, and order him to be delivered out of custody.

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8. On the 25th of March, 1690, a petition from Mr. Montagu, who was a prisoner in execution in the King's Bench at the time of his election, was presented, desiring that he might have his privilege: This matter is referred to a Committee, to examine and search for precedents; who report, //28-1// on the 5th of May, a variety of cases, beginning with Thorpe's case, of Members in execution, but they come to no opinion upon the case of Mr. Montagu, and the House put off the consideration of the report from time to time, and do not, as I can find, proceed to any resolution upon it.

9. On the 10th of November, 1707, Mr. Asgill writes a letter to the Speaker, that he is detained a prisoner in the Fleet, upon two executions.—This matter is referred to the consideration of a Committee; who, on the 15th of November, and 16th of December, report the fact, and the several precedents of Members in execution, and the manner of their being released; and the House immediately order him to be delivered out of custody, by the Serjeant with the Mace: On the next day, the 17th of December, the Serjeant reports, That he had delivered the order to the Warden of the Fleet, who had paid obedience to it, and that he had delivered Mr. Asgill out of his custody.

OBSERVATIONS.

It should seem, from the result of these cases, that a person is eligible to be a Member, though an Outlaw, or in {29} execution, at the time of his election. The great pains taken to //29-1// outlaw Sir Francis Goodwin, in order to introduce Sir John Fortescue, 'Chancellor of the Duchy of Lancaster,' and the very extraordinary clause, to exclude bankrupts and persons outlawed, inserted in the King's proclamation //29-2// for calling this Parliament, shew how very early in his reign King James entertained the idea of interfering in the election of Members of the House of Commons, in order to model that assembly for his own purposes. Had he succeeded in establishing the doctrine, "That persons employed in foreign embassies, Sheriffs of Counties, bankrupts, and persons outlawed, or in execution, ought not to be elected, or to sit in Parliament," he would, by some or other of these methods, have found means to {30} withdraw from their service in that House many of its ablest Members, to whose spirit and attention we, at this distance of time, are indebted for the present enjoyment of our liberties.

With respect to Members, though actually in execution at the time of their election, it appears from Asgill's case to be clear that this is no disability, and that they are entitled by law, that is, by the privilege of Parliament, to their release. The Statute of 1 James I. ch. 13, regulates in what manner the party, at whose suit such execution was pursued, shall have his remedy, after the privilege of that Session of Parliament shall cease, in which such privilege shall be granted: and Sheriffs and their Officers are, by the same Statute, indemnified for delivering such persons out of execution.

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MEMBERS.

Accepting Offices.

1. On the 22nd of November, 1606, it was resolved, That new writs should issue in the room of Sir Thomas Ridgeway, Treasurer at War in Ireland; of Sir Henry Winch, Lord Chief Baron in Ireland; and of Sir Oliver St. John, Master of the Ordnance in Ireland; because, as the Committee report, "their patents were for life, and therefore differ from the case of Embassadors."

2. On the 14th of December, 1698, a petition is presented from Sir Henry Colt, objecting to Mr. Montagu's election for Westminster, as incapable of being chosen to serve as a Member in Parliament; on the report, on the 22d of December, this objection is explained to be, "That he was one of the Lords Justices, and had signed a proclamation for

proroguing the Parliament:" But the Committee and House having considered this objection, are both of opinion "that Mr. Montagu was duly elected."

3. On the 10th of February, 1698, Mr. Isaacson is expelled for having acted as a Commissioner of the Stamp Duties, in breach of the 5th of William and Mary, ch. 7: And on the 13th of February, Mr. Cornish is expelled for the same offence.

4. The case of Mr. Montagu, on the 13th of February, 1698, was particular:—The new Parliament was made returnable on the 24th of August, 1698, and was directed to sit for the {32} dispatch of business on the 29th of November; Mr. Montagu had been a Commissioner of the Stamp Duties, but in the commission which passed in September, 1698, he was left out; it appeared that he had acted under the former commission, till the 4th of October, 1698; but having informed the House that he did not qualify himself as a Member till the 29th of November, and so conceived himself not to be within the law, he is, upon the question, called in to take his place, and a Committee is appointed to draw up and state the matter of fact. I do not find they make any report.

5. On the 19th of February, 1700, Sir Henry Furnese is expelled, for acting as a Trustee for circulating Exchequer bills, in breach of the 5th of William and Mary, ch. 7.—On the 22d of February, Mr. Heathcote is expelled for the same offence.

6. On the 18th of November, 1707, the House having ordered lists to be laid before them, of the persons appointed to execute certain offices which disqualified them from sitting in Parliament, consider those lists, and order new writs to be issued in the room of several Members, whose names appear in those appointments.—This was in the beginning of the first Parliament after the Union; in which, by the Queen's proclamation, the same persons continued Members of the House of Commons, as had been of the last Parliament; till the expiration of which, the Act for excluding these officers did not take place.

7. On the 5th of February, 1708, Sir Richard Allen is declared duly elected for Dunwich, on the hearing his petition; {33} on the 7th of February, he surrenders an office in the Customs for life, to which he had been appointed in May, 1678; on the 8th of February, this surrender is enrolled; and on the 9th of February, he desires the sense of the House, before he takes his seat, on the clause of the 12th and 13th of William III.

ch. 10, which relates to the Officers of the Customs; and upon reading the letters patent, and surrender, he is admitted to take his seat.

8. On the 26th of November, 1709, a new writ is issued in the room of Mr. Aylmer, appointed Admiral and Commander in Chief of the fleet. //33-1//

9. On the 26th of February, 1710, Sir J. Anstruther (a Member) by the death of his father becomes entitled to an office in Scotland, of heritable right; but before he accepts it, he desires the sense of the House, Whether, by accepting it, he shall be incapacitated from sitting. On the 10th of April, 1711, the House determine, that the office is within the meaning of the 12th and 13th of William III. relating to Officers of the Customs; but that Sir John Anstruther, not having taken, enjoyed, or executed the same, is capable of being a Member. //33-2//

10. On the 8th of April, 1714, the House are unanimously of opinion, that Mr. Anstis, a Member, having accepted the {34} reversion of the office of Garter King at Arms, after the determination of the letters patent, 'now in being,' to Sir Henry St. George, may still continue to sit; but on the 27th of March, 1716, this reversion falling in, a new writ is moved for in the room of Mr. Anstis: On the 28th, the letters patent are read; but the question for the writ being put off by adjournment to the 6th of April, and the House immediately adjourning to the 9th of April, this matter drops; nor can I find that it was resumed till near two years after, when, on the 7th of December, 1717, a new writ is ordered.

11. On the 28th of March, 1715, Mr. Webb desires the sense of the House, in respect to his being appointed Governor of the Isle of Wight, by letters patent, which passed the Great Seal since his election, but issued pursuant to a warrant granted before the election; on the 29th, the warrant and patent are read, and Mr. Webb came and took his place in the House.

12. On the 21st of November, 1715, a new writ is issued in the room of Mr. Farrer, who hath accepted the office of Master, Keeper, and Governor of the hospital of St. Catharine, //34-1// near the Tower of London.—See also the 27th of May, 1723, a new writ in the room of Mr. Berkley.

13. On the 17th of January, 1717, Lord Midleton, Lord Chancellor of Ireland, desires the sense of the House, Whether he is incapacitated to sit, in respect to his being continued in a commission for Ireland, which commission has been renewed {35} since his election, 'but is an office of no profit.' The House are of opinion, that he is not within the meaning of the

6th of Anne, ch. 7, and he accordingly came into the House.—Quere, What commission?

14. On the 19th of March, 1717, a new writ is ordered to be issued in the room of a Member who has accepted a pension from the Crown during pleasure.

15. On the 20th of March, 1717, a new writ is issued in the room of a Member appointed Master of Greenwich Hospital for life.—The practice has lately been, to consider this as a military government; neither Sir George Rodney, nor Sir Charles Hardy, vacated their seats on the acceptance of it. //35-1//

16. On the 10th of June, 1720, and 7th of May, 1730, there are writs in the room of Governor and Lieutenant Governor of Chelsea Hospital.

17. On the 3d of April, 1721, the opinion of the House is taken on General Stanwix's having accepted the office of Governor of Hull; and the commission being read, the House first resolve, "That this is not an office in the Army," and then order a new writ: So on the 18th of January, and 22d of January, 1732, new writs are ordered in the room of Members, accepting the offices of Governors of Hull and Berwick; but on the 9th of June, 1733, on General Wade's accepting the office of Governor of the three forts in Scotland, the House {36} resolve, //36-1// "that the accepting a commission of Governor, or Lieutenant Governor, of any fort upon the military establishment, by a Member, 'being an officer in the army,' does not vacate his seat." Before they came to this resolution, the before-cited instances of the 3d of April, 1721, and of the 18th and 22d of January, 1732, were read; and also of the 28th of February, 1708, of a new writ in the room of the Deputy Governor of Dover castle; and also of the 17th of February, 1710, in the case of the Governor of Tinmouth fort; and also of the 1st of February, 1711, the case of the Lieutenant Governor of Hull; and also of the 25th of April, 1715, of the Governor of Fort William.

18. On the 24th of May, 1726, and on the 14th of January, 1729, new writs are ordered in the room of Members made Cursitor Barons of the Court of Exchequer; but in the latter case Mr. Baron Birch is re-elected, and sits as a Member till he is expelled, on the 30th of March, 1732.

19. On the 16th of April, 1728, it is resolved by the Committee of Elections, that Mr. Ongley, having an office in the Customs at the time of the election, is capable of 'claiming to sit.'—See also, on the 11th of

February, 1734, a very particular entry in the case of Mr. Trelawney, a Commissioner of the Customs.

20. On the 25th of January, 1730, and 10th of January, 1765, new writs are issued in the room of Governor and Lieutenant Governor of the Isle of Wight.

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21. On the 20th of February, 1739. See the proceedings on the question of Mr. Corbet's having an office, supposed to be created since the 25th of October, 1705.

22. On the 25th of November, 1740, //37-1// Sir Watkin Wynn has an office come to him 'by reversion,' on the death of his father; a new writ issues.—See also the case of Mr. Legge, the 7th of December, 1759.

23. On the 22d of June, 1742, the House resolve, Nemine Contradicente, "that the accepting the office of Master General or Lieutenant General of the Ordnance, 'by an Officer in the army,' does not vacate the seat."

24. On the 23d of October, 1745, and the 3d of December, 1759, new writs are issued in the room of persons accepting the offices of Colonel and Lieutenant Colonel in his Majesty's army.

25. On the 18th of June, 1751, several writs are issued in the room of Members accepting offices in the Duchy of {38} Cornwall, at that time in the King's hands, by the death of the Prince of Wales; but on the 19th of April, 1763, on a question relating to Mr. Morrice's writ, the House decided differently, that the acceptance of the office of Warden of the Stannaries did not vacate his seat.—Vide the 17th of March, 1752. //38-1//

26. On the 26th of January, 1756. See the proceedings of the House, on a suggestion, that three persons being appointed to the office of Vice Treasurer of Ireland, were more than had executed that office since 1705.—Vide the 10th and 11th of March, 1756.

27. On the 22d of January, 1760, the House resolve, that Sir William Peere Williams, having been appointed Captain in the army by brevet, 'but not receiving, or being entitled to receive, pay,' does not thereby vacate his seat.

28. On the 30th of November, 1779, a new writ is issued for Yarmouth, in the room of Jervoise Clarke Jervoise, Esq; who had been

appointed to, and accepted of, the office of Agent to the regiment of Militia of the County of Sussex. //38-2//

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OBSERVATIONS.

By the 5th of William and Mary, ch. 7, sect. 57, no Member of the House of Commons shall at any time be concerned in the collecting or managing any of the duties granted by that or any future Act of Parliament, except the Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise.

By the 11th and 12th of William III. ch. 2, sect. 150, the exception in the former Act, with respect to Officers concerned in the Excise, is repealed, and such persons are declared incapable of sitting, voting, or acting as Members.

And by the 12th and 13th of William III. ch. 10, sect. 89, the same provisions are extended to Officers in the Customs.

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By the 6th of Anne, ch. 7, sect. 25, no person who shall have in his own name, or in trust for him, any new office or place of profit, created since the 25th of October, 1705, nor a Commissioner or Receiver of Prizes, nor Comptroller of the Accounts of the Army, nor Commissioner of Transports, or of Sick and Wounded, nor any Agent for any regiment, nor any Commissioner for Wine Licences, nor any Governor or Deputy Governor of any of the Plantations, nor any Commissioner of the Navy, nor any person having a pension from the Crown during pleasure, shall be capable of being elected, or of sitting or voting as a Member of the House of Commons.

The persons here enumerated are rendered totally incapable of being Members; but by the 26th section, if any Member shall accept of any office of profit //40-1// from the Crown, //40-2// his election is declared void, and a new writ shall issue; but such person shall be capable of being again elected.

And by the 27th section, no greater number of Commissioners shall be constituted for the execution of any office, than {41} have been employed at some time before the first day of that Parliament.

By the 28th section, nothing herein contained is to extend to any Member of the House of Commons, being an Officer in the Army or Navy, who shall receive any //41-1// new or other commission in those services.

By the 1st of George I. ch. 56, no person having any pension from the Crown for any term of years, either in his own name, or in trust for him, shall be capable of being elected, or of sitting or voting as a Member.

By the 15th of George II. ch. 22, no Commissioner of the Revenue in Ireland, or Commissioner of the Navy or Victualling Offices, nor any Deputies or Clerks in any of the said offices, or in the office of the Commissioners of the Treasury, or of the Auditor of the Exchequer, or of the Tellers or Chancellor of the Exchequer, or of the Admiralty, or of the Paymasters of the Army or Navy, or of the Secretaries of State, or of the Commissioners of Salt, or Stamps, or Appeals, or Wine Licences, {42} or Hackney Coaches, or Hawkers and Pedlars, nor any person having any Office, Civil or Military, in Minorca or Gibraltar, (except Officers having commissions m any regiment) shall be capable of being elected, or of sitting and voting.—There it an exception for the Treasurer and Comptroller of the Navy, the Secretaries of the Treasury, the Secretary to the Chancellor of the Exchequer, and Secretaries of the Admiralty, the Under Secretaries of State, the Deputy Paymaster of the Army, and all persons holding any office or employment for life, or quam diu se bene gesserint.

By the 7th of George II. ch. 16, section 4, no Judge of the Court of Session or Justiciary, or Baron of the Court of Exchequer, in Scotland, shall be capable of being elected, or of sitting or voting.

These laws, which are all passed since the Revolution, shew how anxious Parliament has been, at these several periods, to diminish, as much as possible, the effect of that influence of the Crown, which, from the disposal of so considerable a number of lucrative offices and employments, might have an improper bias on the votes and proceedings of the House of Commons.

It is not a question proper for me to discuss here, where the line should be drawn, with respect to the degree of influence with which the Ministers of the Crown can safely be intrusted. The idea, on the one hand, of excluding from the House of Commons every man who holds an office in the government of the country, and who, from that situation, is the best qualified to give the necessary information relative to the department {43} which he belongs to, is too absurd to be seriously maintained for a moment. Besides, whilst a seat in the House of Commons continues to be an object to persons of the greatest rank and largest property in the kingdom, it can never be a desirable measure to exclude men of this

description from taking upon themselves the offices of Secretary of State, of one of the Commissioners of the Treasury or Admiralty, or of the Secretary at War, and by this means to discourage young men of family and fortune from acquiring that knowledge, and those habits of business, which tend to render their talents and services ornamental and beneficial to their country.—Such an attempt would alone be sufficiently mischievous; but to carry the idea still further, as some have done, and to exclude Officers of the Navy or Army, beyond a particular number, or below a certain rank, from being Members of the deliberative Council of the nation, and thereby to compel them to consider themselves as a separate body from the rest of the Gentry of the kingdom, without any other weight or consequence with the public, than what they derive from the grace and favours of the Crown, would be dangerous to the highest degree. Men, who are to command the fleets and armies of a free country, ought as early as possible to have a voice in the Assembly of the people; where they may hear treated, and may themselves discuss with freedom, every question that concerns the administration of the government of the country, and may learn to set a true value upon those laws, which, as citizens, they are bound to protect, and the excellence of which, in whatever capacity they are employed, they ought ever to love and revere.

On the other hand, it is impossible to say, that the influence of the Crown, arising from the disposal of offices or {44} emolument, and of commissions in the Navy and Army, may not be extended too far: However men may flatter themselves that their parliamentary conduct is regulated only by the principles of honour, and a regard for the publick service, we learn from the histories of all ages, and of all countries, as well as of our own, that the respect which is paid by the multitude to those who are attending about the person of the Prince—that titles of rank—that badges of different-coloured ribands—but, above all, that a considerable pecuniary addition to their income, are motives which always have had a certain weight, and will operate upon the minds of men, even of the highest rank, and of the most independent fortunes.— //44-1// During the reign of the Stuarts, the whole revenue of the Crown, out of which the King was obliged to keep up the establishments of the country, Civil as well as Military, was very inconsiderable. The wars which continued, almost without intermission, for near twenty years after the Revolution, obliged the Ministers of the Crown to defray the expences attending those wars by making considerable loans, and, in order to pay the annual interest of those loans, taxes were necessarily imposed. The Crown, as the executive part of the Government, had directly or indirectly the appointment and removal of all the Officers that were necessary for the collection and management of these taxes. From hence a new system of power and

influence arose, not known, {45} or but in a very small degree, before the Revolution; which extended itself, as the necessities of the State, and with them the taxes, increased, into every part of the kingdom. To check the undue and improper effects of this influence, as well upon the electors of Members of the House of Commons, as upon the elected, the laws above-mentioned were enacted; and it is certainly at all times the duty of a Parliament, jealous of its own independence, to watch over the increase and operations of this new-acquired power in the Crown, and to take care that it be not extended too far, or exercised improperly. But where the line should be drawn; in what instances this influence should be restrained, to what extent, and in what manner, must be determined from the particular circumstances of the time when the proposition is made. The principle of such an attempt is always laudable, as it has for its object the purity and independence of Parliament; and there is little reason to fear, but that there will always be persons sufficiently interested in preventing this principle from being carried into effect, so as to weaken the legal prerogatives of the Crown, and thereby endanger the balance of this most happy and most excellent constitution.

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MEMBERS.

Whether eligible.

1. On the 9th of November, 1605, question moved, Whether Sir Thomas Thynne, being a Burgess, may be chosen and admitted Knight of the Shire.

2. On the 5th of March, 1727, a Committee is appointed to search Precedents, in relation to a petitioner claiming a seat in the House for one place, and who is afterwards elected for another place, pending such petition; with an instruction to enquire also where the election is controverted upon the petition of the electors.—On the 9th of April, the Committee report several instances of petitioners elected, pending their petition; and on the 16th of April, the House resolve, “That a person petitioning, and thereby claiming a seat for one place, is capable of being elected and returned, pending such petition.”

OBSERVATIONS.

A person elected and returned a Member of the House of Commons, cannot certainly, by law, be eligible for any other place, unless by the acceptance of an office, or some other act, he vacates his former seat.—One reason, amongst others, for this, is that, though a Member is elected by the freeholders of a County, or the electors of a particular Borough, he becomes, {47} when elected, //47-1// the Representative of the whole

commonalty of Great Britain, and is therefore already the legal Represtative of the County or Borough, whose seat is at that time vacant.

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MEMBERS.

Whether they can relinquish.

1. On the 2d of March, 1623, it is agreed, That a man, after he is duly chosen, cannot relinquish. //48-1//

2. On the 6th of July, 1641, it is moved, That Mr. Abbott, at his own request, might decline his election, and a new Burgess be chosen in his stead; but the motion was not thought fit to be granted.

3. On the 3d of January, 1698, Mr. Archdale, a Quaker, being returned for Chipping Wycomb, is ready to serve, if the House will accept his declarations of fidelity, &c. instead of the oath; but on the 6th of January, Mr. Archdale coming into the House, but declining to take the oaths, from a principle of his religion, the House order a new writ to issue in his room.

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RULES OF PROCEEDING.

On opening the Session.

1. On the 22d of March, 1603, it is entered, "That the first day of sitting, in every Parliament, some one Bill, and no more, receiveth a first reading for form sake."

2. On the 7th of April, 1614, after the House was returned from the House of Lords, there was read by the Clerk, by the direction of Mr. Speaker, 'according to the usual manner,' a Bill.

3. On the 3d of February, 1620, it is said, the Bill is read as a matter of course and form used in former Parliaments. So on the 21st of February, 1623.

4. On the 21st of March, 1663, King's speech reported, and other business done before the Bill was read. So on the 24th of November, 1664; and on the 9th of April, 1713.—See the 20th of January, 1725.

OBSERVATIONS.

The question, Whether it is of necessity, that at the meeting of the House, after a prorogation, a Bill should be read for the opening of the session, before the report of the King's speech, or before the House proceed on any other business, was very much {50} agitated on the 15th of November, 1662; when, as soon as the Members were sworn at the table, Mr. Wilkes, and Mr. Grenville, then Chancellor of the Exchequer, arose in their places, the first, to make a complaint of a breach of privilege, in having been imprisoned, &c.; and Mr. Grenville, to communicate to the House a message from the King, which related to the privileges of the House; the Speaker at the same time acquainted the House, that the Clerk had prepared a Bill, and submitted it to them, whether, in point of form, the reading of the Bill should not be the first proceeding towards opening the Session. A very long debate ensued, which of these three matters ought to have the precedence, and at last it was carried in favour of the Bill.

Notwithstanding this decision, and the arguments (some very extraordinary ones) that were used upon that day, I understand the custom of reading a Bill immediately on the return from the House of Lords, to be nothing more than a claim of right of the Commons, that they are at liberty to proceed, in the first place, upon any matter which they think material, without being limited to give a preference to the subjects contained in the King's speech. If this is so, the House might certainly have proceeded, and

very regularly, either upon the King's message, or Mr. Wilkes's complaint, before they read the Bill. And whoever will examine the Journals accurately, will find several instances, where other business has been done, before the Bill is read. The reading of the Bill is "for form sake," and may be suspended till after other matters, if the House shall think the consideration of those matters of greater importance.

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RULES OF PROCEEDING.

Members introduced and sworn.

1. On the 19th of May, 1685, the hour of the day 'being elapsed' for taking the oaths, and subscribing the declaration, the House adjourned.

2. On the 23d of February, 1688, resolved, that the antient //51-1// order be observed, "That upon new Members coming into the House, they be introduced to the table between two Members, making their obeysances as they go up, that they may be the better known to the House."

3. On the 7th of November, 1713, the Lord Steward makes a deputation to several 'Lords' and others, for administering the oaths to the Members, before they came into the House of Commons; and on the 16th of February, he makes another deputation for the same purpose.

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4. On the 8th of January, 1716; the Duke of Kent makes a deputation in the middle of the Parliament; so does the Duke of Argyle, on the 13th of February, 1718.

OBSERVATIONS.

By the 5th of Elizabeth, ch. 1st, section 16th, all Members, before they come into the Parliament House, are to take the oath of 'Supremacy' before the Lord Steward for the time being, or his Deputy or Deputies, for that time to be appointed.

By the 7th of Jac. I. ch. 6th, section 8th, the oath of 'Allegiance' is, in like manner, ordered to be taken by Members, before they come into the House.

By the 30th of Charles II. statute the 2d, every Member is to take the oaths of Allegiance and Supremacy, and make and subscribe the declaration against Transubstantiation, //52-1// between the hours of nine in the morning and four in the afternoon, 'at the Table,' in the middle of the House of {53} Commons, while the House is sitting, with the Speaker in the Chair.

By the 1st of William and Mary, ch. 8th, the oaths of Allegiance and Supremacy are altered, and others substituted in their room.

By the 13th of William III. ch. 6th, section 10th, every Member is to take the oath of Abjuration 'at the Table,' in the same manner, and between the same hours, as he takes the oaths of Allegiance and Supremacy, by the 30th of Charles II.

By the 33d of George II. ch. 20th, every Member (except as is therein excepted) is, before he presumes to vote in the House of Commons, to take the oath of his being qualified, and to deliver in his qualification 'at the Table.'

Such Members as are elected at a General Election are not introduced; but, as soon as they have been sworn out of doors, before the Lord Steward, or one of his Deputies, they come up to the Table, and there take the oaths appointed, and subscribe the declaration. But when a Member is elected on a writ issued after the General Election, such Member must be introduced by two other Members, and is brought up from the Bar, making three obeysances to the Chair, and this in order, as it is expressed in the rule of the 23d of February, 1688, "that the Member may be known to the House."

It appears to have been the practice, and I apprehend it is {54} right, if a //54-1// new Lord Steward is appointed in the middle of a Parliament, for him to make a deputation, that Members, taking their seats after his appointment, may be sworn under such deputation, and not under that of his predecessor. I take notice of this, because, from inadvertence, it has not always been observed.

The time appointed by the 30th of Charles II. and by the act of the 13th of William III. for Members to be sworn in the House, being from nine till four, is, //54-2// I apprehend, the reason for the Speaker's continuing to sit in the Chair till four o'clock, though it should have appeared, by a division or otherwise, that forty Members are not present. It is also for the same reason, that, if forty Members do not appear the whole day, the Speaker waits till four o'clock, and then takes the Chair, and adjourns the House.

When a Member appears to take the oaths, all other business is immediately to cease, and not to be resumed till he has been sworn and has subscribed the Rolls. //54-3//

{55} //no text on this page; contains completion of footnote//
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RULES OF PROCEEDINGS.

Taking and keeping Places.

1. On the 25th of April, 1626, a motion is made against leaving of gloves, &c. for keeping of places.

2. On the 26th of November, 1640, neither book nor glove may give any man title or interest to any place, if they themselves be not 'here' at prayers.

3. On the 10th of February, 1698, ordered, That every Member of this House, when he comes into the House, do take his place, and not stand in the passage as he comes in or goes out, or sit or stand in any of the passages to the seats, or in the passage behind the Chair, or elsewhere, that is not a proper place.—On the 16th of February, 1720, this order is read, on receiving the report from the Committee of Secrecy, as a standing order in force.

4. On the 10th of March, 1734, a complaint being made to the House, that places were kept in the House for Members who were not at prayers, by laying papers for that purpose; it is declared, that no Member is to keep any place in the House, by book, glove, paper, or otherwise, till after prayers, and then only for himself.—On the 13th of March, this is declared not to extend to a Member who takes a place by and for himself only, before prayers, and leaves a book, glove, paper, or other mark of the same, provided such Member be at prayers.—

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On the 16th of March, 1737, these resolutions were read; and on the 29th of January, 1741, they were ordered to be printed in the Votes of that day; and again, on the 9th of December, 1755.

OBSERVATIONS.

Disputes have often arisen, where a Member, having by himself taken a place before prayers, and left a book or glove in the place, and not being 'in the place' at prayers, but coming in during prayers, and finding another Member in his place, which has the right to the place. It is said on the one hand, that the rule of the House is, that the Member is to be at prayers, and that this cannot be known, unless he is in his place; to which it is answered, that it is not necessary the Member should be there at the beginning of prayers; that having left a token in the place, it is his, till he has forfeited it by not being present in the House during any part of the

prayers; and that no Member is entitled to remove that token, or to take his place, till prayers are over; because, a Member coming into the House after prayers are begun, ought to make as little disturbance as possible, and kneel down as close as he can to the door; and that it would be hard to lose his place, because he comes in but a moment after prayers are begun. There has never been any //57-1// determination of the House 'upon this important question;' but I rather believe the latter to be the true doctrine, and to have been the opinion of the oldest Members, as to the practice.

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It is the constant practice, that Members lose their right to their seats by attending the Speaker to the House of Lords, when sent for by message from the King; which ought not to be, because it discourages them from doing this part of their duty. The right to seats is also lost on a division (except by the Tellers) which often makes it material which side are to go out, in questions otherwise indifferent.

It is commonly understood, that Members who have received the thanks of the House in their place, are entitled to that place whenever they come to the House, at least during that Parliament; and it is generally allowed them by the courtesy of the House.

On the opening of a Parliament, the four Members for the City of London claim a right of sitting on the lower bench, on the right hand of the Speaker, and generally exercise it; at other times, this is called the Treasury Bench (and, as appears from the antient Journals, used to be reserved for Privy Counsellors) and is now, by the favour of the House, left for the Lords of the Treasury, and other Members in high office, who are supposed by their avocations to be prevented from coming down to take places for themselves: But this too is matter of courtesy, and not of right. Mr. Pulteney, when in the height of opposition, always sat on the Treasury Bench. Of right, no Member can claim any other seat than what he has taken at prayers, or finds vacant afterwards, on his coming into the House: it is, however, frequently allowed to Members who have passed through the great offices, to keep the same seat, without the necessity of coming down to take it; as in my memory, Mr. Pitt, Mr. Fox, Mr. Grenville, and several others.

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RULES OF PROCEEDING.

Compelling Attendance of Members.

1. On the 9th of December, 1549, 22d of February, 2d and 3d of March, 1552, Members have leave to absent themselves, on various pretences; and so on the 22d of February, 1557, and throughout the reign of Queen Mary.

2. In the year 1554, several Members seceded from the service of the House; for which, it appears from the 3d volume of the Parliamentary History, p. 334, and 358, that an //59-1// information was filed by the Attorney-General, in the Court of King's Bench; to which some of them submitted, and were fined; the rest traversed, and judgment was prevented by the Queen's death.

3. On the 18th of March, 1580, ordered, that such Members as shall depart without licence be fined, over and above the loss of their wages; and none to depart without the leave of the Speaker.

4. On the 26th of March, 1606, debate about the method of sending for Members absenting themselves without leave.—See the 31st of March, and 2d and 3d of April.

5. On the 27th of February, 1606, after much debate, it was resolved, that the House should be called over; and {60} such as absented themselves without leave, or just cause of excuse, should be sent for by the Serjeant, and answer as in breach of Privilege.

6. On the 16th of May, 1614, the first instance I observe of the Serjeant being sent with the Mace for the Lawyers.—See the 19th of April, 1621, and 27th of January, 1661.

7. On the 7th of March, 1676, Serjeant Maynard sent for in custody of the Serjeant, for going the circuit without leave of the House.—See the 11th of December, 1678, where fourteen Members are ordered into custody for the same offence, of departing without leave.

8. On the 27th of February, 1732, House resolve they will proceed with the utmost severity against such Members as shall not attend; and this is inserted in the Speaker's circular letter.

9. On the 10th of May, 1744—See the report and resolutions of the Committee appointed to consider of a method of inforcing an earlier and more constant attendance on the service of the House.

OBSERVATIONS.

It is a common proceeding, when the House is going upon very important business, to send the Serjeant with the Mace into Westminster Hall, and the places adjacent, to summon the Members to attend the

service of the House; and this is almost universally done, when the House are to be called {61} over; and by the Act of the 10th of George III. ch. 16, section 4, it is directed to be done previous to the taking into consideration a petition relating to a controverted election.

When it is observed that Members stay in the country, and absent themselves from the business of the House, it is usual to order the House to be called over; and sometimes the Speaker is directed to write circular letters to the Sheriffs, to summon the Members to attend, copies of which are always entered in the Journal: It is also very common to order, that no Member shall go out of town without leave of the House; and this is to be obtained by motion in the House.

There is an Act of Parliament of the 6th of Henry VIII. ch. 16, upon this subject, which may be said to be obsolete, as the penalty inflicted by it has now no longer any existence; by that Act, every Member who absents himself, without licence, from the House, and that licence to be entered of record in the Clerk's book, shall lose his wages, and the place for which he serves shall be discharged of the wages against the said person and his executors.

It has not been customary, of late years, to inforce the calls of the House, by taking Members, who do not attend, into custody of the Serjeant; in the twenty years that I have attended at the Table, there has not occurred a //61-1// single instance; although at the time of ordering the call, there is always a resolution come to, "that such Members as shall not {62} attend at the time appointed, be taken into custody."—It does not become me to determine, how far this lenity of the House, in admitting every trifling excuse that is offered, conduces to the end for which this form was instituted, viz. the producing a full attendance of Members on the publick business—or, whether it would not be better not to order a call, than to make it nugatory, by not inforcing it. Notwith-standing the great anxiety, trouble, and expence, which many persons put themselves to, to obtain a seat in the House of Commons, it is inconceivable how many of these very persons neglect their duty in attending and taking a part in the business that is depending, and with what difficulty they are prevailed upon to give up their amusements, and other less important avocations, for this, which, whilst they continue Members, ought to be their first and principal object.—This indifference about what is passing in the House of Commons, and the difficulty of procuring a numerous attendance of Members, has further and much worse consequences than at first appear. The controul, which the independent Members of the House ought to have over the conduct of the Ministers, is entirely lost; and the direction and

detail of the measures of Government are left, without attention or examination, to those in whose official department they happen to be.—It is therefore the duty of the House of Commons, especially in times of difficulty, to compel the attendance of Members, by //62-1// frequent calls; and {63} not to permit the indolence of some, the inattention of others, or the love of amusement in many, //63-1// to leave the most important and interesting questions to be discussed and decided upon, in Houses not consisting of half the number of Members that ought to be present on such occasions.

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RULES OF PROCEEDING.

As to Members Speaking.

1. On the 2d of May, 1604, two Members rising to speak, and it being doubtful which stood up first, it was put to the question, 'as the manner often is in the like case' and over-ruled for Sir Francis Hastings.

2. On the 9th of May, 1604, Sir R. Litton offering to speak, it grew to question, Whether he should speak any more in this matter; and over-ruled that he ought not.—See the question on Mr. Percivall, 21st of April, 1610.

3. On the 14th of May, 1604, Sir Francis Bacon having spoken twice, offered to speak a third time; and over-ruled, 'upon question,' that he might speak again in the same matter, to expound himself.

4. On the 4th of June, 1604, agreed for a rule, That if two stand up to speak to a Bill, he against the Bill (being known by demand or otherwise) to be the first heard.

5. On the 13th of June, 1604, a Member offers to speak after the question put, and the voice given in the affirmative; which was admitted for orderly, because no full question without the part negative. So on the 17th of May, 1606, it is said a man may speak after the affirmative question, and before the negative.

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6. On the 23d of June, 1604, agreed for a rule, That if a Bill be continued in speech from day to day, one man may not speak twice to the matter of the same Bill. So on the 21st of April, 1610.

7. On the 20th of March, 1620, when divers stand up to speak, Mr. Alford says, "The House, and not the Speaker, are to determine it;" but Sir G. Moore says, "The Speaker is to determine, if he sees both when they arise." And in page 200, of volume the 1st, of the Debates of this

Parliament, it is entered to be the ancient order of the House, “that the Speaker may not name (when it is difficult to tell which of two Members stood up first to speak) which of the two was first up, or shall speak first; but it must be put to the question, which of the two was first up.”

8. On the 24th of April, 1621, Sir Francis Seymour offering to reply, interrupted by Mr. Speaker, because against the order of the House to speak twice in one day; which is for avoiding replies, and spending of time, and to avoid heat.

9. On the 21st of May, 1628, much question whether Mr. Selden might, upon the adjournment of the debate, speak again; at length he was specially licensed by the House.

10. On the 16th of July, 1660, on question, That Sir R. Ashton have leave to speak again, it passed in the negative; but on the same day leave is given to Mr. Brodrick to speak a second time, on an adjourned debate.

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11. On the 1st of December, 1669, Lord Orrery (who was at this time Member for Arundell, in Sussex, but in custody of the Serjeant) was admitted to give in his answer to articles, sitting in the House, being infirm, and unable to stand.

12. On the 13th of March, 1728, in the Committee Book, on the petition of the American merchants, there is a question put, That Mr. Barnard do now speak; and carried in the negative, upon a division.

13. On the 12th of March, 1771, see the proceeding on a question, Whether Mr. Onslow or Colonel Barré should speak first.

OBSERVATIONS.

It is essential to the dispatch of business, that the rule and order of the House, “That no Member should speak twice to the same question,” should be strictly adhered to; and it is the duty of the Speaker to maintain the observation of this rule, without waiting for the interposition of the House; which, in calling to order, seldom produces any thing but disorder. Notwithstanding all the care possible, it will happen that, under pretence ‘of informing the House of a fact,’ or ‘of explaining’ where he has been misunderstood, a Member will break this order, and speak twice; this entitles others to the same indulgence, and it is to this, more {67} than to any other cause, that the House is kept sitting in debate so much later than it formerly used to be; since, even in my memory, Mr. Onslow kept this

order tolerably strict. It is to allow more ample and frequent discussion than this order will admit, that a Committee is instituted, where every Member may speak as often as he pleases.—If a new motion is made, pending the former motion, as 'to adjourn,' or by way of amendment, this entitles every Member to speak again; the strict observance therefore of this rule, so highly necessary to the dispatch of business, must, after all, very much depend upon the good-sense and modesty of the Members themselves, not to obtrude their speeches unnecessarily and disorderly on the time and patience of the House. It appears, from the antient instances, that it was sometimes thought necessary even to take the sense of the House, by a question, upon this order; but I do not find any thing of this sort in the Journal later than the case of Mr. Brodrick. //67-1//—It often happens that, two Members rising nearly at the same time, the House do not immediately acquiesce in the Speaker's decision of which was up first, and it appears that this has formerly been determined by a question; indeed, if it is insisted on, this must always be the case; for the Speaker's first calling upon any Member does not entitle that Member to speak first, if another was up before him; but in general it is better, especially that it is seldom a matter of much consequence, for the sake of order, to submit to the Speaker's decision; if the {68} House see, from repeated instances, that his behaviour, in calling upon Members to speak, is partial, and that he abuses the trust which is reposed in him, they then have the remedy in their hands, by putting the question of "Which Member was first up;" and in that case few men would have the confidence to persist in such a behaviour.—When a Member speaks, he is to stand up in his place, uncovered, and to address himself to the Chair, and not to any particular Member; if he is on the lower seat, he must have one foot within the floor. I remember two instances of the House's permitting Members to speak sitting; one was Mr. Pitt, in his very long speech against the Peace of 1763; the other, the Lord Mayor Crosby, before he was sent to the Tower; both on account of indisposition. If a Member speaks beside the question, it is the duty of the Speaker to interrupt him, and the House ought for their own sake to support the Speaker in such an interposition. Every Member ought to be heard quietly, and without interruption; but if he finds that it is not the inclination of the House to hear him, and that by conversation, or any other noise, they endeavour to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down; for it scarce ever happens that they are guilty of this piece of ill-manners without sufficient reason. It is reported of Sir Spencer Compton, that when he was Speaker, he used to answer to a Member, who called upon him to make the House quiet, for that he had a right to be heard; "No, Sir, you have a right to speak, but the House have a right to judge whether they will hear you." In this he was certainly mistaken; the Member has a right to speak, and the

House ought to attend to him, and it is the Speaker's duty to endeavour, for {69} that purpose, to keep them silent; but where the love of talking gets the better of modesty and good-sense, which sometimes happens, it is a duty very difficult to execute in a large and popular assembly. And indeed the House are very seldom inattentive to a Member who says any thing worth their hearing.

