

# 1796\_HATSELL\_3

## LORDS/SUPPLY

[John Hatsell] *Precedents of Proceedings in the House of Commons; Under Separate Titles. With Observations. Vol. III. Relating to Lords, and Supply. The Second Edition.* [London: Printed for T. Payne, at the Mews-Gate; and T. Cadell, Jun. and W. Davies (successors to Mr. Cadell) in the Strand.] M.DCC.XCVI.

PRECEDENTS OF PROCEEDINGS

IN THE

HOUSE OF COMMONS;

UNDER SEPARATE TITLES,

WITH OBSERVATIONS.

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*Vol. III.*

*Relating to Lords, and Supply.*

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The Second Edition.

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London:

Printed for T. Payne, at the Mews-Gate; and T. Cadell, Jun.

and W. Dies (successors to Mr. Cadell) in the Strand.

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M.DCC.XCVI.



TO  
THE RIGHT HONOURABLE  
FREDERICK MONTAGU,  
ONE OF HIS MAJESTY'S MOST HONOURABLE  
PRIVY COUNCIL,  
THE FOLLOWING COLLECTION OF  
PRECEDENTS,  
IS,  
WITH GREAT ESTEEM,  
INSCRIBED,  
BY HIS FAITHFUL  
FRIEND AND SERVANT,  
JOHN HATSELL.

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PREFACE.

*The variety of materials, which have occurred, beyond what were expected under the two titles, Lords and Supply, has prevented the inserting, in this Volume, the Cases and Observations upon the Heads of Impeachment, Conferences, and Bills, with which it was hoped that this Work might have been concluded.*

*However, as the being engaged in studies of this nature is, to the Editor of these Volumes, an object of amusement, as well as, in some respect, an official duty, he trusts that it may still be in his power to communicate to the Public such information as he shall meet with upon those subjects.—And if it shall be thought, that these publications have in any degree contributed to the better observance of the Rules and Orders of the House of Commons; or, that this Work throws any new light upon the History and true Principles of the Constitution of this Government, it will have answered every purpose for which it was intended.*

*In the course of these Observations, as well as in those of the former Volumes, care has been taken to avoid entering at large into the discussion of several topics, that have engaged great part of the public attention within these last twenty years.*

*The shortening the duration of Parliaments—the proper limitation upon the influence of the Crown—the right of the House of Commons to declare the law with respect to the eligibility of its Members—with several other matters, all offered themselves, in the progress of this Work, as subjects, upon which the Editor might {vi} have taken an opportunity to enlarge, and to explain the grounds of the opinions, that he had formed, upon these and other great political questions. But in a work of this sort, intended principally as an Index for those persons, who wish to obtain a knowledge of the forms and proceedings of Parliament, it did not appear precisely to be the place, where discussions of that kind ought to be introduced.—It has therefore been thought sufficient to point out only such facts as appear to elucidate the general history of this Constitution: and, as some late writers, particularly the Compilers of*

*the Parliamentary History, have taken no little pains to mistate and misapply those facts, the attention of the Reader is here more particularly directed to such instances, as shew, from the Records of either House of Parliament, or from the more ancient repositories of the History of this Kingdom, that the Government, even in the earliest periods, was founded in principles of freedom, and has always had for its immediate object the interests of the Community at large.*

*From these Records, and from the accounts that are transmitted to us of those Governments, from whence the present Constitution of this country is derived, it will appear, that the security and happiness of the People, as distinguished from the Crown and the Nobles, had at all times a considerable weight and influence in the administration of public affairs.—The protection given, by the laws of our Saxon ancestors, to the persons and property of every individual—the establishment of the trial by Jury—the rights of the Freeholders, in their County Courts, to elect Sheriffs and Coroners—the privilege of chusing Members of the House of Commons—the want of authority in the Crown to impose taxes but with the consent of those Members—the firm and successful opposition that has been made, at different periods, by the People of this Island, against attempts of the Crown derogatory from their rights {vii} and privileges—all evince the truth of these Observations, and are historical proofs, that the claims, which were made and asserted at the Revolution, were, as they were then declared to be, “the ancient and undoubted rights and liberties of the People of this kingdom.”*

*These are the principles, and this the information, which are to be acquired from an accurate investigation of the Journals and other Parliamentary Records. It is sufficient for the Editor of this Work, to have acted in the humble station of pointing out the sources of this knowledge—It remains for those persons, whose abilities, and rank, and situation in life, enable them to carry these principles into effect, to attend, upon every occasion, to the preservation of the outlines of the Constitution; and, by a steady adherence to that happy form of government which they have inherited from their ancestors, to endeavour to transmit it sacred and inviolate to their posterity.*

Cotton-Garden,  
Aug. 20, 1784.

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PRECEDENTS OF PROCEEDINGS  
IN THE  
HOUSE OF COMMONS.

LORDS.

- I. *Admitted into the House of Commons.*
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- IV. *Mode of searching the Lords Journals.*
- V. *Joint Committees of the Lords and Commons.*
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- VII. *Particular Lords attended by a Committee of the House of Commons.*

LORDS.

I. *Admitted into the House of Commons.*

1. //1-1// IT appears from the third volume of the Parliamentary History, page 29, that, in 1523, Cardinal Wolsey desired to be, and was admitted into the House of Commons, with all his state and pomp; but was told by Sir Thomas {2} More, then Speaker, "That his manner of coming thither was neither expedient, nor agreeable to the ancient liberties of that House." //2-1//

2. On the 2d of March, 1548, on passing the Bill of Attainder against the Lord Admiral Seymour, the Commons resolve, That the evidence shall be heard orderly; and to require, "That the Lords which affirm that evidence may come hither, and deliver it *vivâ voce*//2-2//." On the 4th of March, message is brought, "That, if the House required the Lords to come, they would come down;" which is accordingly required by message.

3. On the 18th of April, 1554, the Bishop of Durham came present into the House, and declared his whole cause, forcing his bill, and his trouble by the Duke of Northumberland, and required the House to consider the bill.

4. On the 14th of November, 1558, the Lord Chancellor, Lord Treasurer, and several Lords, came into the House, sitting where the Queen's Privy Council used to sit; and the Lord {3} Chancellor, by his oration, declared, That a subsidy must be had. Mr. Speaker and the Privy Council then sitting from them, on the lowest benches.

5. On the 15th of May, 1604, on hearing Counsel in a cause between the Earl of Hertford and his brother, the Earl of Hertford and the Lord Henry Seymour came into

the House, and were admitted to come within the Bar, and to sit upon stools, with their heads covered.

6. On the 17th of May, 1614, Lord Southampton and Lord Sheffield admitted with great ceremony; the Bar, first down, taken up at the Lords coming in; the Lords stood bare, till the Speaker, in the name of the House, signified the pleasure of the House that they should sit down, and be covered.

7. On the 19th of June, 1628, counsel on a bill for the Earl of Cork heard at the Bar; the Earl sitting upon a stool, within the Bar // 3-1 //.

8. On the 21st of December, 1640, see the ceremony of admitting the Lord Keeper Finch, with the purse, within the Bar; he speaking bare-headed, the Serjeant standing by him with the Mace on his shoulder //3-2//.

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9. On the 1st of November, 1641, the Lord Keeper, Lord Privy Seal, and several other Lords of the Council, came into the House, to give information of the Irish conspiracy: they had chairs set for them; and after they had been in a little while, Mr. Speaker desired them to sit, and be covered //4-1//.

10. On the 25th of February, 1661, on hearing of counsel on a bill, the Earl of Derby sat covered, in a chair within the bar.

11. On the 1st of July, 1663, the Earl of Bristol is admitted, at his own request, to give information to the House, relating to a message which his Lordship had delivered to the King from Sir Richard Temple, respecting a change of his Majesty's ministers //4-2//.

12. The ceremony of admitting the Duke of Buckingham and Lord Arlington, on the 13th, 14th, and 15th of January, 1673, is not stated in the Journal; but there is an account of it in the second volume of Grey's Debates, page 248, et seq.

13. On the 16th of July, 1689, the Duke of Schomberg admitted, with the usual ceremony, to thank the House for their favours to him.

14. On the 11th of November, 1690, Lord Torrington, being in custody of the Marshal of the Admiralty, desires to be admitted to be heard. On the 12th of November he is brought into the {5} House by the Serjeant, with the Mace, to a chair set for him within the Bar; and having sat down for some time covered, and the Mace being laid upon the Table, his Lordship arose, and stood at the back of the chair, uncovered and was heard; after which he withdrew, the Mace attending him.

15. On the 27th of April, 1695, the Duke of Leeds is admitted at his own desire; and a chair is set, and the Serjeant ordered to acquaint him, "That he might come in."

He comes in, making his obeisances in the passage; and after reposing himself covered, he spoke; and withdrew, uncovered; the Mace being all the while on the Table.

16. On the 14th of April, 1701, Lord Somers is admitted at his own request, and heard; but it is not mentioned whether he is attended by the Mace; nor in the instance of the Earl of Peterborough, on the 29th of January, 1701; nor of the Bishop of Carlisle, on the 14th of March, 1710.

17. On the 8th of March, 1765, the Earl of Morton was examined before a Committee of the whole House, on the acts relating to the longitude; the ceremony, which was similar to that used in the House (except relating to the Mace) appears from the Minute-book of that Committee.

18. On the 31st of January, 1769, Lord Sandwich and Lord March were examined, on the hearing of a petition of Mr. Wilkes; they were admitted with the usual forms, and the Serjeant with the Mace stood by them during their examination.

19. On the 29th of March, 1779, the Commons send a message to the Lords, to desire leave for Earl Cornwallis to come to a Committee {6} of the House, to be examined relative to the subject matter of some papers relating to America; on the 31st, the Lords send for answer, That they give leave for Earl Cornwallis to come, if he thinks fit //6-1//.

#### OBSERVATIONS.

It has been observed before, //6-2// That the form of admitting persons, being Peers or Lords of Parliament, into the House of Commons, has been almost uniformly the same, from the earliest accounts to the present time: the only material difference, that occurs in any of the cases, is in the instances of Lord Torrington and the Duke of Leeds, where it is expressly said, "The Mace continued on the Table:" for which no other reason suggests itself, than what was mentioned before, that Lord Torrington was actually a prisoner in custody of the Marshal of the Admiralty, and that a resolution for an impeachment had just passed against the Duke of Leeds; and that, perhaps for these reasons, the House declined shewing them that respect, which they shew to other Peers not under those circumstances. It is not stated, in the Journal, where the Mace was, on the admission of Lord Somers, Lord Peterborough, or the Bishop of Carlisle; but most probably, though it is not so mentioned, the Serjeant stood with it by those Lords, as had been done in all the former instances; and as was afterwards observed on the admission of Lord Sandwich and Lord March, in 1769. In the cases of the Earls of Morton and Cornwallis, it being at a Committee of the House, and not {7} before the House itself, the mace was under the Table. Most of the instances, in which Lords have come into the House of Commons, have been at their own request; insomuch that, when, on the 6th of December, 1768, a message was sent to the Lords, to desire leave for the Earls of Sandwich and March to come to be examined as witnesses, the House of Lords doubted the regularity of this proceeding; and, as appears from the report of



the conference on the 8th of December, thought that such a message was not agreeable to the ancient and regular course of Parliament. The answer of the House of Commons to this objection appears in the Journal of the next day, the 9th of December, and was drawn up by Mr. Dyson; and the words, "That this proceeding was warranted by ancient usage" referred, as Mr. Dyson then explained it, to the case of Lord Seymour, the 2d of March, 1548 //7-1//. Indeed it would appear extraordinary that any Court, much more the great Inquisitorial Court of the Kingdom, should stand in material want of the testimony of any person whatever, {8} and should have no mode of signifying to that person, either that it was their desire or command, that he should attend them for the purpose of giving his evidence: and the uniform practice of the House of Lords, to desire leave for the attendance of Members of the House of Commons to give their testimony (over whom they have no more authority than the Commons over the Lords) shews the propriety and necessity of such a proceeding. On the 19th of December, 1768, the House of Lords, without in words departing from their objection, evaded the difficulty, by informing the Commons, at a conference, that they had referred the matter to their Committee of Privileges, but that the two Lords had themselves applied for leave to be examined, which had been granted them. The proceeding, however, with respect to the Earls Cornwallis and Harrington, in 1779, has put an end to this question; and the Houses of Lords and Commons now stand, as they ought to do, upon the same ground, with regard to their asking leave for the attendance of their respective Members to be examined.

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#### LORDS.

##### II. *Messages from, desiring Attendance of Members of the House of Commons.*

1. ON the 16th of March, 1620, Lords send a message desiring certain Members, whom they name, may attend and be sworn, and give their information on an enquiry in which the Lords were engaged concerning Grievances. After debate it is resolved, That as many of the gentlemen as will, may, without derogation to the House, or blame to themselves, be sworn. There are further messages pass between the two Houses on the 17th and 19th; and on the 20th of March the Lords send word, "That they have no intention to violate any of the Privileges of this House, but desire that any other Members, whose testimony shall be needful, may, by private motion, without further message, attend." To which the House of Commons send for answer, "That if their Lordships shall have cause to examine any Member upon oath (in the business then depending), the House giveth them leave, as private men, and as voluntarily, to go unto them, upon private notice, to be examined //9-1//."

2. On the 10th of June, 1628, the Lords desire the attendance of five Members to be examined in Dr. Mainwaring's business; to which the Commons send for answer, "That they have thought fit to give leave to these five gentlemen to go and be examined."

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3. On the 20th of July, 1660, the House being acquainted that Mr. Swanton, a Member, is summoned with a copy of a warrant from the Lords' House, to be examined

in a cause, depending before a Committee there; whereupon he desired the leave of the House to appear to be examined in the said cause. It is ordered that this whole business be referred to a Committee, and if they conceive it to be a breach of Privilege, that they present the same, as an head of conference to be had with the Lords. The next day, the 21st of July, two Members have leave to be examined as witnesses, before a Committee of the House of Lords, "They not having been summoned to be examined there as witnesses."

4. On the 24th of July, 1660, the Lords desire that Mr. Rushworth, a Member, may attend them, to be asked some questions about the death of the late king; which the Commons agree to, and give leave accordingly.

5. On the 31st of July, 1660, the Lords desire that Mr. Henry Seymour may appear at their Bar, to answer some questions that may be demanded of him about Colonel Thomlinson; and the Commons give leave to Mr. Seymour to attend, if he please, for this purpose.

6. On the 20th of February, 1664, leave is given to Members to attend and be examined as witnesses in a cause, and to other Members to attend as counsel, before the Lords. So on the 11th of December, 1666.

7. On the 22d of January, 1666, the Lords desire, by message, that some Members of the House of Commons may have leave to attend, to be examined as witnesses on the impeachment of Lord Mordaunt; which the House of Commons permit.

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8. On the 1st of December, 1669, Colonel Birch, informing the House, that he and some other Members of the House had received a note, desiring them to attend a Committee of the House of Lords concerning Trade, moved for leave of the House to attend the said Committee. The question being put, that Colonel Birch, and the rest of the Members, have leave of this House to attend the Committee, it passed in the negative.

9. On the 18th of May, 1675, it is resolved, That it is the undoubted right of the House of Commons, that none of their Members be summoned to attend the House of Lords during the sitting or Privilege of Parliament. See the 20th of May, and the further proceedings to the end of that session.

10. On the 26th of February, 1688, Sir Christopher Musgrave, informing the House that he is summoned to be sworn at the Bar of the House of Lords, and that the Lords do desire that the House will give him leave so to be, desires to have the direction of the House; on which the House give him leave accordingly.

11. On the 13th of November, 1689, a message from the Lords, That they, being enquiring into who were the advisers and prosecutors of the murder of Lord Russel and others, desire that several Members, who can inform the Lords about those matters,

may have leave to attend for that purpose; which leave is granted. So on the 16th of November.

12. On the 12th of May, 1690, the Lords desire the House to give leave that Sir Rt. Clayton and Sir Geo. Treby may attend the Lords on Wednesday, to declare their knowledge concerning the present lieutenancy and militia of the city of London. No {12} other answer is sent to this message, than that the House will send an answer by Messengers of their own.

13. On the 10th of April, 1695, the Lords desire that Sir Rt. Clayton and Mr. Morrice may have leave to appear, to declare their knowledge in relation to a grant of lands from the city of London; to which the House consent. On the 11th of April it is ordered, That the Members named do insist to be examined at a Committee of Lords, and not at the Bar.

14. On the 20th of March, 1696, the Lords desire that such Members as are Commissioners of the Admiralty may have leave to attend the Lords' Committees, appointed to enquire concerning the Toulon squadron getting into Brest. The Commons return, That they will send an answer by messengers of their own. But no notice being taken of this message, the Lords, on the 25th of March, send another message, to put the Commons in mind of it; and on the 26th leave is given for them to attend accordingly.

15. On the 21st of March, 1697, a message from the Lords, That a paper reflecting on the Lord Chancellor having been complained of, and read in the House of Lords, and their Lordships having been informed, upon oath, that Mr. Robert Bertie, a Member of the House of Commons, can give some account of it, desire that, for that purpose, the House will give leave for him to appear before the Lords. This message being taken into consideration the next day, a Committee is appointed to draw up an answer to the message, which is reported on the 23d: "That the Commons, not being informed by the message, of the matters contained in the paper, or on what grounds the Lords desire the Member to appear, desire the Lords will inform them, what {13} the nature of the account is that is expected from the Member." This is communicated to the Lords, at a conference, on the 24th.—It appears from the Lords' Journals of the 26th of March, that Lord Abingdon, in his son's name, asked the Lord Chancellor's pardon, and that this excuse was accepted: so nothing further was done upon this matter.

16. On the 18th of January, 1702, the Lords desire that Sir George Rooke and Sir Thomas Hobson may attend the Committee, appointed to consider of the Duke of Ormond's expedition to Cadiz, to answer some questions which their Lordships think necessary to ask them. On the 20th, this message is taken into consideration; and Sir George Rooke and Sir Thomas Hobson desiring they might have leave to attend, the House give leave accordingly.

17. On the 9th of January, 1705, the Lords desire that Sir Cloudesly Shovell, and several other Sea-officers, Members, may have leave to attend the Lords' Committees, appointed to consider of proper measures of more effectually manning the fleet; and leave is accordingly granted.

18. On the 26th of November, 1707, the Lords desire that Sir J. Jennings may come to a Committee, appointed for encouragement of trade to the West Indies; which leave is granted, if he thinks fit.

19. On the 25th of January, 1708, the Lords desire that several Scotch Members may attend, to give their testimony in relation to the election of the Sixteen Peers of Scotland returned to serve in this Parliament. A Committee is immediately appointed to search precedents in relation to this message. On the 27th {14} this Committee is discharged from further proceeding; and leave is given for the Members to attend, if they think fit.

20. On the 5th of July, 1714, the Lords having under consideration matters relating to the trade of this kingdom, desire that such Members as are Commissioners for Trade may attend them; and this leave is granted, if the Members think fit.

21. On the 8th of July, 1714, the Lords desire that such Members as are of the Committee of the South Sea Company, and also William Lowndes, Esq. may have leave to attend them. On the question being put for leave, it is carried in the negative; and a message is sent to acquaint the Lords, That the Commons do not give leave, their Lordships not having specified the cause upon which they desire their attendance. The Lords immediately send another message, That they having under their examination matters relating to the South Sea Company, which are of great consequence to the trade of the kingdom, therefore desire the attendance of the said Members: and on this message leave is granted.

22. On the 3d of September, 1715, the Lords desire that William Lowndes, Esq. may have leave to attend a Committee of the Lords, to whom a bill is committed. On a question put, it passes in the negative; and a conference is desired with the Lords on the subject matter of their message. But I do not find that the Committee appointed to draw up reasons made any report.

23. On the 15th of March, 1715, the Lords, by message, acquaint the Commons, That, upon the humble request of George Earl of Wigton, "That General Carpenter, a Member of this House, may be examined as a witness at his trial," their Lordships {15} do desire, That this House will give leave to the said General Carpenter, to be so examined at the said Earl's trial. Leave is granted accordingly.

24. On the 4th of March, 1717, a message, That the Lords having under consideration a Bill relating to the forfeited estates, desire the House will give leave that such of the Commissioners of Enquiry as are Members, as also Sir David

Dalrymple, the Advocate General, may attend their House on Thursday. On the 5th of March, a Committee is appointed to search precedents; they report on the 6th; and on the 21st of March, this report is ordered to be entered in the Journals.

25. On the 17th of July, 1721, the Lords desire that several Members may attend to be examined as witnesses, in behalf of Mr. Aislabie, before the Committee to whom the Bill for raising money on his estate is committed. A Committee is appointed to search precedents, who report on the 18th; and the precedents being read, leave is given to the Members to attend, if they think fit.

26. On the 2d of May, 1723, message from the Lords, to desire, that this House will give leave, that Mr. Chancellor of Exchequer may “attend” the House of Lords, in order to be examined as a witness upon the Bill, to inflict pains and penalties on Kelly. The House of Commons give leave to the Chancellor of the Exchequer to “appear” at the House of Lords as the Lords do desire. See also the 3d and 7th of May, messages for the attendance of Members as witnesses on the Bill against the Bishop of Rochester.

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27. On the 28th of February, 1729, the Lords desire Mr. Shephard may attend, to be examined as a witness on a divorce Bill then depending. The Commons say, They will send an answer by Messengers of their own. On the 9th of March, the Lords send word, That, having rejected the Bill, they have no occasion for Mr. Shephard's attendance.

28. On the 30th and 31st of May, 1733; 14th of April, 1735; the 14th and 15th of March, 1736; and the 26th of April, and the 2d and 3d of May, 1737, there are messages from the Lords, desiring the attendance of Members as witnesses; to which the Commons give leave—See also the 16th of March, 1746, in the proceedings on the impeachment of Lord Lovat for high treason.

29. On the 2d of March, 1757, the Lords desire that Mr. Keppel, and other Members, may attend, to be examined on the second reading of the Bill for releasing from their oath of secrecy the members of the court-martial on Admiral Byng; to which the Commons assent.

30. On the 13th of March, 1758, the Lords desire that several Members (who were then Lords of the Admiralty) may attend to be examined on the second reading of a bill, “for the encouragement of seamen employed in the Royal Navy.” On the 14th of March the Commons take this message into consideration, and several precedents are read; and on the 15th a message is sent to the Lords, to acquaint them, “That the House, not being sufficiently informed on what grounds, or for what purposes, the Lords desire the attendance of their Members, desire their Lordships to inform them of the same.” On the 16th the {17} Lords send another message, to say, “That they desired the attendance of the Members to be examined as witnesses;” to which the House consent, if the Members think fit.

31. On the 5th of December, 1763, the Lords send a message to desire, That the House will give leave to Alderman Harley, one of the Sheriffs of London, to attend the Lords, to give an account of the obstructions given to the execution of an order of both Houses of Parliament.—The House give Alderman Harley leave to go, if he thinks fit.

32. On the 24th of February, 1779, the Lords desire, That Peregrine Cust, Esq. may attend them, to be examined upon an enquiry into the management of Greenwich Hospital. See also the 4th and 15th of March, 1779.

### OBSERVATIONS.

The case of the 16th of March, 1620, is, I believe, the first instance that appears, on the Journal, of this proceeding of the Lords, desiring the attendance of Members of the House of Commons to be examined by them; and it appears from the Journal, and more plainly from the debate as it is related in the printed proceedings of the session, 1620 //17-1//, that the difficulty which arose here was rather, whether they should be examined 'on oath,' than from any scruple about their attendance. Mr. Glanville, who was a man extremely well versed in the history and forms of Parliament, arguing for their attendance, says, "That the Lords have sent {18} down upon occasion their Members into this House, to give satisfaction here." After the answer returned, on the 20th of March, to the Lords' message of that day, there is an entry in the printed proceedings, which does not appear in the Journal, viz. "That it is an antient order, that we may send no message to the Lords, nor their Lordships to us, but whilst both Houses are sitting, the Speaker of each House being in the Chair."

I do not pretend to have inserted here all the instances that are in the Journals, of messages from the Lords on this subject; they may easily be found by turning to the general indexes. Such only are selected from different periods, as have either particular circumstances attending them, or may be sufficient to shew the uniform practice of the House on these occasions //18-1//. From these it will appear, that the Commons have been always extremely jealous of admitting any proceeding which might seem to allow an authority in the Lords, to command the attendance of any of their Members, for any purpose whatever. They have therefore always required, that the Lords should, in their message, express the cause for which the attendance is desired; and even then the House proceed no further than to give leave for the Member to attend; and he is still at liberty to attend or not, as he shall think fit. The later practice (at least during my memory) has been, for the House not to send any answer to the message (except to say that they will send an answer by Messengers of their own) till the Member named in it is present in his place; and then, on his hearing the message read, and consenting to comply with it, the House have given him permission to go; but still adding, in {19} their answer to the Lords, "That he may attend, if he thinks fit //19-1//." One object of the jealousy of the House of Commons, and which has made them particularly careful that the Lords should express in their message the cause for which the Member is desired to attend, has been, that the Lords might not, on any pretence, call a Member before them, to give an account either of the vote he had given in the House of

Commons, or the motives that had inclined him to take a part in any Bill, or other matter, then depending in Parliament.

In the famous dispute that happened between the House of Lords and Commons in 1675, in the cases of Mr. Onslow, and of Shirley and Fagg, there is a great deal of parliamentary learning to be found in Grey's Debates upon this subject. And the Commons, on the 18th of May, 1675, resolve, "That it is the undoubted right of this House, that none of their Members be summoned to attend the House of Lords, during the sitting or Privilege of Parliament." This dispute, it is true, arose upon another subject, on the right of the Lords' judicature in matter of appeal, where a Member of the House of Commons was a party: but in the progress of it, much is said on the mutual rights of each House over the Members of the other. There is also, in the tenth volume of Grey's Debates, p. 133, a debate on the message of the 12th of May, 1690, for the attendance of Sir G. Treby; in which the opinions of several considerable Members are given upon this subject.

The result of the whole, to be collected either from the Journals, or from the History of the Proceedings in the House of Commons, {20} is, 1st, That the Lords have no right whatever, on any occasion, to summon, much less to compel the attendance of, a Member of the House of Commons //20-1//. 2dly, That, in asking leave of the House of Commons for that attendance, the message ought to express clearly the 'cause' and 'purpose' for which the attendance is desired; in order that, when the Member appears before the Lords, no improper subject of examination may be tendered to him. 3dly, The Commons, in answer to the Lords' message, confine themselves to giving leave for the Member to attend, leaving him still at liberty to go or not, 'as he shall think fit.' And, 4thly, The later practice has been, to wait for the Member named in the message to be present in his place; and to hear his opinion whether he chufes to attend or not, before the House have proceeded to take the message into consideration.

As it is essential to the House of Commons, to keep itself entirely independent of any authority which the Lords might claim to exercise over the House itself or any of the Members, they ought to be particularly careful, on all similar occasions, to observe and abide by the practice of their ancestors.

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## LORDS.

### III. *Form of Messages between Lords and Commons.*

1. ON the 5th of May, 1604, it was urged for a rule, "That, if we differ from the desire of the Lords, propounded by their Messengers, then we are to send by our Messengers." Accordingly answer was given, That we would send by our own.—So on the 14th of February, 1606, and on the 20th of June, 1610.

2. On the 24th of May, 1604, on a message from the Lords, to desire a conference, the Messengers returned back, and did not stay, 'as the manner is,' to receive the answer of the House; which being observed, Sir Edward Hobby was sent to the Lords, to acquaint them with the error of their Messengers; and Sir Edward Hobby reports,

“That the Lords do acknowledge the error of their Messengers, in coming away without answer.”

3. On the 8th of May, 1610, on carrying up of Bills, the Lords willed the Messengers to stay; and calling them, willed them to impart to the House, That they had great matters of importance and consequence to deliver; and prayed, that some might come up. To which an answer was sent by Sir Edward Hobby, “That, though it be not usual to receive message by our own Messengers, yet we are willing.”