A Member may speak, and often does, from the gallery; but he must have a seat, and not speak in the passage-ways, or from behind the clock.

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RULES OF PROCEEDING.

As to putting Questions.

1. On the 28th of June, 1604, a Member interposes a motion before a former question is disposed of; this is held to be irregular.

2. On the 27th of January, 1697, see a special entry of what was declared by the Speaker to be the sense of the House, without putting any question.

3. On the 22d of April, 1712, motion to adjourn, made and put in the midst of a debate on another question. So on the 14th of June, 1712, and the 7th of May, 1713, and the 17th of November, 1742, et passim.—See the 9th of February, 1677. //70-1//

4. On the 24th of February, 1728, the sense and meaning of a question, totally altered by amendments; and on the 12th of March following a question is so much changed, that it passes in the negative, Nem. Con.—See also a remarkable proceeding of this sort on the 10th of April, 1744.

5. On the 17th of April, 1729, question being proposed, {71} and objection made, that it is a complicated question; it is separated by an amendment.

6. On the 18th of April, 1739, amendment to a Bill proposed by leaving out words; this proposition divided into two questions, and the question put separately, without being separated by amendment.

7. On the 6th of February, 1740, words proposed to be left out of a question, in order to introduce other words instead of them; the first words are accordingly left out, but on a question to insert the others, it is carried in the negative. And on the 7th of February, 1743, there is a question and division on inserting other words, and carried but by a majority of one.

8. On the 1st of April, 1747, motion made and question put, for reading the orders of the day, after another question had been moved and proposed. This is the first instance I recollect to have met with of this proceeding.—See the 5th of March, 1750; and since it has been very common.

9. On the 13th of November, 1755, amendment proposed to a question, by leaving out words; amendment proposed to this amendment, by leaving out part of these words.

10. On the 25th of May, 1604, is the first instance I have found of putting the previous question.

11. On the 16th of January, 1670, there are different {72} numbers in the House, on the divisions on the previous and main question.—Vide 22d of January, 1666.

12. On the 11th of May, 1678, previous question on a motion for adjourning a debate.

OBSERVATIONS.

The general rule is, that that question which is first moved and seconded is to be first put. It was the antient practice for the Speaker to collect the sense of the House from the debate, and from thence to form a question, on which to take the opinion of the House; but this has been long discontinued: And at present the usual and almost universal method is, for the Member who moves a question to put it into writing, and deliver it to the Speaker; who, //72-1// when it has been seconded, proposes it to the House, and then the House are said to be in possession of the question. And that question cannot, after it is proposed from the Chair, be withdrawn but by leave of the House. The Speaker must read this to {73} the House, as often as any Member desires it for his information. But as it often happens that questions are moved, upon which the House do not wish to give any opinion, they avoid it, by moving either to adjourn,—or for the orders of the day,—or for the previous question,—or by making such amendments to the question as change the nature of it, and make it inadmissible even by those who proposed it.

The motion to adjourn //73-1// must, in order to take place of a motion already made and proposed, be simply “to adjourn,” not with the addition to any particular day; nor can it admit of any amendment, by

adding a particular day; but must be put simply, “That this House do now adjourn;” and if this is carried in the affirmative, the House is adjourned to the next sitting day, unless the House have come to a previous resolution, “That at its rising they will adjourn to a particular day,” and then the House is adjourned to that day. For want of such a resolution on Friday the 3d of February, 1764, the House were obliged to sit on Saturday, though no business required it; and, as it was inconvenient to meet again on Saturday, attempts were made to amend the question “to adjourn,” by adding “till Monday;” but, on considera-tion, this was agreed upon to be irregular. If the motion ‘to adjourn’ is carried in the affirmative, the original question is never printed {74} in the Votes, it never having been a vote, nor introductory to any vote.—Another method of superseding a question, already proposed to the House, is by moving for the orders of the day to be read; this motion, to entitle it to precedence, must be for the orders generally, and not for any particular order; and if this is carried, the orders must be read and proceeded on in the course in which they stand. But a motion “to adjourn” will even supersede this motion “for the orders of the day.” If the question is carried “for reading the orders of the day,” the original question does not appear upon the Votes, for the same reason which I mentioned before.—But it is different, if the previous question is moved; there the first question must be stated in the Votes, in order to introduce and make intelligible the second question, upon which the vote of the House is taken. The effect of the previous question, is only to put off the coming to ‘that’ question, at ‘that’ time, and is in these words, “That ‘this’ question be ‘now’ put.” The ‘same’ question may be therefore moved on ‘another’ day. If the previous question is negatived, so as to put off the main question to another day, the same question, though altered in ‘words,’ if not essentially and substantially altered in ‘matter,’ cannot be again put that day. On the 27th of March, 1770, a doubt was conceived, whether a previous question can be put upon an amendment; and upon a division, the House determined, that it could not, because the question being, “That these words be here inserted”—or, “That these words stand part of this question”—the decision of this question only determines that they shall, or shall not, stand ‘in that particular place,’ and has therefore all the effect of a previous question. And yet, on the 16th of April, 1701, there is {75} an instance of a previous question, on a motion for adding words to an address, by way of amendment; but as I believe this, and another on the 15th of February, 1753, are the only instances of such a proceeding, so I am clearly of opinion they were irregular; for those Members who were of opinion, that the question for adding the words, ought not to be now put, were also of opinion, “that ‘those’ words ought not to be added to ‘that’ question,” and therefore their sense might equally have been taken on the question for the amendment. It is a rule, that in a Committee of the House

there can be no previous question; if therefore it is wished to avoid a question, it is usual to move, “that the Chairman do leave the Chair,” which has the effect of a motion to adjourn, and takes place of every other motion.—The other mode of avoiding a question, is by altering it by amendments, till it bears a sense different from what was intended by the proposers: This, perhaps, is not quite fair, but has been often done; and the instance relating to the Duke D’Aremberg, of the 10th of April, 1744, is a very remarkable one. So on the 29th of January, 1765, on a question moved by Sir William Meredith, relating to General Warrants, the opposers of the question amended it in such a manner, that it was impossible for any one to agree to it; when this appeared in the proof-sheet of the Votes, it was entered very properly, by the Speaker’s direction, without taking notice of the amendments, as if only one question had been made; it happened that Sir William Meredith had had leave to make a motion, which was also entered; it therefore appeared in the Votes, as if this had been the original motion which Sir William had made, though, by the alterations it had undergone, the sense of it was totally reversed; he {76} therefore desired that the whole proceeding, viz. his original question, with the amendments, might be printed in the Votes, in the same manner in which it would appear in the Journal. The Speaker stated to the House, that the manner in which he had entered it, had been the universal practice; viz. where amendments are made to a question, not to print those amendments in the Votes, separated from the question, but only the question as finally agreed to by the House, and that he could not find any instance to the contrary; that the rule of entering in the Votes, what only the House has agreed to, is founded in great prudence and good sense, as there may be many questions proposed, which it may be improper to publish to the world, in the form in which they are made; and that, besides, the order “That the Votes be printed,” does not authorize him to print the ‘proceedings’ of the House, but only the final ‘vote’ upon any question, as agreed to, or disagreed to, by the House. In this opinion the House acquiesced; but at the same time, from the particular circumstance of Sir William Meredith’s name appearing as the mover, they gave leave, that, in this instance only, the common form of the entry should be altered, but that a memorandum should be made of the reasons, and to prevent this from being drawn into a precedent, where the same reasons did not exist.

When a question is complicated, that is, consists of two or more propositions, it has been often said, that it is the ‘right’ of any one Member to have it divided, that he may give his opinion upon each proposition separately. This was a very favourite topic with Mr. Grenville, and often repeated by him, and at last insisted upon so much, in the question about the {77} Middlesex Election, on the 16th of February, 1770, that it was

thought necessary to take the sense of the House upon it; which was done by a question, //77-1// and carried in the negative, on the 19th of February; so that this matter is now at rest. Upon this occasion, every thing was urged that could be said in favour of the doctrine, as laid down by Mr. Grenville; but the fact is, there does not appear the least trace, in the History of the Proceedings of either House of Parliament, of this ever having been the practice; indeed, it would introduce universal confusion; for who is to decide, whether a question is complicated or not?—'where' it is complicated?—into how many propositions it may be divided? Perhaps, when the question was formed by the Speaker from the debate, and not moved by a Member, it was a very proper objection to the manner of the Speaker's stating a question, that it was complicated, and to desire that he would separate it; and to this, and this only, every thing that is said in the case of Ashby and White, and in the other debates, may be referred: But when a question is moved and seconded, and proposed from the Chair, however complicated it may be, the only mode of separating it, is by moving amendments to it; and these must be decided by the House, upon a question: unless, which sometimes happens, that the House 'order' that it shall be divided, //77-2// as they did in that very instance of the 19th of February; or by 'consent' of the House, as on the 25th of January, 1771, and in Lord Clive's case, on the 21st of May, 1773. Indeed, {78} the doctrine of any one Member having 'a right' to insist upon any thing, //78-1// appears to be absurd; for another Member may insist upon the contrary; and therefore, in all cases whatever, the only method of deciding whether any thing shall, or shall not, be done, or how it shall be done, must be by moving a question to the House, that question to be seconded, and proposed from the Chair, and the sense of the House taken upon it.—Although a question is moved and seconded, and proposed from the Chair, if any matter of privilege arises, either out of the question itself, as on the 26th of January, 1768, in the case of the {79} Oxford Corporation, or from any quarrel between Members, or any other cause, this will supersede the consideration of the original question, and must be first disposed of: So if any question of order arises, as on the 16th and 19th of February, 1770, and on the 27th of March, 1770, this must be decided: Or, if it is desired to have an Act of Parliament, or extract from the Journal, or any paper before the House, read, and the House acquiesce, this may be read: If, however, any person objects to the reading these papers, it is not, as is often said, in the power of any Member to insist upon it—for this would be a right to interrupt all business;—but, as on the 22d of March, 1663, and on the 16th of April, 1697, and on the 15th of January, 1699, and on the 12th of May, 1714, a question, whether or not such acts or papers shall be read, must be stated, and decided upon by the House.

The right of making a motion “for the orders of the day” to be read, in the midst of another proceeding, does not hold, where the House are actually proceeding upon one of the orders; it is only to supersede a question upon any other matter, not properly the business of the day. It has been sometimes made a doubt, whether, when a question has been proposed from the Chair, and the previous question has been moved and seconded, and also proposed from the Chair, the House can admit amendments to be made to the main question, without withdrawing the previous question: There have been different opinions upon this: It is said on the one side, that it is reasonable to admit the making these amendments, because, if received, they may, in some cases, so far change the nature of the question, as to preclude the necessity of putting the previous question; besides {80} that, if the contrary doctrine is true, it is in the power of any two Members, by moving and seconding the previous question immediately after the main question is proposed, to deprive the House of that power which they ought to have, in all instances, of amending and altering any question proposed to them: For the practice is, that when the previous question is put and carried, no alteration can then take place, //80-1// nay, no further debate can be suffered to intervene; the Speaker must put the main question immediately, and in its present form; and that therefore to refuse the right of moving amendments, is to cramp the substantial proceedings of the House by mere form.—To this it is answered, that no inconvenience can arise from this doctrine; for if, before the previous question is ‘proposed’ from the Chair, though it should have been moved and seconded, any Member should inform the House, that he wishes to make amendments to the main question, he will ‘then’ certainly be at liberty to do it; and the Speaker, supported by the House, will give that priority to the motion for amending, to the motion for the previous question, which common-sense requires. But if even the previous question should have been ‘proposed,’ yet if it is the general sense of the House to admit the amendments proposed, the previous question may be withdrawn for that purpose. But if the persons moving and seconding the previous question should refuse to withdraw it, against the opinion of the majority of {81} the House, even then no inconvenience will happen; for, if it should be carried, “That ‘this’ question be not ‘now’ put,” which would be the event, if the majority of the House desired to admit the amendments, (and, if the majority of the House do not desire any alteration, then there is no harm done in putting the question in its original form) another question, similar to the former, but ‘altered’ by the proposed amendments, may be immediately moved and seconded.

I confess that I am of the latter opinion, for several reasons. (1.) I do not find in the Journals any entry of amendments proposed to be made to

the main question, after the previous question ‘proposed’ from the Chair: And yet, the case of desiring the admission of amendments at that juncture, must have occurred very often. (2.) I think there will be less confusion and interruption in the debate, by adopting the latter doctrine, than the former; and it is more consonant to the uniform practice of the House, “that, when a motion has been made and seconded, and ‘proposed’ from the Chair, no other motion should intervene, without the consent of the parties, and the concurrence of the House, to withdraw such motion.” (3.) No more inconvenience arises from this doctrine, than from an established rule of the House, “That, when you have amended the latter part of a question, you cannot recur back, and make any alteration in the former part.” And yet this is very often to be wished. The House must be therefore attentive to what is going forwards, and, when a question is proposed from the Chair, if any Member wishes to amend it, he ought to propose his amendments. But if that opportunity is passed by, and the previous question is ‘proposed’ (which is indeed an amendment of the whole {82} question, viz. by ‘leaving it all out’) I cannot conceive that, without withdrawing the previous question, it is possible to recur back and amend the main question. And if, after all, it should be carried, that ‘that’ question be not ‘now’ put, confessedly for the purpose of introducing the ‘same’ question, ‘altered’ by amendments, I should not imagine the moving this ‘new’ and amended question to be irregular, because the rule of not ‘putting again’ a question against which the previous question has been carried, must be always explained, in the observation of it, by the nature and turn of the debate, and the ‘sense’ which the House puts on the word ‘now’ in their arguments upon the previous question.—On the 16th of March, 1778, the House, by their proceedings, adopted this doctrine; for, after the question was moved and proposed, and the previous question was also proposed, an amendment being afterwards suggested, to insert the words “or extracts,” it was by the House thought necessary to withdraw the previous question, before any amendment could be admitted. And, as will appear from the Journals, the proceeding was accordingly.

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RULES OF PROCEEDING.

The same Bill or Question not to be twice offered.

1. On the 2d of April, 1604, rule, That a question being once made, and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the House.

2. In the 4th volume of the Parliamentary History, page 391, see the distinction made by Sir Walter Raleigh, on putting a question that had received a negative the day before.

3. On the 17th of May, 1606, in the Journal of the House of Lords, see the rule //83-1// laid down, on a second Bill brought from the Commons, to the same purport of a former that had been rejected by the Lords in the same session.

4. On the 1st of June, 1610, agreed for a rule, That no Bill of the same substance can be brought in the same Session.

5. On the 8th of September, 1641, the same question put twice in the same day, and carried differently, on divisions, about Mr. Ashburnham's pay.

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6. A dispute arising between the two Houses, upon some amendments made by the Lords to the Bill for raising money for disbanding the army; the Commons, on the 3d of July, 1678, insert the substance of this Bill in another Bill then in the House, pending the conferences, and to this Bill the Lords agree on the 12th of July.

7. On the 4th of December, 1678, the King having refused the Royal Assent to the Militia Bill, offers to pass another with some limitations; the House appoint a Committee to search precedents, Whether, according to the methods of Parliament, such a Bill can be brought in; but no report is made from the Committee.—See the debates in Grey upon this question, //84-1// from the 30th of November to the 4th of December.

8. On the 29th of June, 1685, a Bill begun in the House of Commons, for registering births, &c. rejected after the second reading, and another Bill ordered in immediately with the same title. //84-2//

9. On the 16th of December, 1706, Clause offered, on the report of the Land-tax Bill, relating to assessments of Papists, and rejected on a division; but the same Clause offered on the third reading, on the 18th, and accepted.

10. On the 8th of April, 1707 the Parliament was prorogued to the 14th, which Bishop Burnet //84-3// says, was to give {85} the Commons an opportunity of bringing in a new Bill, similar to one that had been rejected in the House of Lords, relating to the importation of foreign commodities into Scotland. And this appears from the Queen's Speech, on the 14th of April, and from the subsequent proceedings, to have been the reason.

11. On the 9th of February, 1709, a Bill ordered to explain an Act of the same session, about the exportation of corn.—See the 3d of April, 1744, and the 28th of March, 1748, when Bills are ordered in, "for rectifying mistakes in Acts passed in the same session."

12. On the 13th of April, 1711, there having been a great mistake in a Bill of supply, by inserting a duty of 'two' shillings on coals instead of 'one;' a Committee is appointed to examine how the mistake happened; on the 30th of April they report, and on the 9th of May there is an instruction to a Committee to receive a Clause in another Bill to rectify this mistake. //85-1//—See the 15th of April, 1712, and the 2d of July, 1714, and the 25th of March, 1757. Bills ordered "for rectifying mistakes."

13. In 1711, Bishop Burnet says, //85-2// the House of Commons, in one branch of the duties imposed for the taxes of this year, seemed to break in upon a rule that had hitherto passed {86} for a sacred one; for when the duty upon leather was first proposed, it was rejected by a majority, and so, by the usual orders of the House of Commons, it was not to be offered again during that session; but after a little practice upon some Members, the same duty was proposed, with this variation, "that skins and tanned hides should be charged;" //86-1// this was leather in another name.

14. On the 26th of July, 1715, a Bill is ordered for enforcing and making more effectual an Act of the same session. So on the 10th of January, 1715, a Bill is ordered for continuing an Act of the same session.

15. On the 19th of February, 1718, it was moved to give an instruction to a Committee on a Bill relating to Forfeited Estates, to have power to receive a Clause for a particular purpose; which passed in the negative. On the 26th, on the report of the Bill, the same Clause was offered, and it was doubted whether, in point of order, it could be received; but no decision was given upon this doubt, as the previous question was moved, and carried in the negative.—See the 12th and 13th of April, 1727, a motion to leave out on the report, what had been inserted in the Bill by instruction.

16. On the 29th of July, 1721, the King prorogues the Parliament for two days, to enable the House of Commons to pass into a law some resolutions relating to the South Sea Company, which were contradictory to some Clauses in an {87} Act passed in that session, and which therefore the Commons say, in their Address of the 25th of July, could not otherwise be done, "agreeable to the antient usage and established rules of Parliament."

17. On the 24th of November, 1721, on the report of the Mutiny Bill, it was proposed to disagree with the Committee in a Clause they had added about Lord Carpenter's pay; but on a division it was carried for the Clause. On the third reading, on the 28th of November, a question being again moved on this Clause, it was disagreed to, and the Clause cut off at the Table.

18. On the 14th of May, 1723, the House disagree on the report of a Bill, with a Clause to compel Papists to register their estates; and on the 16th order in a Bill for that purpose.

19. On the 6th of March, 1723, on the report of a Bill, there was a division on a question for excusing persons of 'seventy' years of age from taking the oaths, and carried in the affirmative; on the third reading of the Bill, on the 11th, this question was moved again, but still carried in the affirmative.

20. On the 25th of April, 1729, the Commons pass a Bill for disabling Bambridge to hold the office of Warden of the Fleet, which is carried to the Lords; on the 7th of May the Lords send down another Bill to the same effect, which the Commons pass.—See Bambridge's Petition on the 9th of May, taking notice of the two Bills depending at the same time.

21. On the 2d of May, 1733, a Clause was offered on the {88} third reading of a Bill; but the Journal says, "it appearing that the same Clause was originally in the Bill, but left out by an amendment made by the Committee," the said Clause was withdrawn.

22. On the 18th of April, 1739, words left out on the third reading of a Bill, which are expressed to have been inserted by an amendment made by the House to the Bill.

23. On the 30th of May, 1739, the Lords having amended a Bill about gaming, which had passed the Commons; the consideration of these amendments is put off for a month, and leave is immediately given to bring in another Bill to the same effect, but with a different title, which Bill passes.—See also the same proceeding on the 11th of May, 1759.

24. On the 18th and 20th of November, 1745, two questions and divisions on the 'same' Clause, on the report and third reading of the Land-tax Bill. So on the 9th of March, 1748, words inserted in the Mutiny Act on the third reading, which had been proposed by the Committee as an

amendment, and left out by the House on the report, on the 6th of March.—See the 17th and 19th of March, 1755, the same questions on the report and third reading of a road Bill.

25. On the 11th of April, 1753, a Bill from the Lords for settling Lord Ashburnham's estate, read once, and laid aside; and another Bill, with the very same title, ordered immediately.

26. On the 21st of June, 1757, a Bill ordered for enlarging the time limited for executing several Acts of that Session.—See also the 2d of June, 1758.

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OBSERVATIONS.

This seems to be a rule that ought to be adhered to as strictly as possible, in order to avoid surprize, and that unfair proceeding which might otherwise sometimes be proposed. It however appears, from several of the cases under this title, as well as from every day's practice, that it is not to be so strictly and verbally observed, as to stop the proceedings of the House: It is rather to be kept in substance than in words; and the good sense of the House must decide, upon every question, how far it comes within the meaning of this rule. It clearly does not extend to prevent the putting the same question in the different stages of a Bill; nor to prevent the discharging of orders that have been made, though made on great deliberation, as appears from the instances on the 14th and 17th of January, 1766, on discharging the order made for printing the American papers. But it has been always understood to exclude contradictory matters from being enacted in the same session; and it was upon this principle that it was thought necessary to make the short prorogations in 1707, and 1721.

In the Lords protest of the 23d of February, 1691, it is said, "that a Bill having been dropt, from a disagreement between the two Houses, //89-1// it is against the known and constant method of Parliamentary proceedings, to bring in the same Bill in the same session."—On the 12th of May, 1767, on the second reading of a Bill for the importation of salted meat free of duty, Mr. Fuller took an objection, in point of order, that as a {90} Bill had already passed in this session, continuing an Act of the 5th of George III. which admitted the importation of salted meat from Ireland, but paying a duty, the House could not repeal this duty in the same session, and that therefore in the Committee there must be put in an exception with respect to meat brought from Ireland: This objection was admitted to be good, and the alteration was made accordingly; and it

appears from the 10th of June, that this alteration was expressed in the title, when the Bill passed.—On the 9th of December, 1762, the Commons came to a resolution to address the King on the preliminaries of peace, and appointed a Committee to draw up the Address; which being reported the next day, and Lord Midleton beginning to debate upon the Address at large, Sir John Philips called him to order, as being disorderly, in debating against a resolution which the House had agreed to the day before, and said that no objection could now be taken, but to the manner in which the Committee had executed their power. To this it was answered, that where by the forms of proceeding, as in the case of Bills, and Reports from Committees, the same question is again brought before the House, the House have a right to debate, before they give their opinion; that in this instance, the question must be put for agreeing to the Address, and every Member had a right to give every reason that determined him not to agree to it. When the objection made by Sir John Philips was mentioned to Mr. Onslow, the late Speaker, he was clearly of opinion, that it was not contrary to order, again to renew the debate on the question at large.

With respect to Bills, it is clear, that wherever any clause or words are in a Bill, though they should have even been inserted {91} by the House, yet upon any other subsequent stage of the Bill, the sense of the House may be again taken upon these words, and they may be left out; because every stage of a Bill submits the whole, and every part of it, to the opinion of the House; and this being the known order of the House, there can be no surprize upon any person whatever. It is upon this principle are founded the cases of the 24th of November, 1721;—the 6th and 11th of March, 1723;—the 18th of April, 1739;—and the 17th and 19th of March, 1755. It //91-1// has been made a matter of doubt, when a clause or particular words are moved to be added or inserted in one stage of a Bill, and the House have given a negative to this motion, whether the same clause or words may be offered again upon any subsequent stage of the Bill? When this doubt was conceived, on the 26th of February, 1718, the House put the previous question, on offering the clause; and on the 2d of May, 1733, the reason is given in the Journal for withdrawing the clause, "that it had been originally in the Bill, but left out by the House." However, the instances of the 16th and 18th of December, 1706, and 9th of March, 1748, suppose that they may.

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RULES OF PROCEEDING.

Witnesses at the Bar, or Delinquents to receive Judgment.

1. On the 9th of May, 1604, rule, That no delinquent is to be brought in, but by the Serjeant with the Mace.

2. On the 11th of November, 1640, rule, That if a witness //92-1// be brought to this House, the House sitting, the Bar ought be down; otherwise, if the House be in a Committee.

3. On the 7th of February, 1661, Mr. Chute censured at the Bar with great solemnity, for a breach of privilege committed on the 28th of January.

4. On the 26th of October, 1675, Mr. Howard called in to the Bar, has, on account of his infirmity, a chair allowed him to sit down in.

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5. On the 6th of November, 1696, Sir J. Fenwick brought from Newgate to the Bar, and examined and remanded: And on the 13th, 16th, and 17th of November, he is brought to the Bar, by the Serjeant with the Mace, on the second reading of the Bill of Attainder.

6. On the 2d of February, 1704, persons, who had been committed to Newgate by the House, brought by the Keeper of Newgate, and called in and examined, and remanded to Newgate.

7. On the 14th of March, 1710, see the manner of Colonel Gledhill's being heard at the Bar, in support of his charge against Sir James Montagu.

8. On the 3d of June, 1721, is a report from a Committee appointed to examine precedents, //93-1// in what manner persons, who are prisoners in execution, have been examined before the House. The same day, Mist is ordered to be brought to the Bar, when a prisoner in the King's Bench; the Serjeant stands by him with the Mace, and he is then committed to Newgate.

9. On the 1st and 2d of April, 1723, Kelly brought from the Tower to the Bar, on the second reading of Bill of Pains and Penalties, and Serjeant stands by him with the Mace.

10. On the 31st of March, 1731, Jevon, in custody of the Serjeant, brought to the Bar, to be examined, but no notice is taken of the Mace.

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11. On the 13th of April, 1738, Edwin being brought to the Bar to be examined, in custody of the Serjeant; the Serjeant stood by him with the Mace.—See the case of Billingsley, on the 14th of April; but on the 11th of February, 1739, in the same proceeding, against other persons in custody,

no notice is taken of the Mace. See the case of Moring, on the 24th of February and the 1st of March, 1764.

12. On the 6th of February, 1750, see the proceedings against Mr. Murray, on his refusing to kneel to receive the sentence of the House.

13. On the 12th and 15th of February, 1768, Withy brought to the Bar in custody, without mentioning the Mace.

14. On the 27th of January, 1769, Mr. Wilkes, a prisoner in the King's Bench, brought in to the Bar, to support his petition against Lord Mansfield, but not with the Mace.

15. On the 16th of March, 1772, a standing order is made, that when any person is brought to the Bar, to receive judgment, or to be discharged out of custody, such person shall receive such judgment 'standing' at the Bar, unless otherwise directed in the order of the House.

OBSERVATIONS.

When a witness is called in, in order to be examined, the constant practice, both in the House and at Committees of the whole House, is that the Bar is down: It is not so at the Committee of Privileges, because, though they adjourn to the {95} House for their own convenience, yet they are but a Select Committee, and not a Committee of the whole House. If the witness is already in custody of the Serjeant, or is brought from any prison, the practice, with respect to the Serjeant's standing by the prisoner with the Mace, appears to have been different: Mist's case, in 1721; Sir J. Fenwick's, on the 13th of November, 1696, who was then brought to attend on the hearing of the second reading of the Bill of Attainder, and not as a culprit to the House; Kelly's, in 1723; Edwin's, in 1738; and Mr. Horne's, on the 17th of February, 1774; all seem to prove, that whenever any person, already a prisoner, whether in custody of the Serjeant, or in any other prison, is brought to the Bar as a witness, or to attend the hearing of any cause, he must be brought in by the Serjeant, and the Serjeant must stand by him at the Bar, with the Mace, during the time he continues there: On the other hand, the case of Paty, and others, in 1704; Sir J. Fenwick, on the 6th of November, when he is brought in to be examined; Jevon, in 1731; the cases of the 11th of February, 1739, and the 1st of March, 1764; of Withy, in 1768; and of Mr. Wilkes, in 1769; contradict this practice, and shew that a prisoner may be brought to the Bar to be examined, or to be present (as Mr. Wilkes was on the hearing of the charge in his petition against Lord Mansfield) without the necessity of the Serjeant's standing by

him with the Mace; and yet, in supposition of law, Mr. Wilkes, and the others, were, during the time they were at the Bar, in the custody of the Serjeant; which confirms what Mr. Howe says, //95-1// in the Debates of Sir J. Fenwick's Case; "A man {96} may be in custody of the Serjeant, though he has not the Mace in his hand." When a witness, not in custody, or in custody without the Mace standing by him, is at the Bar to be examined, the House supposes the Speaker to ask him all the necessary questions; and these questions may, by the rules of the House, be proposed, at the time of the witness's standing at the Bar, by the Members to the Chair; and the Speaker is to put them to the witness. This is the rule; but the practice, for the sake of convenience, often is, that the Members themselves examine the witness without the intervention of the Chair; but this is intirely irregular, and seldom fails to produce disorder.

When the Mace is off the Table, //96-1// no Member can speak, not even to suggest questions to the Chair. This matter was very much debated on the 13th of November, 1696, in the case of Sir J. Fenwick, and the arguments on both sides appear in the printed account of those proceedings; it was also much disputed when Mr. Horne was brought in custody, in 1774: But, notwithstanding the great inconvenience that attends it, it was in both instances found to be the invariable rule of the House, and was accordingly observed; the Members, in both cases, putting down upon paper such questions as they thought necessary to be asked, and delivering them to the Speaker, before the prisoner was brought in.—In the 4th {97} Volume of Grey's Debates, page 275, when Harrington, then in custody by order of the Privy Council, is brought to the Bar, the Speaker, before he is called in, desires to know to what points 'he is' to examine him.—See also Sir William Temple's speech, in the 8th volume of Grey's Debates, page 64; and the entry in the Journal, and in Grey's Debates, of the 30th of April, 1675, on the examination of the Lord Mayor. //97-1//—This practice, which cannot now be departed from, of no Member's speaking whilst the Mace is off the table, is however attended with very great inconvenience, since they can not even suggest to the Speaker such questions as they wish to have asked; but the practice, that the Mace should be off the Table when prisoners are brought to the Bar 'only for examination,' is not so uniform, but that it is much to be wished it could in all cases be dispensed with; the instances of Sir J. Fenwick, on the 6th of November, 1696, and of Mr. Wilkes, were cases of importance, and, with the several other instances, shew that this rule is not essentially necessary; one was a prisoner in Newgate, the other in the King's-Bench Prison: It is different when a person is brought to the Bar in custody, like Mr. Horne, as a culprit, for having disobeyed the orders of the House; here I should think the Serjeant must stand by him with the Mace; and during

that time no person can speak {98} but the Speaker; but in other instances, //98-1// where a person is brought as a witness, or to be examined as Sir J. Fenwick, or to attend as Mr. Wilkes, here, though they are at the time prisoners, if the Mace is left upon the Table, the Members, though they cannot debate, may suggest to the Speaker such questions as arise out of the examination, and appear to them necessary to be put.

If any Member, or the person at the Bar, objects to the propriety of any question that is asked, and the question is insisted on, the witness must immediately be directed by the Speaker to withdraw, and this without taking the sense of the House by a question; for no question can be moved or put whilst counsel or witnesses are at the Bar.

When any person is brought to the Bar as a delinquent, to receive judgment of commitment, or any other punishment, or to be discharged out of custody, the Mace must be at the {99} Bar, and, till the Standing Order of 1772, such person must of course have received the orders of the House upon his knees. The alteration made by that order was suggested by the humanity of the House; who often have occasion to inflict punishment on persons, who would be more sensibly affected by this ignominious manner of receiving their sentence, than by the severest species of penalty the House can inflict. On the 17th and 18th of May, 1614, this rule is dispensed with, in favour of Mr. Martyn, who was reprimanded for an improper speech he had made at the Bar as counsel in a cause: He had been a Member in a former Parliament.

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RULES OF PROCEEDING.

Peers, and Persons of Rank, not Peers, admitted into the House of Commons.

1. In the third volume of the Parliamentary History, page 29, is a very curious account of Cardinal Wolsey's coming into the House of Commons, with great pomp, to solicit the passing the Bill of Subsidy, and Sir Thomas More's speech, who was then Speaker, upon the occasion.

2. On the 2d and 4th of March, 1548, resolved to require that the Lords, who were evidence in the House of Lords on the Bill of Attainder against the Lord Admiral, may come into the House of Commons, and declare that evidence, vivâ voce.

3. On the 18th of April, 1554, the Bishop of Durham came into the House, and spoke in favour of his Bill.

4. On the 14th of November, 1558, several Lords came into the House, and the Lord Chancellor declared the necessity of a subsidy; but this was in the nature of a conference, as the Speaker sat by them on another bench.

5. On the 15th of May, 1604, Lord Hertford comes into the House, and was admitted to come within the Bar, and to sit upon a stool, with his head covered.

6. On the 17th of May, 1614, two Lords admitted with {101} great ceremony and sat down, covered.—See also the 19th of June, 1628.

7. On the 21st of December, 1640, the Lord Keeper Finch admitted, at his own desire, to be heard.—See also the 1st of November, 1641, and the 1st of July, 1663.

8. On the 25th of February, 1661, Lord Derby, and the Lord Chief Justice Bridgman, admitted within the Bar to give their testimony.

9. On the 13th of December, 1667, Lord Chief Justice Keeling admitted to be heard in his defence.—See also an account of this in the first volume of Grey's Debates, page 67.

10. On the 14th of March, 1667, see the mode of receiving the Commissioners of Accounts, in the seats by the Bar.

11. On the 13th, 14th, and 15th of January, 1673, the Duke of Buckingham and Lord Arlington admitted.—See a more particular account of the form in Grey's Debates, vol. ii. page 249.—See the case of the Duke of Schomberg, on the 16th of July, 1689.

12. On the 30th of April, 1675, the Lord Mayor admitted, and has a chair to sit down in at the Bar.

13. On the 28th of October, 1680, Lord Chief Justice North has a chair //101-1// set for him within the Bar.

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14. On the 24th of November, 1680, Attorney General called in: It appears from Grey's Debates, eighth volume, page 61, that he stood within the Bar, and that the Mace stood by him without the Bar.

15. On the 4th of April, 1689, when the Count Schomberg and Mr. Bentinck attended, to take the oaths for their naturalization, they had

chairs set for them within the Bar, in which they sat down covered; then came uncovered to the Table, and took the oaths.

16. On the 13th and 14th of June, 1689, the Chief Baron, and several of the Judges, attend 'at the desire' of the House, and a //102-1// chair set for them within the Bar.

17. On the 12th of November, 1690, //102-2// Lord Torrington, then in custody of the Marshal of the Admiralty, admitted at his own request to be heard, 'the Mace laid upon the Table.'

18. On the 27th of April, 1695, the Duke of Leeds, after the House had resolved to impeach him, desires to be heard; is admitted, and heard, 'the Mace being all the while upon the Table.'

19. On the 14th of April, 1701, Lord Somers admitted, at {103} his own request; and on the 29th of January, 1701, Lord Peterborough; and on the 14th of March, 1710, the Bishop of Carlisle. Nothing is said, in the Journal, of the Mace, in either of these instances.

OBSERVATIONS.

From the earliest account of Peers being admitted into the House of Commons, the mode of receiving them seems to have been very much the same as it is at present; that is, that they were attended from the door by the Serjeant, with the Mace, making three obeysances to the House; that they had a chair set for them within the Bar, on the left hand as they enter, in which they sat down, covered; and if they had any thing to deliver to the House, they stood up and spoke uncovered, the Serjeant standing by them all the time with the Mace; and that they withdrew, making the same obeysances to the House, and the Serjeant, with the Mace, accompanying them to the door. The difference between the mode of reception of Peers //103-1// and Judges has been, that the Speaker informs the Peer, "that there is a chair for his Lordship to {104} repose himself 'in;' to the Judge the Speaker says, that there is a chair for him to repose himself 'upon;' " i.e. as explained by the usage, for the person to rest with his hand on the back of it. In the case of the Duke of Leeds, it is expressly said, that the Mace continued upon the Table; I do not know from whence this distinction from the other instances arose, unless that a resolution had passed for impeaching the Duke of Leeds, and that, upon this account, it was not thought necessary to shew the same mark of respect to him under such circumstances, as was usual to persons of his rank. In Lord Torrington's case, he is 'introduced' with the Mace; but when he sits down,

the Mace is laid upon the Table. //104-1// When Lord Sandwich and Lord March were admitted, on the hearing of Mr. Wilkes's petition, on the 31st of January, 1769, they were received with all the ceremonies that are above described.

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RULES OF PROCEEDING.

Questions on reading Journals or Papers.

1. On the 22d of March, 1663, question put for reading an Act of Parliament, and resolved in the affirmative.

2. On the 23d of January, 1692, complaint being made of a book, and question put, that it be brought up to the table, it passed in the negative.

3. On the 16th of April, 1697, questions for reading two Acts of Parliament put, and carried in the negative.

4. On the 15th of January, 1699, motion made for reading an address of both Houses to the King, and a debate arising, debate is adjourned.

5. On the 12th of May, 1714, Sir William Wyndham has leave to make a motion; which motion is for reading an Act of Parliament.

OBSERVATIONS.

It is a very common error, and frequently mentioned in the House of Commons, that every Member has a right, upon his own motion, to insist upon any Act of Parliament, or Journal, {106} or paper, or account upon the table, to be read, without the House having any power to interfere to prevent him.—This notion takes its rise from the acknowledged propriety of permitting every Member to have as much information as possible, upon every question, before he gives his vote; but it is infinitely absurd to carry this doctrine to the length to which it is sometimes urged: Even if there were no instances to be found to contradict it (and the cases above-mentioned are decisive upon this point) the delay and interruption, which such a right would put into every Member's power to give to the proceedings of the House, of themselves sufficiently evince the impossibility of the existence of such a rule; and therefore the practice is, that, if any Member moves for an Act of Parliament, a Journal, or paper, to be read, which the House sees is really for information, and not for affected delay, and no Member objects to it, the Speaker directs it to be read, without putting a question; but if any Member objects to it, the Speaker must take the sense of the House, by a question, upon this difference of opinion, as he must upon every other. Where papers are laid

before the House, or referred to a Committee for their consideration, //106-1// every Member has a right to have these papers read through once at the table, before he can be compelled to give any opinion upon them; but when they have been once read to the House, or in the Committee, they are then, like every other paper that belongs to the House, to be moved for to be read, and if the matter is disputed, it cannot be decided but by taking the sense of the House.—Mr. Grenville used to maintain the same doctrine as to the delivery {107} of books or papers; "that if any Member complained of any book or paper, as containing matter which infringed on the privileges of the House, he had a right, without any question put, to deliver it in at the table, and to have it read;" and he insisted upon this, on the 25th of November, 1767, when he complained of a seditious paper to the House; Mr. Dyson, and several other Members, objected to the absurdity of such a rule; and, the question of order being adjourned to the 27th of November, to give time to look into precedents, the matter was, upon that day, almost unanimously, agreed to be further adjourned for six months. Indeed, this right of delivering in a paper—or the other, of having papers read at any time—or one mentioned before of separating a question—or any other right claimed by a Member, to be exercised by him against the opinion of every other Member of the House, //107-1// is so extraordinary, that it is a matter of wonder how such a doctrine ever came to be advanced.

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RULES OF PROCEEDING.

On Questions where Members are interested.

1. On the 12th of June, 1604, Mr, Seymour, a party in a Bill then under consideration, goes forth during the debate, "agreeable with former order and precedent in like cases."

2. On the 4th of February, 1664, a Member appearing to be 'somewhat' concerned in interest, his voice is disallowed, after a division. //108-1//

3. On the 20th of May, 1626, Sir John Eliot withdrew, before the question is stated upon his conduct.

4. On the 21st of October, 1667, a witness at the Bar having reflected on a Member, and he in his place having made his defence, withdrew whilst the matter was in debate.

5. On the 22d of November, 1669, a Member accused of detaining a writ is commanded to withdraw, //108-2// before the matter is debated.

6. On the 16th of February, 1697, a debate arising upon a question relating to Mr. Montagu, then Chancellor of the Exchequer, {109} and a question put, “that he do withdraw;” it passed in the negative.

7. On the 17th of January, 1711, after the examination into Mr. Walpole's conduct, and before any question proposed, he was heard; //109-1// and a doubt arising, “whether he ought to withdraw, before a question stated, or any debate had of the matter relating to him,” the Journals of the 16th of February, 1693, and of the 15th of February, 1710, were read, and thereupon Mr. Walpole withdrew, “before any debate had, or question proposed.” So did Sir Richard Steele, on the 18th of March, 1713. //109-2//

8. On the 5th of April, 1715, Sir William Wyndham being called upon to justify some words he had used, and refusing, a question is moved against him, and then he is heard; and being called upon to withdraw, refuses, and a question is put for his withdrawing.

9. On the 28th of February, 1720, after the examination relating to Mr. Stanhope was concluded, and before any question concerning him was 'proposed,' he withdrew.—So in the case of Sir George Caswall, the 3d and 10th of March; and of {110} Mr. Aislabie, on the 8th of March, 1720; and of Mr. Vernon, on the 8th of May, 1721.

OBSERVATIONS.

The rule, laid down in the two first instances, is not, in many cases, sufficiently observed; it was always attended to in questions relative to the seat of the Member, on the hearing of controverted elections; and has been observed very seriously, in cases of great moment: But in matters of lesser importance, yet where the private interest of the Member has been essentially concerned, it has been entirely neglected, contrary not only to the laws of decency, but of justice; and it would be for the honour of the House of Commons, if this rule, which 170 years ago was “agreeable to former order and precedent in like cases,” was revived and established.

As to the doubt conceived in the case of Mr. Walpole, “at what time the Member should withdraw,” as it was then very properly decided, so that decision has been uniformly supported by the practice in all the familiar instances that have happened since that time. //110-1//—Where there is any proceeding in the {111} House, which affects the character of a Member, as soon as the matter has been examined into, the Member is to be heard, and then to withdraw, even before any question is moved upon

his conduct. In the case of Sir William Wyndham, the question that was moved and proposed, arose out of expressions used by him at the time; he therefore ought to have laid before the House what he had to say in exculpation of the charge, as soon as the motion was made, and then to have immediately withdrawn.—After the examination of the evidence in relation to Lord Clive's conduct in the East Indies, Lord Clive was heard in his place, before he knew what question was to be moved against him, and withdrew, on the 21st of May, 1773.

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RULES OF PROCEEDING.

When the Speaker may take the Chair.

1. On the 5th of January, 1640, it was declared, as a constant rule, that Mr. Speaker is not to go to his Chair, till there be at least forty in the House.

2. On the 26th of April, 1729, forty Members not being present, the Speaker adjourned the House.—See the 12th of May, 1729; the 7th of April, 1731; the 21st of April, the 3d of May, the 16th of March, 1731; the 28th of March, 1732; the 10th of May, and 22d of March, 1733; the 8th of April, 1736; the 15th of February, 1742; and the 24th of April, 1745, et passim.

3. On the 2d of April, 1740, it is said "by mistake," that the question was decided by a division of less than forty Members;—for see the 6th of April, 1741, the 4th of June, 1746, the 26th of March, 1751, and the 10th of June, 1758.

4. On the 16th of March, 1742, forty Members not being present, Mr. Speaker 'waited till four o'clock,' and then told the House again, and forty Members not being then present, adjourned the House.—See the 23d of February, 1746, 25th of May, 1747, the 5th of June, 1749, the 13th of March, 1755, the 2d of April, 1755, the 4th of May, 1756, and the 9th of April, 1759.

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5. On the 21st of May, 1747, notice being taken of forty Members not being present, Mr. Speaker told the House, and forty Members not being present, he waited till more Members came in, and then proceeded in the business.—See also the 17th of March, 1752.

6. On the 23d of April, 1735, there not being forty Members in a Committee of the House, Mr. Speaker resumed the Chair, and there being then forty Members present, proceeded in business. On the 22nd of March, 1733, the 23d of February, 1746, the 2d and 4th of April, 1755, the 9th of

March, 1757, and the 10th of May, 1758, Committees of the whole House break up for want of forty Members.

7. On the 4th of April, 1750, it appears from the numbers on the division, that the Speaker was told himself to make up the forty present.—See also the 16th of April, 1753.

8. On the 20th of March, 1780, the House having continued to sit till after twelve of the clock on Monday night, upon an adjournment for want of forty Members, the Speaker adjourned the House only till Tuesday Morning.

OBSERVATIONS.

This rule was certainly intended to prevent questions being carried by surprise, and in a thin House; and, as it is essential to the fairness of proceeding, it has therefore, I believe been observed inviolably, both as to the number present when the Speaker takes the Chair, and as to his quitting it again immediately, if it is after four o'clock. This distinction of not adjourning immediately, if it is not four o'clock, but of {114} waiting, and, if Members come in so as to make upwards of forty present, of proceeding with the business, arises //114-1// from four o'clock being the hour prescribed by the 30th of Charles II. and the 13th of William III. before which any Member may take the oaths at the Table; and therefore, if a Member is introduced before that hour, he may be sworn, though forty Members are not present; for a rule laid down by the House of Commons, as a regulation to themselves, cannot supersede the directions of an Act of Parliament. But, if it appears that forty Members are not present, and it is after four o'clock, the Speaker, by his own authority, immediately, and without a question put, adjourns the House to the next sitting day; but he cannot, in this case, adjourn over a sitting day, unless the House have previously resolved, "That at their rising, they do adjourn to a. particular, day," and then he adjourns the House to that day; and this resolution is frequently come to, when it is expected, that, from the thinness of the House, they may break up for want of forty Members.

It appears from several instances, that the practice of the House has extended this rule to Committees of the whole House, and that it is equally necessary, if forty Members are not present, for the Chairman immediately to leave the Chair, and for the Speaker to resume it.

The distinction about the hour, does not hold in Committees, because the reason, upon which that distinction is founded, is not there

equally applicable: When the Speaker resumes the Chair, on the Breaking-up of a Committee, the Chairman can make no {115} other report, than informing the Speaker of the cause of their dissolution.—This rule, being established by the House only as a restraint on their own conduct, does not extend to prevent the Speaker's taking the Chair, on the Black Rod's knocking at the door, whether from the King or Commissioners appointed by the King, though fewer than forty Members should be pre- sent; for if it was otherwise, the Commons might, by their private order, interrupt the exercise of the King's prerogative, to dissolve or prorogue the Parliament; and therefore, on the arrival of the Black Rod, the Speaker immediately takes the Chair, and receives the message.

It has sometimes been doubted, whether, on his return from the House of Lords, the Speaker ought again to take the Chair, if at that time forty Members are not present; I should think he ought, at least, to report what has passed in the House of Lords; for it might otherwise happen that, for want of forty Members, the Speaker might be prevented from taking the Chair that day, and from communicating to the House a speech or message from the King, of which, “as a message to adjourn, and several other matters,” they ought to be immediately informed; especially as it is always in the power of any Member to prevent the proceeding in any other business than the report of the message, by calling upon the Speaker to count the House. It can therefore never be supposed, that a rule, laid down by the House to themselves, merely to prevent surprise, can extend to restrain the Speaker from informing the House of the King's pleasure, signified to him in the House of Lords. When it happens, as it has often done, that forty Members do not assemble, the Speaker waits till four o'clock, and then adjourns the House, taking the Chair for that purpose only; and in this case, he can only adjourn to the next sitting day.

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—When there is a division in the House, or a Committee of the House; and it appears, upon: the report of the numbers, that forty Members are not present; and the House, or the Committee, are upon this immediately adjourned; there can be no decision upon the question then under consideration, though, upon the report of the numbers, the majority should be ten to one; and therefore the declaration, in the instance of the 2d of April, 1740, “that the question was carried,” is inserted by mistake, as indeed appears from the entry in the Journal of the next day, the 3d of April. In this case, therefore, the matter under consideration continues exactly in the state in which it was before the division, and, as appears from all the instances, must be resumed at this period on some future day. The Speaker, or Chairman of the Committee, is always considered as one of the forty, as appears from the numbers on the divisions.

It is said, on the 20th of April,. 1607, that no Bill was read this day, and the House arose at ten o'clock, //116-1// “being not above threescore.”

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RULES OF PROCEEDING.

For not admitting Strangers into the House.

1. On the 5th of March, 1662, upon information that several persons, not Members, had come by the back-door into the Speaker's chamber, and into the gallery, whilst the House was sitting; it is ordered, that the back-door be constantly kept shut whilst the House is sitting.—See the 8th of April, 1670; the 25th of November, 1696, and the 9th of December, 1697.

2. On the 31st of October, 1705, is an order for the Serjeant at Arms to take strangers into custody, that are in the House or gallery whilst the House is sitting; and this order is repeated, from that time, at the beginning of every session.—On the 15th of November following, this order is extended to Committees sitting in the House.

3. On the 19th of March, 1716, the orders for the Serjeant to take strangers into custody, &c. are read, and the Serjeant carries them into execution, without any order of the House.—So on the 13th of April, 1717, on notice being taken that there were strangers in the House.— So on the 10th of March, 1734.

4. On the 9th of December, 1755, the House is moved for {118} these orders to be read; and they are ordered to be printed in the Votes of the day.

OBSERVATIONS.

When a Member in his place takes notice to the Speaker of strangers being in the House or gallery, it is the Speaker’s duty, immediately to order the Sergeant to execute the orders of the House, and to clear the House of all but Members, and this without permitting any debate or question to be moved upon the execution of the order. It very seldom happens that this can be done without a violent struggle from some quarter of the House, that strangers may remain: Members often move for the order to be read, endeavour to explain it, and debate upon it, and the House as often runs into great heats upon this subject; but in about half an hour the confusion subsides, and the dispute ends by clearing the House; for if any one Member insists upon it, the Speaker must enforce the orders, and the House must be cleared. In the violence of debate, it is often threatened to move the House for a day to consider of this order, in order to explain or

repeal it, but it is so absolutely and essentially necessary, for the carrying on any business in the House, that such an order should exist (though not always necessary that it should be strictly carried into execution) that it is always found, upon cool consideration, that it cannot admit of any alteration.—The House have, in many {119} instances, winked at the breach of it; and it has been often understood, that the observance of it should be remitted with respect to Peers, Members of the Irish Parliament, eldest sons of Members, and with other exceptions; but this has been only on sufferance; the order itself has notwithstanding existed, and must always exist, liable to be put in execution without delay or debate.

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RULES OF PROCEEDING.

Leave to make a Motion.

1. The 25th of November, 1695, it is ordered, that no new motion be made after one o'clock.

2. On the 2d of January, 1701, leave given to make a motion, it being after two o'clock.—See the 26th of November, 1702; 23d of December, 1702; 14th of November and 11th of December, 1704.

3. On the 9th of December, 1702, question put, that Mr. Mansell have leave to make a motion, it being near two o'clock; and passed in the negative. See the 7th of March, 1711, and 23d of June, 1714.

4. On the 4th of February, 1702, leave to make a motion, it being after the time of day for that purpose.

5. On the 9th of May, 1728, leave to make a motion, it being past four o'clock.—See the 26th of February, 1728; 13th of March, 1729; 24th of April, 1731; 31st of March, 1732; 6th and 13th of April, 1732; et passim.

OBSERVATIONS.

The principle of this rule is to prevent motions of importance being made, after the House have proceeded on the {121} particular business which has been appointed for that day, and which may be a surprise on many Members who are gone away: Formerly this leave was necessary, if it was after the time fixed by the order of the 25th of November, 1695, without any consideration had of the orders of the day; but in later times, particularly from the time Mr. Onslow became Speaker, the having proceeded upon the orders of the day was what made it necessary to have the leave of the House to introduce any new motion: If there remained any orders of the day not proceeded upon, it was not necessary to have leave to

make a motion, though it should be six o'clock in the evening; but if the orders of the day had been all read and disposed of, no motion could be made without leave, though but at two o'clock.—The practice of the House, first established by Mr. Onslow (for before his time it was different) and uniformly continued ever since, ought to proceed upon the orders of the day; and therefore, if any person moves for the orders of the day to be read before two o'clock, and there is a division, the Ayes go forth; if it is after two o'clock, the Noes go forth. The having proceeded upon one, two, or three of the orders of the day, does not make it necessary to ask leave to make a new motion, if there remains one order undisposed of.

This doctrine does not extend to motions for new writs, or matters of privilege; the House is at all times ready to admit these, and no leave is necessary.

The instance of the 2d of April, 1728, of leave granted before the House have proceeded on the orders of the day, is a mistake.—See the 1st of April, 1728, and the practice ever since.

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RULES OF PROCEEDING.

On a Division of the House.

1. On the 15th of June, 1604, after a division the Tellers differed in their report, and thereupon the House divided again.—But held not to be regular.

2. On the 26th of May, 1606, after a division, it came in question, whether the Tellers certifying, and yet disagreeing, any man may after speak to the number, or examine it.

3. On the 28th of May, 1624, //122-1// on a division, seven Members had retired to a Committee-room, and refused to give their voice; they were sent for, and their names taken—and (as it should seem) obliged to divide.

4. On the 24th of April, 1626, some Members desiring that they might go into the Committee chamber, as having given no voice—resolved by the House they might not, but that all present at the debate "should vote."

5. On the 18th of May, 1663, Sir Anthony Irby being absent in the Speaker's chamber, when the first affirmative and negative was put, Mr. Speaker declared, that by the orders of the House, though he were present

at the second putting of the question, he ought not to have any vote; and his voice was disallowed, after the division, and report of the numbers.

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6. On the 4th of February, 1664, a Member appearing to be concerned in interest, his voice was disallowed, though after a division.

7. On the 15th of June, 1604, on a question, Whether a law shall continue to the end of the next session—it was said the Yeas must sit, because the subject is in possession; and therefore affirmed as a rule, that the Noes, who are in this case for the alteration, must go forth.

8. On the 25th of June, 1604, Bill passes on a division, and then, upon motion, such as sat against the Bill went forth of the House, and brought in the Bill in their hands; which is according to ancient order, and was now moved and done (once in a Parliament) for preserving memory of the order.

9. On the 10th of December, 1640, it was declared for a constant rule, that those that give their votes for the preservation of the orders of the House, should stay in; and those that give their votes otherwise, to the introducing of any new matter, or any alteration, should go out.

10. On the 25th of April, 1668, a Committee is appointed to search into precedents, in what cases the Yeas and Noes are to go forth: But I do not find they make any report.

DIVISION ON PROCEEDING ON PETITIONS.

1. On the 20th of February, 1701, That a petition be brought up; Ayes go forth. So on the 10th of December, 1702; 9th of February, 1711; 13th of February, 1717; 8th {124} of February, 1722; 22d of April, 1730; 4th of March, 1746; 14th of April, 1756.

2. On the 14th of March, 1703, That a petition be read; Ayes go forth.

3. On the 27th of January, 1729, That a petition do lie on the Table; Noes go forth. So on the 18th of February, 1729, and the 2d of March, 1735.—The instance of the 31st of January, 1767, is a mistake.—The Noes ought to have gone forth.

4. On the 27th of January, 1729, That a petition be rejected; Noes go forth; because a negative had been put on its lying on the Table: But on the 18th of February, and the 26th of February, 1729, Ayes go forth.

DIVISION ON PROCEEDING ON BILLS.

1. That a Bill be brought in, or read first or read second time, or for proceeding in any stage of a Bill; Ayes go forth.—See the 4th of April, 1733, et passim.

2. That a Bill be committed; Ayes go forth.—That a Bill be committed to a select Committee; Ayes go forth.—See the 13th of February, 1752: But the 23d of April, 1735, is a mistake; See the 22d of April, 1735.

3. That a Bill be committed to a Committee of the whole House; Noes go forth; 12th of December, 1707.

4. That the report of a Bill do lie on the Table: Noes go forth; on the 30th of April, 1742: But on the 11th of May, {125} 1749, in a similar question, Ayes go forth; because there was an order of the day for receiving it.

5. That a report he now read; Ayes go forth; on the 21st of May, 1751, and 17th of March, 1752.—But where there is an order of the day for receiving the report, there, on a question, that the report be now read, Noes go forth.—See the 13th of July, 1713; the 1st of May, 1730; and the 25th of June, 1746.

6. That amendments he read a second time; Noes go forth.—See the 24th of February, 1707; 6th of May, 1742; 5th of April, 1757.

7. That a clause offered on the report of a Bill be read a second time; Ayes go forth: 13th of May, 1738; 17th of March, 1739.—See the 22d of April, 1748.—On the 19th of March, 1755, on a question, that words, proposed to be left out upon the third reading of a Bill, stand part of the Bill; Noes go forth; so on the 24th of November, 1775; and the 19th of May, 1780, and the 12th of June, 1783.

DIVISION RELATING TO COMMITTEES.

1. On the 21st of February, 1676, on a dispute who should take the Chair of a Committee, and question, that Sir Richard Temple do take the Chair; Noes go forth.—See the 13th of March, 1701; 24th of November, 1708; 6th of March, 1728; et passim.—The instance of the 19th of February, 1752, is a mistake.

2. That a Committee to which a matter had been referred, be a Committee of the whole House; Noes go forth; 19th of February, 1728.—

See the 21st of February, 1728; 16th of April, 1744; 22d of January, 1746; et passim.

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DIVISION ON AMENDING REPORTS FROM COMMITTEES.

1. On a question for agreeing with the whole, or any part of a report from a Committee; Noes go forth; 5th of April, 1711; 17th of May, 1733. The instance of the 13th of April, 1727, is a mistake.— See the 16th of April, 1728; 24th of April, and 8th of May, 1729; 18th of May, 1739; 20th of April, and 9th of May, 1749. The instance of the 18th of November, 1745, is a mistake.

DIVISION ON QUESTIONS RELATING TO THE SPEAKER.

1. That the Speaker do now leave the Chair; the Noes go forth, because it is always in consequence of an order for the House to resolve itself into a Committee.—See the 19th of April, 1749, et passim. The instances of the 22d of March, 1733; 3d of March, 1742; and the 20th of November, 1746, where it is said the Yeas go forth, are mistakes.

2. That the Speaker do issue his warrant for a new writ; Noes go forth; 17th of March, 1713; 21st of April, 1714; 8th of February, 1755.

DIVISION ON QUESTIONS MOVED, AND AMENDMENTS PROPOSED.

1. When the previous question is moved, and the question put, "that that question be now put;" Noes always go forth —passim.

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2. But "that words stand part of a question," when moved to be left out; Ayes go forth; 1st of February, 1703; 7th of December, 18th of January, and 5th of February, 1708. The instance 2d of December, 1708, is a mistake.

3. When an amendment is moved to insert words, and an amendment to that amendment, by leaving out part of the. words, on a question, "that these words stand part of the amendment;" the Ayes go forth; 24th of March, 1709; 21st of January, 1728.—See the 13th of November, 1755.

4. When a question is moved by the Chairman of a Committee, in pursuance of a resolution, and by direction of that Committee, and an amendment is proposed, to leave out words, and question is put, "that

those words stand part of that question;" Ayes go forth; 16th of March, 1730.—But Quaere.

DIVISION ON QUESTIONS RELATING TO THE LORDS.

1. Resolution from the Lords communicated, and concurrence desired, and amendment proposed, to leave out words; on question, "that those words stand part of the resolution," Ayes go forth; 8th of December, 1705.

2. Where the Lords amend a Bill, on question "that the amendments be read a second time," Noes go forth; 24th of April, 1707, and 2d of May, 1745.

3. That the Messengers from the Lords be called in; Ayes go forth; 1st of July, 1717.

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DIVISION ON QUESTIONS OF ADJOURNMENT.

1. That the House do adjourn till to-morrow; Noes go forth; 21st of December, 1705.

2. Question for the House to adjourn, put in the midst of a proceeding; Noes go forth; 22d of January, 1705; 9th of February, 1707; 21st of December, and 20th of January, 1708; 8th of March, 1731; and 5th of February, 1755.—But on the same question to adjourn, and in the midst of a proceeding, Ayes go forth; on the 3d of February, 1729; 17th of November, 1742; 19th of December, 1744; 23d of January, 1745.—Note the difference.

3. On the 29th of January, 1708, on question to adjourn over the 30th of January, Noes go forth.

4. On the 29th of February, 1727, question to adjourn from Thursday to Monday; Noes go forth.—This is a mistake.

DIVISION ON PROCEEDING ON THE ORDERS OF THE DAY.

1. That the orders of the day be now read; Noes go forth; 2d of March, 1708; 1st of February, 1743; 1st of April, 1747.—But on the same question, Ayes go forth, on the 21st of April, 1736. Note the difference.

OBSERVATIONS.

Before the House proceed to a division, either in the House or a Committee of the whole House, indeed, before the question is put, {129} upon which it is probable there may be a division, the Speaker or Chairman should take care that all strangers are withdrawn: //129-1// If this is not done, it is almost impossible but that there must be great irregularity and confusion; for while strangers are going out, Members will come in, and they will be told in the division, though not present at putting the question, and this can only be prevented by making strangers withdraw, and shutting the doors, before the question is put.

As no Member ought to be told in a division, who was not in the House when the question is put, so all Members who were in the House, must be told on one side or the other, and cannot be suffered to withdraw. It often happens, that Members, not wishing to vote upon particular questions, withdraw into Solomon's porch, or //129-2// the Speaker's room; but these being {130} still considered as part of the House, as there is no avenue to them but through the House, if any Members insist upon it, those Members must return into the body of the House, and must be told: If they were not in the House or gallery when the question was put, but were absent in Solomon's porch, or the room, and consequently did not hear the question put, they have a right to demand of the Speaker, "what is the question?" and to stay in or go out, even though the door should be then shut; and this I remember to have happened to Mr. Pitt, when Secretary of State, and frequently at other times. But if they were in the body of the House, or in the gallery, when the question was put, and have from inattention, or any other circumstance, neglected to go forth till after the door is shut, it is not then in their option, as in the other case, 'where' they will be told; they must be told 'in' the House, though by this they are made to vote entirely contrary to their known and avowed inclination.— What is commonly, in the proceedings of the House of Commons, called the Speaker's 'chamber,' is the room behind the clock, and is not in the House; the Speaker's room, of which I speak here, is that to which he retires from Solomon's porch, and is in the House.

On Monday the 21st of February, 1780, Mr. Baldwyn, Member for Shropshire, had, during the division, staid {131} in the passage from the gallery into the House, behind the clock, and had not, during the telling of the Members in the House, appeared either in the body of the House or in the gallery, but being discovered before the doors were opened, he was brought up by the Tellers to the Table, and the Speaker was, I think very properly, of opinion, that he must be told 'in' the house, and that he had no

choice of going out or staying in, as is given to those who are in the Speaker's room when the question is put; and who may be supposed to be ignorant that a division is going forward, and who are therefore at liberty to have the question stated to them, and to make their election how they will vote, but to entitle themselves to this favour, they ought to assure the House they did not hear the question put. In Mr. Baldwyn's case, he could make no such pretence, but was exactly I the case of a Member, who proposing to go forth, had, from inattention, waited till the doors were shut (as once happened to Lord George Cavendish) and who is then obliged to be told 'in' the House, and has no option given him. Endeavours were used to persuade the Speaker, that Mr. Baldwyn ought to have the same liberty as if he had been in the Speaker's room; but the Speaker decided peremptorily against him, and said, "that Mr. Baldwyn being in the House, after the doors were shut, and after those within the House had been told, he could not claim the excuse, which is admitted for those who are in the Speaker's room; who, though they are 'supposed to be in' the House, are literally 'out' of it, and out of the hearing of the question being put, or knowing that a division is going forward." Mr. Baldwyn was therefore compelled to be told 'in' the House.

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Whilst the Tellers are telling, Members should be silent, that they may not be interrupted; for if any one of them thinks there is a mistake, or if they are not all agreed, they must begin and tell again. No Member must remove from his place, when they have begun telling, nor can any Member be told but sitting in a seat, and not in any of the passages. When they have told the Members in the House, and are all agreed, they should deliver in the number at the Table, to the Clerk, that there may be afterwards no dispute. If any difficulty arises, in point of order, during the division, the Speaker must take upon himself to decide it, 'peremptorily;' for, as it cannot be decided by the House, and so have a division upon a division, there is no other mode but to submit implicitly to his determination, subject however to the future censure of the House, if that determination is irregular or partial. But in order to form that determination, though there can properly be no debate, it has frequently happened that old and experienced Members have, by the permission of the Speaker, assisted him with their advice, sitting on their seats, and speaking with their hats on, to avoid even the appearance of a debate; but even this cannot be done but by the Speaker's leave, for, if it could, the division might last several hours; the Speaker, therefore, under these circumstances, is absolute, and the Members present ought to submit quietly to his directions.— It has sometimes happened, //132-1// that a division {133} has been demanded, and it has been found, that there is but one Member on one side of the question, and consequently not enough to appoint two Tellers; as on the

9th of July, 1746, and the 12th of December, 1751; in this case the division cannot go on, but the Speaker declares on the other side. If there are two Tellers, the division must go on, and be reported, though on one side the return of the numbers should be none, as on the 10th of June, 1758.—See the 12th of May, 1772. //133-1//

If any difficulty arises upon telling in the Members, or the Tellers should disagree upon their numbers, I do not see how this can be decided but by another division; as was done on the 27th of February, 1771, where a stranger was told in as a Member: But in order to avoid what happened upon that occasion, when some Members went away, who were in the first division, the Sergeant and Door-keepers should, upon every division, not open the doors of the lobby or gallery till the numbers are reported by the Tellers at the Table, and declared by the Speaker {134} for or against the question; for till then the division is not over. In short, it is the duty of the Sergeant, and the persons under him, to keep every avenue into the House, and the doors of the Lobby, shut, from before the putting of the question, till the final declaration by the Speaker, of the determination of the House.

The general rule, of which side ought to go forth upon a division, is very well expressed in the Journal of the 10th of December, 1640; but is subject to a great variety of exceptions, as appears from the instances before cited. The reason for these exceptions I will endeavour to explain, as well as I can, under the several heads into which those instances are classed.

PETITIONS.

"That a petition be brought up;" is a question introductory of new matter, as well as the immediate proceeding upon that petition, and therefore, according to the rule, the Ayes go forth: But as the regular course of proceeding, in the House, requires that a petition should lie upon the Table, for the consideration of Members, before any thing is done upon it, when this question is moved, "That it do lie on the Table," those that are against preserving this course must go forth. If a negative is put upon its lying on the Table, and the House refuse to consider it at all, nothing remains but to reject it; and therefore, though if the question for rejecting a petition is moved in the first instance, the Ayes go forth, because it ought to lie on the Table; yet after refusing to consider it, on a question put for rejecting it, the Noes go forth.—When it has been read, every question for referring it to a Committee, {135} or farther proceeding upon it, is introductory of new matter, and the Ayes go forth.

BILLS.

"That a Bill be brought in," or read the first or second time, or committed, or reported, or engrossed, or read the third time, are all questions introductory of new matter, and the Ayes go forth — But when a Bill is ordered to be committed, and the question only lies between a Select, and a Committee of the whole House, the House pay that respect to the latter, and give it so much the preference, that those who are for the select Committee, and against the Committee of the House, in both instances, go forth.—When a Bill is reported, and the report brought up to the Table, the course of proceeding requires it should lie there for the consideration of Members, before any thing further is done upon it; and therefore those who are against this proceeding go forth, as well as those who are for reading it immediately. But when the House have determined it shall be immediately proceeded upon, and the report has been read once, nothing can be done regularly but to read it a second time; and therefore those who are for putting off the further consideration of the report, and against reading the amendments a second time, must go forth.

COMMITTEES.

When a question is put upon any Member's taking the Chair of a Committee—as every Member is supposed to be proper, and equal to this office—those, who are against any Member, must go forth. And when there is a difference, whether a Committee, to which a Bill or other matter is referred, be a select Committee, {136} or a Committee of the whole House, the latter has always the preference; and therefore those go forth, who are against the Committee of the House.

REPORTS FROM COMMITTEES.

The House pay that attention and regard to every thing that has been done, whether by a select Committee or a Committee of the whole House, that, wherever a question is put for agreeing with a Committee, either in the whole or part of a resolution, or in an amendment to a Bill, those who are for disagreeing with the Committee, or making any alteration in what the Committee have done, go forth.

SPEAKER AND MEMBERS.

The question "for the Speaker to leave the Chair," must be preceded by a resolution of the House to resolve itself into a Committee upon that day, and therefore, when the order has been read for going into the Committee, those who are against proceeding in consequence of that order must go forth.—As the House of Commons ought, if possible, to have always its number of Members complete, those who, upon a vacancy, are against the issuing of a warrant for a new writ for the election of a

Member, must go forth. For a like reason, as it is the duty of every Member to attend the House, those ought to go forth, who are against enforcing that attendance by a special order.

QUESTIONS MOVED AND AMENDED.

When a motion has been made, and a question proposed to the House, those, who are against putting that question, are for altering the usual course of proceeding, and must go forth; the House being, as is commonly said, in possession of the question. One should naturally suppose, that this reasoning would extend to every part {137} of the question, and that the House is as much in possession of 'every word' of the question, as of 'all the words' put together, and that therefore "on a motion to leave out some of the words, and question put, that these words stand part of the question;" I say, one should imagine that the Noes ought, upon the same principle, to go forth; but the uniform practice has been otherwise, and in all instances, upon the question, "that words stand part of a question," the Ayes have gone forth. I own, I never understood the reason of this distinction, but in a matter, not very important, a regular and uniform practice of fourscore years is of itself a sufficient reason for adhering to that practice. The same argument must be urged in favour of the other instances, "where an amendment is proposed to be made to a question, by inserting words, or by leaving out words, and an amendment is proposed to be made to that amendment, by leaving out part of the words; here, on the question, that these words stand part of the amendment," the Ayes, in both instances, have gone forth. If it was allowable to argue upon 'what ought to be' the practice, and I was not concluded by what I have just said, I should have thought that, in the case of the 13th of November, 1755, the Noes ought to have gone forth, because they were for the words standing part of the original question, and would therefore, if the question had been put in this form, and not complicated with the other part of the amendment, have then, agreeable to the practice, gone forth. I should also, if it had been a new case, have thought that in the instance of the 16th of March, 1730, the Noes should have gone forth; because I should have considered a question moved by the Chairman of the Committee, in pursuance of their resolution and direction, in the same light with a motion {138} to agree with a Committee in a resolution, and subject to what has been said under the title "Reports," page 147.

But in these, and every other instance of this sort, it is more material that there should be a rule to go by, than what that rule is; that there may be an uniformity of proceeding in the business of the House, not subject to the momentary caprice of the Speaker, or to the captious disputes of any of the Members. If the maxim, "Stare super vias antiquas" has ever any

weight, it is in those matters, where it is not so material, that the rule should be established on the foundation of sound reason and argument, as it is, that order, decency, and regularity, should be preserved in a large, a numerous, and consequently oftentimes a tumultuous assembly.

LORDS.

The Lords having come to a resolution, or having made amendments to a Bill, does not, in the opinion of the Commons, give that weight to either of these questions, but that on a question to agree with them in the whole, or any part, the Ayes go forth. When the Lords amend a Bill, and the House, by reading the Amendments once, have proceeded to take them into consideration, nothing can regularly be done with the amendments but to read them a second time; and therefore upon this question the Noes go forth.—Though the House of Commons ought to be at all times ready to receive messages from the Lords, yet those messages, being introductory of new matter, fall within the general rule, and the Ayes go forth on question for admitting the Lords messengers.

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ADJOURNMENT.

The common and regular proceeding, in questions of adjournment, is to adjourn to the next sitting-day, so that upon this question, those who are against this, and for adjourning to a future day, must go forth, as well as those who are for sitting upon a Sunday, or any other day, not a sitting-day.

Though it is now become a practice for the House to adjourn over Saturday, yet, there being no reason why the House should not sit on a Saturday, upon a question, “to adjourn from Friday to Monday,” the Ayes should go forth.

ORDERS OF THE DAY.

It appears, from what has been said before, that two o’clock is the hour now established, by the practice of the last fifty years, for reading the orders of the day; if this question is therefore moved before two o’clock, the Ayes must go forth, as deviating {140} from the usual practice of the House: if it is moved after two o’clock, though in the midst of other business, the Noes go forth, upon the same principle.

There is one observation to be made under this title, which affects the rule of the Ayes or Noes going forth, upon every question that may occur under any of the other titles; which is, that, if there is an order of the day for any thing to be done, when that order is read, if there is a division, those who are against carrying that order into execution must go forth;

that is, in all instances, the Noes; and this, in those cases where, if there had been no order of the day, the Ayes would have gone forth.—See the 11th of April, 1771, and in many other instances.

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SPEAKER.

How chosen and approved.

1. In the first Parliament of Richard II. 1377, Sir Peter de la Mare, Knight of the Shire for Herefordshire, is chosen Speaker, and is said, in the Parliamentary History, vol. i. p. 339, 349, to be the first Speaker upon record.

2. On the 19th of March, 1436, Sir John Tirrell, the Speaker, being disabled from attending, by sickness, William Boerly, Esquire, is elected in his room.—Parliamentary History, vol. ii. p. 231.—Vide Elsynge, p. 254.—

3. In 1450, Sir John Popham was chosen Speaker, but his excuse was accepted by the King, and he was discharged; and on the same day, the Commons presented William Tresham, Esquire, for the same purpose, who was allowed.—Parliamentary History, vol. ii. p. 253.

4. On the 15th of February, 1454, Thomas Thorpe, Esquire, Speaker, being detained a prisoner in execution, by the overbearing power of the Duke of York, the Commons elect a new Speaker in his room.—Parliamentary History, vol. ii. p. 271.

5. On the 30th of September, 1566, the Speaker being dead, during a prorogation;—See the proceedings to the choice of a new Speaker, Parliamentary History, vol. iv. p. 53, 59.

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6. On the 16th of January, 1580, Sir Robert Bell, the Speaker, being dead since the last session, there is a curious entry in the Journal, on the proceeding to the choice of a new one.

7. On the 22d of February, 1592, Sir Edward Coke, in his disabling speech, says, “This is only as yet a nomination, and no election, until your Majesty giveth allowance and approbation.”—Parliamentary History, vol. iv. p. 345.

8. On the 16th of March, 1606, the Speaker was ill, yet on this and the following days business was done; and on the 23d several proposals are made, to obviate the difficulties arising from this accident.