4. On the 6th of March, 1620, on a message to the Lords, Sir Edward Montagu says, “The course is, that the Messenger ought to have precedence, and all the others to follow; and the Messenger to stay at the Bar till the Lords come down to the Bar; and then the Messenger maketh his three congees.” Mr. Treasurer {22} afterwards reports, That they observed the course propounded by Sir Edward Montagu, and told the Lords they would not stir, till the Lords came down to the Bar; "which brought them much grace.”

5. On the 31st of August, 1641, the Lords send a message by one Messenger only: Exceptions were taken to this; and it was declared, “That it was the antient right of this House, to have two Messengers sent from the Lords to this House, upon all occasions; however, at this time, the House was willing to pass it over.” Mr. Holles is sent with this message; to which the Lords answer, “That the business required haste, and they sent as many Messengers as they had.”—And the Lords then immediately repeat their former message, which was brought down by “three Messengers.”

6. On the 27th of December, 1641, the Commons having sent a message to the Lords, in which there was some mistake, immediately send another message, to inform the Lords of the error and the Messenger brings word back, That the entry of the message in their book shall be rectified.

7. On the 26th of November, 1680, the Lords send a message by Sir Timothy Baldwin, and the Clerk of the Parliaments. The Commons immediately appoint a Committee to inspect the Journals, and search precedents touching the bringing of messages from the Lords’ House; and that in the mean time, the Clerk of this House do respite the entry of this message in the Journal of this House.

8. On the 22d of May, 1690, the Lords send down a Bill, with a message, That they have passed it *nemine contradicente*. A Committee {23} is appointed to search precedents on this message, and they report the next day, “That they conceive this message is not according to the usual way of transmitting Bills between the two Houses; for that neither House doth acquaint the other by what number any Bill before them doth pass; and the introducing any alteration, in the usual method of proceeding, may be of dangerous consequence.” This message is never delivered to the Lords, as the session is immediately put an end to //23-1//.



9. On the 4th of April, 1699, the Lords taking notice, this day, that a message was brought from the House of Commons by one Member, make an order, "That the Gentleman Usher of the Black Rod, for the future, when he observes any message from the House of Commons that is not attended with more than the Member who brings the message, doth acquaint such Member, "That he is not to be admitted alone."

10. On the 28th of February, 1699, the Lords send down a Bill, which they recommend to the consideration of the House, as a Bill of great consequence. A Committee is appointed to inspect precedents of such recommendatory messages; who report, on {24} the 5th of March, several precedents of similar messages from the Lords, and from the Commons to the Lords.

11. On the 1st of July, 1717, a dispute having arisen between the two Houses, on the mode of proceeding at the trial of Lord Oxford, the Lords send a message to the House of Commons; and the question being put, "That the Messengers be called in," it passed in the negative, on a division.

12. On the 15th of July, 1717, the Lords send a Bill, with a message, That they had passed it *nemine contradicente*. The same objection is taken to this as in 1690, and conferences are held upon the subject between the two Houses. The Lords justify their proceeding by that precedent //24-1//; and that this being a Bill for the King's pardon, and the manner of passing it //24-2// differing so materially, in many circumstances, from the forms in passing other Bills, no arguments can be drawn from the form of passing other Bills to support the objection made by the Commons to this message. To which the Commons answer, That they conceive the different form of passing Bills of this nature, doth very much strengthen their objection; and therefore insist on their former reasons.

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13. On the 9th of April, 1736, the Lords send a message, that they had agreed to a Bill; but they make a mistake in reciting the title. The House immediately resolve to take that message into consideration on a future day: but, previous to that day, the Lords send word, That it was a mistake of their Clerk, in writing out the title for the Messengers; on which, the order for taking the former message into consideration is discharged.

14. On the 15th of February, 1743, a message from the Lords is received, and the Messengers admitted, in a debate on a motion for an address; and the debate is not adjourned.

15. On the 22d of January, 1750, the Lords send a message by a Master in Chancery and the Clerk of the Parliaments.

16. On the 13th of March, 1758, the Lords send word, That they had returned a Bill, it having been brought to their Lordships without the title ingrossed, or the usual words importing a direction for sending it.

17. On the 1st of April, 1772, a message was sent from the Lords, by one Master in Chancery and the Clerk Assistant. On this unusual proceeding, objection was made to the Speaker's reporting the message; and a Committee was appointed to examine into the precedents, by whom messages have been brought from the Lords: On the 9th of April they report //25-1//; and, in consequence of that report, a message is sent to the Lords, to acquaint them, "That this House doth take notice of this unusual method of fending messages to this House; and desire that the same may not be drawn into precedent:" to which message, on the {26} 13th, the Lords return an answer, "That they had ordered the message to be carried in the usual manner; but find, upon enquiry, that one Master in Chancery was ill; and that they do not mean to introduce any precedent contrary to the usage of Parliament." Mr. Speaker is then ordered to report the message of the 1st of April.

### OBSERVATIONS.

The antient and accustomed form of fending a message from the House of Commons to the Lords, is, by one Member; who is, upon motion made, and question put, named by the Speaker, and who is the bearer of the message; but he must be accompanied by others; as the rule and practice of the House of Lords is, to receive no message from the Commons, unless eight Members attend with it. For this purpose, when the Messenger takes his message from the Table, the Speaker always calls aloud to the House, "Gentlemen, attend your Messenger."—In Bills that have passed the House of Commons with a general concurrence, and in other messages in which the House of Commons wish to have an opportunity of shewing their approbation of the measure, it is customary for a great number of Members to follow their Messenger, and attend him to the Bar of the House of Lords.—There is scarcely ever a difference of opinion on the question of who shall be the bearer of a message; as he is usually selected either for having been the promoter of the Bill, or for his known approbation of the subject matter of the message he carries. There is, however, one instance, and that a remarkable one, where this became a matter of debate; and this was on the 25th of March, 1681, when Sir Leoline Jenkins, being ordered to go up to the Lords, and impeach Fitzharris of high {27} treason, at first refused to go; and being at that time Secretary of State, said, "That the sending him up with this impeachment, reflected, in the character he bore, on the King his matter." It appears from Grey's Debates //27-1//, that this refusal, and his expressions, raised a great commotion in the House; his words were taken down; and, instead of being sent to the Lords, he would have been taken into custody, if, after several explanations, he had not submitted to obey the orders of the House, and expressed himself very sorry that his words had given any offence to the House //27-2//.

When the Lords send any message to the Commons, it is always by two Messengers; these, in matters of great moment, are two of the Judges; at other times, the Messengers have been the Master of the Rolls or Masters in Chancery //27-3//; and sometimes one {28} Master in Chancery, and the Clerk of the Parliaments //28-1//. If

the message requires an answer, the Messengers ought to wait in the Lobby, to carry it back; which answer, as appears from the precedents, if the Commons immediately agree with the Lords, is delivered to them; but, if the Commons differ, or the subject matter of the message requires further consideration, they are called in again, and told, That the House will send an answer by Messengers of their own.

Though it is not customary for either House to inform the other by what numbers a Bill has passed, yet it appears from the report of the 5th of March, 1699, that they have sometimes recommended Bills, as of great importance, to the consideration of the House to which the Bill is sent. It has also happened, that, when a Bill has been sent to the Lords, and it has been neglected there, the Commons have sent a message to remind them of it; as in the instances of the 11th of April, 1716; the 23d of May, 1721; and on the 12th of February, 1721 //28-2//.

When the Serjeant informs the Speaker, and the Speaker has reported to the House, That there is a message from the Lords, there must be a question for calling in the Messengers; and it appears, by the instance of the 1st of July, 1717, that this question has been negatived: I believe, however, this is the single instance. The {29} admission of the Messengers from the Lords is so much a matter of course, that on the 15th of February, 1743, and on the 29th of October, 1795 //29-1//, they were received in the middle of a debate, and the Speaker reported the message, and an answer was sent to the Lords; and all this without a formal adjournment of the debate. And on the 29th of February, 1788, there being a message from the Lords, a Committee of the whole House broke up, for the purpose of enabling the House to receive it, and the House immediately again resolved itself into the said Committee //29-2//.

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#### LORDS.

##### *IV. Mode of searching the Lords' Journals.*

It has been the uniform practice of the House of Commons, if they have occasion to know formally, what the Lords have done with respect to any Bill or other measure then depending, to appoint a Committee to search the Lords' Journals on this matter, and to report the same to the House.

Instances of this proceeding are so numerous, and the form of appointing this Committee so uniformly the same, that it would be superfluous to repeat the precedents //30-1//; and they may all be easily found by recurring to the general indexes. To entitle the Commons to this right, it is not necessary that the subject matter of the search should have originated in the House of Commons. In the instances of the Partition Treaty, on the 24th of March, 1700; of the manner of attending the proclaiming of the Queen, on the 8th of March, 1701; in the famous case of Ashby and White, on the 17th of January, 1703; and in a great variety of other instances, the Commons have appointed Committees to inspect the Lords' Journals, with respect to matters depending in the House of Lords, and not sent there from the Commons.

The Journal of the Lords is a record, to which every subject may resort for information; and the mode of acquiring this information to the House of Commons, is, by their appointing a Committee to inspect the record, and to report the same to them.

I {31} do not know of any proceeding similar to this, that has ever been adopted by the Lords, with respect to the Journals of the House of Commons; indeed, the practice that has so long prevailed, of printing the votes, may have rendered such a proceeding unnecessary //31-1//. It has, however, happened, that this practice has been interrupted. On the 25th of February, 1702, it is resolved, "That it be a standing order of the House, That no votes of the House shall be printed without the particular order of the House;" and the order for printing, that had been made at the beginning of that session, is discharged: and the reason for this proceeding is given in the Journal, "That the House have found great inconveniences attending the printing of the votes //31-2//." But this restriction did not last long: at the beginning of the next session this matter was again debated; and on the 23d of November, 1703, it was carried, on a division, 177 to 147, "That the votes should be printed;" and so, I believe, it has continued every session since that time. Indeed, nothing seems more unreasonable, I might add unjust, than that the proceedings of the House of Commons should not, by some mode or other, and that with authority, be conveyed to their constituents; more especially since private bills, so generally affecting the interests both of the landed and commercial proprietors, have been so numerous. {32} Whether, if the House of Commons should refuse to continue this order for printing their votes, the Lords could claim a right of inspecting their Journals, on the principle of their being 'public records,' is a question it does not become me to decide.—Many very great and respectable opinions have differed on this subject. On the 4th of March, 1606, in a message to the Lords, the Messenger having used the expression of "Knights, &c. and Barons of the Commons 'Court' of Parliament," the Lords take offence at this, and send a message to complain of these words. The Commons appoint a Committee to consider of this message, who report on the next day, the 5th of March; and, after referring to the statute of the 6th of Henry VIII chap. 16th, wherein it is enacted, "That the licence for Members departing from their service shall be entered of 'record' in the book of the Clerk of the Parliament, appointed or to be appointed for the Commons House;" they add, "That they doubt not but that the Commons House is a 'Court,' and a 'Court of Record;' and that their Lordships did not take any exception to that point." To which the Lords answer, "That they were not, with respect to that part of the message, willing to enter into further debate at that time, though in all points they were not satisfied."

From the speeches of several Members throughout the Parliaments of James I. short heads of which are preserved in the Journals, the great lawyers of those times appear to have entertained different opinions upon this question. In the famous dispute about the punishment of Floydd, Sir Edward Coke, on the 2d of May, 1621, says, "He wisheth that his tongue may cleave to the roof of his mouth, that faith, that this House is no Court of Record; and he, that faith this House hath no power of Judicature, understands not himself: for though we have not such {33} power in all things, yet we have power of Judicature in some things; and therefore it is a Court of Record."—And afterwards, "That he knoweth this is a Court of Record, or else all the power and liberty of this House were overthrown //33-1//." There is the following entry in the Journal of the 4th of May, 1621: "Sir Edward Sackville—That all our proceedings may be entered here, and kept as records." This entry is explained in the

second volume of the printed Debates, p. 22, where, in a further debate on the question about Floydd's punishment //33-2//, Sir Edward Sackville saith, "The Journals in the Lords House of Parliament are recorded every day, in rolls of parchment; and therefore he would have ours so done too." And then the book says, It is ordered. That the Journals of this House shall be reviewed, and recorded on rolls of parchment." But I do not know that this order was ever carried into execution.

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## LORDS.

### *V. Joint Committees of Lords and Commons.*

1. ON the 19th of December, 1661 //34-1//, the Lords at a conference acquaint the Commons, That there had been discovered a design to disturb the union and peace of the kingdom and that the Lords, to provide a remedy against this evil, had appointed a Committee of twelve of their House, and did propose it to this House, to appoint an answerable number of their Members to be joined with the Lords, who might, during the recess, examine the said traiterous designs, and report to the House such expedients as they should find necessary for preventing and suppressing thereof. The Committee to meet at the Lord Chancellor's lodgings, Whitehall, and to adjourn from time to time, and from place to place, as they should find convenient. The Commons immediately appoint a Committee of twenty-four, to be joined to the Committee appointed by the Lords. On Tuesday the 7th of January, the Lords acquaint the Commons, at a conference, that their Lordships having received the report //34-2// from their Committee, the Committee had been dissolved. On the 10th {35} of January, Mr. Waller reports //35-1// to the House of Commons from the Committee appointed by them; and then the Committee is ordered to be dissolved.

2. On the 8th of May, 1679, the Commons propose to the Lords, that a Committee of both Houses be nominated, to consider of the most proper ways and methods of proceeding, upon impeachments, according to the usage of Parliament. On the 9th of May, the Commons are acquainted at a conference, that the Lords do not agree to a Committee of both Houses, "because they do not think it conformable to the rules and orders of proceeding in this Court, which is and ever must be tender in matters relating to their judicature." The Commons, on the 10th of May, insist on a joint Committee, and at a conference given their reasons. And on the 11th of May the Lords acquaint the Commons, That {36} they had appointed a Committee, consisting of twelve, to join with a Committee of the Commons, to consider of proposals and circumstances in reference to the trials of the Lords in the Tower. The Commons then appoint twenty-four to join with the Committee of the Lords //36-1//.

3. On the 27 of November, 1680, The Lords acquaint the Commons by message, that they have appointed a Committee of give Lords to meet with a Committee of this House, to adjust the methods and circumstances in the trial of Lord Stafford //36-2//. The Commons immediately appoint a Committee of ten to meet the Committee of the Lords.

4. On the 7th of December, 1692, a motion is made in the House of Lords, “That a Committee of both Houses be appointed to consider of advice to be given to his Majesty, upon consideration of the state of the nation.” The question being put, it passed in the negative.—See the reasons given by the protesting Lords against rejecting this motion, and in favour \ \ so in original \ \ of a joint Committee of both Houses.

5. On the 24th of April, 1695, the Lords acquaint the Commons at a conference, that it is the opinion of their Lordships, that all future examinations of person mentioned in the {37} report of Sir Thomas Cook’s accounts, should be had before a Committee of both Houses. To which proposal the Commons agree //37-1//.

6. On the 13th and 14th of May, 1794, the House of Commons appointed a Committee of Secrecy, to consider of papers laid before them by the King’s command, relating to certain Corresponding Societies, associated for the purpose of establishing a convention of the people. The Commons made a report; and this report, together with the original papers, were communicated by message to the Lords. On the 22d of May the Lords send word, that they have referred these papers to a Committee of Secrecy, and have given power to that Committee to receive any communications that may be made to them from the Committee of Secrecy appointed by the Commons //37-2//. The House of Commons immediately give a power to their Secret Committee to communicate, from time to time, with the Secret Committee appointed by the Lords; and inform the Lords of this by the Messengers from the Lords.

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#### OBSERVATIONS.

In appointing these Committees, it appears from all the instances, that both Houses adhered, to what was antiently the practice in naming Members to manage a conference between the two Houses, viz. That the number of Members of the House of Commons should be double the number of the Lords.—The Lords also in these, as in the other cases, appoint the time and place of meeting.

The advantage to be derived from such a joint Committee, where the object of their appointment is to examine witnesses, and to receive information, upon which both Houses are afterwards to ground their proceedings, is, That the evidence, which is to be the foundation of their future measures will, by this means, be precisely the same; not varied by different questions proposed with different views, which might produce different answers, and lead to such information, as might induce one House, that had received it, to propose or adopt different measures, from what might appear proper to the other House, which, in the course of a separate examination, had received no such information. The same questions and answers will form the substance of the report to be made to each House; and in their further proceedings, both Houses will be sure, that the facts and evidence from which they draw their conclusions, as well as the colour and manner of delivering that evidence, will be the same. If indeed the joint Committee had a power to give any opinion, or to make any other report, than of the minutes of the examination of the witnesses, an objection would very properly arise, on the part of

{39} the Lords, that the number of the Commons being double the number of the Lords, that circumstance would take from their Lordships all power of deliberation or of conclusion, in matters where there was a difference of opinion; or, which is the same, would render such conclusions of no effect. The minute books being lost or mislaid, no traces can be found, except in the Journals of both Houses, of the manner in which these joint Committees proceeded to execute their powers.—It appears from Mr. Waller’s report on the 12th of January, 1661, that the Commons did not consider themselves as merely attending a conference with the Lords, where the rules, which have been uniformly observed at conferences between the two Houses, would have prevented them from sitting, or putting on their hats; but that, at this Committee, they were in every respect upon an equality with the Lords with whom they were joined.—When Lord Clarendon makes his report to the Lords, on the 7th of January 1661, he says, “That the Committee finding some imaginary jealousies //39-1// abroad of the end and intent of this Committee’s meeting, the said Committee have made no resolutions or opinions, but have thought fit to leave the business to the wisdom of both Houses of Parliament.”

Another circumstance, which has by some persons been thought an advantage attending a joint Committee of this sort is, that the examination being to be taken before a Committee of the Lords, and it having been usual and the practice of the Lords, that witnesses to be examined at their Committees, should be previously sworn at their Lordships’ Bar, the evidence would in this instance {40} also be given upon oath; and that the persons to be examined before this joint Committee would, as done on the 24th and 25th of April, 1695, be sworn at the Bar of the House of Lords, by which means their Evidence receives the sanction //40-1// and authority of an oath, which could not be administered by the House of Commons //40-2//. When it was proposed in December, 1788, to examine the physicians who had attended his Majesty, in order to lay before both Houses the information of the state of the King’s health, and the capacity he was under to attend to public business, and to execute the functions of his station, it was at first intended, for some of the reasons mentioned before, that this examination should be taken before a joint Committee of both Houses; and the forms of proceeding to the appointment of that Committee in the House of Commons, and the motions for a conference with the Lords, and the subsequent proceedings, were settled and prepared in order to be moved into the Commons; but when this mode was previously suggested to those Members of the Administration who were Members of the House of Lords, they objected to it, and were of opinion, that the Lords in general would object to appointing a Joint Committee, where, from the practice adopted in all the former instances, the number of Commoners much be double the {41} number of the Lords—from which circumstance it might follow, that if there should be a difference of opinion, as to the propriety of any question to be put to the physicians, which, in a matter of this delicate nature, might very probably occur, the voices of the Lords, being so outnumbered, would be rendered of no effect.—This objection the Chancellor of the Exchequer, Mr. Pitt, alluded to, when he moved for a Select Committee for this purpose in the House of Commons, and it was upon these grounds, that the appointment of a Joint Committee of Members of both Houses was, in this instance, laid aside. The

mode adopted in 1794, of each House appointing a separate Committee, and giving powers to these Committees to communicate with each other, from time to time, obviated this objection, and yet preserved all the advantages that might have arisen from a Joint Committee.

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## LORDS.

### VI. *Proceedings between Lords and Commons, where the Rights and Privileges of either House are concerned.*

1. ON the 12th of March, 1575, the Lords, by message, desire to know the reasons which did move the House to deal so hardly in the Bill that had passed their Lordships, for the restitution in blood of Lord Stourton; which message was not well liked of, but thought perilous and prejudicial to the liberties of this House: wherefore it was resolved, That no such reason shall be rendered. The next day, the 13th, the Lords desire a conference touching Lord Stourton's Bill, which their Lordships hear hath had offers of provisoes, or some other things, to the stay of the proceeding of the said Bill: to which the Commons answer, "That, by the antient Liberties and Privileges of this House, conference is to be required by that Court, which at the time of the conference demanded, shall be possessed of the Bill, and not of any other Court; and that this House, being possessed of the Bill, will (if they see cause, and think meet) pray conference therein with their Lordships themselves; and else not."

2. On the 26th of May, 1604, complaint of a book published by a Bishop, in which notice is taken of many passages in this House, touching the matter of Union, unmeet to be questioned by any, much less a Member of the higher House. Moved, "That he might be called to the Bar." At last, after debate, a Committee is appointed, to consider of heads of a message to be sent to the Lords on this subject. This message, with the Lords' answer, appear more at large in the Lords' Journals; and, after {43} several conferences, the Bishop of Bristol, who wrote the book, made the following acknowledgment, on the 5th of June; 1st, "I confess that I have erred in presuming to deliver a private sentence in a matter so dealt in by the High Court of Parliament." 2dly, "I am sorry for it." 3dly, "If it were to do again, I would not do it." 4thly, "But, I protest, it was done of ignorance, and not of malice towards either of the Houses of Parliament, or any particular Member of the same, but only to declare my affection to the Union; which I doubt not but all your Lordships do allow of." On the 21st of June, the Commons desire the Bishop's acknowledgment may be delivered, to be entered and 'recorded' in the Commons' House. But I cannot find that this request was complied with.

3. On the 27th of May, 1606, it appears from the Lords' Journals, that, a Bill for restitution in blood of R. Meyrick having begun in the Commons, and being, on the last day of the session, offered to the King for the Royal assent, the King, by word of mouth, openly gave admonition to the Commons, "That no such act for restitution, from henceforth, should be proceeded withal in Parliament, till the same were first allowed and signed by his Majesty; and that then it ought to begin first in the higher House //43-1//."



4. On the 4th of March, 1606, the Lords send a message, complaining, that in a message sent from the Commons, the Messenger had said “The Knights, Citizens, Burgesses, and “Barons” of the Commons “Court” of Parliament had sent him;” and as their Lordships are very tender in admitting any thing to pass unanswered, {44} which might affect their Rights and Privileges, they are desirous to let this House know, that they can never admit, that any “Baron” of Parliament hath place in this House; and that their Lordships conceive, that this House is no “Court,” and that their House and this make but one “Court.” To this message, the Commons return an answer “That there was no commission given from the House, to use expressly the word “Barons” or any other words; but that they conceive the word “Barons,” used in that stile, may be justified from the Barons of the Cinque Ports, which appellation is warranted by the King’s Writ—for the words of “Commons Court of Parliament” the Messenger protesteth, that, to his best remembrance, he used not the word “Court;” but for the matter of those words, although the Commons doubt not, but that the Commons’ House is “a Court,” and a “Court of Record,” yet because they have no purpose to pursue questions, accidentally arising out of words not intended, they are willing, leaving this point, to pass to the great business in hand.”—To this the Lords reply, “That they were not willing to enter into further debate, though in all points they were not satisfied.”

5. On the 25th of May, 1614, the Bishop of Lincoln //32-1// having, in the House of Lords, dissuaded the Lords from agreeing to a conference with the Commons on the subject of impositions and used this expression, “That the matter of imposition is a *Noli me tangere*; and that it did not strike at a branch but at the root and prerogative of the imperial crown;” the House of Commons, after a long and violent debate, in which several different proposals are made how they may most effectually resent this breach of their privileges, determine to forbear all proceedings in any parliamentary matter, till they have received an answer {45} from the Lords on this subject. Accordingly several days are spent on this question, and all other business postponed. On the 30th of May the Lords send an answer (which appears in the Lords’ Journals) wherein they suggest, “That this complaint seemeth to be grounded, not upon direct or certain proof, but only upon a constant, public fame; and that their Lordships think that common fame only is not a sufficient ground whereon they may proceed in this cause, as is required: nevertheless, the Lords are so respective of any thing that may concern this House, that when they shall be more certainly informed, in direct and express terms, what the Bishop of Lincoln’s words were, and how the same are to be proved, they will proceed therein so effectually, according to honour and justice, as it shall well appear how careful they are to give to that House, in this business, all satisfaction that may be.” Upon this the Commons proceed in their ordinary business, but appoint a Committee to consider of an answer to this message; which, on the 31st of May, Sir Roger Owen reports, and carries to the Lords: in which (as appears from the Lords’ Journals) the Commons desire the Lords, “That if the words charged by them were not spoken, so to signify to the Commons; otherwise, if they were used, then they hope their Lordships will do as they promised: and that the Commons know not what other

course they could have taken to bring the matter to examination; nor, otherwise, how any undutiful speech, which may be uttered in this House, or in theirs, can be called in question." The Lords the same day send word back to the Commons, "That the Bishop of Lincoln, having desired leave to expound himself, had protested upon his salvation, that he had not spoke any thing with any evil intention to that House; expressing with many tears his sorrow, that his words were so misconceived, and strained further than he ever meant: which submissive and ingenuous behaviour had {46} satisfied the Lords. And their Lordships assure the Commons, that if they had conceived the Bishop's words to have been spoken, or meant, to cast any aspersion of sedition or undutifulness upon that House, their Lordships would have forthwith proceeded to the censuring and punishing thereof with all severity. Yet their Lordships are of opinion, that hereafter no Member of that House ought to be called in question, when there is no other ground thereof, but public and common fame only."—The Commons are not satisfied with this submissions; and on the 1st of June, appoint a Committee to consider what is fit further to be done in this matter: but the sudden dissolution of the Parliament put an end to all further proceedings.—The Bishop of Lincoln here concerned was the famous Dr. Richard Neile //46-1//.

6. On the 16th of March, 1620, the Lords send a message to desire that some persons, in custody by order of the House of Commons, may be delivered to their officer, that the Lords may examine them at their pleasure. The Commons consent that the persons in custody may be delivered to the Lords to be examined, and then to be remanded to the custody of the Serjeant.

7. On the 1st of May, 1621, the Commons, after much debate, pronounced a very severe sentence //46-2// against one Floyd, for having {47} uttered disrespectful expressions towards the Prince and Princess Palatine, the daughter of James the First. This exercise of jurisdiction against a person, not a Member, nor under pretence of an offence against the House, or any of its Members, was not only objected to by the King //47-1//, but by the Lords, who, on the 5th of May, desired a conference with the Commons on the subject //47-2//. The dispute, after much discussion, ended, by the Lords, with the consent of the Commons, entering into a protestation, that these proceedings should not be used as a precedent; and by the House of Lords themselves examining into Floyd's offence, and passing a sentence on him, different from that which had been adjudged by the Commons.

8. On the 22d of March, 1623, //47-3// the Lords send a message, that a complaint was made to them against a person, who alleged, that his cause was depending here; they therefore, out of their correspondence with this House, have surceased, and desire to know whether the House be possessed of this case or no. To which message the Commons return thanks for their good correspondence, and say, That they are not possessed of any thing concerning the person complained of.

9. On the 6th of April, 1624, a doubt arose whether a Bill for restitution in blood of Carew Raleigh (son of Sir Walter Raleigh, attainted of high treason) ought to begin in

the House of {48} Commons. Sir Edward Coke, Mr. Noy, and Mr. Selden, are appointed to search precedents; and on the 8th of April, Mr. Noy reports several instances both ways; twenty-two where they began in the Lords, and fourteen or fifteen in the Commons. Mr. Selden, in the debate, refers to the proceeding in 1606, cited before in N<sup>o</sup> 3. The Bill was immediately read a second time, and afterwards passed the House of Commons. It was read a first time, in the House of Lords, on the 5th of May; on the 15th of May it was read a second time; but exception being taken that it began in the House of Commons, the Lords' Sub-committees for Privileges are ordered to make an entrance in the Journal, for saving the Privileges of the Lords in this, and in Bills of this nature: and no farther proceeding appears upon it in this Session //48-1//.