9. On the 4th of February, 1672, Sir Edward Turner being made Lord Chief Baron, a new Speaker is chosen; and then several motions being offered to be made, the House are of opinion, that after a Speaker is elected, no motion can be debated, or business entertained, till the Speaker

be presented, and approved by the King.—But see the 19th of January, 1580.

10. On the 18th of February, 1672, Mr. Speaker being ill, sent a letter to the King, to desire leave to retire, and to give the Commons leave to chuse another Speaker; and //142-1// Sir Edward Seymour is chosen accordingly.

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11. On the 27th of October, 1673, a motion is made, and question put, that Mr. Speaker do leave the Chair, and a Speaker pro tempore be appointed; but passed in the negative on previous question.—See the debate upon this question, in Grey's Debates, vol. ii. p. 186.

12. On the 11th of April, 1678, the Speaker being taken dangerously ill, and the King's leave to proceed to a new choice being signified to the House, Sir Robert Sawyer is chosen Speaker. But on the 6th of May, the former Speaker being recovered, the new Speaker is taken ill, and the other is re-chosen.

13. On the 6th of March, 1678, the Commons chose Sir Edward Seymour Speaker; but on his being presented to the King, on the 7th, the Lord Chancellor, by his Majesty's command, disapproves of him, and directs them to proceed to another choice.—See the debates upon this subject, in the 6th vol. of Grey's Debates, p. 404, till the 13th of March, when the King prorogued the Parliament, and in the next session Serjeant Gregory was chosen. Nothing of this dispute appears in the Journal of either House.

14. On the 12th of April, 1679, standing order, that upon any vacancy, no motion be made for chusing a new Speaker, till after 11 o'clock.

15. On the 13th of March, 1694, Sir J. Trevor, being suddenly taken ill, excuses his attendance; on the 14th, his Majesty's leave being signified, the House proceed to another choice; Sir Thomas Littleton and Mr. Foley are proposed; there is a division upon Sir Thomas Littleton, and carried in the negative, and Mr. Foley is elected.

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16. On the 6th of December, 1698, there is a question on the election of Sir Thomas Littleton, but carried in the affirmative.

17. On the 30th of December, 1701, two persons are proposed as Speakers, Sir Thomas Littleton and Mr. Harley; a negative is put upon Sir Thomas Littleton, and Mr. Harley is chosen.

18. On the 25th of October, 1705, Mr. Smith and Mr. Bromley being proposed, Mr. Smith is elected on a division.

19. On the 23d of October, 1707, debate when the Mace ought to be laid upon the Table; and directed to be, as soon as the Speaker sits down in the Chair.

OBSERVATIONS.

The forms of the election of a Speaker require that the person proposed should be present in the House when he is nominated ; and it is to be desired, in order to avoid future inconveniences and trouble, that he should be a Member upon whose seat there is no probability of a question. //144-1// Formerly, the person in the Chair held a considerable office at the same time; Sir Edward Coke was Solicitor General to Queen {145} Elizabeth, Sir Edward Seymour was Treasurer of the Navy, Mr. Harley was //145-1// Secretary of State, Sir Spencer Compton was Paymaster of the Army, and Mr. Onslow held the office of Treasurer of the Navy for some years, whilst he was Speaker, but resigned it, perhaps to avoid those insinuations of partiality, and dependence on the Ministers, which we see, by Grey's Debates, were so frequently thrown out against Sir Edward Seymour.

When but one person is proposed for Speaker, and there is no objection made to him, it has not been usual to put any question to the House, but, //145-2// without a question, the Members proposing him take him out of his seat, and conduct him to the Chair.—But if any objection is made, and any other person is proposed, the sense of the House must be taken by a question on the name of the person first proposed to them.—This question is put by the Clerk; and on these occasions, it is stated in the Journal, that the Clerk, by 'order of the House,' puts the question.—As soon as the Speaker is chosen, and sits down in the Chair, the Mace is to be laid upon the Table, 'by the Serjeant;' before, it should be under the Table; and the House cannot proceed to the election of a new Speaker without the Mace.—This objection was, I conceive, very properly made, on the 13th of March, 1694, on Sir J. Trevor's being taken ill.—Another point //145-3// essentially necessary, to enable the House to proceed to elect a Speaker, is a {146} direction or permission from the King, either signified by the Lord Chancellor, in the House of Lords, or by some Privy-Counsellor, in the House of Commons.—And therefore the motion, on the 27th of October, 1673, to remove Sir Edward Seymour, and appoint another Speaker pro tempore, was highly irregular.

It has been usual //146-1// for persons, when proposed to be Speakers, to decline that office, from a sense of their own insufficiency, and even on the steps of the Chair, to beg of the House to excuse them.

It also appears from Elsynge, that when they have been presented to the King, for his approbation, the practice, for the last two hundred years, has been, in their speeches at the Bar of the House of Lords, to express the diffidence they entertain of their capacity to execute so great a trust; and, as Mr. Onslow says, in his first speech, on the 27th of January, 1727, "to implore his Majesty to command his Commons to do, what they can very easily perform, to make choice of another person, more proper for them to present on such an occasion."—The conduct of Sir Edward Seymour, when offered to King Charles II. on the 7th of March, 1678, is an exception to this rule; he, knowing that it had been determined, at a Council the night before, to accept of his excuse, on account of some dispute he had at that time with Lord Danby, purposely avoided making any, in order to throw the greater difficulty on the Chancellor in refusing him. But that this arose from the particular circumstances he was in at that time, and not from any disinclination {147} to pursue the forms observed by his predecessors, appears from his speech //147-1// on the 18th of February, 1672, upon his first election to the office of Speaker.

I do not know any instance of the King's refusing his approbation of a Speaker, till the case of Sir Edward Seymour, in 1678, unless it is that of Sir J. Popham, in 1450: The case mentioned in Grey's debates, of Sir J. Cheney, is not to this point; he was elected and approved, but was taken ill the next day. //147-2// Bishop Burnet says, //147-3// that "after the debate in 1678 had held a week, and created much anger, a temper was found at last; Seymour's election was let fall, but the point was settled, 'that the right of electing was in the House, and the confirmation was a thing of course.' " By what authority he draws this conclusion, from what passed at that time, I don't know. //147-4//

During the Speaker's absence, whether from illness, or any other cause, //147-5// no business can be done, nor any question proposed, but a question of adjournment, and that question be put by the Clerk.

This has been often, and must {148} always be a very great inconveni-ence, and it is grown much greater lately, from the quantity of business, and the length of sittings of the House of Commons; many propositions have been made, of having a Deputy Speaker, a Speaker pro tempore, &c.; but nothing of this kind has yet taken place. //148-1//

On a division upon the question for Speaker, the House divide in the House, as if they were in a Committee, to the right and left, and the Clerk appoints one Teller on each side.

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SPEAKER.

His Duty, in praying the Privileges of the House of Commons.

1. In 1566, Mr, Onslow being elected Speaker in the middle of a Parliament, on a vacancy, omits the prayer for liberty of speech, and freedom from arrests.—Parliamentary History, vol. iv. page 53, 59, and 235. //149-1//

2. On the 5th of February, 1672, Serjeant Charlton elected Speaker, on a vacancy, prays all the privileges. But he was certainly wrong.—See the re-election of Sir Edward Seymour, on the 18th of February.

3. On the 15th of March, 1694, Mr, Foley very properly follows the precedent of Mr. Onslow in 1566, and prays only his excuses for his own faults and mistakes. And it appears, that he made the omission of the other privileges from the directions he had received from the House the day before, the 14th of March.

OBSERVATIONS.

Mr. Hackwill, in a debate, which is in the Journal, upon this subject, on the 17th of December, 1621, says, "The {150} 'prayer' for our privileges was first used in the first year of Henry IV; anciently 'protestations' were made by the Speaker in this point." Whatever the form was, it seems agreed that, on presenting the Speaker to the King, and after he had been approved of, it was always customary for the Speaker to claim the several privileges of freedom of speech, from arrests, &c. Not that the Commons, by this ceremony, ever acknowledged what James I. in his answer to the petition of the House of Commons, in 1621, //150-1// says he could have wished that they had said, "that their privileges were derived from the grace and permission of Our ancestors and Us, and not have used the stile of your antient 'and undoubted right of inheritance.' " //150-2// But they considered it as a public claim and notification to the King, and to the people, of the privileges of the House of Commons, in order that no man might plead ignorance. //150-3//

When this claim had been once made at the beginning of a Parliament, it was certainly right in Mr. Onslow, in 1566, and the other Speakers who were elected on vacancies in the middle of a Parliament, not

to renew this claim, but to confine themselves to make their own excuses and apology. And therefore Serjeant Charlton was misled, in not attending to this distinction; accordingly we see, that the House themselves directed Mr. Foley not to make the usual petitions, “it being said, that those petitions were demands of right, {151} and ought to be made but once, at the beginning of a Parliament.”

On the meeting of the new Parliament, in November, 1774, a doubt ws conceived, whether the Act which had passed in the late Parliament, //151-1// and which had taken away the freedom from arrests from the servants of Members, ought not to have made some alteration in the form of the Speaker’s prayer. I confess I was of that opinion; and Sir Fletcher Norton at first intended to make an alteration, by claiming all the usual privileges, “except where the same had been varied or taken away by any Act of Parliament.” And accordingly, as soon as he was elected Speaker, he communicated this his intention to the House. However, upon further consideration, and conversation with Lord Apsley, the Lord Chancellor, he thought it better to abide by the ancient form: Lord Apsley advised this, and said, “that as no alteration had been made formerly, on the passing of the Act in //151-2// King William’s time, relating to the privilege of Parliament; and as, whatever the Commons claimed, neither the allowance of the King, nor indeed the claim itself, could be supposed to include privileges not warranted by law; he was of opinion, that it would be the safer way, {152} to prevent any difficulties which might arise upon an alteration, to adhere to the usual form, and that he was ready to give the King's answer in the accustomed words.” Sir Fletcher Norton acquiesced in this, and accordingly sent to acquaint Lord Apsley, that he would make the claim in the ancient form of words, without any alteration; he did so, and received the usual answer. //152-1//

This matter, therefore, whether finally decided right or wrong, is now at rest.

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SPEAKER.

His Duty, in keeping Order in the House.

1. On the 14th of April, 1604, //153-1// rule conceived, That if any man speak impertinently, or beside the question in hand, it stands with the orders of the House for the Speaker to interrupt him; and to know the pleasure of the House, whether they will further hear him.

2. On the 17th of April, 1604, agreed for a general rule, If any superfluous motion, or ‘tedious’ speech, be offered in the House, the party is to be directed and ordered by Mr. Speaker.

3. On the 19th of April, 1604, agreed for a rule of the House, Qui digreditur a material ad personam, the Speaker ought to suppress.

4. On the 19th of May, 1604, Sir William Paddy entering into a 'long' speech, a rule agreed, That if any man speak not to the matter in question, the Speaker is to moderate.

5. On the 5th of May, 1614, Sir Edward Sandys says, "When Mr. Speaker offereth to speak, every man ought to be silent."

6. On the 10th of November, 1640, it was declared, That when a business is begun, and in debate, if any man rise to {154} speak to a new business, any Member, 'may,' but Mr. Speaker 'ought,' to interrupt him.

7. On the 5th of May, 1641, resolved. That if any man shall whisper, or stir out of his place, to the disturbance of the House, at any message or business of importance, Mr, Speaker is ordered to present his name to the House, for the House to proceed against him as they shall think fit.

8. On the 22d of January, 1693, to the end that all the debates in this House should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented; Be it ordered and declared, "That no Member of this House do presume to make any noise or disturbance whilst any Member shall be orderly debating, or whilst any Bill, Order, or other matter, shall be in reading or opening: And in case of such noise or disturbance, that Mr. Speaker do call upon the Member 'by name,' making such disturbance; and that every such person shall incur the displeasure and censure of the House."

OBSERVATIONS.

It is very much to be wished, that the rules, which have been from time to time laid down by the House, for the preservation of decency and order, in the debates and behaviour of Members of the House, could be enforced, and adhered to {155} more strictly than they have been of late years: It certainly requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy: But, as I very well remember that Mr. Onslow did in fact carry these rules into execution, to a certain point, the fault has not been in the want of rules, or of authority in the Chair to support those rules, if the Speaker thought proper to exercise that authority. The neglect of these orders has been the principal cause of the House sitting so much longer of late years than it did formerly; Members not only assume a

liberty of speaking beside the question, but, under pretence of explaining, they speak several times in the same debate, contrary to the express orders of the House. //155-1// And though, as is said on the 10th of November, 1640, any Member 'may,' yet Mr. Speaker 'ought,' to interrupt them; for the Speaker is not placed in the Chair, merely to read every bit of paper, which any Member puts into his hand in the form of a question; but it is his duty to make himself perfectly acquainted with the orders of the House, and its ancient practice, and to endeavour to carry those orders and that practice into execution. If, upon repeated trials, he should find that the House, in contempt of the order of the 22d of January, 1693, refuse to support him in the exercise of his authority, he will be then justified, but not till then, in permitting, without censure, every kind of disorder; viz.

Members speaking //155-2// twice, or oftener, in the same debate, the 14th of May, and 23d of June, 1604, and 24th of April, 1621.

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Members speaking impertinently, or beside the question—the 28th of June, 1604.

Using unmannerly or indecent language against the proceedings of the House—the 13th and 16th of February, 1606; the 9th of May, 1626; the 27th of May, 1641; and the 7th of December, 1666.

Or against particular Members—the 7th, 8th, and 9th of May, 1621; the 6th of August, 1625.

Using the King's name irreverently, or to influence the debate—the 5th of March, 1557; the 4th of May, 1624, in the Journal, page 697; the 5th of April, 1715.

Hissing or disturbing a Member in his speech—the 20th of June, 1604; and the 8th of February, 1661.

Walking up and down the House, standing on the floor, in the gangways, or in the gallery—the 10th of February, 1698; and the 16th of February, 1720.

Taking papers and books from the Table, or writing there, to the great interruption of the Clerks—the 3d of April, 1677; and the 25th of March, 1699.

Crossing between the Chair and a Member that is speaking—or between the Chair and the Mace, when the Mace is off the Table.

All these rules I but too well remember that Mr. Onslow endeavoured to preserve with great strictness, yet with civility to the particular Members offending; though I do not pretend to say, that his endeavours had always their full effect. Besides the propriety, that in a senate composed of Gentlemen of the first rank and fortune in the country, and deliberating on subjects of the greatest national importance—that in such an {157} assembly, decency and decorum should be observed, as well in their deportment and behaviour to each other, as in their debates—Mr. Onslow used frequently to assign another reason for adhering strictly to the rules and orders of the House:—He said, it was a maxim he had often heard, when he was a young man, from old and experienced Members, "That nothing tended more to throw power into the hands of Administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules—That the forms of proceeding, as instituted by our ancestors, operated as a check and controul on the actions of Ministers, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power." So far the maxim is certainly true, and is founded in good-sense—that, as it is always in the power of the majority, by 'their numbers,' to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding; which have been adopted, as they were found necessary, from time to time, and are become the Standing Orders of the House; by a strict adherence to which, the weaker party can only be protected from those irregularities and abuses, which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities.—I remember a story of Mr. Onslow, which those, who ridiculed his strict observance of forms, were fond of telling; That, as he often, upon a Member's not attending to him, but persisting in any disorder, threatened to name him, "Sir, Sir, I must name you:" On being asked, what would be the consequence {158} of putting that threat into execution, and naming a Member, he answered, "The Lord in Heaven knows!"—from whence they collected, that it was nothing but a threatening expression of his own, that would have no consequence at all. //158-1//

He might have referred them to the Journal of the 5th of May, 1641, or of the 22d of January, 1693, where they would have found, that if the Speaker is compelled to name a Member, such Member will thereby incur the displeasure and censure of the House.

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SPEAKER

His Duty in other Particulars.

1. On the 24th of March, 1603, upon a division, it belongs to the Speaker's place to appoint Tellers, two of either part indifferently.

2. On the 27th of April, 1604, agreed for a rule, That if any doubt arise upon a Bill, the Speaker is to explain, but not to sway the House with argument or dispute.

3. On the 23d of May, 1604, there is a very curious entry in the Journal, on the Speaker's having been guilty of an irregularity, in delivering to the King a Bill, of which the House had been in possession.

4. On the 21st of June, 1604, agreed for a rule, That when Mr. Speaker desires to speak, he ought to be heard without interruption, if the House be silent, and not in dispute.

5. On the 9th of March, 1620, there is a long debate, in which the conduct of //159-1// the Speaker is very much blamed; "That he came out of the Chair without consent of the House, being required by the greater voice of the House to sit still."—That he sometimes neglects his duty to the House, in intricating or deferring the question, and hath made many plausible motions abortive.—"That Mr. Speaker is but a servant to the House; and not a master, nor a master's mate; {160} and that he ought to respect the meanest Member, as well as those about the Chair."

6. On the 20th of April, 1640—see the debate on the Speaker's having adjourned the House the last day of the last Parliament, without leave of the House; and refusing to put a question that was moved; and the House resolve this behaviour to be a breach of privilege, though after a verbal command from the King to adjourn.

7. On the 28th of January, 1677, complaint is made of an irregular adjournment of the House by the Speaker; which he justifies himself to have done, by the King's command. —See a very good account of the debate upon this question, in the 5th volume of Grey's Debates, page 5, and 122.

8. On the 19th of December, 1678, a standing order is made. That Mr. Speaker shall not at any time adjourn the House, //160-1// without a question first put, if it be insisted upon.

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OBSERVATIONS.

The Speaker, though he ought upon all occasions to be treated with the greatest respect and attention by the individual Members of the House, is in fact, as is said on the 9th of March, 1620, but a servant to the House, and not their master: and it is therefore his first duty, to obey implicitly the orders of the House, without attending to any other commands. This duty is extremely well expressed, in a very few words, by Mr. Speaker Lenthall; who, when that ill-advised monarch, Charles the First, came into the House of Commons, and, having taken the Speaker's Chair, asked him, "Whether any of the five Members that he came to apprehend, were in the House? Whether he saw any of them? and Where they were?" thus answered,

"May it please Your Majesty,
"I have neither eyes to see, nor tongue to speak, in this place, but as the House is pleased to direct me; whose servant I am here; and humbly beg your Majesty's pardon, that I cannot give any other answer than this, to what your Majesty is pleased to demand of me."

I have always very much admired the cool temper of Rushworth, who was at this time Clerk Assistant, and, as he tells us himself, //161-1// without being alarmed or astonished at this very new and extraordinary scene, had the presence of mind to take down the King's speech, and the Speaker's answer, in short-hand, at the table, as they spoke them; which the King observing, sent for him that evening, and with some {162} difficulty obtained a copy of his notes. The uncommonness of the transaction had, I suppose, made him neglect the order given to him by the House, on his appointment to his office, on the 25th of April, 1640: "That Mr. Rushworth do not take any notes here, without the precedent directions and command of the House, but only of the orders and reports made in the House."

The Speaker ought to be very cautious, and pay an exact attention to the rule laid down on the 27th of April, 1604, "That 'in matters of doubt' he is 'to explain,' but not to sway.' In matters of doubt, or if he is referred to, to inform the House in a point of order or practice, it is his duty to state every thing he knows upon the subject, from the Journals, or the History of Parliament; but he ought not to argue, or draw conclusions from his information. //162-1// He has no voice, but to utter the sense of the House, when declared.

If, however, as has frequently happened, the numbers upon a division should be equal, //162-2// and it thereby becomes the Speaker's {163} office to give a casting voice, it has been sometimes usual, in giving this vote, to give, at the same time, the reasons which induce him to it; //163-1// but, at that moment, all possibility of his swaying or influencing the House by these reasons is past.

Though it is a standing order, that the Speaker shall not at any time adjourn the House without a question, it is a most ancient rule of the House, that forty Members ought to be present on the decision of every question; and therefore, as we have seen before, when it appears that forty Members are not present, the practice of the House has been, for the Speaker, if it is past four o'clock, to adjourn the House from his own authority, 'without any question,' and it is so expressly stated in the entries in the Journal.

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SPEAKER.

His Rank.

By the 1st of William and Mary, chap. the 21st, intitled, "An Act for enabling the Lords Commissioners for the Great Seal to execute the office of Lord Chancellor, or Lord Keeper," it is enacted, "That the said Commissioners, not being Peers, shall have and take place next after the Peers of this realm, and //164-1// Speaker of the House of Commons."

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CLERK.

His Appointment, and the Officers under him.

1. On the 7th of May, 1604, the Clerk being ill, desires leave, by letter to the Speaker, to appoint a Deputy to supply his place; which was done by one Cadwallader Tydder, an ancient Clerk, that had been servant to Mr. Onslow, the former Clerk of this House, and had once or twice supplied the place in his time. //165-1//

2. On the 25th of April, 1640, resolved, upon question, That Mr. John Rushworth shall be admitted as a Clerk Assistant in this House, at the request of the Clerk himself.

3. On the 25th of April, 1660, William Jessop, Esquire, is chosen by the House of Commons in the Convention Parliament, to be their Clerk, and Ralph Darnall, Esquire, to be Clerk Assistant.—This was immediately before the King's return. Afterwards, on the 11th of September, 1660, it is resolved, "That William Jessop, Esquire, be humbly recommended by the House to the King, to be Clerk of this House; and that his Majesty will be pleased to grant the said office of Clerk of the Commons House of Parliament, to the said: William Jessop for life, by letters patent under the Great Seal {166} of England, with all such fees, salaries, and allowances, as have heretofore been granted to any Clerk of the Commons House of Parliament." On the 13th of September, Mr. Annesley reports his Majesty's consent; and on the 27th of December a message is sent to the Lord Chancellor, to hasten the passing of the patent.

4. On the 22d of January, 1688, on the meeting of the Convention Parliament, Paul Joddrell, Esquire, is appointed Clerk, and Samuel Gwillym, Esquire, Clerk Assistant: And on the 6th of March following, Mr. Gwillym desires to quit the service of the House; which the House agree to.

5. On the 25th of March, 1698, ordered, //166-1// That the Clerk of the Crown do attend this House, 'in his place,' to-morrow morning.

6. On the 28th of March, 1726, //166-2// Mr. Jodrell, by reason of his age and infirmities, desires that Mr. Aiskew may be permitted to assist at the Table; accordingly Mr. Stables, who was Clerk Assistant, by Mr. Speaker's direction, took, the Clerk's chair, and Mr. Aiskew was called in.

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7. On the 20th of January 1725, Mr. Aiskew had before officiated at the table, during an illness of Mr. Stables, the Clerk Assistant.—On the 1st of February, 1727, Mr. Aiskew, then Clerk Assistant, is indisposed, and

another person is proposed by the Clerk, to assist him in the mean time. So on the 25th of February, 1729, and frequently afterwards.

8. On the 10th of February, 1747, the Speaker acquaints the House with a letter he had received from Nicholas Hardinge, Esquire, Clerk, in which he informs him, that he had resigned the office; Mr. Speaker also acquaints the House, that his Majesty will in a few days appoint another person to succeed Mr. Hardinge; and on the 15th of February, Mr. Dyson being appointed, is called in, and takes his seat at the Table.

9. On the 13th of November, 1755, the Speaker acquaints the House, that Mr. Dyson desired to be absent, on account of the indisposition of a near relation. Mr. Poyntz is ordered to attend at the Table during his absence.

10. On the 20th of December, 1759, the Speaker acquaints the House, that the Clerk, and Clerk Assistant, are so much indisposed, as not to be able to attend their duty; Mr. Yeates ordered to attend in their absence.

11. On the 28th of March, 1764, Clerk Assistant desires to be absent for a few days, upon particular business; //167-1// on the 29th, Mr. White is to attend in his absence.

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OBSERVATIONS.

The office of Clerk of the House of Commons, or, as it is sometimes called, “Clerk of the Commons House of Parliament,” or, perhaps still more properly, as it is stiled in the patent, “Under Clerk of the Parliaments, to attend upon the Commons,” is an office granted by the King, //168-1// for life, by letters patent, to be exercised by himself or Deputy, with an ancient salary of 10 £ payable half yearly at the Exchequer. Before the Clerk enters upon his office, he takes the following oath, kneeling upon his knees, before the Lord Chancellor; which oath is administered by the Clerk of the Crown. “Ye shall be true and faithful, and troth you shall bear to our Sovereign Lord George the Third, by the Grace of God, King of Great Britain, France, and Ireland, and to his heirs and successors; ye shall nothing know, that shall be prejudicial to his Highness his crown, estate, and dignity royal, but that you shall resist it to your power, and with all speed ye shall advertise his Grace thereof, or at least some of his Council, in {169} such wise as the same may come to his knowledge. Ye shall also well and truly serve his Highness, in the-office of Under Clerk of his Parliaments, to attend upon the Commons of this realm of Great Britain, making true entries, remembrances, and journals of the things done and

past in the same. Ye shall keep secret all such matters as shall be treated in his said Parliaments, and not disclose the same before they shall be published, but to such as it ought to be disclosed unto. And generally ye shall well and truly do and execute all things belonging to you to be done, appertaining to the said office of Under Clerk of the Parliaments, As God you help, and by the contents of this book." //169-1//

By virtue of his office, the Clerk has not only the right of appointing a deputy to officiate in his stead, //169-2// but has the nomination of the Clerk Assistant, and all the other Clerks without doors. Formerly the appointment to these offices made a considerable part of the Clerk's income, as it was the usual practice to sell them; but when Mr. Dyson came to the office of Clerk, though he had purchased this of Mr. Hardinge, for no less a sum than six thousand pounds, he, with a generosity peculiar to himself, and from a regard to the House of Commons, that the several Under Clerkships might be more properly filled, than they probably would be, if they were sold to the best Bidder, first refused this advantage, and appointed all the Clerks, whose offices became vacant in his time, without any pecuniary consideration whatever. I was the first that experienced {170} this generosity, as Clerk Assistant, to which office Mr. Dyson appointed me, //170-1// not only without any gratuity on my part, but indeed without having any personal acquaintance with me, till I was introduced to him by Dr. Akenside, and recommended by him, as a person that might be proper to succeed Mr. Reid, then just dead, as Clerk Assistant. This office, at the time I received it from Mr. Dyson, 'gratis,' he might have disposed of, and not to an improper person, or one unacquainted with the business of the House of Commons, for 3000 l.— Mr. Dyson's successors, i.e. Mr. Tyrwhitt and myself, have thought ourselves obliged to follow the example which he set; but it is one thing to be the first to refuse a considerable and legal profit, and another, not to resume a practice, that has been so honourably abolished by a predecessor.

The first Clerk that appears upon the Journal, is 'Seymour,' who was Clerk in the reign of Edward VI. And from whom the Journal of that reign, and to the 9th year of the reign of Queen Elizabeth, takes its name, and is called "Seymoure." It should seem, from the report which is entered in the Journal on the 31st of May, 1742, that this Gentleman continued to be Clerk till the year 1569, when he was succeeded by 'Mr. Fulk Onslow,' from whom the second Journal, beginning the 2d of April, in the 13th year of Queen Elizabeth, and ending the 17th of March, in the 23d year of her reign, is called after his name, "Onslow." It appears from D'Ewes's Journal, that on the 11th of February, 1588, Mr. Speaker moved the House in behalf of Mr. Fulk Onslow, the Clerk, "that having of late been sick, and still weak,

and enjoying his office by letters patent of the grant of her Majesty, {171} to exercise the same by himself, and his sufficient deputy or deputies, it might please the House, in his absence, (if he shall happen, in regard of his health and necessary ease, sometimes to withdraw himself from the exercise of his office in this House, in his own person) to accept therein the attendance and service of some of his own Clerks or servants;" which was so granted and assented to by the whole House accordingly. Before this, on the 15th of February, 1586, //171-1// Mr. Serjeant Puckering, then Speaker, informed the House, that "Mr. Fulk Onslow, their Clerk, being then so weakened by sickness, that he could not at present exercise his place, had appointed Mr. William Onslow, his kinsman, 'a Member of this House,' here present, to supply it; and therefore asked their allowance; which they willingly granted. It appears from D'Ewes, //171-2// that this Mr. William Onslow, 'the Member,' was extremity negligent or inexperienced in his duty; so that when Mr. Fulk Onslow, the Clerk, found himself again unable to attend, instead of desiring the assistance of his kinsman, he availed himself of the leave of the House, granted on the 11th of February, 1588, and on the 3d of November, 1601, appointed Cadwallader Tydder, his servant, to execute the place in his absence, as Deputy, until he should recover his health. //171-3// From hence it appears, that Mr. Fulk Onslow continued in the office of Clerk from the year 1569, throughout the remainder of the reign of Queen Elizabeth.

On the meeting of the first Parliament of James I. on the 19th of March, 1603, Ralph Ewens, Esquire, is named in the Journal, as attending the Lord Steward, as Clerk of the House of Commons. How long Mr. Ewens enjoyed {172} that office, or who was Clerk during the remainder of the reign of James I. or in the four first Parliaments of Charles I. I don't know; but it appears from an entry in the Journal, of the 27th of December, 1660, that Mr. Elsyng was Clerk during the first years of the Long Parliament, and that 'he deserted that service' in 1628, on the death of the King. The writer of his life, in the Biographia Britannica, says, "that Archbishop Laud procured him this office, and that he proved of infinite use, as well as a singular ornament to that House of Commons." //172-1//—It seems from the Journal of the 26th of December, 1648, that Mr. Elsyng appointed a Mr. Phelpes, his Deputy; for there is an entry, "Resolved, that this House doth approve of Mr. Phelpes to officiate here, he 'procuring a deputation {173} from Mr. Elsyng." On the 1st of January, Mr. Elsyng writes a letter to the House, in which he leaves the disposal of his office to the House; but the House, instead of accepting of his resignation, resolve, "That Mr. Phelpes be, and is hereby appointed Clerk Assistant to Henry Elsyng, Esquire, Clerk of this House; and that Mr. Phelpes do sign in Mr. Elsyng's name:" And a Committee is appointed, "to

consider of, and present the names of fit and able persons, that a sufficient Clerk may be elected out of them, to be Clerk of this House." On the 5th of January, 1648, just before the King's death, Mr. Elsyng's patent is called in, and Henry Scoble, Esquire, is nominated and appointed Clerk in his place and stead, and Ralph Darnell, Esquire, is appointed Clerk Assistant. On the next day, Mr. Scoble is ordered to attend, and officiate as Clerk; and a Committee is appointed to prepare a letter, to be signed by Mr. Speaker, and to be sent to Mr. Scoble, for that purpose. On {174} the 30th of August, 1649, on the report from a Committee appointed to consider of the fees and salaries of the Officers of the House, it is ordered, "that £500 per annum, together with the office of 'Clerk of the Parliament' (there being at this time no House of Peers) be granted, under the Great Seal, to Henry Scoble, Esquire, in the usual form, during his life." He had been appointed to this office, on the abolition of the House of Lords, by an Act of Parliament passed on the 14th of May, 1649. On the 4th of September, 1654, the day of the meeting of the first Parliament called by Cromwell, Mr. Scoble coming into the House of Commons as Clerk, it was excepted to by some Members, that he came in before he was chosen; upon which he withdrew, and after some time was called in again, and acquainted by William Lenthall, Master of the Rolls, as Speaker, "that the House had 'chosen him' to be their Clerk," and it was ordered to be so entered. On the 10th of October, Mr. Darnell is approved of to be Clerk Assistant.—This was the first Parliament called by Cromwell, as Protestor; though in the Assembly which met on the 5th of July, 1653, Mr. Scoble had been appointed Clerk. Notwithstanding that Mr. Scoble had been so often approved of for this office, and had actually been confirmed in it by Act of Parliament for his life—and had besides, as appears from the Journal of the 25th of January, 1657, received a new patent lately, from the Lord Protector, whereby he is made Clerk of the Parliaments for his life—yet the House of Commons, on the 20th of January, 1657, elect John Smythe, Esquire, to be Clerk; and on the 22nd, order Mr. Scoble to deliver over the Journals, Books, &c. belonging to the House, to Mr. Smythe; and on the 25th, notwithstanding {175} a representation from Mr. Scoble, they confirm these orders. The reason for this proceeding was, that on this day, the 20th of January, 1657, 'the other House,' first named by Cromwell, in the place of the House of Lords, then met; so that Mr. Scoble was really, by his patent, Clerk of that House, and not of the House of Commons.—At the meeting of the next Parliament, on the 27th of January, 1658, Mr. Smythe and Mr. Darnell are again appointed by the House, Clerk and Clerk Assistant. After the death of the Protestor, on the meeting of the Rump Parliament, Thomas St. Nicholas, Esquire, is appointed 'Clerk of the Parliament,' and Mr. Darnell, Clerk Assistant, the 13th of May, 1659, and a Bill is ordered for repealing the Act which had settled that office on Mr.

Scoble.—On the meeting of the Convention Parliament, the 25th of April, 1660, William Jessop, Esquire, is chosen by the House to be Clerk, and Mr. Darnell, Clerk Assistant; and it appears from No. 3, that Mr. Jessop afterwards received a patent from the King. He enjoyed his office for a very short time; for on the meeting of the new Parliament, on the 8th of May, 1661, William Goldsbrough, Esquire, attends as Clerk; and he probably continued till 1684, when, as it is stated in the report of the 31st of May, 1742, Mr. Jodrell succeeded to that office.—Mr. Jodrell exercised the duty of the office till the year 1726, when, from his great age, he was obliged to decline attending, having sat at the table forty-two years. Mr. Stables must have been appointed soon after, as he appears to have attended as Clerk, on the 15th of June, 1727. Mr. Hardinge's name first appears on the 13th of June, 1734, and he continued till the 10th of February, 1747, when he was succeeded by Mr. Dyson; {176} who quitted the office in August, 1762. Mr. Tyrwhitt succeeded him, on the 18th of August; and I succeeded Mr. Tyrwhit, on the 3d of June, 1768, on which day my patent is dated.

//176-1// The form of the appointment of the Clerk Assistant is—the Clerk informs the Speaker, that, with the approbation of the House, he has named such a person to be his Clerk Assistant; the Speaker acquaints the House with this nomination, and that the person so appointed attends at the door; he is then called in, and takes his seat at the table. //176-2//

It should seem //176-3// as if Rushworth was the first person appointed to this office, at least I have not met with the name of any person before him; probably the multiplicity of business which the Parliament found themselves engaged in, in 1640, made an additional Clerk necessary.

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The Clerk appoints all the other //177-1// Clerks without doors, and their Deputies, not by any written or formal appointment, but by his nomination only.

The reason why the appointment of the Clerk is sometimes entered in the Journal, at other times not, is according to the time at which the event happens; if it is during the sitting of Parliament, as in the case of Mr. Dyson, the transaction is entered in the Journal. If it is during a prorogation or adjournment, as was the case both of Mr. Tyrwhitt and myself, no notice is taken of it.

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CLERK.

His Duty.

1. On the 17th of April, 1628, the Lords desire the Journal of the House of Commons to be brought to a conference, that they may see the speech of a learned Member, in the 18th year of James the First; to which message the Commons answer, "That there was no resolution of the House, in the case mentioned; and that the entry of the Clerk of particular men's speeches, was without warrant at all times, and in that Parliament, by order of the House, rejected and left."

2. On the 25th of April, 1640, ordered, that Mr. Rushworth, just admitted Clerk Assistant, do not take any notes here, without the precedent directions and command of the House, but only of the Orders and Reports made in this House.

3. On the 1st of December, 1640, the Clerk and his Assistant are to be enjoined, that they suffer no copies to go forth, of any arguments or speech whatsoever.

4. On the 10th of December, 1641, Sir Arthur Haselrig moved the House against the Clerk, for suffering his Journals, or papers committed to his trust, to be taken by Members of the House from the table; {179} the House upon this declared, "That it was a fundamental order of the House, that, the Clerk, who is the sworn Officer, and intrusted with the entries, and the custody of the records of the House, ought not to suffer any Journal or record to be taken from the table, or out of his custody; and that if he shall hereafter do it, after this warning, that at his peril he shall do it." //179-1//

5. On the 1st of March, 1676, information being given of a mis-entry made in the Journal, in the year 1672, in prejudice of the privilege of this House, and of an omission of an entry in the Journal of this Session, a Committee is appointed to examine and rectify it, and report it to the House.

6. On the 24th of June, 1685, a clause is inserted in a Bill, for rectifying a mistake committed by a Clerk, in ingrossing a Bill of Supply.

7. On the 31st of May, 1742—See the report from the Committee appointed to consider of printing the Journals, with Mr. Hardinge's account of the state of the Journals in his custody.

OBSERVATIONS.

The duty of the Clerk is summed up in a very few words, in the oath which he takes, before he enters on the execution of his office:—"Ye shall make true entries, remembrances, and journals, of the things done and past in the House of Commons." This, which also comprehends his being attentive to the other Clerks under him, that they are exact in making the proper entries of the proceedings of Committees, in {180} obeying the order of the 18th of April, 1614, for affixing the orders for the meeting of Committees on the door of the House, and in the discharge of their other service to the House, includes the whole of his duty. We see it is 'without warrant,' that he should make minutes of particular men's speeches; and that he ought to confine himself merely to take notes of the orders and proceedings of the House. These he and the Clerk Assistant both do in their Minute-books at the table, and, from these minutes, the Votes, which are ordered to be printed, are made up 'under the direction of the Speaker.' At the end of the session, it is the Clerk's office to see that the Journal of that session is properly made out, and fairly transcribed from the Minute-books, the printed Votes, and the original papers that have been laid before the House; and this is commonly done during the summer vacation.

All Addresses to the Crown, and Orders of the House of Commons, whether for the attendance of persons, or bringing of papers, &c. must be signed by the Clerk, and this he always does with his own hand; it is his duty also to sign the Bills which have passed the House of Commons.—But the orders for bringing in Bills, for the appointment and meeting of Committees, and the other common orders of the House, are, for the sake of expedition, signed in his name by a Clerk without doors, who is authorized by the Clerk to affix his name to these papers.

As the Clerk ought to take notes of nothing but the Orders and Reports of the House, he is always under some difficulty, when //180-1// {181} exception is taken to the words of a Member, as irregular, and the House, or any number of Members, call out to have them taken down; as this call of particular Members, though even so general, is not properly, indeed cannot be, an Order of the House; and as it is always intended to have the words taken down, in order to ground a censure against the Member who used them, the Clerk ought not to be too ready in judging of the sense of the House, or in complying with this call.

I have looked over all the cases that I can find in the Journals, and have consulted Grey's Debates, to see whether I could collect from them any precise rule for the Clerk to follow upon these occasions; but I cannot

find that it is by any express order or authority that he takes down the words. In the case of Mr. Cook, the 18th of November, 1685; {182} of Mr. Manly, the 9th of November, 1696; of Mr. Caesar, the 19th of December, 1705; the entry in the Journal is in these words, "which were 'directed by the House,' to be set down in writing at the table," but does not express how "those directions of the House" were signified to the Clerk. In the instance of Sir Robert Cann, on the 28th of October, 1680, Mr. Powle says, "The words are to be written down by the Clerk." It appears from Grey's Debates, vol viii. p. 305, that great exceptions were taken to the words of Mr. Secretary Jenkins, on the 25th of March, 1681, on his refusing to carry up the impeachment of Fitzharris to the Lords, and the words are stated by a Member, but, notwithstanding this, it does not appear that they were actually written down by the Clerk. //182-1// Not finding therefore any precise rule, by which I am to judge "what are the directions of the House," and being of opinion, that the Speaker is the only person from whom the Clerk ought to receive the sense, or directions, or orders of the House; the rule I have laid down to myself, and observed upon these occasions, has been to wait for the directions of the Speaker, and not to consider myself as obliged to look upon the call of one Member, or any number of Members, as the directions of the House, unless they are conveyed to me through the usual and only channel by which, in my opinion, the Clerk can receive them. I was therefore put under very extraordinary difficulties, when, upon the 16th of February, 1770, exceptions were taken to some expressions, used from the Chair by the Speaker himself, but, notwith-standing the loud and repeated cries of several Members, and that I was often particularly called upon by Mr. Dowdeswell, and many others, to do my duty, and write down {183} the words, I recollected my own rule, and declined writing them down, till I had the consent of the Speaker for so doing: And if the Speaker had not given me that consent, I should have persisted in declining to take them down, and would afterwards have submitted the regularity of my conduct, in this particular, to the House, and received their explanation of the rule, Whether the Clerk is justified in obeying any other order or directions but what are signified to him by the Speaker?

When the House resolves itself into a Committee of the whole House, it has been always the practice for the Clerk Assistant alone, and not the Clerk, to officiate in this Committee, and from the circumstance it arises, that the office of Clerk Assistant is much the most laborious of the two, as the principal business of the House of Commons, particularly all enquiries into matters of trade, the state of any of our colonies, or of the East India Company, &c. &c. are generally carried on in Committees; and it is the duty of the Clerk Assistant to make out the reports from these Committees, and from Committees of the whole House on Bills.—The Clerk has properly

nothing to do in the House, but whilst the House is sitting, with the Speaker in the Chair.

There is a particular Clerk appointed to attend the Committee of Privileges; and, as the Committee of Privileges and Elections was formerly the same, the Clerk of the Committee of Privileges is now directed to attend the select Committee of Elections; and when two or more of these select Committees are sitting at the same time, the Clerk of the House appoints other Clerks to attend these, as deputies to the Clerk of the select Committees.

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There are also four principal Clerks without doors, appointed to attend Committees, who take their attendance by rotation; each of these four has a Deputy to assist him. There are also two Clerks who have the direction of the Ingrossing Office, and have writing Clerks under them, for the Ingrossing of Bills.

Besides these, there is a Clerk appointed expressly to collect the fees, and to distribute them to the Speaker, and to the Officers of the House' another Clerk, who has the custody of the Journals and papers, and who has several writing Clerks under him. The office of the Clerk of the papers, was formerly kept in the room, which was anciently the Court of Wards; from whence it has happened, that though this office has been frequently removed from place to place, the chamber in which it has been held, has been always improperly stiled, The Court of Wards.

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FEES.

1. On the 3d of May, 1604, a Bill for the establishment of certain lands, called Assart Lands, in the possessors and owners thereof, pays fees to Mr. Speaker's servant.

2. On the 27th of June, 1607, motion made, that a Bill for amending of highways in Sussex, Surrey, and Kent, might have expedition, Mr. Speaker 'answereth,' and informeth the House, that it was followed and pressed as a 'public' Bill, but was indeed, 'by all former precedents,' to be accounted and taken as a 'private' Bill, being only for three Shires; that no fees were paid for it to the Officers, nor any man took care to answer them; whereupon the House ordered, that ordinary duties should be performed, or else there should be no further proceeding in the Bill.

3. On the 14th of May, 1610, Sir Henry Poole reporteth the allowance agreed on by the Committee for messengers, viz. twenty shillings to the Serjeant for summons for every man, and twelve pence a mile, coming and going, for the messengers: which, after much dispute, was agreed to by the House.

4. On the 11th of July, 1625, a warrant for Mr. Wood, to answer his contempt to the House, in not paying fees for his Bill, to the Speaker, Serjeant, &c.

5. On the 15th of August, 1660, the High Sheriff of Cornwall, {186} being lately in custody of the Serjeant, and going privately out of town, without taking out his order of discharge, or paying his fees, is ordered to be again taken into custody, and safely kept till he shall pay his fees.

6. On the 17th of December, 1660, complaint being made, that the Serjeant had demanded excessive fees for the imprisonment of 'Mr. Milton,' it is referred to the Committee of Privileges, to examine, and to determine what is fit to be given to the Serjeant for his fees in this case. //186-1//

7. On the 19th of December, 1661, the House being informed, that divers persons, whose names are inserted in a naturalization Bill, had refused to pay fees; it is ordered, That Mr. Speaker do send for such persons, and all other persons, who shall at any time refuse to pay their fees, and if payment be not thereupon made, to report to the House, that such course may be taken, as shall be thought fitting, for the enforcing

thereof. On the 7th of February, this course is, by ordering the names of such persons, as have not paid the dues of the House, to be struck out of the Bill—And on the 10th of April following, those persons who were ordered to attend the Speaker, to give satisfaction about the fees, refusing to attend, are ordered to attend the House, to answer this refusal and contempt, and the matter objected against them for not paying {187} their fees.—See the 6th of May, 1664, 17th of May, 1689, and 21st of May, 1702; where persons refusing to pay fees, their names are ordered to be struck out of the Bill.

8. On the 28th of June, 1689, on a complaint against the Serjeant for taking excessive fees, a Committee is appointed to examine, what fees are due to the Officers of the House. But they make no report.—On the 26th of March, 1690, a table of fees is ordered to be prepared, and presented to the House; which is presented to the House, by Mr. Speaker, on the 23d of-April: A Committee is appointed to examine it; but they make no report.—Another Committee is appointed for the same purpose, on the 20th of December, 1695; and another on the 13th of November, 1696; but I cannot find that either of them made any report.—See the 25th of March, 1695.—Table presented.

9. On the 20th of April, 1698, leave given to pass a naturalization Bill, 'gratis,' in consideration of the services rendered to the public by the person to be naturalized.

10. On the 29th of January, 1699, complaint being made, that the messengers belonging to the House had demanded money of persons summoned by them to attend, 'it is declared,' That no person summoned to attend the House, or Committees, as witnesses, ought to pay any thing for their being so summoned:

11. On the 29th of January, 1699; a Committee is appointed to inspect and settle the fees to be taken by the Officers of the House. Their report was ready, and ordered to be received {188} on the 26th of February, but was not received in this session. On the 26th of February, 1700, a table of fees is laid before the House, by the Clerk, in pursuance of an order of the 15th; this table is referred to a Committee, to inspect, and report their opinion upon it; but they never make any report.

12. On the 7th of March, 1699, ordered and declared, that all Bills relating to the poor, be deemed and taken to be public Bills, and pass without paying fees for the same. //188-1//

13. On the 4th of April, 1700, complaint being made of an exorbitant and scandalous Bill of charges delivered by a Solicitor, in respect of a petition presented in the last session of Parliament, highly reflecting, in many articles, upon the honour of the House and its proceedings; the Solicitor is ordered to be taken into custody.

14. On the 4th of April, 1707, resolved, That when any person is ordered to be taken into custody, and shall either abscond from justice, or, having been in custody, shall refuse to pay the just fees—in these cases, the order for commitment shall be renewed in the next session of Parliament, And this declared to be a standing order. See the instances of this order being {189} carried into execution, on the 22d of December, 1711; 22d of April, 1713; 16th of August, 1714; 30th of April, 1715; 24th of January, 1725; 22d of January, 1733; 23d of March, 1738.

15. On the 12th of April, 1709, the House, taking into consideration the great losses which have already and will hereafter arise to the Clerk, and other Officers of the House, from the general naturalization Bill, and from the late orders made concerning the passing of private Bills through the House, address the Queen to give them some recompence and encouragement.—See the Queen's answer on the 20th of April.

16. On the 28th of January, 1731, a Committee is appointed to inspect and settle the fees to be taken by the Officers of the House; on the 22d of February, they report a list of fees, settled according to that of the year 1700, with resolutions, that no Officer do presume to take more.—And these are made standing orders.—On the 5th of March, 1750, this table is referred to the consideration of a Committee, to inspect, and to report their opinion upon it; on the 4th of June, 1751, they report several resolutions, with a paper delivered in by Mr. Dyson, at that time Clerk, relating to the distinctions between public and private Bills, and single and double Bills.—On the 13th of June these resolutions are agreed to.

17. On the 2d of June, 1746, a Committee is appointed to enquire into the fees taken by the Serjeant and Messengers; on the 16th of June, they report several cases from the Journals, and their resolutions; which see on the 16th and 19th of June, and also on the 13th of June, 1751.

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OBSERVATIONS.

It appears from very early cases, that the Officers of the House of Commons were always intitled to certain fees and perquisites from such persons as were benefited by the passing of 'private Bills.' So long ago as the year 1607, this distinction is made between 'public' and 'private' Bills; and the Speaker says, "That the Bill for amending the highways of three counties, though followed as a 'public Bill,' is, 'by all former precedents,' to be accounted a 'private Bill,' being only for three Shires."

And the House order the ordinary fees to be paid. In the letters patent, by which the office of Under Clerk of the Parliaments is granted by the King, and which have probably been copied, one from another, ever since the separation of the two Houses, //190-1// there is a grant of ten pounds of lawful money of Great Britain, payable half yearly, at the Exchequer, "together with all other rewards, dues, rights, profits, commodities, advantages, and emoluments whatsoever, to the said office, after what manner soever, or howsoever, now or heretofore, anciently appertaining, incident, accustomed, incumbent, or belonging."

It has been the opinion of several Antiquarians, I know it was that of Mr. Onslow, that when the two Houses first separated, and sat in different places, the Under Clerk of the Parliament went with the Commons; and he has accordingly from that time, in his appointment, and in several public instruments, been stiled "Under Clerk of the Parliaments, attending upon the Commons." What these rewards, dues, rights, profits, &c. were anciently, it is difficult to {191} ascertain, nor do I know of any thing to lead to this information, earlier than a table of fees, which is entered in the Journal of the 30th of August, 1649, and which is reported from a Committee, appointed on the 15th of February, 1648, to consider what was fit to be allowed to this (at this time) new Officer of the State; for the House of Lords was abolished a few days before, viz. on the 6th of February.—I have searched among the papers in my office, for the table of fees which was laid before the House, by the Speaker, on the 23d of April, 1690; but, being referred to a Committee, it fell into the hands of the Clerk attending that Committee, and was never returned to the House.—The earliest table therefore of the fees, claimed by the Speaker, and the other Officers of the House of Commons, is that which was produced by Mr. Jodrell, on the 26th of February, 1700; and it appears, by the report of the Committee, of the 4th of June, 1751, that that table had been in general the rule of demanding and taking fees, ever since the year 1700. So that from that period of the year 1700, to this day, these rewards, dues, rights, &c.

have been fixed and ascertained; and, such as they were then established, they now continue to be demanded and taken.

There has been at all times some difficulty in settling, between the parties applying for or interested in Bills, and the Officers of the House, what are //191-1// 'public' and what 'private' Bills, and which are 'single' or which 'double' Bills. The House, in the year 1607, thought that a Bill, "being only for the advantage of three Shires," was a 'private' Bill. The resolutions of the, House, formed upon the information of that able {192} and 'disinterested' Officer, Mr. Dyson, with Mr. Onslow in the Chair, endeavour, on the 4th of June, 1751, to clear up this difficulty, with as much precision as words are capable of expressing; and I should think this report, with the subsequent practice of the House (which is to be known by referring to the precedents in the book kept by the Clerk of the fees) might be sufficient to decide upon every question that can arise. And yet it still happens, that, where an application is made by a large body of merchants, for purposes obviously for the benefit of the community, though attended with their own private advantage, {193} the officers of the House are, from delicacy, under difficulties of bringing themselves to insist upon what, however, in strictness and justice, is their legal right. The rule, which has been lately followed in disputes of this sort, has been to desire that any two or three Members, even of those who with most to promote the application, would give themselves the trouble to read the report of the 4th of June, 1751, and would consult the Clerk's book for the practice in similar cases, and, whatever should be the result of their opinion upon this enquiry, to acquiesce in that opinion.—This mode of proceeding has always appeared to {194} me to be more liberal, than obstinately to persist in a demand, which, though strictly lawful, must, if refused, trouble the House to give their decision upon every particular case. //194-1//

It has been sometimes proposed, to take away the fees of the Speaker, Clerk, &c. and to substitute in their place a salary from the public; the immediate consequence of this operation would be, that the overflowing of private applications, which at present very much interrupt the public business, would overwhelm every thing else, and it would be impossible for the Speaker, or the Officers under him, any longer to attend to the Bills of the public.

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KING.

Calls the Parliament.

1. In the first volume of the Parliamentary History, page 233, it is said, that it appears by the date of the writ of summons to the Parliament, which met on the 29th of March, 1340, that, in case of absolute necessity, a Parliament might be then called within less than forty days.

2. In the second volume of the Parliamentary History, page 437, it is said, that the writ of summons to Parliament bore date the 15th of September, 1497, for the Parliament to meet on the 14th of October following.

3. In the seventh volume of the Parliamentary History, page 334, Sir Robert Cotton, in a most excellent speech that he makes before the Council, in the year 1627, says, "If the time of the usual summons to Parliament, reputed to be 40 days, be too large for the present necessity, it may be shortened, since it is against no positive law."

OBSERVATIONS.

This question, Whether 'by law,' the King could summon a Parliament to meet without forty days notice, is now finally {196} determined by the Act of the 7th and 8th of William III. chap. 25, sect. 1. By which it is enacted, "That when any new Parliament shall be summoned or called, there shall be forty days between 'the teste' and returns of the writs of summons;" in order, not only, as Sir Robert Cotton says, "that there may be one County day after the Sheriff hath received the writ, before the time of sitting," but that sufficient notice may be given throughout every part of the kingdom, and time allowed for the elections, and the coming up of Members to Parliament.—By the 22d article of the Treaty of Union, after impowering the Queen to appoint the Parliament of Great Britain to meet at such time and place as she should think fit, it is resolved, "That such time shall not be less than fifty days after the date of her Proclamation to be issued for that purpose." Those additional ten days were certainly allowed, on account of the distance of some parts of Scotland, from whence the Members were to come up. And upon this consideration, on the calling of every subsequent Parliament from that time to the present, it is very remarkable, that, though no positive law has been made upon this subject, fifty days have always been allowed between the teste, and return of the writs of summons. So that from this uniform practice without a single exception, and grounded upon the same reason, which first suggested that alteration in the year 1707, it may now be

considered as the established law of Parliament, that, upon the summoning of a new Parliament, there ought to be fifty days at the least, between the teste of the writs, and the day on which such writs are made returnable.—Though it is the undoubted prerogative of the Crown to judge of the expediency of calling a Parliament, and to determine at what time the writs shall issue; //196-1// yet this prerogative is limited by two {197} Acts of Parliament, (1.) the 16th of Charles II. chap. 1; and (2.) the 6th of William and Mary, chap. 2; both of which reciting, that "whereas by the ancient laws and statutes of this {198} realm, frequent Parliaments ought to be held," enact, "that from henceforth a Parliament shall be holden once in three {199} years at the least;" that, in obedience to these laws, the Ministers of the Crown are bound to take care, "that the sitting and holding of Parliaments shall not be intermitted or discontinued above three years at the most." And it is their duty to give directions for issuing the writs of summons, accordingly.—Notwithstanding this recital of the 16th of Charles II. "That by the ancient laws of the realm, Parliaments ought to be held often" yet, when in the same reign, in the year 1680, petitions were set on foot, desiring the King to call a Parliament, the King set out a proclamation against them; and upon that, a set of counter petitions were promoted by the Court, expressing an abhorrence of all seditious practices, and referring the time of holding the Parliament, 'wholly' to the King. //199-1// As soon, however, as the Parliament met, their first business was to take this matter into consideration; and on the 27th of October, 1680, the House of Commons resolved, nem. con. "That it is, and ever hath been, the undoubted right of the subjects of England, to petition the King for the calling and sitting of Parliaments, and redressing of grievances." And in the course of the session, they proceeded against the Lord Chief Justice North, Sir Francis Wythens, and Sir George Jefferies, the Recorder, and others, for having been concerned in discouraging these petitions. //199-2//

There is a very extraordinary provision made, for the meeting of Parliament, by the statute of the 6th Anne, chap. 7, sect. 6. Viz. "That in case there is no Parliament in being, at the time of the demise of the Crown, 'that has met and sat,' {200} then the last preceding Parliament shall immediately convene, and sit at Westminster, as if the said Parliament had never been dissolved."—The same provision is made, and with the same expression, "that has met and sat," by the Regency Bill the 5th of George III. ch. 27, sect. 20. The construction of this expression, "that has met and sat," has been always understood to be "a Parliament, of which 'a session' has been held;" and to constitute 'a session,' //200-1// it has been held, that an Act of Parliament must have passed both Houses, and must have received the Royal assent. James the First, in his

commission for dissolving the Parliament, in 1614, //200-2// says, “Sed, pro eo quod nullus regalis assensus, aut responsio, per nos praestita suit, nullum Parliamentum, nec aliqua sessio Parliamenti, habuit aut tenuit existentiam.” //200-3//—And in compliance with this construction of the law, and to obviate those difficulties, and that confusion, which must arise on the meeting of a ‘dissolved’ Parliament, even though another Parliament should be actually elected and returned, provided this Parliament {201} “had not met and sat,” i.e. had not passed a Bill which had received the Royal assent; it was thought prudent, in the years 1754, and 1768, for the Parliament to meet ‘immediately’ on its election, and to pass a Bill, in order to constitute ‘a session.’—And indeed the confusion would be such, and the construction put upon these words, in the midst of that confusion, by those persons who should happen to be interested in the assembling of the ‘old’ or ‘new’ Parliament, would be so different, that, whenever I have considered this question, I have been surprized that an Act of Parliament is not immediately passed, to obviate all these difficulties; and to make it clear what ought to be done, if the event of the demise of the Crown should happen, either during the election of the new Parliament; or after the election, but before their meeting; or after their meeting, but before a Bill should be passed, so as to constitute it a legal session.

It appears from the Journal of the House of Commons, of the 22d of December, 1693, that in a Bill “for frequent calling of Parliaments,” which had passed the Lords, and was then depending, but was afterwards rejected, there was a clause, “That it should be understood to be a Parliament holden, if it be assembled, although it happen that no Act or judgment should pass, within the time of their Assembly.” //201-1//

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KING.

Opens the Session.

1. On the 18th of February, 1662, on the day of the meeting after a prorogation, Bills are read, writs issued, and Committees appointed, before the entry of the message from the King, to attend him in the House of Peers.

2. On the 16th of March, 1663, the King not being able to come on the day of the meeting, sends a message by a Secretary of State, on which the House adjourns for four or five days.

3. On the 20th of February, 1665, the House meeting on the day to which they were prorogued (after a proclamation had issued, giving notice of a further prorogation) issue warrants for new writs. The same

proceeding was about to be had, on the 23d of April, 1666, but was interrupted by the Black Rod.

4. On the 18th of September, 1666, a Bill was read, and writs issued, though, the King did not come to the House of Lords on that day.

5. On the 8th of September, 1690, the House being met, and the King not coming (being, as appears from the entry in the Journal of the House of Lords, though arrived in England, not yet come to London) the House adjourns till the 11th, and from the 11th to the 12th.

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OBSERVATIONS.

At the beginning of a Parliament, and at the commencement of every session after a prorogation, the cause of summons //203-1// must be declared to both Houses assembled, either by the King himself, or by some person by his command, or by persons authorised by his commission, before either House can proceed upon any business whatever. The proceedings, therefore, on the 18th of February, 1662, the 20th of February, 1665, and on the 18th of September, 1666, were certainly irregular. But notwithstanding that this declaration of the cause of summons is necessary for the opening of the session, and as it were, to give life and existence to the Parliament, the House of Commons are by no means obliged to proceed 'first' in the consideration of the matters expressed in the speech; and there are frequent instances of their postponing that consideration to other business, and sometimes for several days.—Indeed the usual practice, for several years past, has been, immediately on returning from the House of Lords, to read a Bill prepared of course by the Clerk, in order, //203-2// as I suppose, to assert the claim of not being obliged to give precedence to the subjects contained in the King's speech.—If the King is prevented by illness, or any other sudden cause, from coming himself, and no commission is prepared, for opening, or further proroguing, the Parliament, the House of Commons ought immediately to adjourn, as in the instances of 1663 and 1690.

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KING.

Adjourns the Parliament.

1. On the 18th of December, 1606, the Speaker adjourns the House, upon a message from the Lords, signifying the King's pleasure, "that the session should be adjourned."

2. On the 20th of May, 1607, Mr. Speaker signifies his Majesty's pleasure, "to adjourn this Court to Wednesday the 27th." On the 27th, Mr.

Speaker endeavours to clear himself, “having been challenged to adjourn the Court, without the privity of the House.” “But (he said) as the House had power to adjourn, so had his Majesty a superior power; and in his name, and by his direction, he did it.”

3. On the 30th of March, 1610, the King's pleasure signified, to adjourn from Tuesday to Monday sevennight; which is done accordingly.

4. On the 31st of May, 1621, Sir Edward Coke says, “the commission must be only declaratory of the King's pleasure, but the Court must adjourn itself.” And on the 4th of June, the Lords sending down a message with the King's commission for the adjournment (which is entered in the Lords Journals, with their proceedings upon it) the House decline hearing the commission read; but, after the departure of the messengers, “the House taking notice of his Majesty’s pleasure, {205} by his commission, ‘adjourns itself’ till the day appointed.” //205-1// And the same proceeding is held on the 14th of November.

5. It appears from Rymer, 17th volume, p. 324, that during this vacation, on the 6th of October, 1621, the King published a proclamation, signifying ‘his intention’ to have the Parliament further adjourned, from the 14th of November to the 8th of February; but it does not appear that any commission was made out or signed for that purpose; for on the 3d of November, the King published another proclamation, which is in Rymer, p. 326, signifying that he had altered his former resolution, and that he intended only to adjourn the Parliament from the 14th to the 20th of November. The Commission for this latter purpose is entered in the Lords Journals.

6. On the 11th of July, 1625, the Lords send a message, that they have received a commission under the Great Seal, for granting the Royal assent to Bills, and another commission for adjourning the Parliament, “which they are now ready to publish, if the House will come up and hear them.” The Commons send for //205-2// answer, “that they will most willingly attend to hear the commission read for 'the Royal assent;’ but desire they may not stay to hear the commission for the adjournment, but that they may depart: 'to adjourn themselves,' according to ‘the use and privilege' of their House.” And it appears from the Journals of the Lords, that this was so done accordingly.

7. On the 5th of April, 1626, the Chancellor of the Exchequer reports, that when the Members, appointed to attend {206} his Majesty with the remonstrance, had attended him accordingly, the King said, “he ‘expected

and desired' we would adjourn, as the Lords had done, till to-morrow sevennight." On putting the question, "Whether the House would accordingly adjourn to that time," it was carried by 150 to 120 for the adjournment.

8. On the 10th of April, 1628, Mr Secretary Coke brings a message from the King, "That his Majesty, for many weighty reasons, desires there may be no recess during the Easter holidays." It appears from the Parliamentary History, vol. vii. p. 435, that this message was not well pleasing to the House; it produces a debate, in which Sir Edward Coke says, "The King makes a prorogation, but 'this House adjourns itself; the commission of adjournment we never read, but say, 'This House adjourns itself.' " And on sending a message to the King, that the House would give all expedition to his service, "notwithstanding their purpose of recess," his Majesty answers, "That he wished them all alacrity in their proceedings, and that there be no recess at all."

9. On the 2d of March, 1628, the Speaker, Sir John Finch, as soon as he had taken the Chair, delivered a message from his Majesty, commanding him "to adjourn the House," till Tuesday sevennight following to this, several Members objected.—See the proceedings upon this, in the 8th volume of the Parliamentary History, p. 327, and the resolution of the House in the Journal of the 20th of April, 1640.

10. On the 31st of August, 1660, a message from the King, relative to a recess; on the 1st of September, it is ordered, That the Committee do represent to the Lords {207} (at a conference) that upon the next recess it will be most convenient for the House to adjourn themselves, and to offer these reasons: That if it should be a prorogation, or 'adjournment by writ' all matters depending before the House will be discontinued. On the 13th of September, the King, in his speech„ says, "Upon the desire and reasons given by the House of Commons, for an adjournment without a session, I did very willingly depart from the inclination I had to make a session, and do as willingly give you leave, and 'direct you,' that you adjourn yourselves to the 6th of November."—On their return, it is entered in the Journal, "That, according to his Majesty's leave and direction, they adjourn themselves to the 6th of November."

11. On the 30th of July, 1661, his Majesty, in his speech in the House of Lords, being pleased 'to direct' both Houses to adjourn to the 20th of November, the House 'resolve' to adjourn to that day.—So on the 19th of December, 1667, and 9th of May, 1668.

12. On the 11th of August, 1668, the House met; and "his Majesty having, by his proclamation, signified 'his pleasure,' that there should be a further adjournment to the 10th of November;" the House direct warrants to be issued for new writs, and then 'according to his Majesty's proclamation,' adjourn to the 10th of November.—See also the proceeding on the 10th of November.

13. On the 11th of April, 1670, the King, in his speech, having signified 'his pleasure,' that the House should adjourn to the 24th of October, the House adjourns accordingly. So on the 29th of March, 1675 and on the 5th of June, 1675, {208} where the King desires they would adjourn till the after noon.—See also, the 16th of April, and 28th of May, and the 16th of July, 1677.

14. On the 3d of December, 1677, message from the King, " 'that having given notice' by proclamation, //208-1// that he intended the Houses should be adjourned to the 4th of April, he now thought fit to meet them 'sooner;' and therefore his pleasure is, that this House be adjourned till the 15th of January."—See the entry on the 15th of January.

15. On the 15th of April, 1678, the King's pleasure signified in the House of Lords, to both Houses of Parliament, "that the Houses should adjourn." The House of Commons proceed to do business, and then 'upon the question,' adjourn themselves to the day appointed by the King.

16. On the 2d of July, and 4th of August, 1685, the House adjourns, in pursuance of the King's pleasure signified.—See also the 30th of October, 1707; and 14th of January, 1711; and 21st of June, 1712; and 27th of November, 1745; and 10th of December.—See also the 27th of May, and 18th of June, 1756.

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OBSERVATIONS.

I think we may collect from these instances, that it is the undoubted privilege of the House of Commons to adjourn themselves whether the King's pleasure is lignified by himself in person, or by his command, or by commission. It appears too from some of these cases, that the House, even after the signification of the King's pleasure, have proceeded to do business, and then have adjourned 'upon question,' and sometimes not without a division. It should therefore seem, that the House do not think themselves bound by law, in this case, to obey his Majesty's commands; but, if the nature of the business which is before them requires it, and they think it fitting, that they may continue to sit; and yet I have not found a

single instance where the House have not, however reluctantly, complied with his Majesty's pleasure, not only in adjourning 'on' the day, but 'to' the particular day, specified in the message.

It appears, however, from Grey's Debates, //209-1// that it is by no means an established doctrine, that they are obliged to pay this obedience; for, notwithstanding that the King had himself, in the House of Lords, required the House of Commons 'to adjourn immediately,' Mr. Powle, Sir T. Lee, and several others, on the 28th of May, 1677, attempted to speak, and were only prevented by the Speaker's, Sir Edward Seymour, springing out of the Chair, after having adjourned the House by his own authority.—This scene is repeated on the 16th of July, 1677, and on the 3d of December, and 15th of January: and on the 28th of January, this irregular behaviour of the Speaker's is {210} very severely censured by Mr. //210-1// Sacheverel, Lord Cavendish, Mr. Powle, and several others. On the 6th of February, 1677, the Speaker desires the House to appoint a day to consider of the adjournment of the House, which had been complained of, and tells them, "that if he be not otherwise ordered by the House, he shall do the same thing again, on the next occasion." On Saturday the 9th of February, this matter is again debated, and in Mr. Powle's speech, and Sir Edward Seymour's justification, besides a great deal of other Parliamentary learning, there is contained all that can be urged on both sides of this question. Nothing however was finally decided by the House; for a motion being made, in the middle of the debate, 'to adjourn,' this question was put, and carried by 131 to 121.

The proceedings of the House of Commons, in the years 1621 and 1625, on the King's commission for adjourning the Parliament, are very extraordinary. It appears from the commission itself, which is entered at length in the Journal of the House of Lords, //210-2// that this was a commission to certain Lords, to 'adjourn the Parliament,' and ought therefore to have been read, as is done in similar cases, to the two Houses 'assembled.' But in the latter instance, the Commons actually excuse themselves by message, from attending to hear the commission read, and the Lords acquiesce in this excuse; and in neither instance is the commission, though it is for adjourning 'the Parliament,' ever read in the hearing of the House of Commons.—They considered it only in the light of a message signifying the King's pleasure.

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However inconvenient the sudden alteration of the time of meeting, in 1677, might have been to particular Members, there was no irregularity, much less illegality, in the proclamation issued on the 26th of October, 1677, and the subsequent message on the 3d of December, //211-1// for

shortening the adjournment from the time originally designed. //211-2// For, in the first place, these proclamations were in fact nothing more than declarations of the King's intentions to do an act on a future day; which ‘intentions,’ before the day came, were certainly liable to be changed.—But farther—If the true Parliamentary doctrine is, what I believe it to be, 'that the King has no authority to adjourn the Parliament,' but can only signify his ‘desire,’ and that then it is in the wisdom and prudence of either House, to comply with his requisition or not, as they see fitting, then these proclamations could have no legal operation, and might be revoked or annulled at any time.

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KING.

Prorogues the Parliament.

1. On the 20th of February, 1665, the House meeting on the day to which they had been prorogued, after a proclamation had been issued for a further prorogation, direct writs to be issued.—The same proceeding was about to be had on the 23d of April, 1666, but was interrupted by the Black Rod; but on the 18th of September, 1666, a Bill was read, and writs issued, though the King did not come that day to open the session.

2. On the 8th of February, 1666, the King prorogued the Parliament to the 10th of October, 1667; but in the interval, by a proclamation dated on the 26th day of June, 1667, and which is entered in the Lords Journals, he summons them to meet, for dispatch of business, on the 25th of July.—On the 25th of July the House of Commons meet, and resolve on an Address to the King, about disbanding the army, and then, at the King's desire, adjourn themselves for four days; when, on the 29th of July, the King comes, and, making a speech to both Houses, prorogues them to the 10th of October, the day originally intended.

3. On the 6th of September, 1702, after a proclamation had issued to meet for dispatch of business, the Parliament is further prorogued to the 20th of October, and still forty days notice given.

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4. On the 21st of September, 1704, a proclamation is issued for further proroguing the Parliament from the 19th to the 24th of October, then to meet for dispatch of business: A notice of only thirty-three days,

5. On the 13th of January, 1712, the House meet, 'after proclamation’ to sit for dispatch of business, and are prorogued seven times before the opening of the session; but without any repeated notice.

6. On the 21st of December, 1716, a proclamation is issued for the Parliament to meet, for dispatch of business, on the 17th of January, a notice of twenty-seven days; they are, however, on that day, further prorogued, and afterwards meet, but without any other proclamation.

7. On the 13th of June, 1727, on the demise of George I. a proclamation is issued for meeting, for dispatch of business, on the 27th of June.—See the 6th of November, 1760, on the demise of George II.

8. On the 13th of November, 1727, a proclamation is issued for Parliament to meet, for dispatch of business, on the 11th of January; but on the 22d of December there is another proclamation, for a further prorogation, and meeting on the 23d of January.

9. On the 14th of December, 1730, a proclamation for Parliament to meet, for dispatch of business, on the 21st of January, being a notice of thirty-eight days.

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10. On the 30th of November, 1738, a proclamation is issued to sit, for dispatch of business, on the 18th of January; on that day the Parliament are further prorogued to the 1st of February, but without any new proclamation.

OBSERVATIONS.

I have observed before, //214-1// that, when the Parliament meets on the day to which it has been prorogued, it is irregular for them to proceed to do any business whatever till the cause of summons has been declared, and the session opened by the King, or persons authorised by him, in the House of Lords; and if, from any cause, the King does not come in person (as on the 8th of September, 1690) or send a commission for opening the session, or proroguing the Parliament, the House of Commons ought to do nothing but adjourn to a future day.

It has been often supposed, that it is necessary, ‘by law,’ to give forty days notice of the meeting of Parliament for ‘dispatch of business,’ both at the commencement of a Parliament and after a prorogation. But I apprehend this to be a mistake; it is now indeed determined by the statute, 7th and 8th of William III. chap 25, “that there shall be forty days between the teste and returns of the writs of summons;” but neither that Act, or any other that I know of, prescribes the time that is necessary to give notice of the {215} meeting ‘for dispatch of business:’ And in fact we see, in a very

late instance, the 14th of December, 1730, that a notice of only thirty-eight days ‘was’ given.

When notice has been once given by proclamation, that it is intended that the Parliament shall sit ‘for dispatch of business,’ if it is afterwards found necessary further to prorogue the Parliament, as was the case for several times together in the year 1712, when the Ministers waited for the final ratification of the peace of Utrecht, it does not appear to have been the practice for any further notice to be given. It is supposed, that all the Members attend in conformity to the first proclamation, and that therefore no further proclamation is necessary.—But notwithstanding that there is no positive law, which requires so long a notice as forty days of the sitting for dispatch of business (and indeed, if such a law was to be made, it might, in some instances, be attended with very great inconvenience, as when in the years 1689, 1707, and 1721, it was found expedient to //215-1// prorogue the Parliament for a few days) yet from {216} the almost constant practice since the Revolution, and from a principle of fairness, which requires all due notice to be given, (and that there may be no surprise, but that all the Members may have time to come up, or may not come up to town unnecessarily) I should think it very unadvisable for any Minister wantonly to depart from such a custom; and, unless it appeared to have been done from motives of real necessity, that he deserved the severest reprehension from Parliament.

I cannot find precisely, at what period this practice of giving notice by proclamation, “that the Parliament should meet for “dispatch of business,” began. //216-1// Anciently no such notice was necessary; the Parliament always met and sat on the day on which it was summoned to meet, and on the day to which it {217} was prorogued. But when it became the custom, //217-1// in the reign of Charles II. to make frequent and further prorogations, which made it inconvenient for Members to come up to town when it was not intended that the Parliament should actually sit, it is probable that, to obviate this inconvenience, this practice of giving notice was first in traduced. And yet I cannot find, in the Journals of either House, any proclamation entered in the present form, before the Revolution. The King indeed, in his speech //217-2// on the 9th of May, 1668, says, “I am willing you should adjourn to the 11th of August, and if there be no pressing occasion for your meeting then, I will give you notice by proclamation.” In another speech, on the 24th of October, 1670, he says, “Believing that the good of the kingdom will be best provided for when the Houses are fullest, I thought fit, by my proclamation, to summon you all to be here.” But neither of these proclamations are entered in the Journal.

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The regular and established practice, however, now is, that the Parliament is, in the course of the summer, prorogued from time to time, by Commissioners authorised by his Majesty, of which prorogations notice is always given by proclamation in Council; and, when it is intended that the Parliament shall actually sit 'for dispatch of business,' notice of this is specified in the proclamation; and that proclamation 'generally' bears date at least forty days before the day appointed for the meeting.

The measure taken by Charles II. in the year 1667, on the alarm given by the Dutch fleet coming up to Chatham, of calling together the Parliament, on the 25th of July, when they stood prorogued to the 10th of October, was, notwithstanding the opinion of Mr. Prynn, "who was privately carried to the King, to satisfy him, 'that upon an extraordinary occasion he might do it,' " clearly illegal; and, though it was carried in the Council against Lord Clarendon's opinion, his arguments upon that question were unanswerable. //218-1// If it had been then though absolutely necessary for the Parliament to meet, the proper measure was that which Lord Clarendon advised, of "dissolving the prorogued Parliament, and sending out writs for a new one, which might 'regularly' have met, a month before the prorogued Parliament could come together." For, at that time, there was no law in being, which ascertained any particular interval between the teste and return of the writs.