10. On the 1st of March, 1625, a message is sent to the Duke of Buckingham, that this House desireth to be satisfied from him, as Lord Admiral, in a matter touching the staying of a ship. On the 2d of March, Mr. Spencer reports from the Duke, "That he being informed from the Committee, according to the order of the House, he had, according to his duty, moved the Lords, for leave to give satisfaction to this House, but hath not yet received their answer; and therefore cannot yet give his." On the 4th of March, the Lords desire a conference upon this message to the Duke; at which conference the Lords ask, "Whether this message was any 'summons' to that Lord to make answer?" To which the Commons answer, "That the Clerk had made a slip in making out this order, which had been since corrected."—This satisfies the Lords, that nothing in this had been done to their prejudice. The substance of this conference is entered more at length in the Lords' Journals.

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11. On the 1st of March, 1625, the Commons having occasion to examine the Council of War, some of whom were Peers, Sir Dudley Digges reports from a Committee the form of a warrant of summons for their appearances. It appears from the Lords' Journals of the 2d of March, that these Lords having acquainted the House with this summons, the Act of Subsidy was read, and the House gave them leave to appear and answer before the Commons, according to the tenor of the said Act.—See the manner of their being received and examined on the 3d of March //49-1//.

12. On the 14th of April, 1628 //49-2//, information is given to the House, that the Earl of Suffolk had, in conversation with a Member at the House of Lords, said, "That Mr. Selden, a Member of this House, deserved to be hanged for rasing a record." The Commons immediately sent a message to the Lords, to complain of Lord Suffolk.—See the further proceedings upon this matter in the Journals, on the subsequent days.

13. On the 29th of January, 1628, a motion for leave to Sir John Eppesly to answer a petition presented against him at the House of Lords. Sir Robert Phelips says, "No Commoner is to be complained of but in this House, and here to answer:" and the House, upon question, ordered Sir John Eppesly not to answer this petition above with the Lords, upon pain of the displeasure of the House, and expulsion; and the person, preferring the petition to the Lords, is ordered to be sent for to answer his contempt to this House.

14. On the 28th of April, 1640, in a conference between the two Houses about the Lords interfering in matter of supply, the {50} Commons desire their Lordships hereafter to take no notice of any thing which shall be debated by the Commons, until they themselves shall declare the same unto 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.

15. On the 10th of November, 1640, the Lords desire a conference, touching a breach of their Privileges by two Members of the House of Commons. It appears that this was, that, immediately after the dissolution of the late short Parliament, the pockets and papers of Lord Brooke and Lord Warwick had been searched by Sir William Beecher; who, on being examined to this fact, had produced a warrant for this purpose, signed by Sir Henry Vane and Sir Francis Windebank, the two Secretaries of State, then Members of this House: and that the Lords would not proceed further in this business without acquainting the House of Commons.

16. On the 4th of January, 1640, information being given of malicious and wicked words spoken by Mr. William Pier (Archdeacon of Bath, and son of the Bishop of Bath and Wells) touching the last Parliament, a message is sent to the Lords to acquaint them therewith, and to desire that he may be forthcoming to answer the said information: and it is stated, " That this was done out of a tender respect to the Privileges of the Lords, conceiving that the said Mr. Piers was not only a son, but of the family of the said Bishop of Bath and Wells." He is ordered into custody, and on the 9th of April 1641, is bailed upon good security.

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17. On the 29th of December, 1641, a message is sent to the Lords to acquaint them, that the House finds, by common fame, that it hath been said in the Lords' House by Lord Digby, and offered to be justified by him, "That the House of Commons have invaded the Privileges of the Lords' House, and the liberty of the subject;" and that he did likewise say, "That this was no free Parliament:" and to desire their Lordships, if these words were spoken by him, that right may be done to the Commons of England against him; and that, if there were no such words, then a declaration may be set forth by their Lordships, to acquit this House of that scandal. It appears from the Lords' Journal, that this message is referred to the Committee appointed to keep up a good correspondence between the two Houses //51-1//.

18. On the 17th of May, 1660, the Commons passed some resolutions for seising and securing the persons and estates of those who had sat in judgment on the late King: which being communicated to the Lords, the Lords desire a conference upon them; and give for reasons for not agreeing to them, "That they do intrench upon the ancient Privileges of their House; judicature {52} in Parliament being solely in the Lords' House: but, that no time might be lost, they have issued an order of their own for doing what was desired //52-1//."

19. On the 9th of July, 1660, Ordered, That Alderman Titchborne, committed by this House to the custody of the Serjeant at Arms, being sent for to appear before the House of Lords in Parliament, be forthwith carried to the Lords' House, in custody of the said Serjeant at Arms, or his deputy. See the 8th and 13th of April, 1695.

20. On the 21st of May, 1661, Mr. Weld, a Member, making complaint of an abuse which he received from one Skinner, an officer belonging to the Lords, when he went up to the conference yesterday, Mr. Weld is ordered to reduce into writing the manner of the said abuse, that complaint may be made thereof to the Lords, to the end the offender may be punished.

21. On the 11th of January, 1661, upon information given to this House, that the Clerk of the Lords' House did permit the original rolls of Acts of Parliament to be carried to the Printer; and that they were ripped in pieces, and blotted and abused, and in danger of being embezzled or altered; Ordered, That a message be sent to the Lords, to desire them to give orders, that these rolls may be kept in the office, and not delivered to the Printer; but that true copies, fairly written, and examined and attested, may be delivered to him. I cannot find in the Lords' Journals any entry that this message was delivered.

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22. Whilst a bill was depending for taking the public accounts, it appears from the Lords' Journals of the 20th of December, 1666, that they ordered a petition to be presented to the King, to desire his Majesty to grant //53-1// a commission for this purpose. The Commons object to the irregularity of this proceeding, at a conference; their reasons are reported on the 12th of January. On the 18th of January, the Lords perused the precedents cited by the Commons; and on the 24th, return an answer to these reasons; when, though the Lords assert the regularity of their proceeding, they consent to go on with the Bill.

23. On the 12th of December, 1667, the Lords being informed, "That the Lord Chief Justice, Keeling, of the King's Bench, an assistant to this House, is ordered to appear before the House of Commons to answer some complaints against him, which he thinks fit to acquaint their Lordships with," The House leaves it to him to do therein as he thinks fit.

24. On the 4th of March, 1669, a message to be sent to the Lords, to acquaint them, that this House hath received information, that there is an appeal depending before them, at the suit of Mr. H. Slingsby, against Mr. W. Hale, a Member of this House; and to desire the Lords to have a regard to the privileges of this House therein. To which the Lords return for answer, "That the House of Commons needs not doubt, but that the Lords would have as due regard to their privileges, as they had to their own."

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25. On the 15th of November, 1670, the House being informed, that the Lords had passed some orders concerning the Lord Newburgh's possession of certain lands in

Lincolnshire, a Committee is appointed to examine and state the matter. On the 16th of November, they report the examination: but I do not find that this report is any where entered in the Journal. The Committee is then revived, and ordered to look into precedents, and consider what may be best for the House's further proceeding therein. On the 29th of November, this report is ordered to be taken into consideration; but nothing further appears about it.

26. On the 14th of May, 1675, see the report from the Committee appointed to inspect the Lords' Journals, for their proceedings in the case between Shirley and Fagg, with the complaint against Lord Mohun for forcibly taking from the Serjeant the Speaker's warrant for apprehending Shirley.—See the further proceedings in this dispute, on the 15th and 17th of May, and the following days.

27. On the 9th of November, 1678, complaint being made, that the commissions for taking the oaths of allegiance and supremacy were not issued forth, pursuant to the King's proclamation, this matter is enquired into; and it appearing, that the Lord Chancellor had occasioned this delay, a conference is desired with the Lords, to acquaint them therewith, that they may do therein as to justice shall appertain, "the Chancellor being a Member of their House."—See the Chancellor's answer, on the 11th of November //54-1//.

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28. On the 2d of January, 1691, the Lords taking into consideration a vote of the House of Commons of the 18th of December preceding, as expressed in their printed //55-1// votes, relating to addressing the King upon the terms of a charter to be granted to the East India Company, resolve to desire a conference //55-2// with the House of Commons to complain of this proceeding on their part, excluding the Lords—though the measure is afterwards to be carried into effect by Act of Parliament.

29. On the 18th of March, 1697, the Lords having discharged out of custody, in the Tower, Charles Duncombe, Esquire, committed there by order of the House of Commons, a Committee is appointed to search the Lords' Journals relative to this matter, and the Lord Hartington reports their proceedings. A Committee is then appointed to search precedents, in what manner this House have in like cases asserted their ancient rights and privileges. See the Report on the 22d March, and the resolutions of the House thereupon //55-3//.

30. On the 13th of June, 1701, Lord Haversham having, at a conference, spoken words aspersioning the honour of the House of Commons, it is ordered that he be charged before the Lords for {56} these words, and that the Lords be desired to proceed in justice, and to inflict such punish merit upon the said Lord Haversham, as so high an offence against the House of Commons does deserve. On the 20th of June the Lords send a copy of Lord Haversham's answer to this charge //56-1//, with which the Commons are not satisfied; nothing further however is done, as the Parliament was soon after prorogued.

31. On the 2d of November, 1702, complaint being made against the Lord Bishop of Worcester and his son, relating to the rights and privileges of the House of Commons //56-2//, this matter was taken into consideration on the 18th of November; and the charge being fully made out, an Address //56-3// was presented to the Queen to remove the Bishop from being Almoner; which the Queen complies with, and sends her answer on the 20th //56-4//.

32. The Commons having, at the conference on the 17th of February, 1702, taken notice of a resolution, to which the Lords had come, which declared, “That Charles Lord Halifax, as Auditor {57} of the Receipt of the Exchequer, had preformed the duty of his office, and had not been guilty of any neglect or breach of trust.” The Commons objected, That the Lords, by this, gave a judgment of acquittal, without accusation or trial.—On the 18th of February the Lords resolve, “That the Commons, in their last conference, have made use of several expressions and arguments, highly reflecting and altogether unparliamentary, tending to destroy all good correspondence between the two Houses, and to the subversion of the Constitution.” They then appoint a Committee to consider of farther proceedings.

33. On the 20th of December, 1703, Mr. St. John reports, from the Lords’ Journals, the proceedings of the Lords, in the examination of Boucher and others, upon which the Commons address the Queen, “That they will support her Majesty’s prerogative; and that no persons accused for crimes, who are her Majesty’s prisoners, ought to be taken out of the custody of the Crown, without her Majesty’s leave.” See the farther proceedings upon this matter, in the Journals of both Houses, till the end of the session.

34. On the 17th of January, 1703, the Commons appoint a Committee to search the Lords’ Journals, as to their proceedings upon a writ of error, in a cause between Ashby and White //57-1//; and what the Lords did in the case of Soame and Bernardiston.

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35. On the 20th of January, 1703, a petition is presented from Mr. Bathurst, complaining of an order made by the House of Lords, in which the Lords exercised an original jurisdiction, there being no suit depending, and consequently no ground for an appeal. On the 22d of January the Committee appointed to search the Lords’ Journal make their report, and on the 28th of January the Commons come to several resolutions upon this proceeding of the Lords.

36. There are several instances, in the Journals, of messages from one House to the other, to desire that persons in the custody of the Black Rod, or the Serjeant, may attend to be examined.—See the 4th of April, 1707; the 25th of January, 2d and 27th of February, 1720; and 1st of May, 1729; *et passim*.

37. On the 14th of March, 1710, upon the hearing of the charge of Colonel Geldhill against Sir James Montagu, the Bishop of Carlisle having been mentioned in the

evidence, he desires to be heard. The Bishop is admitted accordingly, and heard //58-1//; and being withdrawn the House resolve, “That it appears to this House, that William Lord Bishop of Carlisle has dispersed several copies of a letter, in order to procure Sir James Montagu to be elected a citizen for the city of Carlisle; and by concerning himself in the said election, hath highly infringed the liberties and privileges of the Commons of Great Britain.”

38. The Commons having, in the Land Tax Bill, which passed in the year 1715, inserted a preamble //58-2//, in which were contained facts and allegations of what were the causes of the then subsisting {59} rebellion; the Lords, when this Bill is committed, on the 13th of February, 1715, gave an instruction to the Committee, "That, although this preamble contains several assertions of facts different from the matter of the Bill, and which may possibly hereafter fall under the consideration of the House in their judicial capacity; yet, their Lordships, being sensible of the inconvenience which would ensue if the necessary supply of money should be delayed, instruct the Committee to agree to the said preamble without any amendment." But the following declaration is immediately ordered, and agreed to by the House:—"To prevent the ill consequences of such a precedent for the future, they have thought fit to declare solemnly, and to enter upon their books for a record to all posterity, that they will not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament; and that as to the said assertions in the said preamble, they will not hold themselves concluded by any of the said assertions, in any judicial proceeding or debate whatsoever."

39. On the 29th of March, 1723, upon a petition from the Bishop of Rochester to the House of Lords, stating, that he had, by order of the House of Commons, received a copy of a Bill for inflicting certain pains and penalties upon him, and that counsel were allowed him to make his defence; but finding, by a standing order of the Lords, of the 20th of January, 1673, “That no Lord may appear, by counsel, before the House of Commons, to answer any accusation there," he is under great difficulty, and desires their Lordships' directions—a question is put, “That the Bishop of Rochester, being a Lord of Parliament, ought not to answer, or make his defence, by counsel or otherwise, in the House of Commons, to any Bill or accusation there depending." {} It passed in the negative //60-1//: and leave is granted to the Bishop to make his defence by counsel.

40. On the 1st of April, 1728, Lord Delawar reports from a Committee of the Lords to whom a Bill had been committed, “for relief of Lord William Powlett, a Teller of the Exchequer, in respect of a sum of money stolen out of his office,” that the Committee had gone through the Bill, “but, upon consideration of the whole, they find several things contained in the said Bill unparliamentary and unprecedented //60-2//, intrenching on the Rights and Privileges, and derogatory to the honour of the House; and therefore did not think fit to proceed any further in the Bill, without the direction of the House.” The Lords resolve, “That this House will proceed no further in the consideration of the said Bill.”



41. On the 28th of March, 1764, the Commons came to several resolutions, respecting the abuse that had prevailed in the exercise of the privilege of franking letters; and having resolved, “That certain regulations should be adopted, for correcting this abuse, with regard to Members of the House of Commons;” {61} a //61-1// message is sent to the Lords to acquaint them with this resolution. On the 29th of March the Lords acquaint the Commons, by message, that they have come to a similar resolution. The House of Commons then order a Bill to be brought in, to correct these abuses, and establish the regulations agreed upon.

### OBSERVATIONS.

The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament, is, That there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other.—From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other; but, if there is any ground of complaint against an act of the House itself, against any individual Member, or against any of the Officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed any other proceeding would soon introduce disorder and confusion; as it appears actually to have done in those instances, where both Houses, claiming a power independent {62} of each other, have exercised that power upon the same subject, but with different views and to contrary purposes //62-1//.

Each House has a right to originate and to pass such Bills as to them seem proper; except that the Lords have, as appears from several of the instances, //62-2// claimed the exclusive right, that Bills for restitution of honours, or in blood, should commence with them //62-3//; and the House of Commons have on their part asserted, and I believe invariably preserved, the exclusive exercise of the right, “That Bills of Supply, imposing burthens upon the {63} people, should be the grant of the Commons; and that the Lords should have no other voice, than, as one branch of the legislature, by their assent to give the authority of a law to the levying of those aids and taxes which the Commons shall think wise and fitting to impose.” //63-1// Other Bills, of what kind soever, whether relating to the Parliament itself, or to either House separately, may have their commencement indifferently in either House //63-2//. At the same time it seems but reasonable, that Bills, which have for their object the regulation of such matters as fall more immediately under the cognisance of either House of Parliament, should begin in that House which must, from several circumstances, be more competent to frame the provisions of the Bill in such a manner as to be best able to answer the purposes intended by it //63-3//.—There is one Bill, which begins neither with the Lords or Commons, but with the Crown //63-4// and that is, “A Bill for a general pardon.” This is first signed by the Crown, and transmitted to both Houses of Parliament, in each of which it {64} has only one reading //64-1//. It

however afterwards again receives his Majesty's Royal assent //64-2//, in the same form with every other public Bill, and the answer is "Le Roi le veut."

When a Bill has passed one House, and been sent to the other, the provisions of which have been grounded, not upon general notoriety, but upon special facts, which are necessary to be proved by evidence, it is usual for the House of Parliament to which the Bill {65} is sent //65-1//, to ask, either by message or at a conference, the grounds and evidence upon which this Bill has passed; and this evidence, whether arising out of papers, or from the examination of witnesses, is immediately communicated. But farther than this it is irregular for either House to proceed. To ask, why the House, where the Bill took its rise, passed it in such or such a manner; or to acquaint the House, to which it is sent, that it had passed unanimously //65-2//; are proceedings, that we see, from several instances, have been objected to. It has not however, been unusual for either House to remind the other of a Bill, which, from its importance, has appeared to deserve greater dispatch, than the House of Parliament, to which it is sent, seemed inclined to give it.

We see, from the several precedents above cited, that neither House of Parliament can take upon themselves to redress any injury, or punish any breach of Privilege offered to them by any Member of the other House //65-3//; but that, in such cases, the usual {66} mode of proceeding is, to examine into the fact, and then to lay a state of that evidence before the House of which the person complained of is a Member. It is true that, in the complaint against Lord Peterborough, on the 29th of January, 1701; and against the Bishop of Worcester in 1702, and the Bishop of Carlisle in 1710, no message was sent to the Lords, to acquaint them that the Commons had any enquiry before them touching a Lord of Parliament: but the reason of this omission, in these instances, I apprehend to be, that, though the subject of complaint, which was that of Peers interfering in the election of Members to serve in Parliament, has been always considered by the House of Commons as a matter in which their Privileges are materially concerned //66-1//, and on which they ought to have redress, and which, in the instance of the Bishop of Worcester, they actually obtained; yet the House of Lords have never, as I recollect, admitted the force of this claim: nay, notwithstanding the resolutions of the House of Commons, some Peers have actually claimed, and I believe exercised, the right of voting, as freeholders, for Members to serve in the House of Commons. It would therefore have been to little purpose to carry up to the Lords a complaint against one of their Members //66-2//, for having committed what, in the judgment of that House, would have been considered as no breach of the Privileges of the House of Commons //66-3//.

Where the cause of complaint is, words spoken by a Member of either House of Parliament, reflecting upon the other House, or {67} any of its Members,—it appears, from the several instances of the Bishop of Lincoln in 1614, of the Earl of Suffolk in 1628, of Lord Digby in 1641, and of Lord Haversham in 1701, how extremely difficult it is to obtain any redress. The impossibility of ascertaining exactly the expressions objected to, and the different meanings which may be affixed to the same set of words,

according to the tone and manner of the persons speaking, have, in the instances referred to, rendered all these applications for redress without effect. But there is still something further, which makes the proceedings upon these occasions very delicate. If disorderly expressions are used in either House of Parliament, and are not taken notice of at the time, and objected to by the House in which they are delivered, we have already seen //67-1//, that the practice of the House of Commons is, that they cannot afterwards be called in question, even by the House itself; how much more difficult then is it for the other House, who can have no information of these words but from report, so to ascertain the form of the expressions, and the meaning and intention of them, as to be able to fix upon them the charge of disorder and irregularity; and thereby to entitle themselves to claim redress from the House in which they were spoken, or to desire such punishment may be inflicted, as the party offending may be thought to deserve. And here, as it cannot be too often repeated, I may be justified in observing, that though the deliberations of Parliament require the utmost freedom of speech, particularly with regard to public measures, and to ministers, and men in responsible situations, yet that this freedom ought to be regulated {68} in its use by the rules of decorum and good manners //68-1//. The greater number of Members of both Houses are men of rank, of high birth, of large fortunes, and of liberal education: There is no measure so reprehensible, there never existed a Minister so guilty, but that both the one and the other might be animadverted upon in the strongest and severest manner, without violating that decency, or departing from those forms of expression, which the character of gentlemen requires to be observed one towards another //68-2//: And therefore, if there is any breach of these rules, if public reprehension and accusation degenerate into private obloquy and personal reflections, it is the duty first of the Speaker, and, if he neglects that duty, then of the House itself, to interfere immediately, and not to permit expressions to go unnoticed or uncensured, which may give a ground of complaint to the other House of Parliament, and thereby introduce proceedings, and mutual accusations, between the two Houses, which can never be terminated without difficulty and disorder.

Where persons are already in custody of the Black Rod, or of the Serjeant attending the House of Commons, or confined by order of either House of Parliament, it is not consistent with that independent equality, which ought to subsist between the two Houses, for the other House to interfere: but if they have occasion for the presence of the person so committed, they usually signify their desire to the House which committed him, and ask their leave that he may be brought up to them, in custody, in order to be examined //68-3//.

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The case of Sir John Eppesly, in 1628, is the first instance that I find, in which the House of Commons began to question the right of judicature claimed and exercised by the House of Lords, in causes brought before them by appeal or otherwise, //69-1// especially where either of the parties were Members of the House of Commons: it does not appear from the Journals what the subject matter was of this petition complained of; whether it was an accusation against Sir John Eppesly, or a cause in which he was concerned. After the Restoration, this question began to be more openly and freely

discussed: on the 12th of December, 1667, a petition from one Fitton was presented to the House of Commons; which being referred to a Committee to be examined, they report, on the 22d of February, that the petitioner's complaint, touching the jurisdiction of the House of Lords, is fit to be argued at the Bar; and a Committee is appointed to consider of the Privileges of the House, and to enquire into the precedents concerning the jurisdiction and manner of the Lords' proceedings in cases of that nature; I do not find, however, that this Committee ever made any Report //69-2//.— On the 2d of May, 1668, the House of Commons first took up the question of the jurisdiction exercised by the Lords, in the dispute between the East India Company and Skinner. The case was this: “Skinner, the plaintiff, was a considerable merchant of London; the defendants were the East India Company, and, in their right, Sir Samuel Barnardiston as their governor. The complaint was, that the Company had seized a ship {70} and cargo of Skinner's, and assaulted his person: Skinner, instead of commencing his suit in Westminster-Hall, had recourse, in the first instance, to the House of Lords; who gave him a hearing, and awarded him £. 5,000 damages //70-1//. Sir Samuel Barnardiston and the Company, upon this, applied for redress to the House of Commons; who, after much debate and consideration of this matter in a Committee, resolve //70-2//, “That the Lords having taken cognizance of Skinner's petition, and over-ruling the plea of the Governor and Company ‘originally,’ is not according to the law of the land:” \ \ extra or missing “ mark \ \ and direct this resolution to be delivered, in a message, at the Bar of the House of Lords.” These proceedings brought on a dispute between the two Houses: Skinner was committed by the Commons for a breach of Privilege; the Lords levied the fine upon Sir Samuel Barnardiston, and committed him till it was paid: till at last the King was obliged to interfere, and desire that all the proceedings upon this matter might be erased out of the Journals of both Houses //70-3//.

On the 4th of March, 1669, the House of Commons order a message to be sent to the Lords, to desire them to have a regard to their Privileges, in the receiving and entertaining an appeal, in which a Member of the House of Commons was a party. This message was by the House of Lords referred to their Committee of Privileges; from which, on the 11th of April, 1670, the Lord Anglesey reports, “That the Lords do declare that their proceedings have been according to course of Parliament, and {71} former precedents; and that the Lords do assert it to be their undoubted right to receive and determine, in time of Parliament, appeals from inferior courts, though a Member of either House be concerned, that there may be no failure of justice in the land:” and to this resolution of the Committee the House agree. No farther proceedings, however, were had between the two Houses upon this matter, as they adjourned upon this day, by the King's direction, to the 24th of October. But in May, 1675, this dispute broke out again with great violence, in the case of Shirley and Fagg //71-1//, and in that of Sir Nicholas Stoughton against Mr. Onslow. It arose in this manner—The Lords had for some years past been endeavouring to break in upon that claim of the Commons, “That the Lords had no right to alter or change the quantum or manner of any imposition laid by the Commons.” The discussion of this question had brought on many and very warm altercations between the two Houses, in the course of which a doubt was suggested, “By

what right the House of Lords claimed and exercised the power of judicature in appeals, in causes in which not only Members of the House of Commons, but any Commoner whatever, was concerned //71-2//?" This point {72} was debated at several conferences. On the 15th of May, 1675, the House of Commons resolved, "That whosoever shall appear at the Bar of the House of Lords, to prosecute any suit against any Member of this House, shall be deemed a breaker and infringer of the Rights and Privileges of this House." And on the 28th of May they proceeded still farther, by declaring, "That there lies no appeal to the judicature of the Lords in Parliament from Courts of Equity." The confusion which arose from this disagreement interrupted all business. Persons committed by the order of the House of Commons were attempted to be discharged by a Habeas Corpus issued by the Lords: till at last, there being to be found no other means to put an end to these differences, the King was, on the 9th of June, compelled to prorogue the Parliament //72-1//.

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The dispute, however, did not end here. Early in the next session, on the 16th of November, 1675, the debate upon Sir John Fagg's business was resumed; and after much consideration, the House on the 19th November resolved, "That whosoever shall solicit, plead, or prosecute any appeal against any Commoner of England, from any Court of Equity, before the House of Lords, shall be deemed and taken to be a betrayer of the rights and liberties of the Commons of England, and shall be proceeded against accordingly." And copies of this resolution were ordered to be fixed upon the Lobby doors, the gates of Westminster Hall, of the several Inns of Court, and of the Chancery, "to the end that all persons concerned may take notice thereof." On the next day, Sir Nicholas Stoughton, and Mr. Shirley, having in disobedience to this order prosecuted their appeals against Mr. Onslow and Sir John Fagg, are both ordered to be taken into custody. This was on the 20th November, Saturday; and on Monday the 22d, the King was once more obliged to prorogue the Parliament //73-1//.

The differences which arose between the two Houses, in relation to the mode of proceeding at the trial of Lord Somers, and the other impeached Lords, in June, 1701, will fall more properly under another title; so that no other matter of dispute occurs, until the famous case of Ashby and White, which first began in the House of Commons on the 17th of January, {74} 1703, upon the question, "Whether an action lies at common law for an Elector, who is denied his vote for Members of Parliament //74-1//." The proceedings upon this question, and the several debates, with the record itself, are collected and printed in one volume, in the year 1705; in which debates will be found much parliamentary learning, touching the rights and privileges of the House of Commons //74-2//.—About the same time, on the 18th of December, 1703, the Commons entertained another dispute with the Lords, on the Lords having instituted an enquiry, and sent for certain persons to be examined, touching a plot, in which one Maclean was supposed to be concerned, and which the Queen's Ministers were actually making enquiries into; and under pretence that the Lords were, by this measure, interfering with the prerogative, the Commons, on the 21st of December, addressed the Queen upon this subject. On the 12th of January following, the Lords took up this matter: and, after having come to several resolutions, asserting their rights

to proceed in this enquiry in the manner they had done, on the 17th of January they drew up a very long representation to be laid before her Majesty; to which the Queen returned for answer the next day, “That she was very sorry for any misunderstandings that happen between the two Houses of Parliament, and thanked the Lords for their assurances {75} to avoid all occasions for them.” The Lords went on with their examinations, notwithstanding several attempts on the part of the Commons to interrupt them //75-1//; and at the close they presented, on the 28th of March, 1704, another address //75-2// to the Queen, in answer to the representations of the House of Commons upon this subject; and on the 3d of April the Parliament was prorogued.

The conclusion to be drawn from the history of all these transactions is, that it should be the endeavour of both Houses, and of every Member of each House of Parliament, to take care, in their proceedings, not to transgress those boundaries, which the constitution has wisely allotted to them; or to interfere in those matters, which, by the rules and practice of Parliament in former ages, are not within their jurisdiction //75-3//. The determination of causes, whether upon Writs of Error or by appeal from the Court of Chancery //75-4//, has been long vested in the House of Lords; and has been almost uniformly //75-5//, exercised by them with that attention {76} to justice and to the laws, as to do much honour to themselves, and give perfect satisfaction to the suitors. However the prejudices and contests of party may have influenced the votes of particular Lords in their political, or even in their legislative capacity, in their judicial character they have maintained that purity and uprightness of conduct, which ought to be the characteristic of Judges, and which is peculiarly becoming that Court, the Court of the last resort in the trial of all the property of these kingdoms. In the few attempts which were made by the House of Lords, in the reign of Charles II. to extend their jurisdiction to causes, not brought from inferior Courts, but originating with them, they were opposed by the House of Commons with such a weight of argument, so forcibly supported upon the principles of the constitution, that no farther endeavours of that sort have been //76-1//, or I trust ever will be, made. On the other hand, the Lords ought not to intermeddle with, but to leave to the House of Commons, that jurisdiction and those rights, which they, on their part, are equally entitled to: I mean the exclusive right of judging in all matters relating to their privilege, and to the elections of their own Members; and of granting, arranging, and disposing of all aids and taxes to be levied on the people. We see that, whenever either Houses has, from inadvertence, resentment or any other cause, transgressed these bounds, and endeavoured to extend their own rights, or to usurp those which belong to the other, confusion and disorder have immediately followed; and in several instances the Crown has been obliged to prorogue the Parliament, in order to put an end to that disgraceful scene, which altercations between two branches of the legislature exhibit to the subjects of Great Britain, and to all Europe.

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#### LORDS.

*Particular Lords attended by a Committee of the House of Commons.*

1. On the 13th of May, 1624, a Committee is appointed to attend the //77-1// Archbishop of Canterbury, and inform him of a book written by Dr. Richard

Mountague, “fraught with dangerous opinions of Arminius, quite contrary to the established articles.” On the 7th of July, 1625, “in the next Parliament,” Mr. Recorder reports the Archbishop’s answer, for which, and for his conduct on this occasion, the same persons are directed to return him the thanks to the House.

2. On the 23d of October, 1667, a Committee is appointed to wait upon Prince Rupert and the Duke of Albermarle, to enquire of them what they know concerning the miscarriages in the late war.—See their report on the 31st of October.—See an Address to the Duke of York on the 9th of November.—See also the 2d of March, where Members are ordered to attend the Duchess of Albermarle.

3. On the 10th of February, 1673, a Committee is appointed to attend Lord Shaftsbury, to know what information he can give touching an altar and crucifix, said to be at Mr. Pepys’s. On the 13th, Sir William Coventry reports Lord Shaftsbury’s answer. See the 16th of February.

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4. On the 29th of April, 1678, a Committee is appointed to attend the Lord Chancellor, to know by what means, or upon whose motion, certain persons were turned out of the Commission of the Peace {78-1}.

5. On the 16th of November, 1691, motion made and question put, that a Committee be appointed to wait on Lord Danby for some information he could give; it passed in the negative: but a conference is immediately appointed, to acquaint the Lords that, as the information the Commons had received related to a Peer of the realm, they, out of respect to the Peerage, thought it most proper to lay the matter before them.

6. On the 10th of November, 1702, a Committee is appointed to thank the Duke of Ormond, Sir G. Rooke, and the Earl of Marlborough, for their signal services.

7. On the 14th of December, 1704, a Committee is appointed to attend the Duke of Marlborough, and in the name of the House, to congratulate him upon his safe arrival, and to give him the thanks of the House for his eminent services.

#### OBSERVATIONS.

The instances of Committees appointed to attend certain Lords, to receive and report to the House of Commons such information as they could give upon particular subjects then under enquiry, {79} seem to be a mode of proceeding, adopted and substituted in lieu of desiring the personal attendance of such Lords to be examined to those points. But, from the nature of the proceeding, it must have been very defective to answer its particular purpose. In a personal examination many questions occur, which arise out of the evidence, and could not be thought of on first sending the message; and therefore the House of Commons have very properly, in the later instances of Lord Sandwich, Lord March, and Lord Cornwallis, departed from this practice, and have

desired the attendance of the Lord in person, to receive his *vivâ voce* evidence //79-1//.

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S U P P L Y.

- I. *Right of granting and appropriating in the Commons.*
- II. *Lords interfere in matter of Supply.*
- III. *Bills of Supply to be presented by the Speaker.*
- IV. *Rules of the House in matters of Supply.*
- V. *Incidental Proceedings relating to the Grant of Supply.*
- VI. *Bills tacked to Bills of Supply.*
- VII. *Petitions on matters of Supply.*

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SUPPLY.

I. *Right of granting and appropriating in the Commons.*

1. ON the 1st of March, 1609, in a message sent to the Lords, it is said, "With respect to the subsidy, which for that it ever moveth from the House of Commons, we will take consideration thereof in due time."

2. On the 20th of March, 1623, resolved, That three subsidies be granted by this House, and three fifteenths, to be levied in such time and manner as they shall please afterwards to appoint; and to be paid into the hands, and expended by the direction of, such Committees or Commissioners, as shall hereafter be agreed on in this session of Parliament.

3. On the 21st of February, 1625, a Committee of the House is appointed to consider of several petitions about money formerly granted, and of all things concerning the account of the three subsidies and fifteenths; with power to make a Subcommittee {81} for auditing the accounts, and preparing them for the Grand Committee.

4. On the 17th of June, 1628, the Lords complain, at a conference, of the preamble to the Bill of Subsidy, "Wherein the Lords were excluded, contrary to antient precedents, though the last were so; and that the Lords desire that the words "the Commons" may be put out; and desire a warrant from this House, that the Committee may so amend it." The Journal says, "This course was not liked in this House, as being of a dangerous example in point of consequence." The next day, the 18th, a message is sent to the Lords to acquaint them, "That the House were in consideration of the matter propounded yesterday by the Lords at a conference, but that we hear their Lordships have passed the Bill //81-1//."

5. On the 29th of April, 1668, a Committee is appointed to bring in a clause for keeping the monies granted by this Bill of Supply in the Exchequer, distinct from all other monies; and that the money shall be used for setting out a fleet this summer, and



in paying of seamen for this expedition, and “to no other use or purpose whatsoever//81-2//.”

{82}

6. On the 11th of November, 1675, resolved //82-1//. That the supply for building the ships shall be made payable into the Exchequer, and shall be kept separate, distinct, and apart from all other monies, and shall be appropriated for the building and furnishing of ships, and that the account for the said supply shall be transmitted to the ‘Commons’ of England in Parliament.—See also the 26th of October, 1675, and the 5th of March, 1676.

7. On the 7th of January, 1680, resolved, That whosoever shall hereafter lend, or cause to be lent, by way of advance, any money upon the branches of the King’s revenue, arising by Customs, Excise, or Hearth-money, shall be judged to hinder the sitting of Parliaments, and shall be responsible for the same in Parliament //82-2//.

8. On the 18th of November, 1693, resolved, That whosoever shall lend any money upon the credit of the Exchequer in general, towards the maintenance of the fleet for the next year, ‘this House’ will take care to see them repaid with interest, out of the next aids to be granted for the fleet.

9. On the 15th of May, 1711, resolved, That the applying any sum of unappropriated money, or surplusages of funds, to uses not voted or addressed for by Parliament, hath been a misapplication of the public money.

10. On the 10th of March, 1713, a Committee is appointed to enquire into the management and application of all sums of money, {83} which have been collected for repairing any particular highway, by virtue of any act passed since her Majesty’s accession.—See the 1st and 17th of February, 1726.—See also the 27th of January, and 12th of March, 1752.

11. On the 18th of November, 1760, when the King, in his speech from the throne, desires a provision may be made for his Civil List, he addresses himself only to the House of Commons.

12. On the 12th of January, 1784, resolved, That for any person or persons in His Majesty’s Treasury, or in the Exchequer, or in the Bank of England, or for any person or persons whatsoever, employed in the payment of public money, to pay, or direct or cause to be paid, any sum or sums of money, for or towards the support of services voted in the present session of Parliament, after the Parliament shall have been prorogued or dissolved, if it shall be prorogued or dissolved before any Act of Parliament shall have passed appropriating the supplies to such services, will be a high crime and misdemeanor, a daring breach of a public trust, derogatory to the fundamental privileges of Parliament, and subversive of the constitution of this country //83-1//.

## OBSERVATIONS.

The earlier accounts of the manner in which the Crown obtained aids, as well from the Clergy as the Laity, together with the disputes which continually arose upon that subject, are to be found in the first and second volumes of the Parliamentary {84} History, and in the Rolls of Parliament and other records and chronicles to which that compilation refers. Whenever any extraordinary aid was necessary for the purposes of carrying on a war, or any other object, to which the established revenue of the Crown //84-1//, arising from its estates, or from those dues and services annexed to the lands which were held immediately of the Crown, was not adequate,—it was a principle not only of the English constitution, but of the governments of France and Spain, and of all the other nations which were established upon the ruins of the Roman Empire //84-2//, that the Crown should, in order to obtain this assistance, apply to the Estates, in whatever form they existed, and should have no power in itself {85} of levying this aid, without the consent of the people, and subject to such rules and conditions as they should chuse to impose //85-1//. After a variety of struggles and endeavours, on the part of the Crown, to usurp this extraordinary power, it was at last declared by one of the articles of the Great Charter obtained from King {86} John in the year 1215 //86-1// —"Nullum scutagium vel auxilium ponamus in regno nostro, nisi per commune consilium regni nostri; nisi ad corpus nostrum redimendum, et ad primogenitum filium nostrum militem faciendum, et ad primogenitam filiam nostram semel maritandam: et ad hoc non fiet, nisi rationabile auxilium. Præterea volumus et concedimus, quod omnes civitates, et burgi, et villæ, et barones de quinque portibus, et omnes portus, habeant omnes libertates et omnes liberas consuetudines suas, et ad habendum commune consilium regni de auxiliis affidendis aliter quam in tribus casibus prædictis. Et de scutagiis assidendis, submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, et Majores Barones regni, singillatim per literas nostras: et præterea faciemus submoneri, in generali, per vicecomites et ballivos nostros, omnes alios qui in capite tenent de nobis, ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum; in omnibus literis submonitionis illius, causam submonitionis illius exponemus: et sic factâ submonitione, negotium procedat ad diem assignatum, secundum consilium eorum qui præsentés fuerint, quamvis non omnes submoniti venerint //86-2//." In addition to this declaration, Edward I. being engaged in great and difficult undertakings, {87} and thereby compelled to take measures for the raising of money which were not entirely conformable to this restriction, was obliged, in the year 1306, at the request of the Parliament then assembled, for their further security upon this important point, to consent to the statute De Tallagio non concedendo //87-1//; by which it is enacted, "That no tallage or aid shall be taken or levied by us, or our heirs in our realm, without the good will and assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other freemen of the land //87-2//."

During the reigns of the three Edwards, the grants were made by the Clergy for themselves; by the Earls, Barons, and Knights for themselves; and the communities of the counties, and by the citizens and burgesses, for themselves //87-3//; and we find that in the {88} reign of Edward IV. so late as the year 1472, the Commons having

voted a supply to be levied, according to a proportion, {89} out of all lands and tenements //89-1//, the Lords spiritual and temporal did also tax themselves, by way of grant unto the King, the tenth part of one whole year's revenue of all and singular their lands, and possessions. The forms of these extraordinary grants were either in tenths or fifteenths, or by way of subsidies //89-2//; or a tonnage upon wines, and poundage or prisage upon goods //89-3//. The first tax which appears to have been laid upon land, was in the year 1411 //89-4//, the 13th of Hen. IV.; when the Commons, by the assent of the Bishops and Lords, granted to the King, that every person possessed of 20 l. by the year, above all charges, {90} should pay 6s. 8d.—In the year 1476 //90-1//, the 16th of Edward IV. a new and yet unheard of imposition was demanded, called a Benevolence; which was not compulsory, but the richest and principal persons in the country being called before the King, he explained to them the cause and necessity of the war begun by France, and required them, out of gratitude and kindness, that they would freely give him some aid in money, towards the maintenance of the war and army. However voluntary such a grant might appear to be, it was soon discovered, that, by the influence and terror of the King's authority, it would become a matter of compulsion; and therefore, in the very first year of Richard III. 1483, this new species of imposition was condemned and abolished; or, as the Act more emphatically expressed it, “shall be damned and annulled forever /90-2//.” But the remembrance of it remaining, with the effect it had in bringing money into the King's coffers, Henry VII. attentive to every mode that had been or could be devised for draining his subjects of their riches //90-3//, revived it again, but with the authority of Parliament; that is, says Lord Bacon //90-4//, “The Commons finding, by the Chancellor's speech, the King's inclination, consented that commissioners should go forth for the levying and gathering a Benevolence from the more able sort //90-5//.” And we find that Henry VIII. in the {91} 35th year of his reign, again renewed this plan for raising money; and in the year 1544 appointed commissioners to collect it //91-1//. In the year 1614, a Benevolence was set on foot, upon which Mr. St. John gave his opinion publicly, that it was against law, reason, and religion; for this declaration, however, he was prosecuted in the Star Chamber, and condemned in a fine of 5,000 l. and to be imprisoned during the King's pleasure //91-2//. All these extraordinary means of raising money upon the subject //91-3//, without the grant and consent of Parliament, were too frequently put in use, not to give a claim to that ill advised Prince Charles I. to demand them as his right; //91-4// and therefore compelled the House of Commons, in {92} the year 1628, in the Petition of Right, to assert //92-1//, “That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament.” At last however, after all these repeated attempts on the part of the Crown, and oppositions on the part of the people, in order to prevent any further disputes upon a subject in which the most essential rights of this free constitution had been so frequently and so notoriously violated, it was finally declared by the Bill of Rights //92-2//, “That levying money for or to the use of the Crown, by pretence of Prerogative, without grant of Parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal.” And this claim is there, together with many other the rights and liberties of this country

asserted in that declaration, declared to be “the true, antient, and indubitable rights and liberties of the people of this kingdom //92-3//.”

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It appears that, even in the more antient times, it was not unusual to appoint persons to examine the accounts of those who had received and had the management of the public revenue: for, in the 14th of Edward III. 1340 //93-1//, William de la Pole and John Charnels are called before certain persons assigned by the Parliament, and demanded to give an account of their receipts and expenditure; and having demanded farther time for this purpose, they give security to be then ready with their accounts. This, Tyrrell the historian says, deserves notice; “because it is the first example that any money given in Parliament was by them ordered to be accounted for to persons appointed by themselves //93-2//.” So in 1406, the 7th and 8th of Henry IV. //93-3//, the Commons require, “That certain persons may be appointed Auditors, to take and examine the accounts of the Lord Furnival and Sir John Pelham, made Treasurers of War in the last Parliament.” They {94} required also, “That three parts of the subsidy, granted to the merchants for keeping the sea, be paid to them; and that the fourth shall ‘only’ be employed for the defence of the realm. Lastly, That all the revenues and profits of the realm granted since the beginning of the Parliament may be resumed into the King's hands, and reserved for the maintenance of his house; and that all the exorbitant charges of the household be speedily retrenched.” In these demands, now almost four hundred years ago, we may trace the origin, not only of Parliament's interfering, to appropriate their grants to such services as they thought the public necessities required; but that, even at that time, when the King's revenue for the charges of his civil government and household expences arose, not out of the grants of Parliament, but from the rents of lands, and services, and other profits invariably annexed to the person of the sovereign, the Commons did not entertain a doubt of their competency //94-1//, as expressing the voice of the people, to interfere in preventing the abuses of this expenditure, {95} and to require, “that all exorbitant charges should be speedily retrenched //95-1//.”

In the year 1453, the 31st of Henry VI. upon the Commons having granted to the King the moiety of one tenth and {96} one fifteenth, the King returned them 'thanks' in these Words //96-1//: “We thank you for your grants; for the which, be ye assured, we will be a good and gracious Lord unto you.” So in the year 1463 //96-2//, the 3d of Edward IV. the Chancellor, in the presence of the King, Lords, and Commons, by his Majesty's command, gave the Commons ‘thanks’ for their subsidy //96-3//.

It cannot but be very pleasing to any one, who is a friend and admirer of the present most excellent constitution of this country, to find, amongst his searches into the antient records and history of Parliamentary proceedings, the seeds and origin of those principles of political freedom, which, though from accidental circumstances they may have lain smothered for a time, particularly during the reigns of the Tudor family, began again to break forth under the Stuarts; and were brought to full maturity at the glorious æra of the Revolution. If such a discovery led to no other end than to refute the compilers of the Parliamentary History, with Mr. Hume //96-4// and those other

writers, who have asserted a {97} contrary doctrine, and who have represented every attempt to vindicate these principles as an infringement //97-1// upon the prerogative of the Crown,—perhaps it would hardly deserve notice: But I trust it will be attended with better consequences.—To those, who {98} shall hereafter have occasion to stand forward in defence of the constitution of their country, it will be a satisfaction to find that, in acting such a part, they are not encroaching upon any powers vested in the Prince by law //98-1//; that they are not even maintaining a post which their ancestors have lately gained; but that they are {99} contending for those rights and privileges, which were interwoven with the earliest establishment of government in this country //99-1//.

{100}

#### SUPPLY.

##### *Lords interfere in Matters of Supply.*

1. IT is said in the third volume of the Parliamentary History, p. 259, That a Bill was read in the House of Lords, for the first time, on the 5th of March, 1551, intituled "For Taxes and Assessments for Relief of poor and impotent Persons;" and that it passed the House of Lords in that form: but that, (it giving occasion to some Members in the other House, when the Bill came before them, to take notice that it was designed to lay a tax on the subject, which was a jealousy not easy to get over in those days,) when the Act passed it had only this title, "An Act for the Provision and Relief of the Poor //100-1//."

2. On the 18th of March, 1552, a Bill was sent from the Lords, "for better answering the revenues of the Crown, and that all treasurers and others, having receipt of the money, shall be yearly accountable." It was read on the 18th and 22d of March, in the House of Commons //100-2//; but on the 27th a 'new Bill' for the same purpose was brought in, and passed the 28th, and afterwards agreed to by the Lords.

{101}

3. On the 18th of October, 1553, the Bill for Tonnage and Poundage was sent from the Lords with amendments, and said in the Journal to be 'not in the former precedents.' The Parliament was prorogued, on the 21st of October, from Saturday till Tuesday; and on Wednesday the 25th, the Bill for Tonnage and Poundage was brought in again //101-1//.

4. It appears from Dewes's Journal, p. 20, and from the Lords' Journal, the 16th and 20th of February, 1558, as if the Lords had made amendments to the Bill of Subsidy, and to the Bill of Tonnage and Poundage; but nothing of this appears in the Journal of the House of Commons, when those Bills are brought back.

5. On the 2d of March, 1592, there is a great debate in the House of Commons, on a proposition made by the Lords to confer with the Commons on the grant of a subsidy; in which Sir Francis Bacon asserts it to have been always the custom and privilege of the Commons to make offer of the subsidies 'from hence,' then to the other House; and proposes a message to be sent to the Lords, "That the Commons could not concur with them, but with prejudice to the Privilege of this House;" and he cites the precedent of

Cardinal Wolsey's coming to the House of Commons, and the answer given upon that occasion //101-2//.

{102}

6. On the 18th of June, 1604, the Lords desire a conference touching the Bill for a Subsidy of Tonnage and Poundage, which had been sent from the Commons, and which the Lords thought to be defective, and to require some amendments.—See, on the 22d of June, Sir Francis Bacon's report of what passed at this conference.

7. In a debate on the 19th of February, 1609, Mr. Hyde says, "Subsidies always begin in this House; it is against Privilege to entertain subsidies from the Lords."

8. On the 7th of June, 1628, the Commons appoint a Committee to draw up the preamble to the Bill of Subsidy, which is reported by Sir Edward Coke on the 9th. On the 17th of June the Lords desire a conference, the subject of which Sir Edward Coke reports to be concerning this preamble; wherein the Lords complain that they are excluded, contrary to ancient precedents, and desire that the words "the Commons" may be put out; and also desire a warrant from this House, as "they will bring from theirs, that the Committee may so amend it."\* This message is taken into consideration; but, before any thing was done upon it, it appears from the Journal of the next day, the 18th, that the Lords passed the Bill as it stood.

9. On the 27th of April, 1640, upon the report of a conference in which the Lords had proposed something touching a supply, the Commons resolve, "That their Lordships voting, propounding, and declaring, touching matters of supply, in such sort as is contained in this report (as it is now entered //102-1//) {103} before it moved from this House, is a breach of the Privilege of this House //103-1//."—See farther the 28th of April and 1st of May.

10. On the 21st of July, 1660, Sir Heneage Finch reports the first clause in the Bill of Tonnage and Poundage to be thus: "The Commons assembled in Parliament do give and grant unto your Majesty the subsidies hereafter following; most humbly praying your Majesty, That it may be enacted, and," &c.

11. On the 23d of July, 1660, the Lords send down amendments and provisos to the Bill for poll money.—On the 2d of August, these amendments were considered; some agreed to, several disagreed to.—On the 15th of August, on the report of a conference with the Lords touching this matter, a Committee is appointed to prepare and report to the House a salvo, upon the present debate, touching the Privilege of this House, 'only' to name the commissioners in Bills that charge the people; to the intent the same may be entered in the Journal of this House, for the asserting of the rights of this House.

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12. On the 12th of September, 1660, the Lords amend the supplemental Bill for poll money //104-1//, by adding a clause, "That no Peer should be assessed, or levies made upon them or their estates, but by order of the Lords appointed commissioners

by this Bill.” To this proviso the Commons disagree; and after a conference the Lords send another proviso, “That no Peer shall be assessed otherwise than in the said recited Act:” and to this the Commons agree.

13. On the 22d of December, 1660, the Lords amend the Post Office Bill, by leaving out the proviso which exempted letters to and from Members of Parliament from postage //104-2//; to which the Commons agree: and the same day the Commons agree to some amendments made by the Lords to the Bill for six months assessment.— On the 28th of December, 1660, the Lords make amendments to “the Act for providing money for disbanding the forces,” to which the Commons disagree; “and, on the 29th of December, the Lords add a proviso to the Bill for raising £. 70,000, which proviso is, That nothing therein contained shall be drawn into example, to the prejudice of the antient rights belonging to the Peers of this realm;” to which amendment the Commons agree.

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14. It appears from the Lords’ Journal of the 19th of June, 1661, that the Bill, for a free and voluntary present to his Majesty, went from the Commons with two blanks in it; which the Lords propose to fill up, by inserting in the first “Lords and,” and in the second “four hundred pounds.” These amendments being read three times, when the Bill is returned to the House of Commons, the Clerk is ordered to fill up the blanks in the said Bill with the said amendments.

15. On the 24th of July, 1661, the Lords send down a Bill for paving the streets and highways of Westminster, to which they desire the concurrence of the Commons. As soon as the Bill is read a first time, “the House, observing that the said Bill was to alter the course of law in part, and to lay a charge upon the people; and conceiving that it is a Privilege inherent to this House, that Bills of that nature ought to be first considered here,”—the Bill is laid aside: and it is ordered, “That the Lords be acquainted therewith, and with the reasons inducing the House thereunto: and the Lords are to be desired, for that cause, not to suffer any mention of the said Bill to remain in the Journals of their House: and that the Commons approving the purport of the Bill, have ordered in a Bill of the like nature //105-1//.”

16. When the Bill passed by the Commons, for paving Westminster, is sent to the Lords, they add to it a proviso, to which the Commons disagree; the reasons for which appear in the Lords’ Journal of the 29th of July, 1661.: “That the Commons cannot {106} agree to this proviso, because it is contrary to their Privileges; because the people cannot have any charge or tax imposed upon them, but originally by the House of Commons. That the Commons have entered in their Journal the irregularities of their Lordships, in sending down a Bill to them for laying and imposing a tax upon the people for repairing the highways about Westminster.”—On the 30th of July, the Lords taking this matter into consideration, resolve, “That the Commons rejecting the Bill sent from them upon these grounds, the Lords do adjudge the assertion of the Commons to be against the inherent Privileges of the House of Peers:” and they cite two precedents //106-1//, in the reign of Queen Elizabeth, in their favour. But

considering the expediency of a Bill of this sort, they agree to it, with another proviso, "That nothing herein contained shall extend to the prejudice of the Privileges of either House of Parliament; and that this Act shall not be drawn into example."—To this proviso the Commons agree, with an amendment; which amendment being rejected by the Lords, the King comes on that day, and the Parliament adjourns to the 20th of November.

17. On the 22d of January, 1661, a Bill from the Lords about fen lands is read a second time and committed; and it is referred to the Committee to consider of the matter of breach of the Privilege of this House, objected to be in this Bill sent from the Lords, "in laying a tax on the people, and naming Members of this House to be Commissioners in the Bill."—I do not find that this Committee made any report.

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18. On the 17th of May, 1662, the Commons agree to amendments made by the Lords to several bills, which had the appearance of trenching upon the Privileges of the Commons; but they order an entry to be made in their Journal, to declare, "That this House, after many conferences, did agree to the amendments made by the Lords to these Bills; to which the House had condescended, not that they were in any sort convinced of the Lords' right in this particular; but rather compelled to yield out of their care of the public safety, and the necessity cast upon them by the shortness of the session."

19. The Lords having made amendments to the Bill for highways, the Commons disagree; and the reasons to be given at a conference on the 19th of May, 1662, are, "Because the provisos are to lay a charge upon the people, which ought not to begin with the Lords, but in this House: and although it be but a part of the kingdom, yet, by the same reason, it may be extended to the whole." It appears from the Lords' Journals of this day, that the Lords, after much debate, gave up these provisos; not however without a protest from several Peers //107-1//. But they adhere to some other of the amendments; and the Commons are ordered to be acquainted, "That the Lords affirm it to be their undoubted Privilege, to begin either bills, or any matters or things of the nature of these provisos, in the House of Peers; and shall make use of it as often as they shall have occsion."—The prorogation of Parliament put an end to this dispute.

20. It appears from the Journals of the House of Commons of the 20th, 23d, 24th, and 25th of July, 1663, that the Lords made {108} several amendments to "the Bill for settling the profits of the Post Office and wine licences upon the Duke of York;" to "the additional Bill concerning the Excise;" and to "the Bill for distribution of £. 60,000 amongst the loyal and indigent commission officers:" to some of which amendments the Commons agreed, and to others disagreed, and several conferences were held: but the particular nature of the amendments or what passed at the conferences, are not clearly specified in the Journals of either the Lords or Commons.—On the 6th of May, 1664, the Lords amend "the Bill for collecting the duty arising by hearth money;" which amendments are agreed to on the 9th.—See also the 7th and 9th of February, 1664.



21. On the 15th of February, 1664, a Bill from the Lords for regulating and ordering of buildings, and for amending highways, and making clean the streets in and about the cities of London and Westminster, was read the first time. "But it appearing that the said Bill was to impose and continue a tax upon the people, which ought to have begun in this House, resolved, upon the question, "That the said Bill be laid aside."

22. The Lords having made several amendments to the Poll Bill, one of which was, "the leaving out the clause which taxed the Peers," the Commons disagreed to this amendment. Their reasons appear in the Lords' Journal of the 12th of January, 1666 //108-1//; wherein they say, "They do not here dispute or question the Privilege of the Peers to tax themselves; but where the tax is one and the same, they can find no precedent to warrant this proceeding." The Lords, on the 14th of January, {109} add a clause "for taxing themselves by commissionersd of their own;" to which the Commons agree.

23. On the 2d of April, 1670, it appears from a report in the Lords Journal of a conference between the Lords and Commons, upon the subject of the amendments made by the Lords to the Bill against seditious conventicles, that some of these amendments, to which the Commons agreed, were concerning the disposal and quantum of the penalties.—So the Commons, on the 8th of April, agreed to a proviso added by the Lords to a Bill for imposition on brandy.