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At present, however, this difficulty, arising from the separation of Parliament in times of real danger, is removed by a special Act of Parliament. For by the statute of the 2d of George III. ch. 20, sect. 117, "If the Parliament shall, in case of actual invasion, or upon imminent danger thereof, or in case of rebellion, happen to be separated by such adjournment or prorogation as will not expire within fourteen days, it shall be lawful for his Majesty to issue a proclamation for their meeting, upon such day as he shall appoint, giving fourteen days notice:" And by the 16th of George III. ch. 3, this power is extended to cases of "rebellion in any part of his Majesty's dominions."

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KING.

Royal Assent to Bills.

1. In the 3d volume of the Parliamentary History, p. 298, there is cited from the Journals of the House of Lords //220-1// a preamble to the Ad: for reversing the Duke of Norfolk's attainder, in these words: "And may it please your Highness, that it be declared, by the authority of this present Parliament, that the law of this realm is, and always has been, that the assent and consent of the King of this realm, to any Act of Parliament,

ought to be given in his own presence, being personally present in the higher House of Parliament, or by his letters patent, under his Great Seal, assigned with his hand, declared and ratified in his absence, to the Lords Spiritual and Temporal, and the Commons, assembled together in the Higher House, according to the statute made in the 34th year of the reign of Henry VIII."

2. On the 1st of June, 1621, Sir Edward Coke says, "When Bills have passed both Houses, the King's Royal assent is not to be given, but either by Commission, or in person, in presence of both Houses." //220-1//

3. On the 4th of December, 1678, Charles II. having refused to pass the Militia Bill, sends a message to the House of Commons, declaring, that he will readily assent to another {221} Bill, under certain limitations." A Committee is immediately appointed, "to inspect precedents, touching the methods and proceedings of Parliament in passing of Bills;" but I do not find that they made any report.

4. On the 24th of March, 1680, notice is taken, that a Bill which had passed both Houses, had not been offered to the King for the Royal Assent. And the next day a conference is desired with the Lords on this subject, but the sudden dissolution of the Parliament prevented its being held.

5. On the 24th of February, 1691, and 14th of March, 1692, King William and Queen Mary refused the Royal Assent to three Bills, that had passed both Houses of Parliament.

6. On the 25th of January, 1693, the King refuses his assent to a Bill, touching free and impartial proceedings in Parliament. The House of Commons immediately appoint a Committee of the whole House, "to consider of the state of the kingdom."—See the report on the 26th of January, and the representation which followed it, on the 27th.

7. On the 10th of April, 1696, the King having refused the Royal assent to a Bill, a motion is made, on the 14th, for censuring the advisers of this measure, "as enemies to "the King and kingdom," but passed in the negative, 219 to 70.

OBSERVATIONS.

The statute alluded to in the preamble of the Act for reversing the Duke of Norfolk's attainder, is the 33d of Henry VIII. chap. 21, intituled, "Queen Catherine, and her complices, attainted of high treason:" The third

session is as follows: “Be it ‘declared’ by the authority of this {222} present Parliament, That the King's royal assent, by his letters patent under the great seal, and signed with his hand, and declared and notified, in his absence, to the Lords Spiritual and Temporal, and to the Commons, assembled together in the High House, is, and ever was, of as good strength and force as though the King’s person had been there personally present, and had assented openly and publicly to the same.” And in section the fourth, “Be it also enacted. That this Royal assent, and 'all other Royal assents,' hereafter to be so given by the Kings of this realm, and notified as is aforesaid,. shall be taken and reputed good and effectual, to all intents and purposes, without doubt or ambiguity; any custom or use to the contrary notwithstanding.”

It appears from the Parliamentary History, and from Dyer's Reports, page 93, that one of the grounds alledged for the reversal of this attainder was, that Henry VIII. had ‘not signed’ the letters patent, for giving the Royal assent to this Act, with ‘his own hand,’ but that his stamp had been set to them by one William Clerk. And the question of the validity of this Act of Parliament, ‘upon this ground,’ was brought and argued before all the Judges of Serjeant's-Inn, by the persons who had purchased the lands of the attainted Duke; but it does not appear that the Judges gave any opinion upon it.

Bishop Burnet gives the following account of the Bill, which in 1680 was not offered for the Royal assent: //222-1//—“There was a severe Act passed in the end of Queen Elizabeth's reign, by which those who did not conform to the Church, were required to abjure the kingdom, under pain of death; {223} and for some degrees of non-conformity, they were adjudged to die, without the favour of banishment. Both Houses passed a Bill for repealing this Act; it went, indeed, heavily in the House of Lords; for many of the Bishops, though they were not for putting that law in execution, which had never been done but in one single instance, yet they thought the terror of it was of some use, and that the repealing it might make the party more insolent. On the day of the prorogation, this Bill ought to have been offered to the King; but the Clerk of the Crown, by the King’s particular order, withdrew the Bill. The King had no mind openly to deny it, but he had less mind to pass it, so this indiscreet method was taken, which was a high offence in the Clerk of the Crown.”

This was certainly a very shuffling proceeding in the King; for, if he had no inclination to pass the Bill, he clearly had the right (which he had exercised but two years before, in the case of the Militia Bill, and what he himself, and his predecessors had done in a variety of other instances) to

refuse the Royal assent. For there is no doubt, though it is now almost a century since it has been exercised, but that this is, and always has been, an inherent and constitutional prerogative in the Crown: It ought, however, to he exercised with great discretion, as the King is never supposed to act, in his political capacity, but by the advice of Counsellors. The refusing the Royal assent to a Bill, agreed upon and offered to the King by both Houses of Parliament, is, in fact, preferring the advice of his Privy Council, or of some of his Ministers, or of some other person, to the advice of the Great Council of the nation assembled in Parliament.

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There was a very long debate //224-1// upon King William's refusing the Royal assent to the Bill "touching free and impartial proceedings in Parliament;" in which (however angry the House of Commons might be with the persons who had advised this measure, and whom, //224-2// as appears from their resolutions, they voted to be "enemies to their Majesties and the kingdom") nobody presumed to question 'the right' of doing it; and the representation, drawn up upon that occasion, puts this matter upon the proper and constitutional ground, in praying his Majesty, "that, for the future, he will be graciously pleased to listen to the voice of Parliament, and not to the secret advice of particular persons, who may have private interests of their own, separate from the true interest of the King and the people."

It was formerly a matter of great doubt, whether (as we have seen that the Royal assent to a Bill, passed by both Houses, is necessary to constitute a session) the Royal assent, when given, did not conclude the session: So long ago as the 21st of November, 1554, on a question asked in the House, Whether, upon the Royal assent, the Parliament may proceed, without any prorogation?" it was agreed by voices, "that it may." There is also a debate upon this subject, in the Journal of the 7th of March, 1620, from which it appears, that the ablest parliamentary men of that time had not formed a clear and decisive opinion upon it. Even Mr. Glanville says, "Though I think the law to be, that the Royal {225} assent to a Bill, without a prorogation, endeth not the session, yet, to avoid all question, it is best to have a proviso in the Bill."—On the 31st of May, 1621, the Lords passed a Bill in a very extraordinary manner, having brought it in, and read it thrice in the same day; the purport of which was, "that the session should not determine by his Majesty's Royal assent to Bills," but it does not appear, that it passed the House of Commons. //225-1// In the year 1625, however, a Bill to this effect passed both Houses, and on the 11th of July received the Royal assent—So in the Parliament called by Cromwell, in the year 1656, it was enacted, "that the passing of any Acts in this session, shall not be any determination of the said session." This question is now no

longer matter of doubt; the uniform practice of above a century has decided, that nothing concludes a session, but a prorogation, or dissolution of the Parliament.

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KING.

Is not to take Notice of Business depending.

1. On the 16th and 18th of June, 1607, is a proceeding on a petition for executing the laws against recusants; which, Mr. Speaker says, "the King had taken notice of;" and it was urged, not to have the petition read: To this it was answered, "that this would be a great wound to the gravity and liberty of the House;" and on Mr, Speaker's replying, "that there be many precedents, in the late Queen's time, where she restrained the House from meddling in petitions of divers kinds," a Committee is appointed, "to search and consider of such precedents, as well of ancient as later times, which do concern any messages from 'the sovereign Magistrate,' King or Queen of this realm, during the time of Parliament, touching petitions offered to the House of Commons." On the 18th, the petition, by the King's consent, is read; and it is set down, "that his Majesty hath no meaning to infringe our privileges by any message; but that his desire is, we should enjoy them with all freedom."

2. On the 12th of November, 1640, upon Mr. Comptroller saying, "that his Majesty taking notice, &c." it was observed, the great inconveniency that might fall upon the House, //226-1// if his Majesty should be informed of any thing that is in {227} agitation in this House, before it is determined; and it was moved, that some course might be taken for preventing this inconvenience.

3. On the 14th of December, 1641, the King, in a speech to both Houses, taking notice of a Bill 'then depending,' about pressing of soldiers, both Houses immediately resolve, "that the fundamental privileges of Parliament have been broken, by the King's taking notice of a Bill that is passing, before it be represented unto his Majesty by the consent of Lords and Commons." And, after a conference held, both Houses agree upon a declaration, petition, and remonstrance, //227-1// to be presented to his Majesty on this subject; to which the King returns an answer on the 20th of December.

4. On the 3d of January, 1666, the Lord Anglesey having, at a conference, acquainted the Commons, "that, instead of a Bill, which the Commons had sent to the Lords, the Lords proposed drawing a petition to the King, for a commission for taking the accompts upon oath." The Commons resolve, "that this proceeding, of going by petition to the King,

whilst a Bill is depending, is unparliamentary, and of dangerous consequence."—See the reasons on the 8th, and in the Lords Journals of the 12th, 18th, and 24th of January.

5. On the 26th of February, 1757, the King having, in a message to the House of Commons, taken notice of what was said the day before by a Member in his place, a special {228} entry //228-1// is ordered to be made, that this case may not be drawn into precedent, to the infringement of the privileges of the House of Commons.

6. On the 17th of December, 1783, the House come to a resolution, "That it is now necessary to declare, that, to report any opinion, or pretended opinion, of his Majesty, upon any Bill, or other proceeding, depending in either House of Parliament, with a view to influence the votes of the Members, is a high crime and misdemeanour, derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the constitution of this country."

OBSERVATIONS.

It is highly expedient, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach upon the other or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate, or of action, which is essential to a free {229} Council. //229-1// And therefore, neither the King, or Lords, or Commons, are to take notice of any Bills, or other matters, depending, or of votes that have been given, or of speeches which have been held, by the Members of either of the other branches of the legislature, until the same have been communicated to them in the usual and parliamentary manner. When, on the 12th of March, 1575, the Lords desire to know the reasons which moved the Commons to deal so hardly with the Lord Stourton's Bill, for restitution in blood, which had been signed by the Queen, and passed by their Lordships; this message was not well liked of, but thought "perilous, and prejudicial to the liberties of the House." And resolved, "That no such reason shall be rendered."—So on the 28th of April, 1640, "for avoiding of all misunderstandings between their Lordships and the Commons, for time to come, the Commons desire their Lordships hereafter to take no notice of any thing which shall be debated by the Commons, 'until they shall themselves declare the same to their Lordships;' which the Commons shall always observe towards the proceedings of their Lordships; conceiving the contrary not to stand with the privileges of either House."

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There are, however, in the proceedings of the House of Commons, exceptions to this rule, necessarily arising out of their own forms and orders. //230-1// As in those cases where the King is interested, as a party in any Bill depending before the House, either as Patron of a living. Lord of the manor or soil, or in any other manner; here, as it is the duty of his servants to acquaint him with the purport of such Bills, and to take care that his property or interest may be secured, or that he may have an adequate compensation for them, it is usual for the Chancellor of the Exchequer, or the Chancellor of the duchy of Lancaster, to {231} acquaint the House, either on presenting the petition, or in the course of the Bill, "that his Majesty 'having been informed of the purport of the said Bill,' gives his consent, as far as his Majesty's interest is concerned, that the House may do therein as they shall think fit." And this is no breach of the privileges of the House of Commons, as it is a proceeding founded on the fundamental rules of natural justice.—There is another case, where, by the standing orders of the House, it is necessary that the King should be acquainted with the nature of the petition or proceeding, even before it is proposed to the House; and that is, on applications for public money. By the order of the 11th of December, 1706, which is declared to be a standing order on the 11th of June, 1713, it is resolved, //231-1// "That this House will receive no petition for any sum of money, relating to public service, but what is recommended from the Crown." As soon therefore as any petition of this nature is offered to the House, and before it can be received, it is necessary that the Chancellor of the Exchequer, or some other Officer of the Crown, should inform the House, that "his Majesty, 'having been informed of the contents' of the said petition, recommends the same to the consideration of the House."

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And the House, having conducted their proceedings rather according to the spirit of this order, than the words, have required the King's recommendation, not only in petitions from private persons, but in other cases of application for public money, not coming by estimate from the Crown: As, on the estimate for paying and cloathing the Militia, on augmenting the salaries of the Judges, the purchasing Sir William Hamilton's collection of antiquities, and in many other instances.

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KING.

Sends Messages relating to Members, and other Matters.

1. On the 9th of December, 1661 the King sends word by the Speaker, that he had restrained Mr. Lovelace for a duel; the House thank him for his attention to their privileges, and send for their Member by the Serjeant.

2. On the 13th of June, 1663, the King sends a message, //233-1// that he had received information, that Sir Richard Temple had made a particular offer to him of his services in Parliament ; the House thank the King, and order an enquiry into this very extraordinary affair.—See the further proceedings on the 16th, 20th, 26th, and 27th of June, and 1st of July. //233-2//

3. On the 19th of December, 1678, message from the King that he had given orders for seizing Mr. Montagu's papers.— See the proceedings upon this message on this day, and the 20th.

4. On the 18th of January, 1705, Mr. Secretary Harley acquaints the House, that in enquiring after the authors of a libel, there had appeared the names of some Members of the House; of which her Majesty's tenderness for any thing which hath the {234} appearance of the privileges of the House, had inclined her to command him to acquaint the House, before she directed any further proceedings in the said examination.

5. On the 3d of January, 1710, Mr. Chancellor of the Exchequer informs the House, that he is commanded to acquaint them, that in an examination, at the Treasury, into the abuses in the victuualling, the name of a Member had appeared.—The House order the examinations to be laid before them.—See the 5th and 9th of January, and 15th of February, when Mr. Ridge, the Member alluded to, was expelled.

6. On the 21st of September, 1715, Mr, Secretary Stanhope acquaints the House, that he was commanded by the King to inform the House, that his Majesty, having just cause to suspect Sir William Wyndham, and several other Members, of supporting an intended invasion, hath given orders for apprehending them ; and that his Majesty desires the consent of the House for committing and detaining them. So on the 13th of March, 1722, with respect to Dr Friend; and on the 28th of February, 1743, on apprehending Lord Barrymore; and on the 10th of December, 1745, and 5th of August, 1746, on apprehending Archibald Stuart and Sir John Douglas.

7. On the 3d of December, 1756, Admiral Boscawen acquaints the House, that the King, and Board of Admiralty, having been dissatisfied with Admiral Byng's conduct; he is in custody, in order to be tried by a Court Martial; and that, as he is a Member, the Board of Admiralty think it a respect due to the House, to inform them of this commitment, and of the reasons thereof.—See a similar proceeding in the case of Admiral Knowles, on the 12th of December, 1749.

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8. On the 17th of February, 1757, Mr. Hunter, from the Admiralty, acquainted the House, that Admiral Byng having been sentenced, and his Majesty having signified his pleasure that the sentence should be carried into execution, a warrant had been signed to put him to death.

9. On the 6th of December, 1757, Lord Harrington informs the House, that he was commanded by the King to acquaint the House, that Sir John Mordaunt had been put under arrest, for disobedience of orders.—So on the 28th of February, 1760, in the case of Lord George Sackville; and of Lieutenant Colonel Dodd, on the 20th of April, 1762.

10. On the 19th of June, 1780, Lord North informed the House, that he was commanded by the King to acquaint the House, that his Majesty had caused Lord George Gordon to be apprehended and committed for high treason. The House return an address of thanks to his Majesty, for his communicating to them the reason of this commitment.

11. On the 13th of June, 1783, General Conway informed the House, that he was commanded by the King to acquaint the House, that the Honourable Major Henry Fitz-Roy Stanhope, a Member of this House, was put under arrest, to be tried by a Court Martial; to which the House return an address of thanks.

OBSERVATIONS.

We may collect from these instances, that whenever the King, or any of his Ministers, or persons employed by him, find it necessary, for the public service, to put a Member of the House of Commons under arrest; or that, in any public enquiry, matter comes out, which may lead to affect the person of a Member; or, as in the case of Mr. Montagu, to seize his papers; it has been the uniform practice, immediately to acquaint the House of Commons, that they may know the reasons for such a proceeding, and take such steps as they think proper.—As there is no privilege, of which the House of Commons have always been, and indeed ought to be, more jealous, than the security of the persons of the Members, that they shall be under no undue restraint from being able to attend their duty in Parliament, it is highly expedient, that, whenever the public necestity appears to the Ministers of the Crown to justify any breach of this privilege, they should, as soon as possible, acquaint the House with the {236} steps they have taken, and the grounds and reasons which induced them to it.—And this information is, as we have seen, by a 'verbal' message, delivered by the Secretary of State, the Chancellor of the Exchequer, the

Secretary at War, or one of the Commissioners of the Admiralty, according to the department in which the proceeding arises. But, when the object of the message is, not merely to inform the House of Commons of this fact, but to desire any proceeding on their part (as for an augmentation of the army or navy, a supply of credit, the payment of the debts of the civil list, &c &c.) here it is usual to send a 'written' message, signed by the King, with his own hand; and in this case, the person, who is entrusted with the message, informs the House, from the Bar, that he has a message from his Majesty, signed by himself; //236-1// he brings it up, and delivers it to the Speaker; and, as soon as the Speaker has read the signature, the House have always paid that respect to the King's message, as to be uncovered while it is reading; as in the instances of the 24th of May, 1737, and 3d of May, 1739; 1st of April, 1742; 17th of March, 1748; et passim.—And it appears from the printed debates of the House of Commons, in 1620-1, on the 10th of March, in the 1st volume, p. 141, that that House of Commons carried their respect still farther, and "that all the while the Attorney General, who was {237} the messenger, was in the House, being come from his Majesty, it was thought fit, and so observed, that every one 'should stand up' and be uncovered."

Where the subject of the message is 'of a nature' that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both Houses on the same day. //237-1// And when, on the 24th of March, 1725, the King sent a message, for an increase of seamen, to the House of Commons only, and this appeared in the Votes, the Lords, on the 20th of April, 1726, took this matter into consideration; and, as appears from the printed Debates, and from the protests of some of the Lords, which are entered in their Journals, it was thought by many an irregular and unparliamentary mode of proceeding.—I said, it must be of a nature which 'can' be communicated to both Houses at the same time; for when it appeared to the House of Commons, at a conference, on the 16th of November, 1722, that the King had sent a message, under his sign manual, to the Lords, which he had not sent to the House of Commons, no notice was taken of this, nor any objection made, because the message was accompanied {238} with 'an original declaration,' signed by the Pretender, and to which the message referred; which declaration, 'being original,' could not possibly be sent to both Houses 'at the same time.'

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KING.

Sends Black Rod for the House to attend Him.

1. On the 23d of April, 1666, a motion being made, and the question being put, and votes given in the affirmative, and Mr. Speaker being just

putting the question in the negative, the Usher of the Black Rod knocking at the House door, no farther proceeding could be had. //239-1//

2. On the 9th of May, 1679, a Committee is appointed to search for precedents; among other things, “Whether the House may debate after the message delivered by the Black Rod for the House to attend upon his Majesty.”

3. On the 24th of June, 1721, the House were hearing an election at the Bar, and being informed, that the Black Rod was at the door, the counsel were directed to withdraw.

4. On the 9th of April, 1731, the House being in a Committee, the Speaker resumes the Chair, and the Chairman reports, “That the Committee being informed that the Black Rod ‘was at hand,’ had directed him to report a progress, and ask leave to sit again.”

5. On the 16th of March, 1741, the Black Rod comes, after a motion made, and question proposed, “That a Bill do pass.” On return from the King, the Speaker reported what passed in the House of Peers, and then the question is put.—See the 22d of March, 1743.

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6. On the 15th of April, 1742, the Black Rod interrupts the proceeding on a Bill.—See the 2d of March 1743; the 17th of April, 1753; the 23d of March, the 5th of April, and the 13th of December, 1759.

OBSERVATIONS.

It appears from the 7th vol. of Grey’s Debates, p. 216, that the reason for appointing the Committee, on the 9th of May, 1679, was, that, on the House receiving the King's message, the Speaker had taken up with him a Money Bill, which had passed both Houses, in order to offer it for the Royal assent; and that he had done this without any direction from the House, or intimation given, that the purpose for which the King had sent for the House of Commons was to give the Royal assent to Bills; both which circumstances, as was asserted by some very experienced Members, were necessary to authorise the Speaker to carry up the Bill and therefore they rose to oppose his doing it, even after the message delivered by the Black Rod, to command the 'immediate' attendance of the House in the House of Peers.

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Whatever might be the custom at that time, of giving intimation to the House 'for what purpose' the King came to the House of Lords (and

perhaps such notice might then be necessary, as Charles II. often came and passed part of his morning there) nothing of that sort is done at present; whenever //241-1// the King comes to the House of Lords, and sends for the Commons, if there is a Money Bill, which has passed both Houses, //241-1// 'and has been returned from the Lords to the Commons,' {242} the Speaker, without any authority from the House, or any intimation given to the House, that the King comes for the purpose of passing Bills, takes it with him, and offers it at the Bar of the House of Lords for the Royal assent.—But I should apprehend that, even at that time (whether the Speaker did right or wrong in taking the Bill with him, or in that instance Acted agreeable to or contrary to ancient forms) the moment the House had received the King's commands to attend him 'immediately,' no other matter could be permitted to intervene, nor any objection heard; but that it was the duty of the Speaker, and the House, to go 'directly' to the House of Lords, there to receive the King's commands. And, as it is the established custom, that, when the Black Rod knocks at the door, he is immediately let in (without any notice given by the Serjeant to the House, or question put, as is usual in messages from the Lords, and in other cases) I apprehend that as soon as he knocks, all other business, of what kind soever, must immediately cease, the doors must be opened, and, when he has delivered his message, the Speaker and the House must, without debate or delay, go to attend the King in the House of Peers. Indeed a contrary doctrine might lead into much confusion; for if the King came, as was not unusual in the reigns of the Stuarts, on a sudden to prorogue or dissolve 'the Parliament,' and the House of Commons 'alone' could, by their forms, by refusing to open the door, or, after the message was delivered, by delaying, or debating whether they should pay an immediate obedience to it, decline going to receive the King's commands, they would thereby have it in their power to resist, and render of no effect, the undoubted prerogative of the Crown; and therefore, in times even of the greatest heat and violence, {243} this proposition has never been maintained; for, as to what passed on the 2d of March, 1628 (though it is said, in the 8th vol. of the Parliamentary History, page 333, "that the King sent the Usher of the Black Rod 'for the dissolution of the Parliament,' and that he was refused admittance," it appears from the Journals of the House of Lords, that the King was not present upon that day; and therefore this, like many other assertions in that compilation, cannot be true); the disturbance, which then arose in the House of Commons, was from the Speaker's endeavouring to adjourn the House to the 10th of March, under pretence that the King's pleasure for that purpose had been signified to him, and that he should put no question upon it. And the messages which the King sent, were, 'not for the House to attend him,' but relative to this adjournment. //243-1//—Lord Clarendon, in his History of the Rebellion,

vol. i. page 6, speaking of the injudiciousness of Charles I. in dissolving his three first parliaments, says, “I do not know any formed act of either House (for neither the remonstrance, nor the votes, of the last day were such) that was not agreeable to the wisdom and justice of great courts upon those extraordinary occasions.”

There has happened within my memory, and since I have been in the service of the House of Commons, a very extraordinary case, which was in the first year of his present Majesty (I think it was on the 20th of January, 1761) where the King {244} was actually on the throne, and the Black Rod was coming with the message for the House of Commons to attend his Majesty; but there not being forty Members present, 'Mr. Onslow,' then Speaker, declined taking the Chair, and the King was kept waiting a considerable time. The reason of this was, that it was generally known, that the only purpose for which the King came at that time, was to give the Royal assent to a Money Bill: this Bill had passed the House of Lords, but the House of Commons had received no message from the Lords to inform them that the Lords had agreed to it; and therefore, till this message was received, the Speaker could not take notice of their consent, or receive or take up the Bill to offer it for the Royal assent. And though the Lords messengers were at the door, the Speaker could not, agreeable to the ancient rule, and unbroken practice of the House, take the Chair, for the purpose of admitting the messengers, till there were forty Members present. If the Black Rod, instead of loitering in the passages between the Houses, had come forward and knocked at the door, the Speaker, though forty Members were not present (nor even five Members, and this happens frequently) must have ‘immediately’ taken the Chair, and gone up to the King, but, in that case, he would have been justified in refusing to take up with him the Money Bill, which was, at that time, the only object of the King's coming to the House of Lords. —A message from the King to attend him in the House of Peers, or from the Lords authorised by his Majesty's commission, is the only authority which can allow the Speaker to dispense with the rule of the 5th of January, 1640, and can permit his taking the Chair, though forty Members are not present. //244-1/

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It has sometimes been made a question, What ought to be done if the Black Rod should knock at the door whilst the doors of the House are locked, and the House are employed in appointing a Committee, under the directions of the Act of the 10th of George III commonly called Mr. Grenville's Bill? Whether the doors of the House should be opened? or, Whether the House are justified, under the positive directions of that Act, to keep them shut, even against the Black Rod, till the Committee is appointed? I say, it has been sometimes made a question; but, I

apprehend, without the least foundation. The express words of an Act of Parliament, which the King is, equally with the House of Commons, bound to take notice of, supersede every other authority; and in this case, the King's prerogative, which he holds by the common law of the realm, is cancelled and taken away by the superior effect of the statute; and therefore, if such an event should happen, which is not probable, //245-1// I should think the House would be justified 'by law,' in this instance, and in 'this instance only,' to refuse admittance to the Black Rod, till they are again authorised, by the Act of Parliament, to open their doors.

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KING.

How attended with Addresses.

If it is a joint Address of both Houses; as soon as the Address is agreed to, it is left to the Lords, to know at what time the King will please to be attended with it; and they inform the House of Commons, by message, of the King's answer.—See the 21st of March, 1627; the 27th of March, 1673; the 15th and 17th of March, 1676; the 21st and the 24th of March, 1728; the 18th of March, 1739; the 23d of November, 1739 ; and the 26th and 27th of April, 1751. The Houses then meet at the place and time appointed by the King, and the Address is read by the Speaker of the House of Lords.—There is, on the 14th of May, 1661, a very particular entry in the Journals of the House of Commons of this proceeding.—It has sometimes happened, that, from particular circumstances of the King's health, or other causes, it has been more convenient, instead of the two Houses going up in a body, that the King should be attended by a Committee from each House (and in this case the Commons appoint double the number of the Lords; as on the 27th of March, 1673, and 31st of March, 1756); or the Address is presented by the Chancellor and Speaker only, as was done on the 23d of December, 1708, on account of the death of Prince George of Denmark.

If it is only the Address of the House of Commons, this is presented by the whole House, or by such particular Members {247} as are of the Privy Council. There is no precise rule to be drawn, either from the subject-matter of the Address, or from the form in which it is drawn up (whether only as a Resolution, or an Address prepared by a Committee pursuant to a Resolution) in what manner it shall be presented. It has frequently been the practice to present Resolutions for an Address (without drawing them up in form) by the whole House; as may be seen on the 3d of February, 1707; where a motion is made, and question put, "That a Committee be appointed to draw up the said Address," and it passed in the negative. So on the 17th of December, and 10th of March,, 1718; the 29th of March, 1721; the 17th of April, 1721; the 25th of March, 1726; the 7th of May, 1728;

the 14th of March, 1728; the 30th of March, 1738; the 23d of March, 1741; the 11th of April, 1745; the 3d of March,, 1761; et passim. And, vice versa, though an Address is drawn up in form, pursuant to a Resolution, it is not ‘therefore’ necessary it should be presented by the whole House, but may, as was done on the 10th of May, 1732, be presented by Privy Counsellors.

FOOTNOTES TO 1781_HATSELL_2

//1-1// Sir Henry Carey, Knight, being chosen one of the Knights for Hertfordshire, was afterwards created Viscount Falkland, of Scotland; the question grew, Whether, being a Nobleman of another kingdom, he could sit here in the Lower House of Parliament or no; for in the Upper House he cannot, being no Baron of this kingdom.—This was referred to a Committee; because, if he might serve here, the House might hereafter be filled altogether, or for the most part, with the Nobility of Scotland and Ireland. But herein was no further order made at all.—See Proceedings and Debate of the House of Commons in 1620 and 1621, vol. i. p. 20.

//2-1// James the First was attended by great numbers of Scots in his coming into England, who were advanced to great honours, and shared largely in his bounty, at the expence, and much to the regret of the English nation.—Harris's Life of James I. p. 53.

//3-1// See the Statutes of 13 George II. ch. 7; and the 22d of George II. ch. 45; and the 2d of George III. ch. 25, relating to the naturalization of foreigners serving in America, and the whale fisheries.

//3-2// Though this has been the custom of late years, it seems, by an entry in the Journal of the 2d of May, 1668, that it was otherwise formerly; for there it is ordered, "That when any person comes to be naturalized hereafter, they do first take the oath of allegiance and supremacy in the House, after the Speaker takes the Chair, according to antient form."— By the statute of the 7th Jac. 1. ch. 2, no form is prescribed, "but that the oaths shall be taken in the Parliament House, and ministered by the Chancellor or Speaker, during the session."—See, the 4th of April, 1689, the manner of the Counts Schomberg, and Mr. Bentinck's taking these oaths.

//4-1// In a letter from Lord Somers to the Elector of Hanover, dated the 12th of April, 1706, and published in Macpherson's State Papers, p. 33, vol. ii., is the following paragraph:

"Having already presumed to take so great a liberty, I humbly beg permission of your E. H. to mention another particular, the *Act of Naturalization*, which some have said, was at least unnecessary, if not a

diminution to your most Serene family. If this be so, not only all our present Judges, but all the Lawyers of former ages, have been in the wrong.

"There are but two ways of making any persons born out of the allegiance of the Crown of England capable of enjoying inheritances, honours, or offices in this kingdom; the one complete and perfect, which is a naturalization by Act of Parliament; the other imperfect, which is by Letters Patent of denization. That this is so, cannot be better proved, than by the instance of His Highness Prince Rupert. For when King Charles the First intended to create him Duke of Cumberland, to make him capable of that title, it was found necessary previously to make him a denizen, by the King's grant, under the Great Seal; the differences then subsisting between the King and his Parliament, making it impossible to procure an Act of naturalization. But the present Act is attended with all possible marks of honour and respect, from the Queen and Nation. *It extends to all the posterity of her Royal Highness the Princess Sophia, born or hereafter to be born, and wheresoever they are born*; which is a privilege that was never yet granted in any case, till in this instance."

I am with the most profound respect, &c. &c. Somers.

//5-1// On the debate on this clause, when proposed, Mr. Weston says, "For it is not fit that *they* should make laws for the kingdom, who are not liable to the law."—Parliamentary Debates in 1620, vol. ii. p. 227.

It appears that Sir Edward Coke was present at this debate.

//5-2// See his speech in Grey's Debates, vol. i p. 355, and Mr. Waller's life in the Biographia Britannica.

//6-1// Carte, in his third volume of the History of England, p. 95, says, "Whether Dr. Nowell was the Chapter's representative in this Assembly, (the Convocation) or whether it was owing to his affection for the Reformation, a difference was made between him and Dr. Tregonwell, who being likewise a Prebendary of the same church, continued to sit, as Sir Thomas Haxey, and other Clergymen, had formerly done, in the House of Commons." This Thomas Haxey, Clerk, appears, from the Parliamentary History, vol. i, p. 457 and vol. ii. p. 53, to have been a Member of the House of Commons in 1397, in the 20th year of Richard II.

//7-1// Here must be some mistake, as Sir Edward Coke was born in 1550, and the case of Dr. Nowell happened in 1553.

//7-2// On the 16th of December, 1664, The House agree with the Committee, "That all lands extraparochial, and *other lands not hitherto taxed*, shall be taxed in this Act;" and on the 31st of January, 1664, in the

further proceeding on the same Bill of Supply, a proviso is offered and agreed to, on the behalf of the Clergy, "For discharging of such estates *as shall be now assessed*, belonging to the Clergy, of the two last subsidies, formerly by them given." The Bill passed the House of Commons on the 3d of February, 1664. On the 24th of November, 1666, it is resolved, "That the Clergy be rated in the Poll Bill, for their titles and dignities."

//8-1// This was first settled by a verbal agreement between Archbishop Sheldon and the Lord Chancellor Clarendon, and tacitly given into by the Clergy in general, as a great case to them in taxations. The first public Act of any kind, relating to it, was an Act of Parliament passed in 1664-5, by which the Clergy, in common with the Laity, were charged with a tax given in that Act, and were discharged from the payment of the subsidies, which they had granted before in Convocation; but in this Act of Parliament there is an express saving of the right of the Clergy to tax themselves in Convocation, if they think fit; but that has never been done since, nor attempted, as I know of, and the Clergy have been constantly, from that time, charged with the Laity, in all public aids to the Crown, by the House of Commons.— —In consequence of this, (but from what period I can't say) without the intervention of any particular law for it, except what I shall mention presently, the Clergy have assumed, and without any objection have enjoyed, the privilege of voting in the election of Members of the House of Commons, by virtue of their ecclesiastical freeholds.—This having been constantly practised, from the time it first began, there are two Acts of Parliament which suppose it to be now *a right*. The Acts are, the statute of 10 Anne, ch. 23, and the 18 George II, ch. 18.—Gibson, Bishop of London, used to say, that this was the greatest alteration in the constitution ever made without an express law. Mr. O.

//9-1// Vide the Commons Journal, the 28th of May, 1624, Cambridge election.

//11-1// By the Scotch law, the eldest sons of Peers were disqualified from being elected Commissioners of Shires or Boroughs in the Parliament of Scotland.—See the precedents of the 23d of April, 1685, and of the 18th of March, 1689, cited in Mr. Irving's petition, presented on the 27th of November, 1708—in the Journal of the Commons.

//11-2// The truth of this observation has acquired an additional strength, since the passing of that excellent law, commonly called Mr. Grenville's Act.—Besides the shameful manner in which, under the former judicature for deciding Controverted Elections, every principle of decency and justice were notoriously and openly prostituted, (from whence the younger part of

the House were insensibly, but too successfully, induced to adopt the same licentious conduct in more serious matters, and in questions of higher importance to the public welfare—an evil, which by Mr. Grenville's Act is entirely done away) it cannot but be an object of the greatest satisfaction to every person, who is a friend to this constitution, to see young men of the first rank and consideration in the country, assiduously attending, for four, five, or six hours in a morning, to the hearing of Counsel and examination of evidence, and with great pains investigating the real merits of the cause before them; and, after several days hearing, to know that their decisions upon those questions are formed with the most pure and upright intentions to determine according to the rules of law and justice, is a prospect, that, in every light, cannot but be pleasing to all, who know how much the freedom of this constitution, and in that the future happiness of this country, depends upon the spirit and character of those who are hereafter to be called forth, either to fill the great offices of the State, to give advice to their Sovereign in matters of high import to the public welfare, or (in which they may be equally useful) to maintain such a conduct in Parliament, as that, by their wisdom and prudence, and reputation with the people, they may preserve inviolate that free constitution which was established at the Revolution; and which, whilst it continues unimpaired by any illegal exertions of power on the part of the Crown, or by any licentious abuses of liberty on the part of the People, is a blessing that Providence has never yet conferred on any other people, in any age, or in any country.

//14-1// Notwithstanding the cases of Sir Henry Belasye, and Sir Joseph Martyn and others—since the determination in General Carpenter's case, in 1715, no Ministers employed abroad have thereby vacated their seats. Mr. O.

//14-2// On a question about the eligibility of Sir Dudley Digges and Mr. Maurice Abbot, who were chosen whilst they were abroad on an Embassage to the Low Countries, Sir Edward Coke says, "Those who are employed abroad are without question eligible, though absent when they are chosen; for absentia ejus, qui reipublicae causa abest, non obest."— — Parliamentary Debates in 1620-1, vol. i. p. 49.

//15-1// It should seem from what is said in the Appendix to the Parliamentary Debates, 1620-1, and from his life in the Biographia Britannica, that Mr. Selden was not a Member of this Parliament; but that, on being consulted on the question relating to the privileges of Parliament, he had given his opinion in their favour.—His name is certainly not in the list of the Members returned to serve in this Parliament, which is printed

in the 1st vol. of Parliamentary Debates, 1620-1: and in Wood's Athen Oxoniensis, vol. ii. p. 179, it is said, that the full Parliament he was elected into, was that which met in February 1623.— Yet on the dissolution of the Parliament of 1630-1, Mr. Selden was committed, and lay in prison five weeks, for the opinions he had given in support of the privileges of the House of Commons.

//15-2// Mr. Hume ought to be commended for making this distinction in this place; as throughout his History, as well of the Tudors as the Stuarts, he is but too apt to confound the meaning of these words, and to apply them indiscriminately, in instances where he is not authorised so to do by the law and constitution of this government.

//15-3// Vide Hume's History of the Stuarts, vol. i. p. 88.

//16-1// It is said in the Journal, "Many precedents of the King's Serjeant and Solicitor, but none for the Attorney; *sed cadem ratio*."

//16-2// In the debate upon this question, Mr. Whitlock says, "Never any Master of the Rolls of the House, till Cromwell, 26th of Henry VIII. because all former Masters of the Rolls in Holy Orders, and so could not be of this House."