24. On the 28th of February, 1670, the Lords send down amendments to the Bill of Subsidy; some of which, on the 1st of March, are disagreed to. The reasons appear in the Journal of the 3d of March; and they are confined to the impropriety of the Peers, by these amendments, putting themselves upon a different and more favourable footing than the Commons.—See Lords' Journal of the 2d of March.—On the 6th of March, the Commons agree to some amendments made by the Lords to "a Bill for an additional excise upon beer and ale."

25. On the 17th of March, 1670, the Lords amend the Bill about foreign brandy, which amendments are considered on the 24th; when there is this entry made in the Journal: "Amendments coming from the Lords to the Bill of brandy: which being for laying an imposition on the people, in breach of the Privilege of this House, where all impositions on the people ought to begin; therefore the House did think fit to lay the said Bill and amendments aside:" and, as appears from the Lords' Journal of the 29th of March, 1671, the substance of this Bill was inserted in another Bill then depending.—See, in the {110} Lords' Journal of the 30th of March, the report from the Committee of Privileges, upon what they term this "unparliamentary proceeding."

26. On the 13th of April, 1671, the Lords having amended the Bill for an imposition on foreign commodities, by reducing the duty on sugars from one penny per pound to a halfpenny half farthing,—resolved, *nemine contradicente* //110-1//, "That

in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords //110-2//.”

27. On the 11th of February, 1673, the King having, in a Speech from the throne, recommended to ‘the Commons’ the {111} consideration of the means of providing a naval force, the Lords on the same day sent down a vote of thanks for his Majesty's Speech, to which they desired the concurrence of the Commons: But the Commons answer, “That there being something in his Majesty's Speech which particularly relates to the House of Commons, it makes their concurrence with their Lordships, on this occasion, not so proper.”

28. On the 26th of March, 1677, the Lords send down a Bill, “for the better payment of church rates, small tythes, and other church duties.” This Bill was suffered to lie neglected almost a whole year, till the 5th of March following; when it was read a first time, and rejected.

29. On the 11th of April, 1677, the Lords make amendments to the Bill for raising a sum of money for building ships; to which the Commons disagree.—See the 12th, 13th, 14th, and 16th of April //111-1//.

30. On the 14th of March, 1677, the Lords amend the Poll Bill; to which the Commons agree. It appears from the Lords' Journal of the 12th of March, "that these were small amendments, and that the Lords had added commissioners for assessing themselves in the room of those Lords that were dead since the last Poll Bill:" and on the 4th of April following, Mr. Thomas Knatchbull is appointed by the Lords “Receiver and Collector of the several sums of money to be rated and taxed upon the Lords, by virtue of this Act.”

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31. On the 10th of May, 1678, the amendments sent from the Lords to the Bill for burying in woollen were agreed to “except those which relate to the distribution of forfeitures,” to which the House disagree; and a Committee is appointed to draw up reasons. But the prorogation of the Parliament on the 13th of May, prevented any conference from being held upon this subject //112-1/.

32. On the 22d of June, 1678, the Lords amend the Bill for granting a supply to his Majesty, for enabling him to disband his forces: to these amendments the Commons disagree.—See the reasons on the 25th.—See also the 26th and 28th of June, and 1st, 2d, and 3d of July; on the last of which days, the Commons came to the resolution, “That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons: and that it is the undoubted and sole right of the Commons to direct, limit, and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords //112-2//.”

33. On the 11th and 12th of July, 1678, there is a conference with the Lords upon the subject of the distribution of a penalty {113} of five pounds, which was inserted by the Commons in a Bill sent from the Lords. In the reasons, the Commons confine themselves to the arguments arising out of the propriety or impropriety of this distribution, without alluding to any question of Privilege.

34. On the 6th of May, 1679, the Lords amend the Supply Bill for disbanding the forces; to several of which amendments, on the 8th of May, the Commons disagree, and appoint a Committee to draw up reasons to be delivered at a conference; which reasons are immediately reported, and agreed to: and on the 9th the Lords desist from their amendments.

35. On the 19th of June, 1685, a Bill came from the Lords, for consolidating the estate which the King had in the Post Office, with £. 24,000 *per annum* out of the hereditary excise; which Bill is agreed to without objection.

36. See, on the 6th of May, 1689, the amendment made on the third reading of the Poll Bill, by inserting, "We, the Commons assembled in Parliament, do pray your Majesties, that it may be enacted," &c.

37. On the 9th of May, 1689, the Lords amend the Poll Bill, by adding a clause for appointing commissioners to rate themselves; To this the Commons disagree: and on the 15th of May, the Committee appointed to draw up reasons, report them //113-1//. This {114} report is recommitted, and other reasons given on the 22d.—See on the 27th, 29th, and 31st of May //114-1//.

38. On the 24th of July, 1689, the Lords amend the Bill for collecting the duties on coffee and tea; to which the Commons disagree, *nemine contradicente* //114-2//.

39. On the 14th of December, 1689, the Lords make 'some small' amendments to the Bill for granting an aid of two shillings in the pound; which are agreed to by the Commons. So on the 8th of November, 1690; and the 31st of December, 1691.

40. On the 17th of April, 1690, the Lords amend the Poll Bill, by adding a clause for appointing Lords to be commissioners for assessing the Peers, and for the Lords to appoint a receiver of the monies payable by them; which amendments are agreed to.

41. On the 5th of January, 1690, the Lords amend a Bill, by inserting a clause which inflicted a penalty of ten pounds: to this clause the Commons disagree. Several conferences are held, which are interrupted by an adjournment, and then by a prorogation of the Parliament.

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42. On the 28th of January, 1691, the Lords amend a Bill for appointing commissioners of public accounts, by adding other commissioners: to this the Commons disagree. //115-1//

43. On the 23d of February, 1691, the Lords amend a Mutiny Bill, by altering the application of a pecuniary penalty; to which the Commons disagree //115-2//.

44. On the 17th of January, 1692, the Lords amend a Bill for granting an aid of four shillings in the pound, by appointing Lords commissioners to rate the Peers, and also appointing a collector to receive those rates: to this the Commons disagree.—See the reasons //115-3//.—The Lords, on the 20th, desist from their amendment: but at the same time insist upon their right to make this amendment, and assign reasons at the conference, which are not however inserted in the Common’s Journal.—See the Lords’ Journal of the 20th of January.

45. On the 8th of March, 1692, the Lords make an amendment to a Bill for enabling the King to grant leases of the Duchy of Cornwall, which amendment increased the fees payable on the renewal of leases: to this the Commons disagree.—See the reasons on the 9th of March //115-4//.

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46. On the 25th of January, 1693, the Lords make some small amendments to the Bill for granting an aid of four shillings in the pound; to which the Commons agree; but order the said amendments to be particularly entered in the Journal, “to the end that the nature of them may appear.”

47. The Lords having amended a Bill about the coining of silver, the Commons disagree to some of the amendments and a conference is held upon this subject on the 7th of January, 1695. The reasons alledged by the Commons at this conference do not appear in the Journals of either House; but at the next conference on the 11th of January, after the Lords have assigned their reasons for insisting on their amendments—they add, “The Lords hold themselves obliged to take notice of what was delivered from the House of Commons at the close of the last conference in relation to pecuniary penalties, which, the Commons say, ought to have their commencement “only” from the House of Commons.—Their Lordships conceive this to be highly derogatory to the rights of their House; but, since the House of Commons thought fit to deliver a bare assertion only, without shewing any foundation for it, the Lords at present will content themselves with as positive a denial of it.”

48. On the 28th of November, 1696, the Lords amend the Bill for remedying the ill state of the coin; to which the Commons disagree; and give for their reasons on the 2d of December, “That the amendments being of a nature which, in their consequences, will bring a charge upon the people, the Commons can by no means admit that the Lords can make {117} such an amendment.” On the 2d of December the Lords do not insist on their amendment //117-1//.

49. On the 25th of February, 1696, the Lords amend a Bill relating to wearing of callicoës, by imposing a penalty of £. 100; to which the Commons disagree; and on the 4th of March give for their reason, “That their Lordships have added and imposed pecuniary penalties upon the subject; whereas all charges of money upon the people

ought to begin with the Commons.” This brought on another, and afterwards a free conference //117-2//.

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50. On the 6th of May, 1698, the House disagree to amendments made by the Lords to the Bill for erecting a workhouse at Colchester; because, they allege in their reasons on the 9th, that these amendments are an alteration of the laws concerning rates for the poor. On the 13th the Lords do not insist on their amendments.

51. On the 18th of April, 1699, the Lords amend a Bill about Blackwell Hall; to which the Commons do not agree, because, they say on the 19th, that this alteration will not only be prejudicial to the manufacturers, “but is a change upon the people; which the Commons can by no means allow to arise but in their House.”

52. On the 2d of May, 1699, the Lords amend the Bill for laying a duty upon vellum and parchment, to which the Commons disagree; “For that all aids which are granted in Parliament are the sole and entire gift, grant, and present of the Commons in Parliament: and that it is the undoubted right and privilege of the Commons, that such aids are to be raised by such methods, and with such provisions, as the Commons only think proper: and that your Lordships, by the antient law and constitution of Parliament, are not to alter any such gift or grant, or the methods or provisions for collecting, raising, or enforcing the payment thereof.”—See the 3d of May.—On the next day, the 4th, the Lords desire another conference at one o'clock; to which the Commons say, They will send an answer by messengers of their own; but they let the time for the conference elapse, without taking any further notice of the message. This proceeding is noticed {119} by the Lords; and the reasons which they intended to offer are ordered to be entered in their Journal //119-1//.

53. On the 8th of April, 1700, the Lords amend a Bill for granting an aid by sale of forfeited estates in Ireland; to these amendments the Commons disagree. The Lords adhere, and the Commons desire a free conference //119-2//.

54. On the 18th of May, 1702, the Lords amended a Bill for the encouragement of privateers; to which amendments the Commons disagree; and give for their reasons, on the 19th, “That this Bill doth alter several duties granted to the Crown, and doth likewise dispose of severa \\ so in original \\ sums of money arising therefrom, and of other public monies; the Commons do therefore disagree to all the amendments: for that the altering of duties, and the granting and disposing of all public monies, is the undoubted right of the Commons alone, and an essential part of their constitution.”

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55. On the 9th of December, 1702, the Lords amended the occasional Conformity Bill, one of which amendments was for leaving out several pecuniary penalties, and substituting others in their place; with a direction in what manner these last pecuniary penalties, imposed by the Lords, should be distributed. To this the Commons disagree; and, on the 15th of December, say, that “though many other reasons may be offered, from which the Commons can never depart,” they think it sufficient to say that the

penalties left out are reasonable, and necessary to make the Bill effectual. To this, on the 9th of January, the Lords at a conference replied, "That, in justification of their amendment, as they have an undoubted right to begin Bills with pecuniary penalties, and to alter and distribute pecuniary penalties in Bills sent up to them from the House of Commons //120-1// (which right their ancestors have always enjoyed, and from which their Lordships can never depart), so they are convinced there never was a more just occasion of making use of that right than in the present case." A free conference was afterwards held; at which the Commons said, That this amendment of the Lords, "could the Commons agree to it," would discourage informations and prosecutions.— See the 5th of February, 1702.

56. On the 4th of February, 1702, the Lords send a message, that they have appointed a Committee to consider of the observations of the Commissioners of accounts; and those commissioners {121} being Members of the House of Commons, the Lords desire the House will give them leave to attend that Committee. On the 5th a Committee is appointed to search precedents upon this subject, which they report on the 13th: the Committee are then ordered to draw up what may be proper to be offered at a conference, which they report on the 16th. On the 22d of February this conference is reported; and on the 25th it is stated what is fit to be offered at a free conference; and on the 27th the free conference is reported //121-1//.

57. On the 21st of March, 1703, the Lords amend the Bill for taking the public accounts; to which the Commons disagree //121-2//.

58. On the 16th of January, 1704, the Commons lay aside a Bill which came from the Lords, for appointing commissioners to treat of an Union; because, Bishop Burnet says, of the money penalties which were put in several clauses of the Bill //121-3//.

59. On the 22d of March, 1706, the Lords amend a turnpike road Bill, by exempting certain persons from paying the toll: to this the Commons disagree, and give their reasons on the 26th of March; wherein they say, "they decline offering any further reasons at present, hoping these will be sufficient //121-4//." On the 27th the Lords do not insist on their amendment.

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60. On the 1st of April, 1708, the Commons disagree to an amendment made by the Lords to a Bill for covering St. Paul's eupola with "copper," which the Lords proposed should be covered with "lead." Amongst other reasons, the Commons alledge, "That the money for building the said cathedral was granted by the Commons; and therefore the application thereof does belong to them."

61. On the 18th of March, 1709, the Lords amend a Bill for building a lighthouse on the Eddystone, by inserting a clause for limiting the duration of the Act: to this the Commons disagree, and report their reasons on the 23d of March: which being general reasons, and not asserting the Privileges of the House, are recommitted: and on the 29th they report, "That this amendment, for shortening the time for the collection of

certain duties, being an alteration of the Commons' disposition of the money arising by those duties, doth intrench upon the antient rights and privileges of the House of Commons, from which they can never depart." On the 3d of April the Lords do not insist on their amendment.

62. On the 25th of March, 1719, the Lords amend a Bill to prevent smuggling: to which amendments the Commons disagree; and on the 26th give for their reasons, "Because the first amendment is a disposition of public money; contrary to the undoubted right of the Commons, from which they can never depart:" and that "The second amendment is an alteration of the Commons' disposition of public money; which is likewise {123} contrary to the undoubted right of the Commons, and from which they can never depart." The Lords send a message on the same day, that they do not insist upon their amendments.

63. On the 11th of April, 1719, the Lords amend a Bill about the East India trade; to which the Commons disagree; and on the 13th give for their reason, "That these amendments levy money on the subject, by a new subsidy not granted by the Commons, and which it is the undoubted and sole right of the Commons to grant, and from which they can never depart." The Lords, on the 14th, do not insist upon their amendments.

64. On the 15th of February, 1722, a Bill from the Lords, for sale of an estate, in "order to discharge a debt due to the Crown," was rejected, *nemine contradicente*."

65. On the 9th of May, 1727, the Lords amend a turnpike road Bill, by leaving out an exemption for certain persons from paying the toll: to this the Commons disagree, and give reasons; but add, "That they declined offering any other reasons, hoping these may be sufficient." On the 15th the Lords insist on their amendments; and the Commons resolve, *nem. con.* to insist upon their disagreement; and the Committee are ordered to draw up what may be proper to be offered at a free conference. But that day the Parliament is prorogued.

66. On the 7th of May, 1729, the Lords amend a Bill; by making persons liable to pecuniary penalties; to which amendments the Commons agree.

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67. On the 19th of May, 1732, the Lords amend a Bill relating to bankrupts; by one of which amendments the Lords appoint an office for keeping the records, and that the Lord Chancellor shall appoint an office-keeper, "with such 'fee and reward' to be paid to such person, for his labour and pains therein, as the Lord Chancellor shall think reasonable." To this amendment the Commons disagree; and having given certain reasons, add, as they had done on former occasions, "That they decline offering any other at this time, "hoping these may be sufficient." The Lords, on the 31st of May, insist on their amendment; and the Commons do not insist upon their disagreement //124-1//.

68. On the 4th of May, 1733, a Bill from the Lords, for vesting in Sir Theodore Janssen the remainder of an estate 'now in the Crown,' was rejected, *nemine contradicente*.

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69. On the 20th of April, 1736, the Lords made several amendments to the Bill for building Westminster Bridge. When these amendments are taken into consideration, on the 5th of May, several precedents are read out of the Journals of proceedings similar to this; and then the amendments are agreed to.

70. On the 20th of May, 1736, the Lords amend a Bill for indemnifying persons guilty of offences against the laws, made for securing the revenues of customs and excise; to which, after reading several precedents, the Commons agree //125-1//.

71. On the 13th of April, 1743, the Lords amend a Bill relating to rogues and vagabonds, by directing in what manner the treasurer of the county shall pay the rates and allowances appointed by the Quarter Sessions of the Peace. To these amendments the Commons disagree; and after giving their reasons, add, "That they hope these reasons will be sufficient, and they therefore decline offering any others at this time."

72. On the 2d of July, 1746, the Lords amend the Bill for securing the payment of shares of prize-money to Greenwich Hospital; which amendments, after reading several precedents from the Journals, are resolved, *nemine contradicente*, to be put off two months.

73. On the 2d of July, 1746, a Bill from the Lords, for founding and building a chapel at Wolverhampton, was read once; and, upon question for reading it a second time, it passed in the negative, *nemine contradicente*. The Journal is read of the 19th of May, 1662 //125-2//.

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74. On the 6th of April, 1750, the Lords having amended a Bill for the encouragement of the White Herring Fishery, the Commons agree to this amendment; but order a special entry to be made in the Journal, to shew the nature of the amendment; "and that the same was agreeable to what was intended by the Commons, but had been expressed otherwise by mistake //126-1//."

75. On the 20th of March, 1752, the Lords amend a Bill for suppressing thefts and robberies, to which the Commons disagree; and having given reasons, "declined offering any other at this time." The Lords, on the 24th of March, do not insist upon their amendments.

76. On the 11th of April, 1753, a Bill from the Lords, for enabling the trustees of Lord Ashburnham to convey his estate pursuant to the directions of his will, was, after reading a precedent from the Journal of the 24th of July, 1661, ordered, *nemine contradicente*, to be laid aside (126-2).



77. On the 24th of May 1757, the Commons disagree to several amendments made by the Lords to the Militia Bill, the reasons are reported; and the Commons “decline at this time offering any other reasons,” believing these may be sufficient. On {127} the 7th of June, the Lords insist upon some of their amendments, but take no notice of this expression of the Commons.

78. On the 11th of May, 1759, the Lords amend a turnpike road Bill, by inserting a clause, “That no gate shall be erected within a mile of Ensham Ferry.” The consideration of this amendment is resolved, *nemine contradicente*, to be put off for a month.

79. On the 29th of March, 1762, a Bill from the Lords, for vesting in the Duke of Bedford certain lands called ‘Feoffees lands,’ and settling others in lieu thereof, was laid aside //127-1//.

80. On the 6th of May, 1762, the Commons disagree, *nemine contradicente*, to an amendment made by the Lords to a Bill for lighting the streets of Hull; which amendment was, the leaving out a clause “that enacted that persons should not gain a settlement by paying to the rates imposed by this Act.”—See the reasons on the 7th of May.—Upon the 2d of June, the Lords send word, they do not insist upon their amendment.

81. On the 25th of April, 1765, a Bill from the Lords, for repealing an Act of the 7th of Queen Anne, for enforcing an Act passed in the 5th of Queen Anne, relating to buying and selling cattle,—was put off for two months //127-2//.

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82. On the 9th of May, 1766, the Lords agree to a Bill for preservation of fish, with some amendments; one of which being for imposing a pecuniary penalty, the amendments were never moved to be taken into consideration.

83. On the 27th of May, 1767, the Lords amend a Bill for repairing the roads in the county of Ayr, by leaving out “not being a Peer of this realm,” which was an exception to the description of the persons, appointed to be commissioners for executing the powers of the Bill. The consideration of this amendment is put off for two months, and another Bill ordered.

84. On the 19th of April, 1771, the Lords amend a turnpike road Bill, by leaving out a clause, which was to prevent abuses by persons carrying coals along the road. The consideration of this amendment is put off for three months.

85. On the 3d of June, 1772, the Lords amend a Bill to regulate the importation and exportation of corn; wherein they provided, “That no bounty should be payable in certain cases.” The House order the Bill, with the amendments, to be //128-1// rejected, *nemine contradicente*.

86. On the 3d of June, 1772, the Lords amend a Bill for better preservation of the game, by extending the penalties and forfeitures {129} in the Bill to persons killing red game. This Bill, with the amendments, are ordered, *nemine contradicente*, to be rejected.

87. On the 25th of June, 1781, the Lords having amended a Bill for erecting a new gaol at Gloucester; the Commons agreed to this amendment on the 26th, but directed a special entry to be made in the Journal, to shew, that this alteration, made by the Lords, was within the scope and purport of the Bill, as it was sent from the House of Commons.—See before, N<sup>o</sup> 74.

88. On the 8th of May, 1783, the Lords amend a Bill relative to opening a trade with the United States of America, by enlarging the term of the powers given to the King, for making regulations with respect to the duties and drawbacks to be paid by ships coming from thence, or going thither. The Commons put off the consideration of these amendments for three months, and ordered in another Bill.

89. The Lords having made amendments to the St. James's paving Bill, by altering the number of persons who were to compose the Committee that were to have the controul and management of the rates, the House of Commons, on the 8th of July, 1783, took these amendments into consideration; and following the precedents of the 3d of June, 1772, rejected //129-1// the Bill, with the amendments, *nemine contradicente*.

90. The Lords having made amendments to some of the resolutions, which were sent from the Commons for their concurrence, relating to the commercial intercourse between Great Britain and Ireland, and these amendments being in matters of duties, {130} the Commons put off the consideration of them for three months, and immediately came, on the 22d of July 1785, to other resolutions, which included the substance of the amendments made by the Lords. To these resolutions the Lords agreed on the 25th of July.

91. On the 23 of May, 1786, the Lords, by a message, desire the Commons to communicate to them the information relating to the state of the public income and expenditure, on which they proceeded in passing the Bill, “for vesting certain sums in commissioners for the reduction of the national debt.” The next day, the Commons return for answer, “That it has not been the practice of Parliament, for either House to desire of the other the information, upon which they have proceeded on passing a Bill, except where such information has related to facts stated in such Bill, as the ground and foundation thereof; and //130-1// that the Commons think this reason sufficient for not giving, at this time, any further answer to their Lordships’ message.” To this answer the Lords made no reply but passed the Bill the following day.

92. On the 4th of May, 1787, a Bill from the Lords was read 1<sup>o</sup>, and it appearing, that there were provisions in the Bill, “for declaring a new gaol or prison, lately built at

Horsham in Sussex, to be the common gaol for that county, and that the said {131} gaol should be kept in repair by the same means, by which the other county gaols are repaired." These provisions were so directly against the rule, "That the Lords should not impose any rates or taxes upon the people," that upon the Speaker's stating them to the House, it was unanimously agreed to lay the Bill aside, and to give leave to present a new //131-1// Bill for those purposes.

93. On the 20th of May, 1790, the Lords amended a Bill for regulating Warwick gaol, by changing the rate, to be imposed for that purpose, from the land owners to the occupiers. To this amendment the Commons disagree, and on the 27th of May agree on reasons to be offered to the Lords at a conference. On the 8th of June another conference is held, where the Lords give their reasons for insisting on their amendment, and the Commons resolve, *nemine contradicente*, to insist upon their disagreement.

94. On the 11th of April, 1791, the Lords having amended a road Bill by adding a clause directing how the money to be paid for lands to be purchased should be laid out by the parities receiving it, the Commons agree to this amendment, but direct a special entry to be made in the Journal //131-2//.

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95. The Lords having passed a Bill //132-1//, "to regulate the distribution of rewards in case of felony," the Commons on the 13th of May, 1791, put off the consideration of this Bill for three months, and ordered in another Bill.

#### OBSERVATIONS.

We see, from the foregoing cases, that, in the earlier parts of the history of this country, there are instances of a jealousy entertained by the House of Commons, that the other branch of the legislature should not be permitted to interfere with that which they have always considered as their exclusive right; viz. "The grant of aids and taxes to the Crown for the public service."—In whatever mode the Lords have at any time attempted to invade this right, the Commons have uniformly and vigorously opposed \\ so in original \\ the attempt; and have asserted and maintained this claim through such a long and various course of precedents, particularly from the time of the Restoration to the beginning of this century, that the Lords have now for many years desisted, either from beginning any Bill, or from making amendments to Bills passed by the Commons, which, either in the form of positive taxes or pecuniary penalties, or in any other shape, might by construction be considered as imposing burthens upon the people.

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As long ago as in the year 1407, the 9th of Henry IV. a dispute arose between the two Houses of Parliament, touching the manner of granting a subsidy; which gave rise to the famous ordinance of that year, intituled, "The Indempnity of the Lords and Commons //133-1//." The substance of this proceeding was, "That King Henry IV. being in great want of money, and having demanded of the Lords what aid might be

sufficient in this case, they answered, that, considering the King's necessities on the one hand, and the poverty of his people on the other, a lesser aid would not be sufficient than a tenth and a half from the cities and boroughs, and a fifteenth and a half from the rest of the people: besides this, that it would be necessary to grant a prolongation of the duties on wools and leather, and of tonnage and poundage, from the feast of St. Michael for two years to come. Upon this advice of the Lords, the King sent a message to the Commons, to desire that certain of the Commons' House would come before him and the Lords, to hear and report to the House that, which the King should signify in command to them. Upon this message the Commons sent a Committee of twelve members; to whom it being told what had passed between the King and the Lords, the King directed them to report this to the House of Commons, in order that they might immediately take such steps as might be conformable to the intent and meaning of the Lords." This report being made by the Committee to the House, the record says //133-2//, "They were greatly disturbed; saying, and affirming, that this was in great prejudice and derogation of their liberties."—The King being informed of this, and being unwilling that any thing now or hereafter should be done which {134} might be against the liberty of the state //134-1//, for which they are come to Parliament, or against the liberty of the Lords, wills, grants, and declares, "That in this present Parliament, and in all Parliaments to come, in the absence of the King, it should be lawful, as well for the Lords by themselves, as for the Commons by themselves, to commune amongst themselves of all matters relating to the realm, and of the means to redress them: provided that neither the Lords on their part, nor the Commons on their part, should make any report to the King of any 'grant granted by the Commons, and assented to by the Lords,' nor touching any communication of the said grant, until the Lords and Commons should agree thereupon; and then that it should be done in manner and form as has been hitherto accustomed, that is to say, 'by the mouth of the Speaker of the House of Commons for the time being.' And the King further wills, that the communication made in this present Parliament should not be drawn into example in time to come, nor should turn to {135} the prejudice or derogation of the liberties and privileges of the Commons." I have transcribed this record the more at large, because in every account I have hitherto met with, particularly in the Parliamentary History //135-1//, it is much abridged and mutilated; and several parts totally omitted, upon which the Rights and Privileges of the House of Commons upon this subject, as claimed at this day, are to be maintained and supported //135-2//.

It has been before suggested, that the short prorogation for three days, in the year 1553 //135-3//, was intended to avoid those difficulties which the Commons were under, from the Lords having made amendments to the Bill for tonnage and poundage: they were obliged either to agree to the amendments, which would have been in derogation of their Privileges; or to have laid aside the Bill, which would have been inconvenient to the state. The expedient, therefore, was adopted, of making a short prorogation; and which measure has since been followed in similar circumstances: the Commons were thereby enabled to bring in a new Bill, probably containing those amendments which the Lords had made in the former Bill.

Another instance, in which the Commons shewed their jealousy of the Lords interfering in any matter which might even be construed to have a reference to public money, was in the year 1587, where the Lords having passed a Bill for the sale of the estate of one Thomas Handford, 'for a debt due to the {136} Crown,' the Commons rejected this Bill, and passed another to the same effect //136-1//.

It must be admitted, that the Commons did not always insist, with the same precision and exactness, as they have done of late years, upon their privilege, "That the Lords should make no amendments to Bills of Supply." There are a variety of instances, particularly before the Revolution, where the Lords made amendments to Bills of this nature, to which amendments the Commons did agree. At this period they appear to have been satisfied with maintaining the principle, "That all Bills of aid and supply, or charge upon the people, 'should begin' with them;" and that the Lords should not 'commence' any proceeding that might impose burthens upon the people." But they soon found, that under pretence of making amendments to Bills originating in the Commons, the Lords //136-2// inserted matter, 'which had the appearance of trenching upon the Privileges of the Commons:' so that, after several discussions and conferences, the Commons found themselves obliged to lay down the rule more largely; and to resolve, "That, in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords //136-3//." Within a very few years after, in 1678 //136-4//, the doctrine {137} is carried still further; and the Commons refuse to agree with the Lords in some amendments which they had made, and which related to the distribution of forfeitures; and on the 3d of July, 1678, they came to the resolution, "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords."

The first instance that has occurred, where the Commons expressly took exceptions to the Lords inserting pecuniary penalties in a Bill, is in the year 1690 //137-1//. The ground and principle upon which this objection was made, and has been since maintained, is, to prevent the Lords from evading, under pretence of imposing a pecuniary fine or penalty, that rule so distinctly laid down by the Commons, in several conferences which have been held upon these subjects, "That all charges or burthens whatsoever upon the people ought to begin with the Commons, and cannot be altered or changed by the Lords." Upon the same principle the Commons have objected to any alterations made by the Lords, in the application or distribution //137-2// of pecuniary penalties imposed by the Commons; but it does not appear, that this objection has been extended by the Commons to instances, in which the Lords, by disagreeing to clauses or making other alterations in the Bill as sent from the Commons, have entirely withdrawn from the penalty //137-3//, the object upon whom the Commons meant it should attach.

From the beginning of the present century, a period of above fourscore years //138-1//, the claims of the House of Commons to their Rights and Privileges, in matters of supply, have been seldom or but faintly controverted by the Lords. The rules, which the Commons have from time to time laid down to be observed in Bills of Aid, or in Bills imposing charges and burthens upon the people, have been very generally acquiesced in; and the practice of both Houses of Parliament has been uniformly adapted to these rules. It may perhaps be difficult to express with precision and correctness the doctrine that is to be collected out of these precedents; but, as far as my observation has gone, I think the following propositions contain pretty nearly every thing which has at any time been claimed by the Commons upon this subject.

First, That in Bills of Aid and Supply, as the Lords cannot begin them, so they cannot make any alterations either as to the quantum of the rate, or the disposition of it; or indeed any amendment whatsoever, except in correcting verbal or literal mistakes //138-2//: and even these the House of Commons direct to be entered specially in their Journals, that the nature of the amendments may appear; and that no argument, prejudicial to their Privileges, may be hereafter drawn from their having agreed to such amendments.

Secondly, That in Bills which are not for the special grant of supply, but which however impose pecuniary burthens upon the people, such as Bills for turnpike roads, for navigations, for paving, {139} for managing the poor, &c. for which tolls and rates must be collected—in these, though the Lords may make amendments, these amendments must not make any alteration in the quantum of the toll or rate, in the disposition or duration of it, or in the persons, commissioners, or collectors appointed to manage it. //139-1// In all the other parts and clauses of these Bills, not relative to any of these matters, the Commons have not objected to the Lords making alterations or amendments //139-2//.

Thirdly, Where the Bill, or the amendments made by the Lords, appear to be of a nature which, though not immediately, yet in their consequences, will bring a charge upon the people, the Commons have denied the right of the Lords to make such amendments, and the Lords have acquiesced //139-3//.

And lastly, The Commons assert, that the Lords have no right to insert in a Bill pecuniary penalties or forfeitures, or to alter the application or distribution of the pecuniary penalties or forfeitures which have been inserted by the Commons.—These rules {140} with respect to the passing or amending of Bills, are clear, distinct, and easy to be understood and applied in all the cases which may occur //140-2//. It has been sometimes attempted to extend this claim, on the part of the Commons, still further; or rather so to construe this claim, as to tend very much to embarrass the proceedings of the House of Lords upon Bills sent from the Commons. This has never appeared to me a prudent measure: I think the House of Commons may rest satisfied with the observance of these rules, which they can maintain upon the ground of ancient practice and admitted precedents. Their sole and exclusive right of beginning all aids and

charges upon the people, and not suffering any alterations to be made by the Lords, is sufficiently guarded by the claims as here expressed: and it does not seem to be either for their honour or advantage to push this matter farther; and, by asserting privileges which may be subjects of doubt and discussion, thereby to weaken their claim to those clear and indubitable rights, which are vested in them by the constitution, and have been confirmed to them by the constant and uniform practice of Parliament.

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## SUPPLY

### III. *Bills of Supply to be presented by the Speaker //113-1//.*

1. ON the 18th of March, 1580, the Lords send word, that the Queen purposed to come to the Higher House this afternoon; and therefore desire that this House be then there present, to attend upon her Highness; and withal, that the Bill of Subsidy shall 'then' be delivered to Mr. Speaker to be presented by him, in the name of this whole House, to her Majesty. Immediately after, two Messengers from the Lords bring down the Bill for the subsidy; and withal a report, that their Lordships do say, "That the use is indifferent, either 'to take it there' or 'send it hither':" which being, after their departure, reported to the House by Mr. Speaker, it is by the House resolved, "That the use thereof is not indifferent; but always hath been, and is, that it be sent down into this House, and not left there."

2. On the 23d of July, 1610, in the Commons Journal is the following entry: "His Majesty came about three o'clock: Mr. Bowyer sent the Subsidy privately to Mr. Speaker //141-2//."

3. On the 12th of July, 1641, Mr. Maxwell came down, and acquainted this House, That the Lords did desire them to come {142} up to the passing of the Bill for tonnage and poundage by commission: to which message the Commons send an answer by Sir Henry Vane, to acquaint the Lords, "That this House being informed by the Black Rod that their Lordships desire this House to come to the passing of the Bill for tonnage and poundage, that, in regard it is a free gift of the Commons of England, and the Speaker of the House of Commons ought to present the same,—that their Lordships would be pleased to send the Bill down to this House."—Sir Henry Vane brings back word that their Lordships had taken the message into consideration, and would send an answer by Messengers of their own //142-1//.

4. On the 25th of March, 1642, a message from the Lords, that they had received a commission for the passing of a Bill for raising £. 400,000, but that the commission is fixed to the Bill: if this House thinks it not fit to pass thus, it must be sent back to York.—The Commons appoint a Committee to advise of what will be fittest to be done, in this case, for the saving of the Privileges of the House; who report on the next day, the 26th of March: and on their report the House resolve, "That Mr. Speaker shall go up, and if the Bill be delivered to Mr. Speaker before the commission be read, that then he shall have leave to present it to be passed; but if the Lords shall not deliver the Bill {143} to Mr. Speaker's hands accordingly, that then he shall immediately return //143-1//."

5. On the 24th of July, 1660, Mr. Annesley is to carry the Bill for tonnage and poundage to the Lords; and to desire the Lords that, 'it being a Bill concerning money,' it be sent back to this House when the Lords have passed it. On the next day, the 25th, this Bill, with another for continuing the excise, is brought back by two Masters in Chancery, and delivered in, with the Lords' agreement, and the Speaker carried to the Lords on the 28th.—See also the 18th of August, and the 10th and 13th of September, 1660 //143-2//.

6. On the 28th of December, 1660, Sir William Lewes is ordered to put the Lords in mind of returning back to this House the Bill concerning wine licences; which they send back the next day, according to the desire of this House.

7. On the 7th of April, 1671, the Speaker is directed, on presenting two Bills of Aid to his Majesty, that he do intimate to his Majesty the reasons which induced the Commons to enlarge the continuance of one of the said Bills; and that he do desire his Majesty to take order that the value of the aids given by this and the other Acts be applied towards satisfaction of his Majesty's {144} debts: which directions he appears, from the Lords' Journals, to have followed, on presenting the Bills on the 22d of April //144-1//.

8. 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 //144-2//; and to desire it may be sent down to this House. But there is an entry immediately following, "That 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."

#### OBSERVATIONS.

The uniform practice, with respect to the returning Bills of Supply from the Lords, in order that they may be presented by the Speaker to the throne, has long been, not to send them back by the Masters in Chancery, but for the Clerk of the House of Lords to deliver them privately, as was done on the 23d of July, 1610, to one of the Clerks belonging to the House of Commons: and if there is any doubt which are, or are not, Bills proper for the Speaker to present, the Clerk of the House of Lords, in delivering a list of the Bills ready for the Royal assent, desires that the Speaker would mark in that list which of them appear to him Bills of Supply; and those Bills are immediately {145} sent down to the House of Commons. This practice of the House of Commons, of insisting that Bills of Aid to the Crown should be presented by the Speaker, in the name of the Commons of Great Britain, which, from the foregoing instances, appears above two hundred years ago to have been considered as no trifling or indifferent Privilege, naturally arises out of that principle of the constitution which is expressed in the resolution of the 3d of July, 1678, "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons." And in the preamble to



these Bills, this principle is expressed by the words with which they always begin: “Most gracious Sovereign, We your Majesty's most faithful Commons, have given and granted to your Majesty," &c. //145-1//

It has not been unusual, when the King is present on the throne,—indeed it has been customary, on the Speaker's presenting the Bills of Supply on the last day of the Session //145-2//, or any Bill for the particular service of the Crown in the course of the session,—for the Speaker to make a Speech, at the bar of the House of Lords, either immediately arising out of the subject matter of the Bill itself, or, when at the close of the session, recapitulating the principal objects which have employed the attention of the Commons during their sitting //145-3//. These Speeches, when made at the {146} close of the Session, as the Parliament is immediately prorogued, cannot appear in the Journal of the House of Commons; but the substance of them is entered in the Journal of the Lords //146-1//.

When the Speaker presents a Bill in the course of the session, in the delivering of which he thinks proper to make a Speech to the throne, the House of Commons, on their return, have sometimes come to a resolution to desire the Speaker to print his Speech; as they did on the 2d of December, 1761, when Sir John Cust presented the Bill for settling a jointure on the Queen; and on the 7th of May, 1777, when Sir Fletcher Norton presented the Bill for the additional sum to his Majesty's civil list; and on the 26th of May 1786, when Mr. Cornwall presented the Bill for establishing a fund for the discharge of the national debt; and these Speeches are then entered in the Journals. As the Speaker receives no instructions upon what particular topics //146-2//, or in what manner, he shall express himself upon these occasions, it may happen that he may, in the name of the House of Commons, whose mouth he is, declare sentiments, which, though they coincide with the opinions of one part of the House, are entirely contrary to those of another part. This was the case in the {147} Speech of Sir Fletcher Norton, on the 7th of May, 1777: for, in a debate on the 9th of May, some allusions being made to this Speech, as if the Speaker had used expressions to the throne which he was not authorized to use as the sense of the House of Commons, the Speaker immediately called the attention of the House to this subject, and desired a copy of his printed Speech to be read; and then demanded the judgment of the House, whether what he had said was liable to this objection. The House, by a question put, declared, “That Mr. Speaker did, upon that occasion, express, with just and proper energy, the zeal of this House for the support of the honour and dignity of the Crown, in circumstances of great public charge.”—Under these difficulties therefore, the Speaker can only, upon such occasions, endeavour to express what he conceives to have been the intention of the majority of the House, and the principles upon which they appear to him to have passed the Bill.

## SUPPLY

IV. *Rules of the House in Matters of Supply.*

1. ON the 18th of February, 1667, resolved, That if any motion be made in the House for any public aid or charge upon the people, the consideration and debate thereof ought not presently to be entered upon, but adjourned till such further day as the House shall think fit to appoint; and then it ought to be referred to the Committee of the whole House; and their opinions to be reported thereupon, before any resolution or vote of the House do pass therein //148-1//.

2. On the 3d of November, 1675, a debate arising in the House touching the ancient order and course of the House in the method of raising supplies, and concerning the precedency of the lesser sum, the House, upon the question, did resolve and declare it an ancient order of the House, "That when there comes a question between the greater or lesser sum, or the longer or shorter time, the least sum and longest time ought first to be put to the question //148-2//."

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3. On the 1st of June, 1685, on a report from the Committee of Supply, the seventh resolution imposed one penny per pound weight upon all foreign sugar: the House added to this duty a farthing //149-1//, and agreed to this resolution so amended, "one penny farthing."

4. On the 26th of April, 1689, a clause was offered to be made part of a Bill of Supply, as a ryder, "That every one of five hundred pounds estate, shall pay as much as a gentleman is rated at in respect of his title." A debate arose thereupon, whether, in regard the same was to lay a new tax, the same could be admitted upon the third reading, after the Bill had passed the Committee of the whole House. The question being proposed that the said clause be read, the question was put that that question be now put; and it passed in the negative. And the House resolve to go into a Committee of the whole House the next day, to consider of that proposition.

5. On the 20th of January, 1703, a clause to a Bill was offered, and brought up, and read twice, with a blank for the penalty, which was filled up by the House with £. 100. On question that the clause be read the third time, it passed in the negative.

6. On the 11th of December, 1706, resolved, "That this House will receive no petition, for any sum of money, relating to {150} public service //150-1//, but what is recommended from the Crown." On the 11th of June, 1713, this is declared to be a standing order.

7. The Committee of Supply being closed on the 22d of January, 1706, without any directions to the Chairman to ask leave to sit again—and it being afterwards, in the course of the same session, found necessary to vote a sum to discharge the equivalent money due to Scotland upon the Union—the same form and proceedings are observed

in opening the Committee of Supply again, on the 6th, 7th, 10th, 11th, and 12th of March, as at the beginning of a session.—See also the 20th of July, 1715.

8. On the 18th of March, 1706, the House address the Queen, that she will be pleased to give directions for enquiring into the losses of the inhabitants of the islands of Nevis and St. Kitt's, that the same may be laid before this House, in the next session; and that in the mean time she will, out of the public money granted in this session, apply what may be convenient for the better securing those islands, and supplying them with necessaries //150-2//.

9. On the 29th of March, 1707, resolved, That this House will not proceed upon any petition, motion, or Bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a Committee of the whole House; {151} and that the same be declared to be a standing order of the House //151-1//.

10. On the 3d of April, 1707, the clause for appropriating the monies granted in this session of Parliament, was added 'on the report' of the Bill of Supply.

11. On the 10th of May, 1714, a clause was offered as a ryder, on the third reading of a Bill, with a blank for a pecuniary forfeiture; which was filled up by the House and the clause agreed to.—So on the 11th of June, 1714, and the 5th of February, 1745.

12. On the 3d of April, 1717, a message from the King, to desire such a supply as may enable him to concert measures against Sweden. This message is considered the next day; and upon a motion for a supply for this special purpose, this motion is considered in a Committee of the whole House, on the 8th of April; and a resolution is come to, which is agreed to on the 9th, "That a supply be granted for this purpose."—The message is then referred to the subsisting Committee of Supply; and, on the 13th of April, a specific sum of £. 250,000 is voted for this service //151-2//."

13. On the 16th of May, 1717, upon a report from the Committee of Supply of £. 577,000 granted for making good the deficiencies {152} of the supplies in the last session, the House amend this resolution, by appropriating £. 334,000, out of that sum, towards discharging the debt of the navy.

14. On the 22d of January, 1717, the Committee of Supply drops, by the Chairman's not asking leave to sit again; but is revived by a special order of the next day. So on Wednesday, the 14th of March, 1743, the order of the day for the Committee of Ways and Means being omitted to be read and disposed of, it was considered as dropped, and revived by an order of the 15th //152-1//.

15. On the 7th of March, 1744, a clause being offered upon the report of a Bill, directing the payment of subsistence money to recruits, the clause is brought up and read, and then committed to a Committee of the whole House. The House immediately resolves itself into that Committee, and report the clause directly with amendments: the amendments are read twice and agreed to, and then the clause is added to the Bill.

16. On the 17th of March, 1748, a message from the King, for a supply to discharge part of a sum due to, and claimed by the Empress Queen of Hungary, is referred immediately to the Committee of Supply //152-2//. The Committee of Supply sit the same day, and come to several resolutions; but they do not consider this message till the Committee sits again on the 20th of March //152-3//.

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17. On the 24th of April, 1759, a clause is offered, on the third reading of a Bill, for inflicting pecuniary penalties on persons offending against the Act: the blanks are filled up in the Chair, and the clause is added by way of ryder //153-1//.

18. On the 19th of March, 1767, two messages are delivered from the King. The first, relating to a marriage portion to the Princess Matilda, married to the King of Denmark; the other, for the making a provision for the King's brothers, the Dukes of York, Gloucester, and Cumberland. The first message is referred to the Committee of Supply; the second to a Committee of the whole House //153-2//.

19. On the 4th of April, 1770, on the third reading of a turnpike {154} road Bill, an amendment was made, to leave out "he shall for every such offence forfeit the sum of five pounds //154-1//."

19. On the 18th of May, 1772, upon the third reading of a game Bill, a penalty of £. 50 was imposed, the Speaker in the Chair //154-2//. \\ There are two entries numbered '19'. \\

20. On the 24th of February, 1780, a motion being made, That it be an instruction to gentlemen appointed to bring in a Bill, "That they do make provision for imposing an additional stamp duty on the admission of occasional freemen into corporations,"— it was proposed to refer the consideration of this motion to the Committee of Ways and Means //154-3//, but passed in the negative.

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21. On the 24th of February, 1784, upon the report of the Bill for explaining and amending the Act imposing a stamp duty on receipts and bills of exchange, a clause was offered for repealing an exemption, that had been allowed by the former Act, to bills drawn, payable to order, upon persons within ten miles: but the clause, after having been twice read, was withdrawn //155-1//.

22. On the 17th of July, 1789, on the third reading of the Bill for leaving the duties on tobacco by excise, a clause was offered, by which persons were permitted to keep their tobacco in the King's warehouses beyond the time limited by law, on payment of a certain sum per week for each hogshead //155-2//. This clause was {156} read 2<sup>o</sup>, and then referred to a Committee of the whole House, where the blank was proposed to be filled up with "six pence." This was reported and agreed to by the House, and then the clause was read 3<sup>o</sup>, and added to the Bill by way of ryder.

23. On the 5th of June, 1795, the House resolved to go into a Committee of the whole House, to consider of appropriating a sum out of the consolidated fund, towards liquidating such part of the Prince of Wales's debts as should be unpaid at the death of his Royal Highness //156-1//.

### OBSERVATIONS.

The House of Commons have, with great wisdom, imposed these rules and restrictions upon themselves, in the exercise of that great and most important privilege, "The sole and exclusive right {157} of granting aids and supplies to the Crown:" in order (as it is their duty, when they are imposing burthens upon their fellow subjects, to give every opportunity for free and frequent discussions) that they may not, by sudden and hasty votes, incur expences, or be induced to approve of measures, which might entail heavy and lasting burthens upon themselves and their posterity. It is upon this principle, that, as long ago as the year 1667, the House laid it down for a rule, "That no motion or proposition for an aid, or charge upon the people, should be 'presently' entered upon;" that by this means due and sufficient notice of the subject should be given, and that the Members should not be surprised into a vote, but might come prepared to suggest every argument which the importance of the question may demand //157-1//. Another part of the same order, "That such propositions shall receive their first discussion in a Committee of the whole House," is no less wise and prudent. There every Member may speak as often as he finds it necessary; and is not confined, in delivering his opinion, by those rules which are to be observed when speaking in the House, and which, in matters of account and computation, would be extremely {158} inconvenient, and would necessarily deprive the House of much real and useful information. This mode of proceeding likewise gives an opportunity of a further and more mature deliberation, when the resolutions of the Committee are reported; to which the House may either not only agree or disagree, but, if they are of opinion that the subject has not been sufficiently canvassed, they may recommit the whole, or any part of the report, for the purpose of receiving more accurate information, or more narrowly enquiring into the nature and expediency of the measure proposed. For these reasons, this resolution of the 18th of February, 1667, has been, particularly of late years, very strictly adhered to; and it appears to be one of those rules, which, as it has its foundation in prudence, and an attention to the ease of the people, ought to be in all instances inviolably observed. Almost the sole exception, that is admitted by the practice of the House, is, when they address the Crown to advance money for any particular purpose, and give assurances that the expences so incurred shall be repaid out of the grants of the next session. This practice has indeed generally been confined to small sums, and to services, the amount of which cannot at the moment be exactly ascertained //158-1//; it has also been used, for the most part, at the end of the session, when the Committee of Supply is closed, and when the sum required has not been thought of magnitude sufficient to adopt the form of opening it again, as was done in the instances of the 6th of March, 1706, and the 20th of July, 1715, the 16th of June, 1721, and the 18th of April, 1748. However, as {159} this proceeding, of voting money by address, is contrary both to the words and spirit of the standing order of 1667 //159-

1//, it is a practice which the Speaker, and those Members who wish to preserve the credit and authority of the House of Commons, ought to discourage, and not to permit it to be wantonly adopted, or without apparent necessity //159-2//.

The proceeding of the 1st of June, 1685, of increasing, the Speaker in the Chair, the tax imposed by the Committee, was, as was very properly observed at the time by Mr. Mallet and Sir William Coventry, against order, and irregular; and would, if admitted into practice, entirely destroy the effect of the standing {160} order of 1667 //160-1//. The uniform practice of the House therefore has been, if, upon reconsideration on the report, it is thought expedient {161} to increase either the sum granted in the Committee of Supply, or the tax imposed in the Committee of Ways and Means, to recommit the resolution for that purpose //161-1/. The House has always thought itself competent, without the intervention of a Committee, to lessen the sum proposed, and thereby to contribute to lighten the burthens imposed upon the people; but in no instance to increase the sum (unless it has at any time been done through inadvertency), and thereby for the House, as it were, to impose a charge not authorized by the previous deliberation and resolution of a Committee.

It is upon similar grounds, that, in a Bill where it is necessary to inflict pecuniary penalties, the House have been particularly cautious not to do this upon the report, the Speaker in the Chair; {162} but, as in the instance of the 7th of March, 1744, to commit the clause, in which such penalties are to be inserted, to a Committee of the whole House //162-1//; or, if that is thought inconvenient, to recommit the Bill to the Committee from whence it was reported, that the imposing these pecuniary fines might at least receive the consideration and sanction both of a Committee and of the House. The precedents therefore of 10th of May, 1714, 11th of June, 1714, 5th of February, 1745, and the 24th of April 1759, were certainly irregular; and it is much to be desired that this practice of inserting penalties or forfeitures, which impose a pecuniary tax upon the subject, might never be adopted, the Speaker in the Chair. For, though such a proceeding is contrary to no expressed or declared order of the House,—yet, inasmuch as it tends to increase the burthens of the people, it is so far contrary to the spirit and meaning of the rule laid down on the 18th of February, 1667.

Upon the same principle, viz. “That, when money is to be raised upon the subject, the proposition shall have the fullest and most frequent discussion,” the House of Commons resolved, {163} on the 11th of March, 1716, “That no Bill be ordered to be brought in for any work proposed to be carried on by tolls or duties to be levied on the subject in particular places, till such petition has been referred to a Committee, and they have examined the matter thereof, and reported the same to the House.” Which resolution, on the 28th of February, 1734, is declared to be a standing order of the House. So that in every mode, in which any pecuniary burthen can be imposed upon the people, whether for public or private purposes; whether in consequence of a requisition from the Crown, or on the application of individuals for a particular purpose; whether in the form of tolls and duties, or as a pecuniary penalty: in all these cases, the orders and practice of the House of Commons require, that there shall be

more frequent, and, being in a Committee, consequently a more free discussion, than other propositions are entitled to, in which the levying money on the subject is not included. And the time at which this discussion shall be had is determined by the nature of the proposition—whether previously a Committee of the whole House, or whether in a Committee on the Bill; or, if the proposition is made upon the report, or on the third reading of the Bill, in a Committee of the whole House upon the clause by which the sum is to be imposed.

In the year 1675, it was declared to be an ancient order of the House, "That when there comes a question between the greater or lesser sum, or the longer or shorter time, the least sum and longest time ought to be first put to the question." And the usage of the House, in compliance with this order, is, that if two sums are proposed to be granted to the Crown //163-1//,—or, in the {164} considering of any public service, as of the army or navy, if the number of men moved to be voted is different,—or if, in the Committee of Ways and Means, a larger and smaller tax are proposed together,—the Chairman of the Committee, without considering the smaller sum in the form of an amendment to the question, immediately states the question with that lesser sum, the fewest number of men, or the smallest tax; and, if that is carried in the negative, he then puts the question again, with the next smaller sum proposed //164-1//. It appears from the history of this order in Grey's Debates //164-2//, that, at the time this rule was agreed to, there was no express or written order existing upon the Journal; but that it had been frequently observed in practice, and delivered down by tradition from old Members, as the form and usage of the House; and that the reason for it was, "That the burthens imposed upon the people might be as easy as possible." An objection was then made, that this form of proceeding would preclude Members from their vote; and that the having put a negative upon the smaller sum, a larger could not be proposed.—Sir John Berkenhead says, "If the greater sum be denied, you may have a second question; but if the least be denied, you cannot come to a greater." But this argument was overruled; Mr. Powle, Sir William Coventry, Sir Thomas Meres, and several other Members, {165} spoke for the preservation of the ancient forms of the House. Sir Thomas Meres says, "An old Parliament man, of eighty years of age, enjoined me strictly to keep to the order of the lowest sum first to be put:" and Colonel Titus says, "To debate whether the smaller sum and longer time should be first put to the question, is as much as to say, whether you will not make the charge as easy upon the people as you can."—With regard to the other part of this ancient order, "That the longest time is to be first put," this certainly, as has been suggested to me by a very ingenious friend, well versed in the history and proceedings of Parliament, must relate to the mode in which subsidies, the ancient manner of granting aids to the Crown, were given. The custom was, to give so many subsidies, to be levied in such a time; and the longer that time was, in which the subsidy was to be collected, the easier for the subject. This manner of granting aids being changed long ago (for in the debate in the year 1675 upon this order, Mr. Boscawen says, "The usual way formerly was by subsidy; now we give by a newer way, land tax"), the effect of this part of the order is dropped with it; and has not, in any instance since that time, that I can recollect, had occasion to be put in execution by the House. The spirit, however, and meaning of the rule have been preserved, in several

instances which have occurred, where a dispute arose touching the time of the commencement of a tax: there the later time, at which such tax should be proposed to have its beginning, has had the precedency; and has been put to the question before the earlier though the earlier was first proposed.

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#### SUPPLY.

##### *V. Incidental Proceedings relating to the Grant of Supply.*

1. On the 31st of October, 1670, a Committee is appointed to inspect the estimates, lists of debts, and accounts brought in from the Lords Commissioners of the Treasury, and the Treasurers of the Navy; and to examine the particulars, how the debts were contracted, and for what, and to whom the monies are owing.
2. On the 23d of March, 1676, is the first instance that has occurred to me, of Members being ordered to bring in lists of commissioners of the land tax.
3. On the 25th of May, 1714, there is a great mistake in the form of the proceeding; The Committee of Supply (which is appointed "for the purpose of granting money,") having come to two resolutions for the taking off duties upon books //166-1//
4. On the 18th of July, 1715, the House address the King, to give directions that an account may be taken of the losses and damages sustained by all persons from the late tumultuous and rebellious proceedings, and that the sufferers may have full compensation; and to assure his Majesty that all expences so incurred {167} shall be made good out of the next aids to be granted by Parliament.
5. On the 18th of March, 1725, a Committee, to whom the petition of Mr. Campbell had been referred, complaining of great losses which he had suffered by a riot at Glasgow, report a state of the facts, and their opinion that satisfaction ought to be made to him.—This report is referred to a Committee of Supply; who, on the 16th of April, report, "That the sum of £. 6,080 ought to be allowed to him:" and, on the 27th of April, a tax is reported from the Committee of Ways and Means, to be laid upon the city of Glasgow, for raising the sum granted to Mr. Campbell //167-1//.
6. On the 12th of March, 1727, the Committee of the whole House, appointed to consider of the state of the nation, come to several resolutions touching the state of the national debt, as it stood at different periods; which are agreed to by the House.—The House then resolved, "That a representation be made to the King upon the said resolutions, and upon the debate of the House." A Committee is appointed to draw up this address, which is reported to the House on the 8th of April, 1728, and presented to his Majesty.
7. On the 21st of March, 1727, there is a great mistake, in voting in the Committee of Ways and Means a sum to make good {168} the deficiency of the general fund. On the 29th of April following, the mistake having been adverted to, it is voted again in the Committee of Supply //168-1//.