//17-1// The Attorney-General, as an assistant to the House of Lord, is, on the trial of a Peer, to sit within the bar, unless he is a Member of the House of Commons, and then he is to be without the bar. In 1678, Sir William Jones, at the trial of Lord Pembroke; and in 1699, Sir J. Trevor, at the trial of Lord Warwick, both sat within the bar; neither of them being Members of the House of Commons.—But in Lord Kilmarnock's trial, in 1746, Sir Dudley Ryder, being a Member of the House of Commons, did, on great consideration, appear without the bar; and so did Mr. Pratt, Attorney-General, at the trial of Lord Ferrers, in 1760. Mr. O.

//18-1// The Attorney-General is an assistant in the House of Lords; whereas, the Master of the Rolls, King's Serjeants, Solicitor-General, and Masters in Chancery, are but attendants. Mr. O.—See the Lords Journals, 14th of January, 1692, and 13th of May, 1742.

//19-1// On the 20th of November, 1621, Sir J. Strangeways says, That Sir T. Thynne, a Member of this House, is pricked Sheriff for Gloucestershire; he desireth to know, whether the House will dispense with his service here, or otherwise set down how he may dispense with his conscience, having

taken an oath to be resident in that County during the time of his Sheriffalty.

Mr. Alford says, that there is no Parliament man but knows, that Sheriffs have usually served here during the time of their Sheriffalty.

Sir William Bowlstred says, that he was pricked down Sheriff of his County, when he was a Member of this House, and was forced to serve that office, by order of the House, notwithstanding he moved the House, that he might be discharged of the same.

It is the opinion of the House, That Sir T. Thynne shall serve his Sheriffalty, notwithstanding he is a Member of this House.— — Parliamentary Debates in 1620-1, vol. ii. p. 177.

//22-1// Mr. Recorder Finch says, "The reason is, why no Sheriffs shall be of this House, that they are the King's Vicegerents, and are necessarily to be reliant in their Government."——Parliamentary Debates, in 1620-1, vol. i. p. 213.

//23-1// One in the 1st volume, p. 419, and the other in the 4th volume, p. 87.

//24-1// A question is made upon this day, the 9th November, touching Sir Henry Carey, *captive*, and resolved, "That he do stand still as a Burgess, and not to be amoved."

//25-1// Mr. Pryse, in his letter, urges Mr. Prynn's opinion in favour of excusing the attendance of Members, who are ill of incurable distempers.

//26-1// This case is extremely well worth reading, as it contains a great deal of very curious parliamentary learning.

//26-2//See the Case of Sir Thomas Shirley, on the 22d of March, 1603, in the Collection of "Cases of Privilege of Parliament," page 153, and the observations upon it. See also Fitzherbert's case, in the same work, p. 107— and Mr. Gissard's case, p. 161.

//28-1// It is said in this report, that Sir Trevor Williams, and others, did serve as Members of the last Parliament, though they were charged in execution before the date of the letters of summons.

//29-1// As appears from p. 71 of the 5th volume of Parliamentary History.

//29-2// See this proclamation at large, in the 5th volume of Parliamentary History, p. 4. Notwithstanding the many clauses in this

curious State paper, directly contrary to law, particularly the last, which notifies, “That if any returns are made contrary to this proclamation, the City and Borough shall be fined for the same; and if it be found that they have committed any gross or wilful default and contempt in their election, return, or certificate, that then their liberties, according to the law, are to be seized into our hands as forfeited, and the person returned, contrary to the purport, effect, and true meaning of this proclamation, to be fined and imprisoned for the same;” the compilers of the Parliamentary History cannot avoid, with their accustomed partiality in favour of the King’s prerogative, and in derogation of the liberties of the people, expressing their commendations of it. “It must be owned,” say they, “by every impartial reader, that these were noble injunctions, and, if rightly followed, will always be the means to have a free and independent Parliament.”—The reader will see many instances of the same sort, referred to in “the Cases of Privilege of Parliament,” p. 85, 134, 148, 199.

These observations are not meant to detract from the merit of that work, as containing much Parliamentary learning, compiled with great labour and assiduity; but to caution the reader against trusting to the conclusions drawn from those materials, by the compilers, and to advise him to consider the Parliamentary History only as a collection of Historical tracts and State papers, from whence he may draw his own inferences, and form his opinions on the law and constitution of Parliament.

//33-1// This case, as well as that of James Campbell, Esq; on the 13th of December, 1763, were of persons who had been formerly in the respective services of sea and land; but had been dismissed from or quitted the service, and were therefore not to be considered as coming within the Statute of the 6th of Queen Anne, ch. 7, sect. 28. Mr. O.

//33-2// Vide Note page 37.

//34-1// This office is in the gift of the Queen Consort; but there being no Queen Consort at either of these times, it was given ‘by the Crown,’ and so came within the Statute of 6 Queen Anne. Mr. O.

//35-1// See the case of Sir William Gifford, on the 10th and 12th of February, 1710; where it was determined, that this, being an office existing before the 4th of Queen Anne, was compatible with a seat in Parliament.

//36-1// Jersey and Guernsey are considered as military governments, within the resolution of the 9th of June, 1733. Mr. O.

//37-1// This case of Sir Watkin Wynn was founded in several precedents of reversionary grants of offices not vacating seats, till they devolved upon, and were actually possessed by, the reversionary grantees; as being then only 'accepted,' within the meaning of the 6th of Queen Anne.—See the warrant for Mr. Horace Walpole's writ, in the Journal of the 25th of November, 1717; and of Mr. Pultney's, the 7th of May, 1726; and of Mr. Aislabie's, the 24th of January, 1737; and of Mr. Spencer's, the 27th of November, 1744.—All of whose grants were reversionary, and then only accepted. Mr. O.

I remember an instance of Mr. Norris, Member for Rye, who had an office in reversion, upon his father's death; when his father died, he declined accepting the office, and his seat was consequently never vacated.

//38-1// Compare these determinations with the proceedings of the House in the cases of Members appointed masters of the Hospital of St. Catherine, and of those who have been appointed *by the King* to be servants to the Prince of Wales.

//38-2// This measure of vacating the seat of a Member, by appointing him agent to a regiment, was adopted in consequence of Mr. Jervoise's not being able to obtain the appointment to the Stewardship of the Three Chiltern Hundreds, or of the Manor of East Hendred, offices which of late years have been applied by the Minister for the time being, for the sole purpose of vacating the seats of such Members as wished to quit their present seat in Parliament, either to be eligible for another (as was the case in the present instance of Mr. Jervoise, who intended to offer himself a candidate for the County of Southampton) or to withdraw entirely from Parliament.—This practice of issuing a new writ in the room of Members accepting these nominal offices, which began, I believe, only about the year //internal footnote to 38-2// 1750, has been now so long acquiesced in, from its convenience to all parties, that it would be ridiculous to state any doubt about the legality of the proceeding; otherwise, I believe it would be found very difficult, from the form of these appointments, to shew that they were offices of *profit, granted by the Crown*.

How far the appointment of Mr. Jervoise to the agency of a regiment, avowedly for no other purpose than to remove him from his present seat, was a *bona-fide* appointment, which would have been held valid upon a question, that should have come to be decided by a Committee appointed under Mr. Grenville's Bill—or, Whether an agency to a *Militia* regiment, though embodied, and out of their County, in actual service, can, by any construction, be included within the meaning of the Act of the 6th of Queen Anne, an Act made long before the institution of the Militia—are questions that it does not become me to discuss—the House of Commons,

who had the sole right of determining these points, having directed the writ to be issued, without any discussion or debate.

//internal footnote to 38-2// The first instance I find, is in the case of Mr. Pitt, on the 17th of January, 1750; I believe the next is on the 17th of March, 1752, in the case of Mr. Lascelles. Since that time, they have become very frequent.

//40-1// On the 3d of May, 1751, mention was made in the House, to take their sense of the case of Members who were to be servants to the young Prince of Wales; Whether such Members vacated their seats or not? It was debated for some time, but in a loose manner, and went off without a question; which was understood to be in the favour of those concerned; they accordingly accepted their employments, and continued to hold their seats in the House. Sir Dudley Ryder and Mr. Murray, the Attorney and Solicitor General, were strongly of opinion that they ought to vacate their seats, as they were to be appointed, paid, and removeable by the King; but they happened not to be in the House when the matter was stirred, and Mr. Fazakerly, an eminent lawyer, being there, and being of a contrary opinion, the House gave into that. Mr. O.

//40-2// When Mr. Edward Walpole was made Clerk of the Pells, he continued to sit, as being appointed, not *by the Crown*, but by the Treasurer of the Exchequer: and this case was well considered at the time. Mr. O.

//41-1// When Admiral Boscawen was appointed General of the Marines, in 1759, there was a doubt, whether, the Marines being to serve at land as well as at sea, and being regimented, he, being only a Sea Officer, would not vacate his seat by such acceptance; the part of the appointment which concerned the land service being to him, a mere Naval Officer, a new appointment, and not a promotion in the navy: But upon consideration and consultation of the Law Officers of the Crown, and after inspection of the several documents and acts relating to this matter, it was determined, though with much doubt, that he should not vacate his seat. Mr. O.

Mr. Onslow adds, “This was the first instance of a Sea Officer having that commission; many Land Officers have had it, amongst others, Lord Peterborough and Lord Stair.”

//44-1// There is a very curious paper entered in the Journal of the 20th of March, 1688, of the expences of James the Second’s government, under the separate articles, from Lady-day, 1685, to Lady-day, 1688—the medium of which annually amounts to £1,699,363.

The military establishments of this country at present, in time of peace, can never be reduced under £3,500,000; add to this, the £900,000 appropriated to the Civil list, and the interest of the national funded debt, which now amounts to near £7,000,000 and the revenue raised annually will be above £11,000,000 which is more than six times as much as was collected before the Revolution.

//47-1// Every Member, as soon as he is chosen, becomes a Representative of the whole body of the Commons, without any distinction of the place from whence he is sent to Parliament. Instructions, therefore, from particular constituents to their own Members, are or can be only of information, advice, and recommendation (which they have an undoubted right to offer, if done decently; and which ought to be respectfully received, and well considered) but are not absolutely binding upon votes, and actings, and conscience, in Parliament. That every Member is equally a Representative of the *whole* (within which, by our particular constitution, is included a Representative, not only of those who are electors, but of all the other subjects of the Crown of Great Britain at home, and in every part of the British empire, except the Peers of Great Britain) has, as I understand, been the constant notion and language of Parliament. Mr. O.

Every Member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the *commonwealth*; and therefore he is not bound, like a Deputy in the United Provinces, to consult with, or take the advice of, his constituents upon any particular point, unless he himself thinks it proper or prudent so to do. Blackstone, vol. i. page 159.

//48-1// Though it is not immediately referable to this point, I beg leave to insert here the following very curious proceeding:—Sir Richard Lloyd was chosen Knight of the Shire for the County of Radnor, and also a Burgess for the Town of Cardiff, and made his election to serve for Radnorshire.—A new writ went for Cardiff, and Mr. Bassett was chosen and returned; but a petition having, before the waver of Cardiff by Sir Richard Lloyd, been delivered by Mr. Thomas, claiming to be duly elected for Cardiff, and the Committee of Elections having heard the matter, and having reported Mr. Thomas, and not Sir Richard Lloyd, duly elected for Cardiff, the House, on the report, agreed with the Committee, and on the 15th of June, 1661, resolved, “That the new writ, and the election of Mr. Bassett, was void, and that the same be discharged.”

This case shews the expediency of adhering strictly to what has been lately the practice of the House, not to permit Members elected for two places to make their election, or writs to issue in the room of Members

dead, or accepting offices, till the time is expired which the House has limited for receiving petitions complaining of undue elections or returns.—This practice had been departed from in the two last Parliaments, but was observed and strictly adhered to in the beginning of this Parliament, which met in October, 1780, though many attempts were made to break through it.

//51-1// This order was certainly understood, at the time of the renewal of it, in 1688, to extend to persons who came in upon petitions, though chosen originally at the General Election, as may be seen from the entries in the Journal of the 4th of March following, relating to Sir Robert Rich, Sir Philip Skippon, and Mr. Vincent: but for many years past, the constant practice has been for such persons not to be introduced, and to confine the order to persons chosen upon vacancies that happened after the General Election; and so it was said by several antient Members, and acquiesced in by the House, on the 4th of March, 1736, in the case of Captain Cornwall, who was not introduced. Mr. O.

This practice of not introducing Members chosen at the General Election, and coming in upon petition, is now constantly adhered to.

//52-1// At the beginning of the Parliament which met in October, 1780, there was some debate in the House of Lords, whether any Lord might, notwithstanding the limitation of time so plainly expressed, be admitted to take the oaths, and sign this declaration, 'after four o'clock;' and the Lords determined that he might.—The House of Commons, by their uniform practice, have always determined differently.—I take for granted, that the Legislature had some reason for inserting this limitation of time, more especially, because it is repeated in the Act of Settlement.

//54-1// On the 16th of February, 1623, whilst the Members were swearing, news was brought that the Lord Steward had died suddenly, whereby, the Journal says, the power of Deputation ceasing, they did then forbear to swear any more.

//54-2// This is not merely my conjecture; I have frequently heard Mr. Onslow assign it as his reason for continuing in the Chair till four o'clock, when there were not forty Members present.

//54-3// Sir John Leech, having sat in the House, not having taken either of the Oaths, as he was bound to do by the Statutes, went out of the House to the Lord Steward's Deputies, desiring to have the oath ministered unto him; but they first asking him, whether he had sat in the House or no this Parliament? whereto he answered He had; and then they demanding,

whether he had taken the oath in part, or none at all? he said, None at all; they forbore to give him the oath till they had first acquainted the House with it, which they did.—A debate arose, in which Mr. Crewe said, “Sir John Leech cannot serve in Parliament, for then the House should dispense with an Act of Parliament, which saith, “He who sitteth in the House unsworn, shall be accounted as a man not elected or returned.”—Sir John Leech was then called to the Bar, where he kneeled; and then, being bid stand up, he confessed he had sat in the House a quarter of an hour, on Wednesday morning last, being unsworn. He was therefore disabled to serve in this House for this Parliament, and a new writ was sent forth by course, not order.— —Parliamentary Debates in 1620-1, vol. i. p. 30.

This transaction was on the 10th of February, 1620.—The oaths alluded to were the oaths of Allegiance and Supremacy.

//57-1// The mentioning any thing upon this subject must appear ridiculous, to those who have not been witnesses to many and very serious debates upon it.

//59-1// See the form of this information in the 4th Inst. page 17.

//61-1// Since this was written, one instance has occurred, in the case of Mr. Roberts, Member for Taunton, on Thursday, the 15th of February, 1781.

//62-1// It has not been unusual, to order more than one call in the same session, and even to carry this order into execution; as may be seen by referring, among other instances, to the 16th of March, 1720, and the 15th of May, 1721.—22d of January, and the 16th of February, 1730.—20th of February, and the 5th of March, 1738.—17th of February, and the 7th of April, 1773.

//63-1// It appears from the report of the 10th of May, 1744, how inadequate every measure has been, that has been hitherto proposed, to prevent this evil: nothing can correct it entirely, but a sincere desire in the Members themselves to attend to that business, for which they were elected and sent to Parliament.

//67-1// I do not know upon what occasion the question was put on Mr. Barnard’s speaking, in the year 1728—as in a Committee every Member is at liberty to speak as often as he thinks proper.

//70-1// This is the first instance that I have met with of this proceeding.

//72-1// It is often said, that in a Committee of the whole House there is no necessity for a motion to be seconded. I do not know on what authority this assertion is made; I never met with it in any book, or in the printed debates or proceedings of the House of Commons; nor do I know that it is to be justified by practice.—The reason for requiring a motion to be seconded, appears to me to hold as much in a Committee of the whole House as in the House itself.

//73-1// A motion for the House *to adjourn*, takes place of any motion before made, or question proposed, although the same has been ever so long in debate; and is a method the House has used, to put an end (at least for that day) to a matter which they don't think proper to determine by a question upon the matter itself. If this question for adjournment takes place before four o'clock in the afternoon, and there is a division upon it, the Yeas go forth; if after four o'clock, the Noes. Mr. O.

//77-1// On the 19th of February, 1770, the question being put, That it is the rule of this House, that a complicated question, which prevents any Member from giving his free assent or dissent to any part thereof, ought, *if required*, to be divided; it passed in the negative.—But the same question, on which this debate arose, was immediately divided by *order of the House*, as had been done on the 2d of December, 1640.

//77-2// On the 2d of December, 1640, on the question for making void the election of the Knights of the Shire for the County of Worcester, a question was made, Whether there should be *two* questions made of it, *or one*.—Resolved, there should be *two*.—This instance is referred to in Lex Parliamentaria, p. 294; where it is said, "If a question, upon a debate, contain more parts than one, and the Members seem to be for one part, and not for the other, *it may be moved*, that the same may be divided into two or more questions." //internal footnote to 77-2//

//internal footnote to 77-2// After a question is *propounded* (i.e. proposed from the Chair) any Member may offer his reasons against the question, in whole, or in part; which may be laid aside, by a general consent of the House, without a question put: but without such general consent, no part of the question propounded may be laid aside, or omitted: And, though the general debates run against it, yet if any Member, before the question put (without that part) stand up and desire, that such words or clause may stand in the question, 'before the main question is put' *a question is to be put*, Whether those words, or clause, stand in the question.—Lex Parliamentaria, p. 287. See also the proceeding in the Lords

Journals, 29th January, 1722, in p. 73, on the question relating to the printing of Layer's trial; where, notwithstanding the objection of its being complicated, the separation was proposed by way of amendment.

//78-1// The only exception to this, is when a Member calls for the execution of a subsisting order of the House. Here, the matter having been already resolved upon, and ordered by the House, any Member has a right to insist that the Speaker, or any other person, whose duty it is, shall carry that order into execution, and no debate or delay can be had upon it; and this frequently happens in the cases of admitting strangers in to the gallery—the clearing the lobby of Footmen—telling the House, when notice is taken that forty Members are not present; &c. every Member being entitled to have the orders and resolutions of the House carried into immediate execution; and in this case, the Member does not properly *make any motion*, but only *takes notice*, that the orders of the House are disobeyed.—It is from the want of observing this distinction, that many persons have fallen into the mistake above-mentioned.— —But in cases where there is no standing order or resolution of the House, if a Member proposes any thing, and that proposition is not seconded (which frequently happens) the Speaker takes no notice of it, and nothing is done in consequence of it.

//80-1// After the previous question is put, "Whether such a question shall be put," and carried in the affirmative, no words can be added or taken from it, nor any further *debate*, but the main question must be *immediately* put. Mr. O.

If the previous question be put, and pass in the affirmative, then the main question is to be *put immediately*, and no man may *speak any thing further* to it, either to add or alter. Lex Parl. p. 292.

//83-1// The substance of this rule is, "That a Bill being brought into the House, and afterwards rejected, another Bill of the same argument and matter may not be renewed in the same House in the same session; but if a Bill begun in one House, be disliked and refused in the other, a new Bill of the same matter may be drawn and begun again in that House whereunto it was sent."

//84-1// See the 6th vol. of Grey's Debates, p. 300.

//84-2// This is not within the rule laid down by the Lords in 1606, and was certainly irregular.

//84-3// History of his Own Times, vol. ii. p. 467.

//85-1// It is remarkable, that in the original Act, the 9th of Anne, chap. 6th, as it is printed, the sum is only 'one' shilling, and in the printed copy of the 9th of Anne, chap. 23, in which the mistake was rectified, no Clause appears for this purpose: I have also examined the Paper Bill, and can find no Clause, nor any thing relating to it.

//85-2// History of his Own Times, vol. ii. p. 563.

//86-1// The measure here spoken of, to recover the loss of the former question, was mean, unparliamentary, and dangerous. Mr. O.

//89-1// The practice however has been sometimes different, as may be seen from some of the precedents under this title.

//91-1// It has been very judiciously observed by a friend, to whom this work was communicated, "That with respect to amendments to Bills, the rule ought to be the same, whether the amendments first offered are carried in the affirmative or negative; and therefore that words once inserted in a Bill, ought no more to be left out in a subsequent stage, than words refused to be admitted, should be again offered; but that the practice ought to be the same with respect to both."

Perhaps, therefore, the true doctrine is, that, *in every stage* of a Bill, *every part of* the Bill is open to amendment, either for insertion or omission, whether the same amendment has been in a former stage accepted or rejected.

//92-1// It was said by Compton, (Speaker) that he thought it irregular for any Member to produce witnesses to be heard at the Bar, without previously acquainting the House thereof, and desiring that he *might have leave* to examine such and such. Mr. O.

This note of Mr. Onslow's, is a confirmation of the regularity of the determination of the House, on the 3d of March, 1779; when, it being proposed to examine Admiral Keppel, with respect to the state of the English and French fleets, it was refused to permit this examination to *be taken down as evidence*, "no enquiry having been instituted by the House."

The regular mode of proceeding being, in all cases, for the House to determine first, that such an enquiry shall be entered into, before any Member can be permitted to produce witnesses to be examined to any matter relative to that enquiry.

//93-1// See the several precedents cited in this Report.

//95-1// See the printed proceedings against Sir John Fenwick, pag. 10— where there is much learning upon this subject.

//96-1// When the Mace lies *upon* the Table, it is a House. When *under*, it is a Committee. When the Mace is *out of* the House, no business can be done. When *from* the Table, and upon the Serjeant's shoulder at the Bar, the Speaker only manages, and no motion can be made. But if a witness be at the Bar, and the Mace upon the Table, then any Member may propose any question to the Speaker to ask a witness. Mr. O.

//97-1// So on the 14th of January, 1673, before the Duke of Buckingham is admitted, it appears from the Journal, that several questions were agreed to by the House to be proposed to his Lordship; and when he is called in, the several questions agreed to are proposed to him by Mr. Speaker; to which, having given his answer, he withdrew. The same proceeding is had the next day, the 15th of January, with respect to Lord Arlington; the questions to be asked him are all proposed and debated, and agreed to by the House, before his Lordship is called in.

//98-1// If a Lord of Parliament, or Judge, or the Lord Mayor, comes to the House as *a witness*, chairs must be set for them, and every thing done, respectively, as if they attended the House on any other occasion, except as to the Mace, which I conceive ought to be *upon the Table*, in order that Members may propose questions to be put to the witness; which cannot be done unless the Mace be upon the Table: And so it was intended to be done on the 2d of February, 1748, if the Earl of Lauderdale (one of the Sixteen Peers of Scotland) had come as a witness on the part of Mr. Maitland. Mr. O.

On the 27th of May, 1779, Lord Belcarras, a Peer of Great Britain, but not one of the Sixteen Peers of Scotland, was examined before the Committee on the papers relating to Sir William Howe's conduct in America, and had a chair set for him within the Bar, and was received with the same formalities as Lord Cornwallis had been before in that Committee.

On the 12th of February, 1701, the Earl of Abercorn, a Peer of Scotland, and on the 3d of May, 1779, the Earl of Belcarras, are *ordered to attend* the House of Commons.

//101-1// It is said in Grey's Debates, 7th vol. page 378 that Lord Chief Justice North "sat down" in the chair prepared for him—but I should doubt

of this; as it appears from all the other instances, that this ceremony is confined to Peers only.

//102-1// Though several Judges attended, *one chair* only is set for them, as they were not to sit down in it. Mr. O.

//102-2// Lord Torrington is introduced, the Serjeant attending with the Mace; his Lordship sits down in a chair within the Bar, covered; as soon as he sat down, *the Mace was laid upon the Table*; when his Lordship withdrew, the Mace attended him.

//103-1// Lord Tyrawley, an Irish Peer, had indeed a chair to sit down in without the Bar, but this was on account of his lameness; for this is always done, in case of infirmity, to any person whatever: otherwise, being a Peer *only in Ireland*, he must have stood at the Bar, like other Commoners. Before the Union, the Earl of Abercorn, who was both a Scotch and Irish Peer, stood at the Bar on the 16th of February, 1701. Mr. O.

//104-1// On the 1st of June, 1758, the counsel proposed to examine the Earl of Westmorland, in proof of the allegation of an Act of violence committed by the Earl Ferrers, at the seat of the Earl of Westmorland. Then a chair was set by the Serjeant, a little within the Bar, on the left hand of the entrance into the House; and the door being opened, his Lordship came in uncovered, making his obeysances in the passage, and at the Bar, and came up to the chair set for him; and his Lordship was acquainted by the Chairman of the Committee, that he might, if he pleased, repose himself in the chair; and he sat down, and was covered, and arose up presently uncovered, and gave his evidence; then his Lordship sat down in the chair, covered, and on a question being put by the counsel, he arose again, uncovered, and gave his answer. His Lordship then withdrew, making three obeysances at the Bar, and in the passage. Mr. O.— —See a similar proceeding at the examination of Lord Cornwallis, and Lord Belcarras (a Scotch Peer, and not one of the Sixteen) before the Committee on the Papers relating to Sir William Howe's conduct in America. See the note, pag. 98.

//106-1// It was said by Smith, on the 25th of January, 1717, that when papers were referred to a Committee, they were used formerly to be first read, but of late, only the titles; unless a Member insisted they should be read, and then nobody could oppose it. Mr. O.

//107-1// Except as is mentioned before, in the note † , p. 78, //78-1// where the Member insists upon the putting in execution a standing order or subsisting resolution of the House.

//108-1// No Member of the House may be present in the House, when a Bill, or any business concerning himself, is debating; but while the Bill is but reading or opening, he may.—Parliamentary Debates, 1620-1, vol. i. p. 141.

//108-2// See the Debate upon this subject in the 1st vol, of Grey's Debates, p. 179; where Mr. Finch beginning to argue upon it, is taken down to order, "for speaking to the merits of the cause, without the Member being withdrawn."

//109-1// In the proceeding against Mr. Walpole, the Commissioners report was read, and Thursday appointed to consider the report. Mr. Walpole desired to be present at the debate, until a question was formed upon the Speaker's paper; but denied, and he accordingly withdrew.—The rule here seems to be, "that if the charge against a Member be contained in a report, &c. then he is to withdraw before the question is moved or stated; but if nothing previous to the question contain a charge, the question is the charge, and that must be stated before he withdraws." Mr. O.

//109-2// The Journal of the 15th of July, 1661, of the proceeding relating to Mr. Prymm, was read; who withdrew before the House entered upon any debate.

//110-1// The rule laid down by Mr. Onslow, in the preceding note, seems to be perfectly just and proper. The Member is not to withdraw, till he knows what will be the substance of the charge against him, and till he has had an opportunity of explaining to the House the motives of his conduct in the matter alledged against him.—Where this charge arises out of a report from a Committee, or from an examination of witnesses in the House, the Member accused knows to what points he is to direct his exculpation, and may therefore be heard to those points, before any question is moved or stated against him, and in this case he is to be heard, and to withdraw, before any question is moved—as in the instances of Mr. Walpole, Sir Richard Steele, and Mr. Stanhope.—But where the question itself is the charge, for any breach of the orders of the House, or for any matter that has arisen in the debate, there the charge must be stated, i.e. the question must be moved. The Member must be then heard, in his explanation or exculpation, and then, and not till then, he is to withdraw—as in the case of Sir William Wyndham.—In the case of Mr. Manly, the 9th

of November, 1696, and of Mr. Caesar, the 19th of December, 1705, the words spoken by them are taken down by order of the House, and, by such taking down, become a matter of charge; they are therefore heard, and then withdraw, before any question is moved.—In the instance of Mr. Shippen, on the 4th of December, 1717, the words spoken by him were reported, as a charge against him, from a Committee; he therefore was heard, and withdrew, before any question was stated.

//114-1// Vide the Note in Page 63.

//116-1// This was at a time when the House of Commons consisted of much fewer Members than it does at present; not only the forty-five Members from North Britain have been added, but the Members for Durham, Newark, Cockermouth, and several other places.—It appears from a list of the names of the Members returned to serve in the first Parliament of James I. in 1603, which is printed in the fifth volume of the Parliamentary History, page 11, that the House of Commons then consisted of 470 Members: and the number of Lords summoned to that Parliament were 78.—In the Parliament elected in 1620 (a list of the Members of which is inserted in the printed collection of the Debates of that Parliament) the number of Members appears to be 478.

//122-1// There are two Journals preserved of the proceedings of this session.—This instance is in page 714 of the first volume of the printed Journals.

//129-1// After the Speaker has put a question, and declared who have it, the Ayes or the Noes, any Member it at liberty to contradict him, until some Member comes into the House, but after a Member is come in, it is too late. Mr. O.

//129-2// On the third reading of the Bill for taxing Roman Catholicks, on the 17th of May, 1723, it was taken notice of on the division, by some of the Members (after the door was shut) that there were other Members behind the Chair (in Solomon's porch); the Tellers were called upon by the Members to fetch them out. Mr. Freeman, one of the Tellers, told the Speaker, that there were four Gentlemen in the Speaker’s little chamber, but that they did not intend to vote in the question, and hoped they should be excused from coming into the House.—The Members, dissatisfied with this answer, required that they should come into the House; which they accordingly did. Sir John Norris, Mr. Egerton, Mr. D’Arcy, and another. Sir John Norris and Mr. Egerton said, if they did vote, they desired they might vote with those who were gone out.—Mr. Egerton said, that he was in the

Speaker's little chamber when the question was put. The Speaker declared, that no Member could regularly withdraw, who was in the House when the question was put; that the passages and places about the House, which lay open to the House, were esteemed as part of the House; that he looked upon the shutting of the door to make the division; but that he had known the like happen before, in the case of Mr. Ash, and that he had leave to vote with those who went out.—But some Members insisting, that, according to order, they ought to be told with those within, the Speaker said, "that instances made order"—and, with a voice somewhat peremptory, commanded the Serjeant to open the door. Sir J. Norris and Mr. Egerton went out, but D'Arcy and the other staid in. I then staid in the House, and well remember this whole matter; it has been done twice in the same manner since I was Speaker, and I take it now to be the rule. Mr. O.

//132-1// These things happen from a very unparliamentary proceeding, in dividing the House for the sake of a division only; whereas the old rule, and practice too, were, that the House should be divided only when the Speaker's determination upon the voice was wrong, or doubtful, and thought to be so by the Member calling for the division, as the words then used imply.—For when the Speaker has declared for the Yeas or Noes, upon the cry, the Members, who would have the division, says, "The contrary voice has the question." Mr. O.

This abuse, and "unparliamentary proceeding," as Mr. Onslow very properly terms it, has in my memory been carried to such a length, as to make many Members wish for an alteration; and that the right of calling for a division should not be in one Member only, but be vested in two, three, or more Members, standing up in their places, and declaring for the contrary voice to what the Speaker had declared. This might at least secure the House from that inconvenience and unnecessary delay in their proceedings, which has been sometimes wantonly brought upon them, by the power of creating a division being vested in one Member only—and could not, as far as I see, be attended with any ill consequences. At the same time, perhaps, it is better that so ancient a practice should not be discontinued or altered, unless the House should be compelled to take any such steps for the preservation of their order, and the regularity of their proceedings.

//142-1// This Gentleman was at this time only Mr. Seymour, as he did not come to the title till several years after; but as he is more generally known by the name of Sir Edward Seymour, this distinction will not be here observed.

//144-1// See the 7th chap. of Elsynge, p. 155, on the subject of electing a Speaker, and his duty.

//145-1// Mr. Harley was appointed Secretary of State in the Spring of 1703-4, whilst he was Speaker, and held this offices together for above a twelvemonth, till the Parliament was dissolved.—This was before the Act passed, which vacated the seats of Members, accepting offices of profit from the Crown.

//145-2// Elsynge, p. 160.

//145-3// Id. m. p. 162.

//146-1// Vide Elsynge, p. 160-165.—See particularly Sir Richard Onslow's speech in the Lords Journals, 18th of November, 1708, where, on account of the death of Prince George of Denmark, the session was opened by Commissioners, the Queen not being present.

//147-1// Vide Lords Journals.

//147-2// See the 2d vol. of Parliamentary History, p. 38.

//147-3// In the 1st vol. of the History of His Own Time, p. 453.

//147-4// The Earl of Oxford (Harley) who had been Speaker, used to say, "That all that the Commons got by this contest was, that the Speaker might be moved for by one who was not a Privy Counsellor."—Lord Russell now moved for Gregory.—Mr. O.

//147-5// It appears from the proceedings upon the King's refusal to approve of Sir Edward Seymour, which, though expunged from the Journal, are to be found in the 6th vol. of Grey's Debates, p. 402, that several questions must have been moved, and debated, and put, though there was no Speaker. These questions must, in this instance, from necessity, have been put by the Clerk. It is expressly said, that the question for adjourning was put by him; so that, upon returning from the House of Lords, Sir Edward Seymour did not resume the Chair.

//148-1// Vide the 27th of January, 1656; the 9th of March, 1658; and 13th of January, 1659; where, the Speaker being ill, other Speakers are appointed pro tempore. These instances occurred in the Parliaments which were holden during the Interregnum.

//149-1// See the Commons Journals—on the election of Mr. Popham to be Speaker, on the 20th of January, 1580.

//150-1// See the history of this transaction, and several others of a similar nature, in the third chapter of the former vol. p. 135, No. 6.

//150-2// See the 2d vol. Parliamentary Debates, in 1620-1, p. 327.

//150-3// Vide Elsyng, p. 168.

//151-1// The 10th Geo. III. ch. 50.

//151-2// See the 12th and 13th of William III. chap. 3.—The difference between this Act and the statute of the 10th of George III, chap. 50. with respect to this question, is, that the former Act left certain privileges to the servants of Members; so that the Speaker might still very properly claim those privileges, whatever they were: But the latter Act expressly takes away from servants all privilege whatever, personal, as well as privilege from suits: It seems therefore particular, that the Speaker of the House of Commons should pray, and the Lord Chancellor, in his Majesty's name, should grant, privileges to a set of men, who by law have no privilege at all.

//152-1// The same form was used at the opening of the Parliament which met in October, 1780.

//153-1// The Journal says, "Sir Henry Jenkins was observed to mistake the question, and therefore, to prevent the idle expence of time, was interrupted by Mr. Speaker."

//155-1// See under p. 73-75.

//155-2// An order of the House, that none may speak twice to one Bill or Motion in the House, in one day, unless it be on new matter; but as often as they will at a Committee.—Parliamentary Proceedings in 1620-1. Vol. i. p. 28.

//158-1// I should suppose, that, if the Speaker is compelled to name a Member, from his persisting obstinately in any irregularity, after having been frequently admonished from the Chair, the House ought to support the Speaker in his endeavours to enforce obedience to their orders, and should call upon the Member so named, to withdraw.—When he is heard, and withdrawn, the Speaker will then state to the House the offence

committed, and the House will consider what punishment they ought to inflict upon the offender.—See the proceedings in the Journals, in the instances of Mr. Edward Clarke, on the 6th August, 1625; Mr. Dyet the 9th May 1626; and Mr. Watkins, the 16th November 1640.

//159-1// This Speaker was Sir Thomas Richardson, Serjeant at Law.

//160-1// Ever since the order of the 19th of December, 1678, the practice has been, to put a question for adjourning, although it be not insisted upon.—But if notice be taken, that there is not a sufficient number of Members present (which must be forty at the least) to go on with business, or to determine a question, then the ancient power of the Speaker revives, and he is, without a question put, to adjourn the House; but he must do it to the usual time: and if this want of forty Members happens after four o'clock in the afternoon (which is the hour for adjourning) he is to adjourn the House immediately, to the next sitting day, unless he perceives a sufficient number of Members coming in: But if it is before four o'clock, he is then to stay a reasonable time for Members to come in, and is not to adjourn the House till four o'clock, or till it is probable there will not be forty Members that day.—He is however to suffer no business to proceed till there be forty Members, after notice is taken that there are not so many. Mr. O.

//161-1// See Rushworth's Historical Collections, vol. iv. p. 478.—See also the whole of this transaction, in the Appendix to the first volume, No. 3.

//162-1// The Speaker is not obliged to be at Committees of the whole House; when he is there, he is considered a private Member, and has a voice accordingly: He is supposed, whilst the House is in a Committee, to be in his private room, and is not, upon a division, compellable to come out of it, as other Members are, who may happen to be there. Mr. O.

//162-2// On a division, upon the 19th of April, 1714, touching the drawback of tobacco, the numbers being equal, the Tellers came up in *the usual manner*; but it was agreed by many ancient Members, that this was wrong, and that the Tellers ought to have come up mixed.—So it was said to happen when Sir John Trevor was Speaker; and the Tellers coming up in the usual manner, he sent them to the Bar again, and by his direction they came up mixed. Mr. O.

Note.—The *usual manner* is, for those Tellers who have told on the part of the majority, to take the right hand in coming up, and making their obeysances to the Chair, and for one of them to make the report of the numbers to the Speaker.

//163-1// See the 7th of May, 1714; 29th of March, 1742; 2d of March, 1748; 15th of May, 1759; and 17th of March, 1766; in all which instances the Speaker declared the reasons of his vote.

//164-1// Ever since this Parliamentary declaration (though before it has been sometimes otherwise, by mistake) the Speaker of the House of Commons has constantly taken place next to the Peers of Great Britain, both in and out of Parliament time.—In all publick commissions he is so ranked and has the precedence at the Council-table, as a Privy Counsellor. And although on common occasions, and by practice at the Council Board, and in Commissions of the Peace, and in some other Commissions, the Speaker gives place to Irish Peers, and whoever else, by courtesy, takes place before some Peers of the realm, as sons of Dukes and Marquisses; yet in all commissions by Act of Parliament he is named before these; and so ought to be on all solemn and national matters: As Mr. Smith, the Speaker, was in the commission about the union of the two kingdoms; in which he was named immediately after the Peers who were in the commission, and before the Marquisses of Hartington and Granby, and signed the treaty before them.—This commission was issued, and the articles signed, during the prorogation of the then Parliament; which shews, that the Speaker's precedence is not confined to the time of the sitting of Parliament. Mr. O.