8. On the 22d of February, 1730, instruction is given to the Committee on the Land Tax Bill, with power to receive a clause for exonerating the county of Sussex from the payment of a certain sum overcharged by the Land Tax Acts of 1728 and 1729.

9. On the 13th of April, 1731, the duties upon yarn imported from Ireland being taken off, the aggregate fund is charged with the payment of the annuities to which those duties were applicable. This is done, not in the Committee of Ways and Means, but in a Committee of the whole House, appointed to consider of this subject. See a similar proceeding, on the 21st of April, 1731, with regard to the duties on hemp and flax.

10. On the 21st of March, 1732, instruction to the Committee on the Land Tax Bill, to have power to receive a clause for relieving the Commissioners of the Land Tax, for the year 1730, for the county of Norfolk, from a process issued against them out of the Court of Exchequer, for a sum of money which had been collected, and paid to Mr. Allen, late Receiver General of the Land Tax for that county, but never accounted for by him; he becoming insolvent, and since dead //168-2//.

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11. On the 19th of March, 1733, instruction to the Committee on the Land Tax Bill, to have power to receive clauses for relieving the towns of Tiverton and Blandford from arrears of land tax, on account of great fires there //169-1//.

12. On the 29th of March, 1734, the House, in consequence of the King's message, assure him, that they will make good any extraordinary expences he may be put to; and, on the 3d of April, they empower his Majesty, in the clause of appropriation, to apply such sums of money, towards the augmentation of his forces by sea and land, as shall be necessary, and as the exigency of his affairs may require //169-2//.—See a similar proceeding on the 12th of April, 1727 //169-3//; and on the 7th and 17th of May, 1728 //169-4//.

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13. On the 26th of March, 1739, a petition of Mrs. Stephens, for a sale of her secret method of curing the stone, referred 'immediately' to the Committee of Supply.—See Mr. Lowndes's petition for making salt, the 26th of May, 1746, referred to a Committee of the whole House, who report resolutions; and upon those the House address the King to advance money.

14. On the 19th of March, 1740, a petition from several officers and others, who had suffered by the insolvency of one Popple, who was agent to several independent companies.—This petition is referred to a Committee of the whole House, on the 9th of April, 1741: they report resolutions on the 10th of April; which resolutions and petitions are then referred to the Committee of Supply.

15. On the 13th of April, 1742, the Chairman of the Committee of Ways and Means reports a proposal which the Committee had received from the Governor and

Company of the Bank, for the continuance of their charter, and the resolution to which the Committee had come.—So on the 7th of February, 1743, the Chairman of the Committee of Ways and Means reports a proposal from the East India Company.—But, on the 21st of January, 1745, a proposal from the Bank for cancelling a debt upon receiving interest, is received in the House, and referred to the Committee of Supply.—So a proposal from the African Company, on the 25th of May, 1749, for the relinquishment and sale of {171} their forts on the coast of Africa, is received in the House, and referred to a Committee of the whole House.

16. On the 26th of May, 1742, the House ballot for seven persons to be the commissioners whose names are to be inserted on the third reading of the Bill for examining, taking, and stating the public accounts.

17. On the 1st of April, 1748, the time for paying in the subscriptions, on the loan borrowed by an Act of the same session, is enlarged, and different days allowed for the payments, instead of those originally assigned //171-1//.

18. On the 21st of March, 1749, Mr. Speaker is to give notice of the redeeming and paying off certain public annuities; which notices see on the 24th of March.—See also the 13th and 18th of June, 1751.

19. On the 13th of February, 1750, a petition from the inhabitants of Huntingdon, to be relieved from arrears of land and window tax, which they had actually paid to a person who acted as Receiver General of the county, but without authority; so that the money was still due.—This petition was referred to a Committee to examine, and state the fact; who report on the 4th of March; and instruction is given to the Committee on the Land Tax Bill, to have power to receive a clause to relieve them.—See, on the 9th of December, 1754, a petition from the County of Lincoln.

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20. On the 23d of January, 1752, a proposal from the Bank, to advance money for the public service, is received in the House, and referred to the Committee of Ways and Means.

## OBSERVATIONS.

The Committees of the whole House, appointed by the House at the commencement of every session—the one for considering of the quantum of the supply granted to the Crown for the purposes of the state; the other, to find out ways and means for raising that supply—are in their titles, and in their nature and purposes so distinct, that it is rather extraordinary that there should ever have been any confusion or mistake, in voting in one of these Committees what ought properly to have been the subject of consideration in the other: and yet we see that, so lately as in the years 1714 and 1727 //172-1//, the business of these two Committees has been confounded together. Indeed any person, who is conversant with the proceedings of the House of Commons, must have often observed, that the distinction between the Committee of

Supply and the Committee of Ways and Means, however clear and accurately defined, is not sufficiently marked in the conception even of those, who, from their offices and occupation in matters of finance, ought to have the most precise ideas upon these subjects. The Committee of Supply, as it is commonly termed, is a Committee of the whole House, appointed by the House, in consequence of the order of the 18th of February, 1667, to consider of the supply granted to his Majesty by a former vote or determination of the House. As it takes its origin from the aids which are demanded {173} by the Crown, it can properly have no cognizance of any matters but such as are laid before the House of Commons, by the direction of the Crown, for the public service; and therefore, if at any time it is thought expedient or desirable to vote a sum of money in the Committee of Supply, which is not intended for the service of the army, or navy, or ordnance, or any other aid demanded by the Crown, the House must, in order to entitle the Committee to take this matter into their consideration, enable them so to do by particular instruction //173-1//.—And here again the House have imposed another restraint upon themselves, in the exercise of that most valuable and important privilege, "The sole right of granting away the money of their fellow-subjects:" for, by a resolution of the 11th of December, 1706, which, upon the 11th of June, 1713, was declared to be a standing order, the House resolve, "That they will receive no petition for any sum of money relating to public service, but what is recommended from the Crown." And the uniform practice of the House has applied this order, not only to petitions for public money, or for money relating to public service, but to all motions whatever for grants of money, whether the grounds of such applications have been public or private //173-2//. {174} Upon this principle, before the Committee of Supply can take into their consideration the providing for the pay and cloathing of the militia—that great and important national service—or even before the House can give the Committee a power to consider of this service, some Member of the House of Commons, authorized by the Crown, must acquaint the House that the King recommends the same to their consideration //174-1//. It arises out of the nature and appointment of this Committee, which is "to consider of the supply granted to his Majesty," that the form of all its resolutions, though they are for mere private purposes, is by way of grant to the Crown //174-2//, to be applied by the Crown to the ends specified in the resolution.

The object of the Committee of Ways and Means is, as is expressed in the title of it, to find out modes of raising the supply which the House, upon resolutions reported from the Committee of Supply, and agreed to, have granted to his Majesty: and the first consideration attending this proceeding is, that the money proposed to be raised upon the subject by loans or taxes, or any other mode, should not exceed the sum already granted in the Committee of Supply. It is, for this reason, incumbent upon the Chancellor of the Exchequer, or whatever Member of the House of Commons proposes the Ways and Means for raising money for the service of the current year, to explain and to shew to the {175} House, by a detail of the sums granted for the several services, that the amount of those sums will be a sufficient justification, in point of quantity, to the Committee of Ways and Means, to adopt such measures, and impose such taxes, as shall be then recommended to them. And this proceeding (arising out of that regard

and attention which the House of Commons ought at all times to shew towards the people, "that the burthens imposed upon them may not be larger than the public exigencies require"), ought for this reason, if for no other, to be most strictly adhered to.

The Committee of Ways and Means being specially appointed for considering such propositions only //175-1// as may raise the supply {176} granted in the current session of Parliament, ought not, nor can properly take any other matters into their consideration, without particular powers for that purpose given them by instruction from the House: and therefore, where it is found necessary to impose taxes, or to charge duties, which are not to be applied towards the service of the year //176-1//, this, if done in the Committee of Ways and Means, must be done by special authority given them by the House //176-2//: but it may as well be done, and indeed with more propriety, in any other Committee of the whole House, appointed for that particular purpose.

It has been a common practice to instruct the Committee of Ways and Means to consider of the taking off of duties formerly imposed //176-3//: but it is obvious that this proceeding, as well as the mistakes I alluded to before, have arisen from a misconception of the end and purposes of this Committee, in the ideas of those {177} who have suggested this mode of proceeding to the House. There is no rule or order of the House, which makes it necessary that the taking off of duties or taxes should receive the previous consideration of a Committee of the whole House: the House are at liberty, if they see it fitting and expedient, to order in a Bill immediately for this purpose //177-1//. But perhaps it may be more prudent, in a matter of importance, where the revenue and estate of the public are interested, to give the subject a previous consideration in a Committee of the whole House; but even then it is by no means necessary that this should be the Committee of Ways and Means, unless other duties are to be substituted in lieu of those taken off, and that these are intended for the current service of the year. Indeed it is much better that this proceeding should be in a special Committee appointed to consider of this subject; it will be clearer and more intelligible, and less likely to lead those persons into mistakes, who may hereafter consult the Journals for precedents to be followed on similar points. It has of late years become a practice to instruct the Committee of Ways and Means to consider of those Acts that have been reported from the Committee of Expiring Laws as fit to be continued, which, from the subject matter of them, ought to receive the consideration of the Committee of the whole House, before a Bill is ordered to continue them. This proceeding is unnecessary, and only tends to mislead. It would be better, that the precedent of the {178} 10th of April, 1735, should be followed where the consideration of these laws was referred, no to the Committee of Ways and Means, but to a Committee of the whole House, appointed for that purpose.

When the Committees of Supply and Ways and Means are closed, the House of Commons pass a Bill, in which the several grants that have been made in the Committee of Ways and Means, by land tax, malt tax, loan, sinking fund, &c. are

recapitulated, and directed to be applied to those services which have been voted in that session in the Committee of Supply; specifying the particular sums granted for each service, and appropriating the money, that shall be paid into the Exchequer, for their discharge; and directing, that the said supplies shall not be applied to any other than the purposes mentioned in the said Act.

We have seen before //178-1// that the measure of appropriating the grants of the Commons to be applied to particular services, was attempted, and in some instances carried into execution, soon after the Restoration. The extravagance of Charles II. and the several pretences used by him for obtaining supplies for the purpose of extraordinary services //178-2//—which, when obtained, he immediately squandered in defraying the expences of a dissolute court—perhaps suggested the idea at this time; and, though it was strongly objected to by Lord Clarendon and the other Ministers from its novelty, and being, as they termed it, a republican measure, the necessity of adopting some such expedient, in order to secure to the public use the money granted for that purpose, recommended (179) it to the House of Commons, and induced them to carry it into effect //179-1//.

This idea, however, which was conceived originally only as a restriction upon those who had the management of the public revenue, was, at the Revolution, adopted in a much larger extent; and made part of that new system of government, which was then established for the better securing the rights, liberties, and privileges of the people of this country. Immediately after that era, all the grants of the Commons, that were intended for the service of the current year, were, in the Act of Parliament which carried those grants into effect, applied and strictly appropriated to that specific service. In a Bill which passed in the first year of the reign of William and Mary, “for a grant to their Majesties of an aid of two shillings in the pound for one year,” in which a particular sum is appropriated for naval services //179-2//, very severe penalties are inflicted upon the Officers of the Exchequer, if they shall permit any part of that sum to be applied in any other manner than is specified in that Act; and these penalties are afterwards referred to and re-enacted in almost all the Acts that passed during that reign, which appropriated the supplies granted {180} by the Commons //180-1//. The Commons, at the same period, took upon themselves the authority of judging as well of the nature, as of the quantum, of the particular services recommended to them by the Crown; and voted, of the army, navy, and ordnance //180-2//, such proportions only as appeared to them, upon due consideration of the state of this country with respect to its foreign enemies and internal defence, necessary and expedient for those purposes. They then provided the supplies sufficient for those services; and, in the Acts of Parliament which passed for levying the taxes, they appropriated the monies arising by such duties to the uses for which they were granted. The mode of appropriation varied throughout the reigns of King William and Queen Anne. Sometimes the produce of the duties were applied in the same Act by which they were authorised to be levied //180-3//: in other instances, monies that had been levied by one Act were appropriated by {181} another Act of the same session //181-1//: Sometimes the sums brought into the Exchequer were specifically applied, in different proportions, to particular services

//181-2//: at other times, the grants were appropriated generally to the public services of the army, navy, and ordnance, but without specifying the particular sums for each service //181-3//.—This difference in the mode of appropriation probably arose from the difficulty of ascertaining, in time of war, and in a war carried on in so many different parts of the globe as that was in the reign of Queen Anne, the precise sums that would be found necessary for each service: for, upon the conclusion of the peace of Utrecht, the Commons returned to what had been the practice throughout the reign of King William; and in the Acts of the 10th year of Queen Anne, chap. 26, and the 12th of Queen Anne, Sess. 2 chap. 9, again specified the particular sums which they thought necessary to be applied to the different services they had voted in the course of the session. And this mode has been, I believe, from that time, followed without any variation.

This then appearing to have been the uniform practice, begun at the Revolution, and continued for near a century, "that the sums granted by the House of Commons for the current service of the year, should, by a special appropriation, either in the Act for levying the aid, or in some other Act of the same session, be applied only to the services which they had voted,"—and as great penalties had been inflicted by several laws upon the Officers of the Exchequer, and others, who should divert or {182} misapply the monies levied upon the subject to any other purpose than that for which they were granted; //182-1// which penalties, though not repeated in every instance, sufficiently shew the sense which the Legislature then entertained of such a misdemeanour,—a difficulty arose, in the year 1784, with regard to the manner of proceeding upon this subject. The Bills for granting the aids by the duties upon land and malt had passed in December, 1783; and several services of the army, navy, and ordnance, had been then voted by the House of Commons; but no Bill had passed, appropriating the produce of these taxes to those services. Upon the change of administration, before the Christmas recess, an apprehension was entertained of an intention in the new Ministers to dissolve the Parliament; and it was thought that this measure would take place soon after the meeting again, in January, 1784. A doubt arose—supposing this event to happen, and that the Parliament should be dissolved before any Act was passed for appropriating the land and malt duties—whether the Officers of the Crown, in any department, would be authorized to pay, upon account of the navy, army, or ordnance, any of the sums that should arise from those taxes.—It had been usual for the Treasury, whilst the session of Parliament continued, to direct the application of any of the grants to the services voted by the House of Commons in that {183} session; and this without any appropriation by Act of Parliament. This they had been accustomed to do, from the convenience it produced to the public service; and under the confidence, that, before the session was finally closed, an Act of Parliament would pass, which, by appropriating the grants to the different public services, would thereby confirm and authorise that proceeding. But if the Parliament should be dissolved, and the session thereby put an end to, every resolution of the House of Commons, not carried into effect by a law, would be done away; the votes for the army, navy, and ordnance, would be as if they never had been passed; and the Officers of the Treasury and Exchequer would be left, without even that authority of a vote of the House of Commons, to apply,

at their discretion, and upon their own risk, the produce of the land and malt duties to any of the public services as they should think proper. They could not ascertain whether another House of Commons would revoke the services to the same extent, or in the same proportions, that their predecessors had done; nor could they know to what particular purposes the Commons, when they met again, might find it expedient to apply the grants of the former Parliament. This difficulty was increased by the resolution of the House of Commons, of the 12th of January, 1784 //183-1//, which was reported from a Committee of the whole House, and was agreed to, not only without a division, but, to judge from what passed at the time, without much difference of opinion. This resolution adopted those ideas of appropriation of the grants by Parliament, which I have here endeavoured to explain; and declared, “That any person who should controvert this doctrine, by applying any sum of money, without the authority of Parliament, to the public service, after the Parliament should be dissolved, would be guilty of a high crime and misdemeanour.” {184} The Members who proposed and supported this resolution, intended, by the terrors which it held out //184-1//, to avert, what appeared to them to be a public inconvenience, a dissolution of the then existing Parliament; and hoped, by pointing out in this manner the difficulties which the Government would be under of providing for the public service for the space of near two months—the time necessary for the election of a new Parliament—to prevent the Ministers from advising this measure. However, the Parliament was dissolved; and, as appeared from an account called for by the next House of Commons, and presented on the 11th of June, 1784, a part, though a very small part of the money borrowed on the credit of the produce of the land and malt taxes had, during the interval of Parliament, been applied and paid towards the services of the army, not amounting in the whole to seventy thousand pounds; and nothing had, during this period, been paid upon account either of the navy or ordnance. No question was moved, or discussion had, upon the meeting of the new Parliament, relative to this question. Perhaps the smallness of the sum that had been issued, and the endeavours which, as appeared from the account presented to the House of Commons, the Ministers concerned in the department of the revenue had used to avoid any violation of the rule, as expressed in the resolution of the 12th of January, 1784, were considered as sufficient reasons to render any further proceeding upon this subject, at that time at least, unnecessary.

The sums voted for the different heads, upon account of the army, ordnance, militia, foreign subsidies, and other particular {185} services, are in the Bill of appropriation separately and specifically applied to those services for which they are granted. But, in the instance of the supply granted towards the navy, the practice has been different. In this service, all the different grants upon the head of wages, victualling, ordnance, ordinary and extraordinary //185-1//, are, in the appropriating Bill, added together; and the whole sum, arising out of all these separate grants, is appropriated generally for the navy service. This distinction in the form of proceeding between the navy and all the other public services //185-2//, and in a matter so important as the appropriation of the grants of the Commons, of which, since the Revolution, the House of Commons have been particularly jealous, has arisen from necessity, and the impossibility that has been found, from the nature of the sea-service,

to confine the expenditure of the sums granted for wages, or building or rebuilding of ships, to those immediate services, and to no other. The long absence of ships in the different quarters of the globe—the uncertainty of their return—the difficulty of ascertaining {186} the time in which any ship will be completely finished or repaired for sea—with many other circumstances, render it almost impossible to observe in this, as in the other services, that rule which ought most strictly to be adhered to, “That the sums granted and appropriated by the Commons for any special service, should be applied by the executive power only to defray the expence of that service.” And this impossibility has therefore induced the House of Commons not to appropriate the sums voted for the navy ‘specially,’ but ‘generally:’ so that, if it shall be found expedient and necessary, the whole of the navy money, except that voted for the navy debt, may be by law applied to any one part of the service; subject however to a future enquiry and examination, by the House of Commons, into the expediency and propriety of such an application.

Notwithstanding every precaution which can be taken to confine the expences of the different services within those sums, which, after consideration of the estimates laid before them, appear to the House of Commons to be fully sufficient, we learn, from fatal experience, that this has been found to be impossible. In all the different services, the navy, the army, and the ordnance //186-1//, there has always been an exceeding, or debt, contracted upon each, which has been brought before Parliament in a subsequent session, under the title of Navy Debt, or of Extraordinaries incurred and not provided for. Formerly these exceedings were confined within some limits, as appears from the accounts entered in the {187} Journals during the war of the succession; and even in the war which terminated in 1748. In what is commonly called the German war, these sums first became very large; but in the late war, carried on in America, they exceeded all bounds //187-1//. There was a degree of negligence or extravagance, or both, in those who had the conduct of this department, which rendered all the votes of the House of Commons, or Bills for appropriating the supplies, ridiculous and nugatory. The sums demanded, upon the head of extraordinaries of the army incurred and not provided for, during this period, fell not very much short of the whole sums voted by Parliament upon estimate for that service //187-2//; nay, in the {188} year 1782, they appear to have actually exceeded them. This was such a shameful prostitution of the money of the public, that—though perhaps the distance, and magnitude, and nature, of the American war might be pleaded as some alleviation and excuse for the generals abroad who commanded, or for the ministers at home who ought to have controuled those commanders—nothing can justify the House of Commons, who permitted this practice to continue uninterrupted through several sessions; and whose more immediate duty it was to have examined into the contracts, and other services, pretended to have been performed, and to have pointed out and punished those frauds and abuses, which were afterwards with no great difficulty detected and exposed by the Commissioners of Public Accounts //188-1//.

The general and unlimited power which was given, by the resolution of the 3d of April, 1734, to the Ministers, to apply out of the aids of the year such sums as the



exigency of public affairs might require //188-2//, was a measure entirely subversive of those rules and restrictive forms of Parliament, which the House of Commons have imposed upon themselves in the mode of granting supplies; {189} and contrary to the practice which has been wisely established since the Revolution, of appropriating the supplies to the services for which they have been voted. We see, therefore, that this proceeding did not pass without much difficulty and debate //189-1//; and that, soon after, another, and, so far as it was limited, a better mode was adopted, which, though it gave the Ministers credit for the manner of disposing of the money voted, confined that credit to a precise and special sum //189-2//. This deviation, in times of war, from the usual forms of Parliament, can only be justified from the impossibility of stating in an estimate those demands, which the unforeseen exigencies of extensive and uncertain operations may require: it is therefore incumbent upon the House of Commons, not only to make this supply as small as possible, but in a subsequent session to enquire into the particular expenditure of the sum granted; and to be assured that it is strictly applied to those purposes for which it was intended, and not squandered loosely, improvidently, wantonly, or perhaps corruptly //189-3//. Till of late years, the practice was to vote this supply of credit in the Committee of Supply; and to come to a resolution, in the Committee of Ways and Means, that a sum to that amount be raised by loans, or Exchequer Bills, to be charged on the next aids to be {190} granted by Parliament. On the 21st of May, 1777, and the 1st of June, 1779, the Committee of Supply being closed when the King's message was delivered, the House referred the consideration of that message to a Committee of the whole House; in which they came to a resolution to grant the supply of credit, and specified the mode of raising it by Exchequer Bills: and then a Bill was ordered in upon this resolution. A different and more regular, and the antient, mode of proceeding was recurred to upon the King's \\\ apostrophe as in original \\\ message of the 5th of May, 1790, for a supply of credit: This message was first referred to the Committee of Supply where the quantum of the sum was granted; and afterwards the means of providing this sum was voted in the Committee of Ways and Means, and the Bill was founded upon that resolution. On the 10th of May, 1733, the King's message for a marriage portion for the Princess Royal was referred to a Committee of the whole House, which resolved, "That out of the monies in the Exchequer arising from the sale of lands in St. Christopher's, £. 80,000 should be applied as a marriage portion for the Princess Royal;" and the Bill was ordered upon this resolution. This proceeding was not irregular nor informal; but the more regular proceeding would have been, to have voted this sum of £. 80,000 in the Committee of Supply, which was still open, and in the Committee of Ways and Means to have applied that sum then in the Exchequer to the general service of the year.

The proceeding on the 21st of March, 1732, and on the 13th of February, 1750, upon the petition from the inhabitants of Huntingdon, which was referred to a Select Committee to examine, and state the fact to the House, was perfectly regular: for, in the other instances //190-1//, where the House act immediately upon {191} the petition when it is presented, and refer it to the Committee of Supply, as in the case of Mrs. Stephens—or to the Committee upon the Land Tax Bill, with an instruction to provide

relief,—in those cases, there having been no previous enquiry or examination into the truth of the facts alleged, it seems difficult for the House to proceed with propriety; and to proportion the relief granted, either to the degree of merit in the persons who petition for a reward, or to the nature and magnitude of the damages sustained by such as have suffered from misfortunes. The regular mode, therefore, of proceeding in these cases, and which has been almost uniformly followed of late years, is, in the first instance, to refer any application of this sort to a Select Committee, that they may examine into, and state to the House, the truth of the facts contained in the petition; and, when their report is received, the House then, knowing what credit is to be given to the circumstances alleged by the petitioners, may direct such a proceeding upon the report as may be most proper for affording the desired relief //191-1//.

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We see from N<sup>o</sup> 15. and 20, that it is indifferent in what manner the proposals from the Bank and other great Companies are received, whether in the House, or in the Committee appointed by the House to consider of Ways and Means for raising the supply //192-1//; that is, where such proposals are to offer money which will be applicable to the public service //192-2//. Where the proposal is for any other purpose, as on the 21st of January, 1745, and 25th of May, 1749, there it is no part of the business of the Committee of Ways and Means; and must therefore, in such instances, be made directly to the House.

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## SUPPLY.

### VI. *Bills tacked to Bills of Supply.*

1. ON the 11th of November 1675, it was resolve upon a division, That the Bill for appropriating the customs to the use of the navy should be annexed to the Bill for raising a supply for providing, equipping, and furnishing twenty ships //193-1//.

2. The Commons having passed a Bill for raising two millions, and for settling the trade to the East Indies, upon the second reading of this Bill, in the House of Lords, on the 1st of July, 1698, several Lords protest //193-2//: "Because this Bill granting a {194} supply, in which the Commons pretend the Lords ought not to make any alteration, we are of opinion their Lordships are thereby likewise deprived of the freedom of their vote in the matter of the East India trade; which we humbly conceive to be a manifest violation of the rights of this House, and tending to an alteration in the constitution of the government."

3. On the 1st of February, 1699, a Bill for granting an aid is referred to the same Committee with the Bill for applying the forfeited estates in Ireland to the use of the public.

4. The Commons having passed a Bill for granting an aid by sale of forfeited estates in Ireland, and by a land tax in England,—when this Bill is proposed to be read a second time in the House of Lords, on the 4th of April, 1700, several Lords protest: "Because the tacking of so many and different matters to a Money Bill, is not only

contrary to all the rules and methods of Parliament, but highly dangerous both to the undoubted prerogative of the Crown, and right of the Lords; putting it in the power of the Commons to make any resolutions of their own as necessary, as any supply given for the support or emergencies of State."

5. On the 28th of November, 1704, upon a question, That the Bill for preventing occasional conformity be committed to the {195} Committee upon the Land Tax Bill, it passed in the negative: 251 to 134.

6. On the 21st of April, 1712, the Bill for appointing Commissioners for examining the value and considerations of grants made by the Crown, is referred to the Committee upon a Bill for imposing duties, with an instruction to make both the said Bills into one Bill: but, upon the 6th of May, this instruction was discharged upon a division, by a very large majority.

7. On the 15th of May, 1713, a motion was made, That the Bill for limiting the number of officers in the House of Commons, be committed to the Committee upon the Malt Bill: it passed in the negative.

#### OBSERVATIONS.

Whenever this measure of tacking to a Bill of Supply is attempted by the House of Commons, with an intention of thereby compelling the Crown //195-1// or the Lords to give their assent to a Bill which they would otherwise disapprove of and reject, it is highly irregular; and is a breach of those parliamentary rules and orders, which have been established by long and uniform practice {196} between the two Houses, in the mode of passing Bills. It is much to be wished that every question, which is brought either before the House of Lords or Commons, should be as simple and as little complicated as possible. For this reason, the proceeding, that is but too often practiced, of putting together in the same Bill clauses that have no relation to each other, and the subjects of which are entirely different, ought to be avoided. Even where the propositions are separately not liable to objection in either House, the heaping together in one law such a variety of unconnected and discordant subjects, is unparliamentary; and tends only to mislead and confound those, who have occasion to consult the Statute Book upon any particular point. But to do this in cases where it is known that one of the component parts of the Bill will be disagreeable to the Crown, or to the Lords; and that, if it was sent up alone, it would not be agreed to—from this cause, and with a view to secure the Royal assent or the concurrence of the Lords, to tack it to a Bill of Supply which the exigencies of the State make necessary—is a proceeding highly dangerous and unconstitutional. It tends to provoke the other branches of the legislature, in their turn, to depart from those rules, to which they ought to be restrained by the long and established forms of Parliament; and can have no other effect than finally to introduce disorder and confusion. The Commons are by the practice of Parliament entitled to insist, "that the Lords shall make no alteration in a Bill of Supply:" but to avail themselves of this right, and thereby to refuse to the House

of Lords the exercise of that privilege which they have, as one of the branches of the legislature, “to give their dissent to a proposition they disapprove of,”—without, at the same time, being obliged to reject the supply which the public necessities demand, and which they are {197} ready and desirous to grant //197-1//—is to confound the separate rights which belong to the two Houses of Parliament: and thereby to introduce and encourage proceedings, which must in their consequences prove dangerous to the constitution. The Lords, therefore, in their answer to the attempt which was made by the Commons in 1699, replied with great weight, "The joining together in a Money Bill things so totally foreign to the methods of raising money, and to the quantity or qualification of the sums to be raised, is wholly destructive of the freedom of debates, dangerous to the Privileges of the Lords, and to the Prerogative of the Crown. For, by this means, things of the last ill consequence to the nation may be brought into Money Bills, and yet neither the Lords or the Crown be able to give their negative to them, without hazarding the public peace and security //197-2//."