During the sitting of Parliament, and adjournments of it, the Speaker has the keeping of the Mace, and is to be attended with it, and ought never to appear on any public occasion without it; and then always in his gown. Mr. O.—See the opinion of the House on this subject, in the Journal of the 7th of May, 1668.

When the House are at the trial of a person impeached, as a Committee of the House, the Speaker is placed in a box, in the middle of the front row of the benches allotted for the Members, and has his gown on. Neither he, nor the Members, sit covered, because they are a Committee only; an expedient established at the trial of Lord Strafford, to prevent disputes between the two Houses, about being, or not being, covered. Mr. O.

//165-1// On Monday, February the 19th, 1620, the Clerk being sick, his son is admitted to sit in his place; and it was ordered, but it was not observed, that one Lawyer one day, and another day, shall sit in the low Chair by him, with his hat on his head, and to have his voice, and speak, and have the same privilege as any other Member of the House, only he shall sit there to assist the young Clerk in his father's illness.—Parliamentary Debates, 1620-1, vol. i. p. 59.

//166-1// The Clerk of the Crown is an officer of the House of Commons, and his place is upon the steps, at the Speaker's feet, where he may sit, and be present at debates. —When the Clerk of the Crown is a Member, as Mr. Bisse was, and Mr. Yorke is, the orders are then made on his Deputy. Mr. O.

//166-2// Before this, on the 15th of December, 1694, when Mr. Cole, one of the Clerks without, attended to assist in the House during Mr. Jodrell's illness—Mr. O. says—In this case the Standing Clerk Assistant sits in the chair of the principal Clerk, and the occasional Clerk sits on the stool. But, if the principal Clerk makes a Deputy in form (as he may do by his patent) I conceive that the Deputy must sit in the chair of the Principal. Mr. O.

//167-1// This leave of absence was to permit me to attend the election of a High Steward for the University of Cambridge, in a great contest between the Earls of Hardwicke and Sandwich.

//168-1// In Grey's Debates, vol. vi. p. 106, is the following entry:

Complaint was made by several Members, of the Clerk's non-entry of the enquiries yesterday, concerning money issued out by Privy Seals, and that he deserved to be turned out of his place, for his misdemeanour.

The Speaker.] You meddle with what you have nothing to do with, in displacing the Clerk, he being a Patent Officer.

Mr. Hampden.] The Clerk Assistant is your own Officer, and you may put him out, and displace him, upon misdemeanour.

This allegation against the Clerk, of the not entering yesterday's order perfectly, was passed over, with some reflection on the Clerk; and he was ordered to perfect the Journal.

//169-1// Compare this oath, with the oath taken by the Clerk of the House of Lords, in the House of Lords, in the Journal of the 21st of March, 1620.

//169-2// See his Letters Patent, and D'Ewes's Journal, p. 431.

//170-1// On the 10th of May, 1760.

//171-1// See D'Ewes's Journal, p. 407.

//171-2// See D'Ewes's Journal, p. 413, 414, 415, 416.

//171-3// See D'Ewes's Journal, p. 623.

//172-1// The following excellent character of Elsyng is to be found in the 2d volume of Wood's Athena Oxonienses, p. 177.

"Having taken one degree in arts, he afterwards spent more than seven years in travelling through various countries beyond the seas, whereby he became so accomplished, that, at his last return, his company and conversation was not only desired by many of the Nobility, but Clergy also; and was so highly valued by Dr. Laud, Archbishop of Canterbury, that he procured him the place of Clerk of the House of Commons. This crowned his former labours, and by it he had opportunity given to manifest his rare abilities; which in short time became so conspicuous, especially in taking and expressing the sense of the House, that none, as 'twas believed, that ever sat there, exceeded him.—He was also so great a help to the Speaker and the House, in helping to state the questions, and to draw up the orders free from exceptions, that it much conduced to the dispatch of business, and the service of the Parliament. His discretion also, and prudence, was such, that though faction kept that fatal, commonly called the Long, Parliament in continual storm and disorder, yet his fair and temperate carriage made him commended and esteemed by all parties, how furious and opposite soever they were among themselves. And therefore it was, that for these his abilities and prudence, more reverence was paid to his Stool, than to the Speaker's (Lenthall's) Chair; who being obnoxious, timorous, and interested, was often much confused in collecting the sense of the House, and drawing the debates into a fair question: in which Mr. Elsyng was always observed to be so ready and just, that generally the House acquiesced in what he did of that nature. At length, when he saw that the greater part of the House were imprisoned and secluded, and that the remainder would bring he King to a trial for his life, he desired to quit his place, on the 26th of December, 1648, by reason, as he alledged, of his indisposition; but most men understood the reason to be, because he would have no hand in the business against the King.—He was a man of very great parts, and was very learned, especially in the Latin, French, and Italian languages. He was beloved of all sober men, and the learned Selden had a fondness for him. He retired to his house at Hounslow, and died about the middle of August, 1654, in the 56th year of his age. He left behind him certain tracts and memorials of his own writing, but so imperfect, that his Executor would by no means have them published, lest they should prove injurious to his worth and memory."

He was son to Henry Elsyng, Clerk of the House of Lords, who published "The manner of holding Parliaments in England," and who died while his son was on his travels.

A new and very excellent edition of this work was published in 1768, from a manuscript in the Harleian Collection, in Mr. Elsyng's (the father's) hand-writing.

On the 27th of December, 1660, it is resolved, "That towards the present relief of the children of Henry Elsyng, Esq; heretofore Clerk of the Commons House of Parliament, (who, out of his loyalty and duty to his Majesty and the public, deserted his said employment in the year 1648, and is since dead, leaving a very small provision for his children) there be charged on the arrears of the Excise, the sum of five hundred pounds, to be paid, for the use aforesaid, out of the said receipt."

//176-1// The Clerk Assistant is called the Speaker's Clerk; so Trevor (Speaker) said, as I have heard; but is appointed by the Clerk. Mr. O.

//176-2// When I was named to this office, by Mr. Dyson, on the 10th of May, 1760, having come up the House to the table, the Speaker, Mr. Onslow, said to me aloud, "The Clerk has appointed you to be his Clerk Assistant; but now you are appointed, you are the Clerk of the House, you are my Clerk;" and then, by his direction, I took my seat at the table.

//176-3// Mr. O. says, that Rushworth was not the first Clerk Assistant; for that he had seen a print of the House of Commons, in 1620, in which are two Clerks sitting at the table.—But he adds, "This might be occasional, for, by tradition, Rushworth was the first standing Clerk Assistant." //internal footnote to 176-3//

//internal footnote to 176-3-3// From the note in p. 180, it should seem that in 1620 there were two seats for Clerks at the table.

//177-1// For the rank of the several Officers of the House of Commons, in processions at the Coronation and other Ceremonies; See the Journal of the 23d of April, 1702.

//179-1// On the 4th of May, 1780, Resolved, That the papers and accounts, presented to this House, be carefully preserved by the Clerk in whose custody they arc intrusted; and that no person be permitted to take the same from the House under any pretence whatever; and if any person shall presume to take any papers or accounts from the House, that the said Clerk do forthwith acquaint Mr. Speaker, that the House may be informed thereof.

//180-1// By the ancient rule of the House, words spoken by any Member, which gave offence, were to be taken notice of, and censured, some time of the day in which they were spoke.—See Lex Parliamentaria, p. 281. 'This

was the ancient rule; but of late years, the practice and rule has been, that if any other person speaks between, or any other matter intervenes, before notice is taken of the words which give offence, the words are not to be written down, or the party censured, and this was observed in the instance of John Howe, Esquire, who in a debate (in the year 1694) reflecting with great bitterness on the then administration of affairs, with some personal imputations on the King himself, said, “Egone, qui Tarquinium Regem non tulerim, Sicinium feram?” and then moved, that the House might go into a Committee, to consider of the state of the nation. He was seconded by a Member, who spoke two or three sentences on the subject of the motion, and then sat down.—After which, Mr. Charles Montagu (afterwards Lord Halifax) took notice of Mr. Howe's words, which, he said, carried a reflection of the highest nature, and desired that Mr. Howe might explain himself. Upon which, Sir Christopher Musgrave stood up to order, and said, That, for the security of every Gentleman who speaks, and to prevent mistakes, which must happen, if words were not immediately taken notice of, it was the constant rule and order of the House, “That, when any Member had spoken between, no words which had passed before could be taken notice of, so as to be written down, in order to a censure.” And this the House acquiesced in, and Mr. Montagu did not insist upon his motion. This account I had from Mr. Salway Winnington; and since this, several instances have happened, in which the words were immediately taken notice of; and it has been declared to be the order of the House, “that any person speaking between, or other business intervening; would prevent a censure.” Mr. O

//182-1// Notwithstanding the words are stated by a Member, and there is much debate upon them, nothing appears upon the subject in the Journal; which shews, they were not taken down by the Clerk.

//186-1// This Mr. Milton, was John Milton; who, on the 16th of June, 1660, was ordered to be taken into custody of the Serjeant, and to be prosecuted by the Attorney General, for having written, “Pro Populo Anglican disensio,” against Salmasius; and another book, in answer to the Icon Basilike.—He was ordered to be discharged, on the 15th of December following, paying his fees.—It appears, from the Parliamentary History, vol. xxiii. p. 54, that the complaint in favour of Milton was made by Andrew Marvel; and that Sir Heneage Finch, afterwards the Lord Chancellor Nottingham, said in this debate, “This Milton was Latin Secretary to Cromwell, and deserves hanging.”

//188-1// This order was made on account of a Bill, then depending in the House of Commons, “for the better employment and relieving the poor in

the city of London;" which Bill arose out of a Committee, appointed on the 16th of November preceding, "to consider of ways for better providing for the poor, and setting them to work." It has never been understood to relate to particular applications, which are frequently made, from corporations, hundreds, and divisions, for erecting Poor Houses, &c.—these Bills having always paid fees.

//190-1// This, in the 1st volume of Parliamentary History, p. 216, is said to be on the 12th of March, 1332.

//191-1// In the table of fees, inserted in the Journal of the 30th of August, 1649 the distinction is expressed in the following manner:—

	£.	s.	d.
Of every private person taking benefit of any private Act	2	0	0
Of every private person taking benefit of any proviso in any Act, public or private	2	0	0
Of every corporation, town, company, society, shire, or place, for a private Act	4	0	0
Of every corporation, town, &c. taking benefit of any proviso in any Bill, public or private	4	0	0

On enquiring what the practice had been, during the time Mr. Onslow was Speaker, in order to form my own judgment, what were *public* and what *private* Bills, I found that the following Bills had paid fees as *private Bills*, or rather, as it is better expressed in the table of the 30th of August, 1649, that private persons, and corporations, &c. had paid fees for the benefit they derived from these Bills, whether in their nature public or private.

In 1731-2	A Bill for encouraging the trade of the Sugar Colonies. — for regulating Pilots. — for recovery of debts in the Plantations. — to prevent the exportation of hats out of the Plantations. — to secure the trade of the East Indies. — to encourage the growth of coffee in the Plantations.
1732-3	A Bill for the free importation, and exportation of diamonds. — to secure the trade of the Sugar Colonies.
1733-4	— for encouraging the engraving of historical prints, &c.
1734-5	— for vesting printed copies of books, in the authors or purchasers, &c.
1735-6	— to make more effectual the laws, for recovery of ecclesiastical dues from Quakers. — for relief of shipwrecked mariners. — for continuing the additional duties on stamped vellum, &c. — for building Westminster-bridge.
1737-8	— for encouraging the consumption of raw silk, and mohair yarn. — to prevent frauds in gold and silver wares. — for regulating the cheese trade. — for collecting at Genoa, money for relief of shipwrecked mariners. — to regulate the importation of Smyran raisins.
1738-9	— to obviate doubts relating to tanned leather. — to prevent frauds in gold and silver wares. — for liberty to carry sugars from the Colonies, to foreign parts, in British ships.
1740-1	— for opening a trade to and from Persia, through Russia. relating to insurance on ships.
1741-2	— to prevent counterfeiting of gold and silver lace. — for laying an additional duty on foreign cambricks imported.
1743-4	— for making provision for the widows and children of the Clergy of the Church of Scotland. — to prevent brewers servants stealing barrels.
1744-5	— Westminster bridge Act paid two double fees, because it contained a grant of public money, and further powers to the Commissioners. — for allowing additional bounties on the exportation of British and Irish linens.

1745-6	— for regulating pawnbrokers. — for securing the duties on foreign-made sail-cloth.
1746-7	— for support of maimed seamen. — to empower distillers to retail spirits.

//194-1// The doubts, which the resolutions of the House, of the 4th of June 1751, were meant to explain and decide upon are very well expressed in the paper delivered in to the Committee by Mr. Dyson—which states,

1. "That where a Bill appeared to be of general utility, although immediately, and in the first instance, calculated for the benefit of a particular person, or body of people, it has of late been sometimes argued, that such Bill was a *public* Bill, and *therefore* not liable to pay any fees.

2. "That where a Bill has been brought into the House *upon motion*, without a previous petition, or in consequence of a report form a Committee of the whole House, it has been sometimes argued, that *the manner of bringing in* such Bill proved it to be a *public* Bill, and *therefore* not liable to pay fees.

"This last method of avoiding the payment of fees has been more particularly practised of late, with regard to the continuance of temporary acts.—Application is made to the Committee, appointed to consider of expiring laws, to insert in their report of laws fit to be continued, such Acts as, in their own nature, ought to pay fees, and for which fees were originally paid.—Now, as the provisions, made in consequence of such report, are usually inserted in some general Bill, the persons interested in such particular provisions are under no necessity of appearing to solicit or follow such Bill; so that no demand of fees can be made; and the regular method (and indeed, in such cases, the only remaining one) of enforcing the payment of fees, by objecting to the progress of the Bill, is what the Officers of the House must be very backward to make use of, in relation to matters which have the appearance of being originally taken up by the House itself."

//196-1// A notion has been sometimes entertained, that, by virtue of the statutes of the 4th of Edward III. chap. 24, and of the 36th of Edward III. chap. 10, intituled, "A Parliament shall be holden once every year," the King is obliged to call a Parliament once at least in every year; and those persons who maintain this doctrine do not mean, that, according to these statutes, a session of Parliament shall be holden every year, but that a new election shall be had; that is, that by the ancient law and constitution of this kingdom, the King ought to hold Parliaments elected annually.

If there is any foundation for putting this construction upon these statutes of Edward III. it is rather remarkable, that in the famous Parliament which was elected in 1620, and in which Sir Edward Coke took

so great a part, and of which Mr. Glenvylle, Mr. Noy, Mr. Crewe, Mr. Hakewill, Sir Dohn Davies, Sir Edwin Sandys, and Sir Robert Phelips, were Members—all men, than whom there never were persons better acquainted with the history of the English constitution, or more anxious to preserve it in its utmost purity—that these great and able men, throughout all the debates of that Parliament, which are very accurately preserved (and have been lately printed) should never, amongst their other spirited endeavours to maintain the rights and privileges of the people, once assert or even allude to this doctrine.—On the contrary, though the Parliament of 1620 was called in January (after an intermission of Parliaments for six years); when an adjournment was proposed, and which took place from June 1621, to the November following; though much doubt arose about the mode of this adjournment; yet, so far from any idea being entertained of its illegality, or that the Parliament ought to be dissolved, to give an opportunity for the calling of another to meet in the next year; Sir Edward Coke himself drew up the resolution respecting the privileges of the Members during this very long adjournment: And when the Parliament met again in November, and, after sitting some time, adjourned till the February following (before which time the King dissolved them in disgust) so far from the House of Commons supposing that by law, and the statutes of Edward III. a dissolution ought to take place, they address the King, on the 18th of December //internal footnote to 196-1//, "not to *prorogue* them at Christmas, but that he will consider what time will be fittest for their departure and *re-access*, to perfect those beginnings which are now in preparation." And not a hint is dropped throughout this very long session, that by the statutes of Edward III. they ought to be *dissolved* in January, 1621, and that *a new Parliament* ought to be summoned.

It is remarkable, that after an intermission of Parliaments for twelve years, when a Parliament was summoned, and met in April, 1640—a Parliament of which all the historians speak in the highest terms, and of which Lord Clarendon says, "It could never be hoped, that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill-purposes with them"—and when a Committee was appointed to consider, amongst other things, "of the liberties and privileges of Parliament"—and when that Committee report, on the 24th of April, three heads of grievances, and the fourth, "Lastly, as that which relates unto all, and is a great cause of all the former grievances—the not *holding* of Parliaments every year, according to the laws and statutes of the realm"—the Committee itself, and afterwards the House, lay by this point for the present, and agree not to put it to the question. Afterwards, on the meeting of the Long Parliament, in November, 1640, an Act, commonly called "The Triennial Bill," was passed, which, according to Rapin's "History (for the Act itself, being repealed, is not printed in any edition of the Statutes) so

far from declaring the law to be, that Parliaments ought to be elected annually, ordains, "that a Parliament should be held *at least every three years*, though the King should neglect to call it, in order to prevent the inconveniences arising from a too long intermission of Parliaments." The clauses in this Act, compelling the sending out of writs, without the King's consent, being, as Lord Clarendon says, "derogatory to Majesty, and letting the reins too loose to the people," were repealed by the statute of the 16th of Charles II. ch. 1, but the principle was retained; for this Act also declares, "That the sitting and holding of Parliaments shall not be intermitted for above three years."

In the debates in the House of Lords, in consequence of the very long prorogation in 1677, for above a year—the substance of which are reported in Burnet's History of his Own Times, and in the 4th volume of Grey's Debates—though Lord Shaftesbury, and the other leaders of the opposition party, pressed with great earnestness every argument and suggestion that could seem to support the cause they adopted, yet they never proceeded so far, as to urge this doctrine, "That the Parliament should be *elected* annually." What they maintained was, that the Parliament, not having *met and sat within the year*, was virtually dissolved, and its acts were therefore illegal; for that, according to the true construction of the statutes of Edward III. which were cited, *a session of Parliament* ought to be holden once every year.

Add to all this, that in the Bill of Rights, that new Magna Charta, by which the true and real constitution of this country was settled and established at the Revolution—and in which every grievance, under which the people had suffered during the preceding reigns, was condemned, and the claim of the nation asserted to their undoubted rights and liberties—the claim upon this subject is expressed in the following terms: "And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held *frequently*." This word *frequently*, which in its meaning is very vague, is, by a statute passed a few years afterwards, viz. by the Act of the 6th of William and Mary, chap. 2. explained in the following manner, "That *within three years at the furthest*, from and after the determination of every Parliament, legal writs shall be issued under the Great Seal, by direction of the King, for calling, assembling, and holding another new Parliament."

From all these sources of history, that is, from the several Acts of Parliament passed in the reigns of Charles I. Charles II. and William and Mary (all expressed in almost the same terms); from the debates and resolutions of the best and most jealous Parliaments that have sat since the beginning of the last century; from the practice, during a course of above two hundred years; but above all, from the declaration of the Bill of Rights, I should imagine the true intent and meaning of the words used in the

statutes of Edward III. might be best explained: For, where the expressions of Acts of Parliament, passed above 400 years ago, are doubtful, nothing can better clear up and settle these doubts, than the opinion of all the wisest and best-informed persons upon the subject, uniformly expressed, as well by their acts as speeches, from the beginning of the reign of Queen Elizabeth to the present time.

//internal footnote to 196-1// See this Address in the Second vol. of Parliamentary Debates, 1620-1, page 356.

//199-1// Burnet's History, vol. i. p. 478.

//199-2// See the Journals of the House of Commons, vol. ix. p. 640, et subs.—and the 7th vol. of Grey's Debates, p. 369.

//200-3// The session is never understood to be at an end, until a prorogation: though, unless some Act be passed, or some judgment given in Parliament, it is in truth no session at all.—Blackstone, vol. i. p. 186.

//200-2// It appears from Rolle's Reports, vol. i. p. 29, that the same opinion was held in Westminster-hall upon this occasion.—For he says, "Et ore Coke dit, que ceo ne suit un Parliament, mes solement un inception d'un Parliament, pur ceo que ne suit aucun Royal assent, ou dissassent; et pur ceo l'estatutes, que suerunt fair en le Parliament, devant continuer tanque le primar session del prochain Parliament, sont en force." And the reporter subjoins this note, in confirmation of Sir Edward Coke's opinion: "Nota, Que jeo aie ester crediblement informe, que per l'opinion de touts les Justices, ou pluis parte de eux, les statutes avant dits ne sont determine pur le cause avant dit." Nota auxi, "Que apies le dissolution del cest Parliament, com est avandit, le Seignor Chancellor mist un command al Cursitors, que ils ne duissoint faire ascua brief pur aseun Chevaler ou Burges del Parliament pur son charges."—In Sir Robert Atkyns's argument, in the case of *Seams* and *Barnardiston*, this case is cited; and he says, "The Judges, though the Parliament had met, yet no Act passing, *therefore adjudged* it was no session."—See Atkyns's Parliamentary Tracts, p. 144; and State Trials, vol. vii. p. 436.—See also D'Ewes's Journal, p. 383: where it is said, "No one Bill passing, and so no Royal assent putting life into any one law, it could not be a session, but a mere meeting."—See upon this subject a letter from Mr. Selden to Lord Bacon, dated the 14th of February, 1621; who had, upon the objection, "That the meeting of Parliament, in which Lord Bacon was condemned, having been declared by the King's proclamation to be no 'session,' but a 'convention' only," consulted Mr. Selden, Whether the judgments passed against him were valid?—Letters of Lord Bacon, published by Dr. Birch, 1763, p. 297.

//200-3// See Parliamentary History, vol. v. p. 303.

//201-1// Lord Somers was Keeper of the Great Seal, and Speaker of the House of Lords, at the time that this clause was inserted by the Lords in this Bill.

//203-1// See the 6th chap. of Elsyng—De summonitionis causa.

//203-2// See p. 49, 50.

//205-1// See an account of this proceeding in the first volume, p. 177.

//205-2// This answer is entered in the Journal of the Lords, but not in the Commons Journal.

//208-1// It appears from Kennet's History of England, vol. iii. p. 343, that this proclamation was issued on the 26th of October, and signified, "that on the 3d of December (being the day prefixed for their assembling) the House of Peers *may adjourn themselves* and the House of Commons *may adjourn themselves* until the 4th day of April next ensuing."

//209-1// See a very curious account of the proceedings upon this occasion in Grey's Debates, vol. iv. p. 390, 391, and vol. v. p. 1. and 2.—See also p. 95 and 122.

//210-1// See Mr. Sacheverel's, and the other speeches in this debate, in the 5th volume of Grey's Debates, p. 5.

//210-2// Vide Lords Journals, vol. iii. p. 158, 466.

//211-1// Nor in those of the 6th of October, and 3d of November, 1621.

//232-2// Mr. Hume, in his History of the reign of Charles II. makes a great mistake, in supposing these proclamations, which were nothing but declarations of the King's intentions, to be in effect actual adjournments ofthe Parliament.—In p. 257, he says, "The King prolonged the adjournment of the Parliament, from the 3d of December to the 4th of April." And in p. 259, "Finding that affairs were not likely to come to any conclusion, the adjournment of the Parliament was anticipated to the 15th of January, a very unusual measure, and capable of giving alarm to the French Court." It would have been indeed unusual; because, if the Parliament had been actually adjourned to the 4th of April, it would have

been out of the King's power to have called them sooner; and the attempt to do so would have been therefore illegal.

//214-1// See p. 203.

//215-1// On the 21st of October, 1553, the Parliament was prorogued from Saturday to the Tuesday following, though (as appears from the Journal) several Bills were depending, which were necessarily brought in again.—I never could find, from any history, the reason of this short prorogation.—Carte, in his 3d vol. p. 295, assigns a very insufficient one: "That three Bills, to which the Queen gave the Royal assent on the 21st of October, being Acts of Grace, she would not intermix other matters with them in the same session; for which reason the Tonnage Bill was deferred, and the Parliament prorogued for three days, to Tuesday, October 24, when the second session began." Perhaps it might have been necessary on account of a dispute between the two Houses respecting the subsidy Bill of Tonnage and Poundage.—It appears from the Journals of the House of Commons, that this Bill was passed, and sent up to the Lords, on Saturday the 14th of October; that on the 18th it was sent back from the Lords, "to be reformed in the two last provisoes, not in the former precedents," and no further notice is taken of it in this session; but on Wednesday the 25th of October, the second day of the next session, it is again brought into the House of Commons and passed without objection. If the Commons could not agree to the alterations made by the Lords, and the Lords would adhere to those alterations, I say, perhaps this might suggest the idea of a prorogation, to give the Commons an opportunity of bringing in a new Bill. It is unfortunate, that the Journal of the House of Lords, of this session, is lost; and the rolls of this Parliament, as printed in the 1st volume of the Lords Journals, contain nothing but a list of the Bills to which the Queen gave the Royal assent.—If this conjecture is well founded, it shews how very early the House of Commons exerted their undoubted privilege, *of not permitting the Lords to make any amendments whatever in Bills containing their grants to the Crown.*

//216-1// When the Parliament meets, and sits for dispatch of business, on the day upon which the writs are made returnable, it has not been usual to issue any notice by proclamation.—Yet in the Gazette of the 18th of May, 1754, there is an article from Whitehall, "That the King has been pleased to appoint Commissioners to open and hold the Parliament, on the 31st of May, being the day of the return of the writ of summons." Mr. O. To which he adds, that "It was from a particular circumstance, that some sort of notice was necessary at this time." But Mr. Onslow does not explain what that circumstance was.

//217-1// On the 31st of October, 1665, when Charles II. prorogued the Parliament that had sat at Oxford, he says in his speech, “It is not probable they should meet till April; but yet, lest he might have occasion for their assistance sooner, he had given orders for proroguing them only till February; and if there should be no occasion for their coming together then, he would, by a proclamation, give timely notice thereof.”—See Lords Journals, vol. xi. p. 701.

In the year 1677, during an adjournment of the Parliament from the 3d of December to the 15th of January, the King, by a proclamation, dated the 7th of December, “declared himself desirous, in respect to several important matters intended to be debated and considered, to have, on the said 15th of January, a full assembly of the Members of both Houses of Parliament, and therefore, with the advice of his Privy Council, thinks fit to require and command the Lords and Commons to give their attendance at Westminster on the said day, in a ready conformity to his Royal will and pleasure.”—See Kennet’s History of England, 3d vol. p. 343.

//217-2// See this speech in the Lords Journals, vol. xii. p. 247.

//218-1// See, in Continuation of his Life, p. 422, &c. the substance of Lord Clarendon’s speech on that occasion.

//220-1// The Journals of the House of Lords, of all this first Parliament of Queen Mary, are missing; I cannot therefore guess to what the Parliamentary History refers.

//220-2// Vide Note, p. 241.

//222-1// See the History of his Own Times, vol. i. p. 494.

//224-1// See Grey’s Debates, vol. x. p. 375.

//224-2// See these resolutions, and the representations of the House of Commons upon this subject, on the 26th and 27th of January, 1695, with the King’s answer on the 31st of January, in the Appendix to this vol. No 3.

//226-1// On the 14th of May, 1621, Mr. Alford says, “It is an ancient order in both Houses of Parliament, that whilst any thing is in debate in either of these Houses of Parliament, the King should not be acquainted with it, till the House had taken some course in it.” Parliamentary Debates, in 1620-1, vol. ii, p. 67.

//227-1// See this remonstrance, and the proceedings, in the Appendix, No 4.

//228-1// This entry is as follows:

"The mention made in the message, of an application being made to this House, by a Member of the House, in his place, was much excepted to in the House; being conceived that it might affect, although not so intended, the privilege of the House, with regard to freedom of speech in their debates and proceedings; and forasmuch as the maintaining of that privilege must ever be of the utmost consequence to the House, the House did direct, that this special entry should be made in the Journal, lest at any time hereafter this case should be endeavoured to be drawn into precedent, to the infringement of so important and essential a claim and right of the House."

This entry is one proof, amongst many others, of Mr. Onslow's great attention to the preservation of the privileges of the House of Commons. It could not have been a very pleasing circumstance to Mr. Pitt, who was then Secretary of State, and who drew the message, and brought it to the House, to have this mark put upon the conduct of a measure which he advised.—No respect, however, for the personal character of that great Statesman, or for his rank or office, nor any other consideration, could prevail upon Mr. Onslow to let pass, without observation, a circumstance which, though not at that time intended, might hereafter be urged as a precedent for the King's taking notice of the speeches of Members of the House of Commons.

//229-1// On Friday, the last day of the Parliament held in the 9th year of Henry IV. 1407, some disputes having arisen between the Lords and Commons, touching the grant of a subsidy—it was resolved, "That in all Parliaments, in the absence of the King, it should be lawful, as well to the Lords by themselves, as to the Commons by themselves, to debate of all matters touching the realm, and of the remedies, and not to disclose the same to the King, before a determination thereof made, and that by the mouth of the Speaker.—The which order ws made, for that part of the aforesaid displeasure arose by the means, that in the question of the subsidy, the Lords made the King sundry times privy thereto, and brought answer therein from the King; upon which the Commons answered, that the same was against their liberties." Cotton's Abridgment, p. 465.—See the record at length in Rot. Parl. vol. iii. p. 611.

//230-1// The purport of some Bills must be communicated to the King, even before they are presented; as Bills for the reversal of attainders and outlawries, and for restitution in blood.

The Bill to reverse the attainder of Lord Russell, came to the House of Lords in with the King's and Queen's name in the margin, and recommending the Bill.— It was received by the Commons without any recommendation, passed through that House, and had the Royal assent, as a private Bill; and the same proceeding was had in the case of the reversal of Algernon Sydney's attainder.—But in the Bill for restoring Basil Hamilton in blood, the Bill had the King's sign manual at the top of the ingrossment, and was presented so ingrossed, and signed by the King, to the Lords.—But this was, as the Clerk of the House of Lords told me, a mistake.—See the 22d of May, 1733, Commons Journals. Mr. O.

In the Bill from the Lords, to restore the Duke of Buccleugh to the Earldom of Doncaster, the ingrossment was not signed by the King; but the paper-Bill presented to the Lords was signed; and there was a message from the King, of recommendation of the Bill to the Commons, on the 16th of March, 1742, which message I advised. Mr. O.

See at length, in the Lords Journals of the 6th and 7th of May, 1702, a very curious entry upon this subject; where the Lords resolve, “That this House will, in no future times, ever receive any Bill for reversing outlawries, or restitution in blood, that shall not first be signed by her Majesty, or her successors, Kings or Queens of this realm, and sent by her or them to this House, first to be considered here.”

This arose from two Bills of this nature having had their commencement in the House of Commons, “contrary, as is said in the Lords Journal, to the usage of Parliament, and her Majesty’s prerogative Royal.”

//231-1// It has been very properly observed, that this order is founded on the principles of the constitution—For, though it is the sole right of the House of Commons to grant the public money, it seems to be only for those services pointed out by the Crown; and, upon this ground, the Committee of Supply arises only out of the King's speech; and if that Committee is closed, it must be by speech or message from the King, that it can again be instituted.

For the manner of opening the Committee of Supply, after it has been closed. See the 16th of June, 1721, and also the 18th of April, 1748.

//233-1// The King’s message is, “That a message was delivered to his Majesty, by a person of quality, from Sir Richard Temple, to the effect following—viz. That Sir Richard Temple was sorry his Majesty was offended with him, that he could not go along with them that had

undertaken his business in the House of Commons: But, if his Majesty would take his advice, and entrust him and his friends, he would undertake his business should be effected, and revenue settled better than he could desire; if the Courtiers did not hinder it."

//233-2// On the 1st of July, the Earl of Bristol, who was the person of quality that gave the information, is, at his own desire, admitted into the House, and heard.

//236-1// A message from the King, signed by himself, is always read the first time by the Speaker, and the Members of the House are uncovered.—If it is read again, it is by the Clerk, and the Members have their hats on. In a Committee, the Chairman reads it the first time, and the Members sit covered. Mr. O.

On the 16th of November, 1722, on reading the report of the conference with the Lords, in which was a message from the King to the Lords, under his Majesty's sign manual, the Speaker and the House, whilst the message was reading, sat uncovered.—But Hammer said, that the House ought not to have been uncovered, unless the message had been sent immediately to the House by the King. In which remark Mr. Onslow concurs. Mr. O.

//237-1// On the 2d of January, 1711, the Queen sends a message to the Lords to adjourn to the 14th.—It appears from Bishop Burnet, vol. ii. p. 589, that exception was taken to this message, as coming to one House only—and that the adjournment, in compliance with the message, was carried by the vote of the twelve new-created Peers, who had taken their seats only on that morning.—The House of Commons had adjourned from the 22d of December to the 14th of January, and therefore this message could not be communicated to them.

On the 25th of June, 1713, the Queen sends a message to the House of Commons only, respecting the payment of the debts of the civil list.—The Lords (sensible, as Bishop Burnet says, vol. ii. p. 628, "that this method of procuring this supply was contrary to their privileges, since all public supplies were either asked from the throne, or by a message sent to both Houses at the same time") appointed a Committee (on the 30th of June, who reported on the 13th of July) to consider of the method and manner of demanding supplies by the Crown.—Bishop Burnet says, "That they found, on this enquiry, no precedents which came up to this practice; but some came so near it, that nothing could be made of the objection." Upon which passage, Mr. Onslow very properly observes—That the precedents are many, and particularly in King Charles the Second's time; but (he adds) the practice has been disused of late years, occasioned by a

violent speech made by Lechmere, //internal footnote to 237-1// then a Peer, in the late reign (this was in 1725) and which had so much effect on the House of Lords, that Ministers have almost ever since that time sent these messages to both Houses, but with a distinction in the wording of them, so as to make the grant of the money to be only in the Commons, as is done in speeches from the throne; and thus qualified, says Mr. Onslow, the Commons have made no objection to it.—But see another instance, in 1739, where the King sending a message, for a farther supply, to the House of Commons only, this was taken notice of in the House of Lords, on the 28th of February, and a question was moved, "That it is contrary to the usage of Parliament, and derogatory to the privileges of this House, that a message, signed by his Majesty, asking a farther supply for the carrying on a war, should be sent to the House of Commons singly, without taking any notice of this House." But the previous question was put upon this question. See, in the 6th volume of Lords Debates, p. 338, a very long and curious debate upon this question.

//internal footnote to 237-1// See the substance of this speech of Lord Lechmere, in Lords Debates, vol. iii. p. 450.

//239-1// This was a message from the Lords, authorised by his Majesty's commission to prorogue the Parliament.

//241-1// When the King comes to the House of Lords or directs a commission to be made out, for the purpose of giving the Royal assent to Bills, it is the duty of the Clerk of the Crown to signify to his Majesty the purport of all the Bills that have then passed both Houses, and to receive his Majesty's pleasure, what answer shall be given, when they are offered for his Royal assent. A circumstance happened in June, 1779, which made it desirable to pass all the Bills then ready by commission, except one, which was a Bill for altering the duty on Houses.—The Corporation of London, or the Livery (I forget which), had come to a resolution to petition the King against this Bill, which petition the King had appointed to receive on Wednesday the 16th of June.—It was intended to have had a commission on the Monday preceding, and it was therefore wished, if it could have been done, to have kept this Bill out of the commission (for it had then passed both Houses of Parliament). But upon great consideration, and looking into precedents, this was found to be irregular; it was thought not advisable to withhold this Bill, though nothing would have been intended by such a proceeding, but to give an opportunity for his Majesty to consider of the City's petition; and therefore the other plan was adopted, of suspending the issuing the Commission for passing any Bills till the day after, viz. Thursday the 17th of June.—But see, in the 4th volume of Rushworth's Collections, p. 306, an instance where, upon the 3d

of July, 1641, Charles the First came and gave the Royal assent to the Poll Bill, whilst the Bills for taking away the Court of Star Chamber, and High Commission Court, having passed both Houses, lay upon the table. The House of Commons being dissatisfied with this, were entering upon debate of this proceeding, on Monday the 5th of July; when the King sent for them to the House of Lords, where he gave the Royal assent to those Bills, and gave his reasons, in a speech, why he deferred that measure on the Saturday preceding.—Sec also the Note * in this vol. p. 242.

//241-2// On the 8th of March, 1696, a message is ordered to be sent to the Lords, to put them in mind, that the Bill, intituled, "An Act for encouraging the bringing in wrought plate to be coined," does belong to this House to be presented to the Throne; and to desire it may be sent down to this House.—The following memorandums are afterwards entered in the Journal:

"The Bill being brought by the Clerk of the House of Lords to the Clerk of this House, as Bills relating to money usually are, the message was not sent.

"The reason the House insisted to have the said Bill to be presented by their Speaker to his Majesty was, for that the same allowed 5 s. 4d. per ounce to be given for plate to be brought into the mints to be coined; and authorised the Commissioners of the Treasury to take £50,000 out of any monies in the Exchequer, for the paying for such plate."

//243-1// It appears from the Journals of the Lords, vol. iv. p. 42, that the same message for adjournment, was delivered to the Lords by the Lord Keeper, and complied with by them.—See also the King's own account of this proceeding, in his declaration, published after the dissolution of the Parliament.—Parl. Hist. vol. viii. p. 350.

//244-1// See p. 115.

//245-1// It has been said, on the other hand, by persons whose opinions ought to have great weight, that the King's power of sending for the House of Commons at any time (a prerogative which he holds by the common law) cannot be taken away or abridged but by the special words of an Act of Parliament, and not merely by implication.—Whichever of these opinions is right, I am sure that this question—as well as that mentioned before, of "which is the legal Parliament to meet on the demise of the crown"—ought not to be left doubtful, and to be determined at the moment the event shall happen.