The measure attempted by the Tories, in 1704, to avail themselves of this weapon to force through the House of Lords their favourite but absurd Bill, “for preventing occasional conformity {198} //198-1//,” was, like many of the designs of that party throughout the reigns of King William and Queen Anne, “with a view (as Burnet says) to put all matters in confusion at home and abroad; and thereby to put a stop to the war, and force a peace; and dispose our allies, as despairing of any help from us, to accept of such terms as France would offer them //198-2//.”

In short, however desirable the end may be, that is at any time aimed at by this measure, the means are always bad; it is much safer to trust to time and to circumstances, which sooner or later dispose the minds of men to accept and approve of such propositions as are really for the public good, than to obtain even the best of laws by breaking down those bounds and fences which the wisdom of past ages has set up; and to let in disorder and confusion, which may finally prove fatal to the security, perhaps to the existence, of the constitution. //198-3//

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\\ This page has no text; footnote //198-3// carries over. \\

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## SUPPLY.

### VII. *Petitions on Matters of Supply.*

1. ON the 15th of April, 1689, a petition of the French Protestant Ministers, praying a yearly relief for their subsistence, out of a revenue arising by hackney coaches, or some other, was read. And a debate arose thereupon; in respect, the petition was very irregular, and disagreeable to the custom of the House, to prescribe ways how, and out of what, the relief shall be given. And resolved, “That the petition be withdrawn.”

2. On the 9th of April, 1694, a petition was tendered to the House, relating to the Bill for granting to their Majesties several duties upon the tonnage of ships; and the question being put, That the petition be received, it passed in the negative.

3. On the 28th of April, 1698, a petition was offered to the House against the Bill for laying a duty upon inland Pit Coal; and the question being put, That the petition be received, it passed in the negative.—See also the 29th and 30th of June, 1698, petitions relating to the duties upon Scotch Linens, and upon Whale Fins imported.—Vid. 20th of April, 1698.

4. On the 5th of January, 1703, a petition of the maltsters of Nottingham being offered, against the Bill for continuing the duties upon malt; and the question being put, That the petition be brought up, it passed in the negative.

5. On the 11th of December, 1706, resolved, That this House will receive no petition for any sum of money, relating to public {201} service, but what is recommended from the Crown. Upon the 11th of June, 1713, this is declared to be a Standing Order of the House //201-1//.

6. On the 29th of March, 1707, resolved, That the House will not proceed upon any petition, motion, or Bill for granting any money, or for releasing or compounding any money owing to the Crown, but in a Committee of the whole House: and this is declared to be a standing order.—See also the 29th of November, 1710.

7. On the 5th of April, 1712, a petition of serge-makers was offered to the House, relating to the duties resolved to be laid upon soap. And several Members acquainted the House, that they had petitions of the like nature to offer to the House. And a motion being made, and the question being put, “That the said petition be brought up,” it passed in the negative.—See the 21st of April, 1712.

8. On the 23rd of April, 1713, resolved, That the House will receive no petition for compounding debts to the Crown, upon any branch of the revenue, without a certificate from the proper officer annexed, stating the debt, what prosecutions have been for the recovery thereof, and what the petitioner and his security are able to pay. On the 25th of March, 1715, this is declared to be a standing order.—See, the 2nd of March, 1735, and 9th of January, 1752, the proceedings upon petitions of this sort.

9. On the 28th of February, 1718, a petition was presented by the Sheriffs from the corporation of London, against a Bill for {202} continuing a duty upon coals imported into London, to be made a fund for the public service. The petition was read and rejected.

10. On the 2d of February, 1726, a petition of the land owners in the Isle of Ely, for lessening the proportion of the said Isle to the land tax, being offered, and the question being put, “That the petition be brought up,” it passed in the negative.

11. On the 26th of February, 1727, a petition from the corporation of London, was read, relating to the duties on coal and culm, which by a resolution in the Committee of

Ways and Means, on the 23 of February, had been applied to certain purposes. The petition was ordered to be rejected. Then the resolution was reported, and agreed to by the House.—See the 27th of January, 1729.

12. On the 8th of March, 1732, a petition being offered against a Bill depending for securing the trade of the Sugar Colonies, it was refused to be brought up. A motion was then made, That a Committee be appointed to search precedents in relation to the receiving or not receiving petitions against the imposing of duties; and the question being put, it passed in the negative.

13. On the 10th of April, 1733, a petition from the city of London against the famous Excise Bill, then depending, was presented by the Sheriffs, and read, praying to be heard by their counsel against the Bill. Upon this occasion a great variety of precedents were read from the Journals on both sides of the question: after which, upon the question, “That the petitioners be heard by their counsel,” it passed in the negative {203} //203-1//, and the petition was ordered to lie on the table, till the Bill was read the second time.

14. On the 6th of April, 1736, a petition from the merchants trading to the Sugar Colonies in America was presented to the House, and read, against a Bill for granting duties upon spirituous liquors. On a question, “That the petition be referred to the Committee upon the Bill, and that the petitioners be heard by their counsel,” it passed in the negative, and the petition was ordered to lie upon the table //203-2//.—See in the Journal several precedents, which were ordered to be read, relating to this proceeding.

15. On the 19th of March, 1756, a petition from the city of London, presented by the Sheriffs, against the Bill depending for granting a duty upon persons having silver plate, was read, and ordered to lie upon the table.—See also the proceedings on the petition of the city of London against the Cyder Bill, the 22nd of March, 1763; and on the 25th of March, 1782, a petition from London against the Bill imposing a duty on the tonnage of ships.

16. On the 28th of January, 1760, a petition of the maltsters of Ipswich, against the additional duty upon the stock of malt in hand, being offered; on question, “That it be brought up,” it passed in the negative, *nemine contradicente*.

17. On the 15th of February, 1765, a petition of Mr. Montagu, agent for Virginia, and a petition from Connecticut, and another {204} from the inhabitants of Carolina, against the Bill then depending for imposing a stamp duty in America, being offered, upon question for bringing them up, it passed in the negative.

18. On the 5th of June, 1783, a petition from the merchants and traders of Exeter was offered to be presented against the Bill depending for imposing stamp-duties on notes and receipts; upon question for bringing it up, it passed in the negative.

19. On the 11th of June, 1783, a petition from the corporation of the city of London was delivered by the Sheriffs against the Bill imposing a tax upon receipts, and desiring to be heard by counsel //204-1//: this was refused, and the petition ordered to lie upon {205} the table.—See the 19th of May, 1785, a petition from the corporation of London against the Bill then depending for imposing a tax upon shops.

20. On the 1st of July, 1789, a petition of the news-men, complaining of a clause in a Bill depending, for granting additional stamp-duties on news-papers, which clause prohibited the lending of news-papers to be read for hire, being offered to be presented. The debate on the question for bringing up the petition was adjourned //205-1// to the 3d of July; and then the question being put, it passed in the negative. {206}

21. On the 4th of March, 1795, a petition of certain merchants, importers, and dealers in foreign wines, (praying, That the proposed augmentation of duties on foreign wines may not be imposed on the stock in hand on the 23d of February last) being offered to be presented to the House—the question being put, “That the said petition be brought up,” it passed in the negative, *nemine contradicente*.

#### OBSERVATIONS.

We see from the foregoing instances, particularly from the precedents which are cited and read on the 10th of April, 1733, that, very soon after the Revolution, the House found it necessary to establish a rule, “That they would not receive any petition against a Bill, then depending, for imposing a tax or duty //206-1//.” The principle, upon which this rule was adopted, appears to be this: that, a tax extending in its effect over every part of the kingdom, and more or less affecting every individual, and in its nature necessarily and intentionally imposing a burden upon the people—it can answer no end or purpose whatever for any set of petitioners to state these consequences as a grievance to the House. The House of Commons, before they come to a resolution which imposes a tax, cannot but know that it may very sensibly affect the commerce or manufacture upon which the duty is laid; but they cannot permit the inconvenience, that may possibly be brought upon a particular branch of trade, to weigh with them, when put in the balance with those advantages, which are intended to result {207} to the whole, and which the public necessities of the state demand from them. For these reasons it has been thought better, and more candid to the persons petitioning, at once to refuse receiving their petition, than, by receiving it, to give countenance to the application, and to mislead the petitioners into an idea, that in consequence of their petition the House of Commons would desist from the tax proposed, and impose another, which, though it might be less felt by that branch of trade, might be more oppressive to some other.

Upon an accurate examination of the numerous precedents cited on the 10th of April, 1733, in favour of the doctrine which was then laid down by Mr. Sandys, and those who supported the petition of the city of London, out of seventy-nine cases which

were then produced and read, it will be found there are but three that apply to this question //207-1//. The first of these is the petition against a Bill for imposing a duty of £. 10 per cent, *ad valorem*, upon the woollen manufacture, in the year 1696-7. The resolution of the Committee of Ways and Means, upon this point, brought such a cloud of petitions from all parts of the kingdom—not only from those who were immediately concerned in the woollen trade, but from others who thought they might be ultimately affected by it—that it was thought adviseable not even to present the Bill //207-2//. And in the very next session, in April and June, 1698, {208} the House having felt the inconveniency resulting from admitting these petitions, peremptorily refused to receive the petitions which were then offered against the taxes at that time depending //208-1//. From that period, this practice of refusing to receive petitions against Bills imposing duties for the current service of the year, has been almost uniformly observed; and is now become the established rule of the House //208-2//. The other two instances of petitions received against duties, which are cited on the 10th of April, 1733, are, those presented on the 14th of February, 1704; and the petition of the card-makers, on the 21st of May, 1711. All the other precedents, which were then produced by Mr. Sandys, did by no means apply to this question, of petitions against taxes depending. They were either petitions complaining of the burden of duties imposed by former Acts, or of the execution of those Acts by the Officers of the Excise or Customs; or against Bills which were not Bills of Supply, but Bills for the regulation of trade //208-3//; or to desire an exemption for particular cargoes, which had been engaged and contracted for previously to imposing the tax //208-4//; or for particular exemptions, where such would be for the {209} public good, as salt used in the curing of fish //209-1//; or where persons thought they should be included in the tax, who were not intended by the legislature so to be //209-2//; or to show the impossibility of complying with the provisions enacted by the Bill //209-3//. All these precedents therefore then cited, except three, falling within one or other of these distinctions, form no argument in favour of the doctrine, that the House may receive petitions offered against Bills imposing duties for the current service: much less do any of them prove the propriety of hearing counsel in favour of such applications //209-4//. That would be indeed to open a door for delay; and, as was very properly urged in the debate upon the Excise Bill, “it would be impossible ever to pass such a Bill; because there would be so many different petitions presented against it, by those who were to be subject to it, that it would be impossible to hear counsel separately upon every such petition, within the usual time of the continuance of one session of Parliament.”—But this rule of not receiving petitions against Bills of Supply does not extend to petitions from the “Corporation” of the city of London //209-5//: as the forms used, by the indulgence of the House //173-6//, in the receiving their petitions, preclude the House from knowing {210} the substance or prayer of them, till they are received and read. The contents are not opened by a Member, as is required on the presenting of petitions from any other set of persons; but the petition is brought to the Bar by the Sheriffs of London; is, without a question, delivered to the Clerk, who brings it to the table; and, when the Sheriffs are withdrawn, the Speaker puts the question for reading it //210-1//: If this is agreed to, the petition is read; and then, and not till then, the House are acquainted with the contents of it, and afterwards dispose of it as they think proper.



We learn, from an examination of all these instances, that this practice has been confined, as it ought to be most strictly, to the refusing to receive such petitions only, as object against a tax, which the House of Commons is imposing for the current service of the year; and has not been applied to petitions, which {211} have been offered in a subsequent session, desiring a repeal or reconsideration of the taxes imposed in a former. Indeed the House ought to be particularly cautious, not to be over rigid in extending this rule beyond what the practice of their ancestors, in former times, can justify them in //211-1//. To receive, and hear, and consider {212} the petitions of their fellow subjects, when presented //212-1// decently, and containing no matter intentionally offensive to the House, is a duty incumbent upon them, antecedent to all rules and orders that may have been instituted for their own convenience //212-2//; justice and the laws of their country demand it from them. But, on the other hand, if a petition only states that the parties shall, as they are intended to be, be affected by the tax, and that in its consequences {213} it may be prejudicial to the particular trade in which the petitioners are interested, it cannot be considered as a hardship to decline the receiving such a petition; especially if the use, which was made of these petitions, in the year 1696, against the Bill for imposing duties on the woollen manufactures, should be again adopted, and the people should be encouraged to sign petitions from all parts of the kingdom, in order to make it impossible to pass the Bill //213-1//; and by that means to put a stop to those aids which the public necessities require, and which, however disagreeable the task may be, it is the duty of the House of Commons wisely and prudently to impose //213-2//.

A petition which states any distress, and prays to be relieved from the charity or munificence of the public, ought not, in point of form, either to prescribe the quantum, or to mention the fund out of which that relief is to be granted. The prayer should be general; and it should be left open to the consideration of the House, what the nature of the relief should be, and to what extent.—The great number of petitions that were presented to the House of Commons, at the commencement of the Session which began in October, 1705, from persons either claiming an arrear of pay as officers, or making some other demand upon the {214} public, //214-1// made it necessary for the House to put some restriction upon these applications; which, being often promoted by Members who were friends to the parties, and carrying with them the appearance of justice or of charity, induced the rest of the House to wish well to, or at most to be indifferent to their success; and by this means large sums were granted to private persons improvidently, and sometimes without sufficient grounds. Very early, therefore, in the next session, on the 11th of December, 1706, before any petitions of this sort could be again offered, the House came to a resolution, “That they would receive no petition for any sum of money relating to public service, but what is recommended from the Crown.” This resolution, not being at that time made a standing order, had no effect beyond the session in which it was passed, so that soon after the same practice returned again; and the same mischiefs resulting from it //214-2//, the House, upon the 11th of June, 1713, ordered the resolution of the 11th of December to be read, and declared it to be a standing order of the House. From this

time, whenever any petition which desires relief by public money is offered, or any motion is made to this purpose,—before the Speaker puts the question for bringing up the petition, it has been the practice, in conformity to this order, that the recommendation of the Crown should be signified by some Member authorised so to do //214-3//: and if the Chancellor of the Exchequer, or person usually authorised by the Crown, declines to signify this recommendation, the House cannot properly receive the petition. It has sometimes happened, that the Chancellor of the Exchequer {215} has, from motives of humanity, and in order not to preclude the House from taking a petition under their consideration, given the recommendation of the Crown, in cases of which, even at the time, he acknowledged his disapprobation. This conduct, from whatever motives it may proceed, is not to be approved of: it destroys the meaning and spirit of the order, and reduces it to a mere form.—The resolution of the 11th of December, has no other intention than to transfer the responsibility of receiving or refusing the petition, from the House to the Ministers of the Crown. Unless, therefore, the Ministers will do their duty, by examining into the nature of the claim, and the propriety of granting any relief—and, if they find the application unfounded, will have the courage to inform the House of the result of their opinion—it would be better that the standing order should be repealed, and that the House should be left to act in these, as in all other instances, without restraint or control.

APPENDIX  
TO THE  
THIRD VOLUME.

APPENDIX, N<sup>o</sup>1. (p.57)

*Die Lunæ, 27<sup>o</sup> Martii, 1704.*

THE Lord Viscount Townshend made a Report from the Lords Committees, appointed to draw up the state of the case upon the writ of error lately depending in this House, wherein Matthew Ashby was plaintiff, and William White and others were defendants.

Which, being read, was agreed to, with an amendment; and is as followeth; (videlicet)

“Ashby against White and al.

“The plaintiff in this action declares, That on the 26<sup>th</sup> of December in the 12<sup>th</sup> Year of King William the Third, a writ issued out of Chancery, directed to the Sheriff of Bucks, reciting, “That the King had ordered a Parliament to be held at Westminster, on the 6<sup>th</sup> of February following.” The writ commanded the {218} sheriff to cause to be elected for the county two knights, for every city two citizens, and for every borough two burgesses; which writ was delivered to the sheriff, who made precept in writing under the seal of his office, directed to the constables of the borough of Aylesbury, commanding them to cause two burgesses of the said borough to be elected, &c.; which precept was delivered to the defendants, to whom it did belong to execute the same. By virtue of which writ and precept the burgesses of that borough being summoned did assemble before the defendants to elect two burgesses, and they being so assembled, in order to make such election, the plaintiff being then a burgess and inhabitant of that borough, being duly qualified to give his vote at that election, was there ready, and offered his vote to the defendants, for the choice of Sir Thomas Lee, Baronet, and Simon Mayne, Esquire, and the defendants were then required to receive and admit of his vote. The defendants being not ignorant of the premises, but contriving, and fraudulently and maliciously intending, to damnify the plaintiff, and to defeat him of that his privilege, did hinder him from giving his vote, and did refuse to permit him to give his vote; so that the two burgesses were elected without any vote given by the plaintiff, to his damage, &c. Upon Not Guilty pleaded, the cause went down to trial; and a verdict was given for the plaintiff, and five pounds damages, and also costs.

“It was moved in the Court of King’s Bench, in arrest of judgment, “That this action did not lie;” and that point was argued by Counsel, and afterwards by the Court.

“The Lord Chief Justice Holt was of opinion, “That judgment in this case ought to be given for the plaintiff;” but Mr. Justice Powel, Mr. Justice Powis, and Mr. Justice Gold being of a different opinion, judgment was entered for the defendant. Whereupon the plaintiff brought a writ of error in Parliament, and the cause being argued at the Bar of the House of Lords by {219} Counsel, and ten of the Judges who were present in the House being heard, and the matter fully debated by the Lords, the House was of

opinion, “That the judgment given in the King’s Bench was erroneous; and that the plaintiff has a good cause of action, and ought to have judgement.”

“To maintain this opinion, these three positions were laid down:

“1. That the plaintiff, as a burgess of this borough, had a legal right to give this vote for the election of Parliament burgesses.

“2. That, as a necessary consequence thereof, and an incident inseparable to that right, he must have a remedy to assert and maintain it.

“3. That this is the proper remedy which the plaintiff hath pursued, being supported by the grounds and principles of the ancient Common Law of England.

“To make good the first position, “That the plaintiff has a legal right to give his vote at the election of burgesses for this borough;” it was said, “That it is well known, the House of Commons consists of knights, citizens, and burgesses.”

“The knights of shires represent all the freeholders of the counties. Anciently every the least freeholder had as much right to give his suffrage, as the greatest owner of lands in the county. This right was a part of his freehold, and inherent in his person by reason thereof, and to which he had as good a title as to receive the natural profits of his soil. This appears by the statute of 8 Hen. VI. cap. 7. which recites the great inconvenience which did arise in the election of knights of the shires, by men that were of small substance, who pretended to have an equal right with knights and esquires of the same county; therefore the right was abridged, and confined only to such freeholders as had {220} forty shillings per annum. But thereby it appears, that the right which a freeholder hath to vote, in the election for knights of the shire, is an original and fundamental right, belonging to him as he is a freeholder.

“The second and third sort of men, which compose the great representation of the people of England, are citizens and burgesses; who though they differ in name, yet are in essence and substance the same, for every city is a borough, and as such sends members to Parliament.

“There are two sorts of boroughs; the one more ancient, the other more modern.

“Of the first sort are the most ancient towns of England, whose lands are held in burgage; and, by reason thereof, had the right and privilege annexed to their estates of sending burgesses to Parliament.

“The second sort are those cities and boroughs that have a right by prescription, time immemorial, or by charter within time of memory, to chose burgesses for the Parliament. Both these are upon several foundations; the one as belonging to their burgages, the other as belonging to their corporations: the first is a real right, belonging to their houses and lands; the other is a personal right, belonging to their body politic.

“As for the first, it is sufficiently described in Littleton’s Tenures, sect. 162, 163, 164. A tenure in burgage is a tenure in soccage and is called a tenure in burgage because these are the most ancient towns in England, and from thence came the burgesses to Parliament: and they who have this privilege have it as belonging to their estates or possessions.

“The other right of chusing Parliament burgesses is not annexed to any freehold or estate in possession, but vested in the corporation of the place, and is created in this manner; (videlicet)

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“When a town was incorporated, a grant was either then or after made to the body politic, that they shall have two burgesses for the Parliament, to be chosen either by all the freemen and inhabitants of the place, or such a selected number is as prescribed by the charter.

“The inheritance of this privilege is in the whole corporation aggregate; but the benefit, possession, and exercise is in the persons of those who, by the constitutions of those charters, are appointed to elect.

“And in all cases where a corporation hath such a privilege, the members thereof, in their private capacity, have the benefit and enjoyment thereof, because the corporation, as such, is not to be represented; for it is not necessary that it should have any estate, but, by being a corporation, they have only a capacity to have estates: Jones 165, Hyward and Fulcher. For as the citizens and freemen of a place are incorporated for the better government of those of the place, so is this privilege of having burgesses given for the advantage of the particular members thereof, whose estates are to be bound by the acts of their representatives.

“And therefore the wages of citizens and burgesses were always levied, not upon the estates of goods of the corporation, but upon the goods and estates, of the members thereof.

“It appears by other instances, that it is usual and proper for corporations to have interests granted to them, which enure to the advantage of the members in their private capacities: Moore 832, Sir Thomas Waller versus Hanger. The King granted to the mayor and citizens of London, “That no prisage be taken and paid for wines of the citizen and freeman of London.” This enures to the benefit of every citizen and freeman of London for his own wines, in which the corporation of the city hath no interest.

“The same thing appears by the case of Waller and Spateman, 1. Saund. 343, and by the case of Meller and Walker. These instances {222} make it sufficiently appear, that though the inheritance of this franchise be in the body corporate, yet it is for the benefit of the particular members thereof; and it is certainly a great advantage for the men or inhabitants of a place to choose persons to present them in Parliament, who thereby will have an opportunity, and be under an obligation, to represent their grievances, and advance their profit.

“Of this opinion have two Parliaments been, as appears by two several Acts: the one, 34 and 35 Hen. VIII. cap 13.; the other, 25 Car. II. cap. 9. The first is an Act for making knights and burgesses within the county and city of Chester, which begins in this manner: “In humble wise shew to your Majesty, the inhabitants of your Grace’s county palatine of Chester, that they being excluded and separated from your high court of Parliament to have any burgesses within the said court, by reason whereof the inhabitants have hitherto sustained manifold losses and damages, as well in their lands as goods and bodies;” therefore was it enacted, “That they should have knights for the county, and citizens for the city of Chester.” The other Act, which constitutes knights and burgesses for the county palatine and city of Durham, recites, “That the inhabitants thereof, hitherto, had not that liberty and privilege of electing and sending knights and burgesses to the high court of Parliament.”

“The application of these two Acts is very plain, the first saith, “To be excluded from sending knights and burgesses to Parliament, is a damage to lands, goods, and body.” The other saith, “That it is a liberty and privilege to send them.”

“Thus the right of election is explained and shewed to be a legal right.

“That of electing knights of shires belonging to, and inherent in, the freehold.

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“The other, of electing burgesses, is belonging, in some cities and towns, to the real estates of the inhabitants; and, in others, is vested in the corporation, for the benefit of the particular members, who are the electors; the having of which is a great benefit and advantage to the people thereof, and will prevent great loss and damage, that otherwise would ensue.

“2. It follows, that, in consequence of this right or privilege, the possessors thereof must have a legal remedy to assert and maintain it.

“It was said, That there are many rights, for which a man has no remedy by the common law; as in case of a legacy given, if it be not paid, the party cannot bring an action for it. This is very true, but not applicable to the present purpose; for the constitution of the English government has wisely distributed to several courts the determination of proper causes; but has left no subject, in any case where he is injured, without his adequate remedy, if he will go to the right place for it. If a man will seek for a remedy at common law for a legacy, which by our constitution is to be recovered in the Ecclesiastical Court, it is his own fault if he do not recover; as it would be, if he should begin a suit for land in the Court of Admiralty, or go for equity to the Common Pleas.

“But there is no such notion in the law of England, as a right without a remedy.

“He who loses or quits his remedy, loses his right. If a man has a bond for payment of one thousand pounds, he has no remedy to recover this money but by action; therefore, if he releases all actions, he loses his right to the money, because he has given away the means to recover it. Coke’s 6th Rep. 58, Bridgeman’s case. If a man purchases an advowson, and at the next avoidance suffers an usurpation, and brings no the *quare impedit* in time, he hath lost all manner of remedy, and in consequence his right, to which neither he nor his heirs can ever be restored.

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“Would it not look very strange, in a constitution so formed, that the Commons of England have an undoubted share in the legislative authority, which is to be exercised by their representatives, chosen by themselves, in which every freeholder of forty shillings per annum hath a right to vote for the county, every citizen for a city, and every burgess for a borough; that if the sheriff, or other officer, who is to cause the election to be duly made, shall hinder or deprive any of those electors of his right, the person injured shall have no remedy, though the injury be done to such a right, upon the security whereof the lives, liberty, and property of all the people of England so much depend.

“That the defendants in this case, by hindering the plaintiff from voting, have done ill, cannot be denied; because they have excluded one, who has a right, from his vote. Then, if the law doth not allow an action to the party injured, it tolerates the injury; which is absurd to say is tolerable in any government.

“There was much weight laid upon the case of Ford and Hoskyns, 2 Cor. 388, Mo. 842; which is, “That where, by the custom of the manor, every tenant for life might name his successor for his life, whom the lord is to admit; if one be named, and the lord refuses to admit him, it was held an action on the case would not lie, because the nominee had no right without being admitted.” But the reason given for that opinion, shews it was no relation to this case; for the plaintiff’s right of voting is vested in him, without any previous admittance; therefore, though it should be law, that no action will lie for not giving a right, yet certainly an action must lie, for defrauding and hindering a man to enjoy a right that he hath.

“When any statute requires an act to be done for the benefit of another, or to forbear the doing of an act which may be to his injury, though no action be given in express terms by that statute for the omission or commission; the general rule of law in such {225} cases is, that the party injured shall have an action, Coke 10 Rep. 75, the case of The Marshalsea, 12 Rep. 100, Co. Mag. Car. 118. This is a maxim allowed and approved of in all ages.

“There is the same reason, where the common law gives a right, or prohibits doing a wrong: but, in this case, an act of Parliament is not wanting; for the Stat. of West. 1. cap. 5, enacts, “That elections shall be free.” If he who hath a right to vote be hindered by him who is to take his vote, or to manage the election, that election is not free; such an impediment is a manifest violation of that statute, as well as an injury to the party whose vote is refused. This Stat. of West. 1, shews what opinion the King and Parliament had of the great consequence it was to the whole realm, that people should have their freedom in choice. And though the common law was the same before, as appears even by the statute itself, the words whereof are, “The King commandeth, upon great forfeiture, that no great man, or other, by force of arms, or by malice or menaces, shall disturb any to make free election.” The defendants did not by force of arms drive the plaintiff away from the election, nor by menaces deter him; but they did maliciously hinder him (so it is charged by the plaintiff in the declaration, and it is found by the jury to be done by fraud and malice); and so the defendants are offenders within the very words of the Statute of West. 1. Where the law is so clear as to the right, and the duty so strictly enjoined by Act of Parliament to be observed, it seems a great presumption to make it but a light thing.

“It being apparent that the plaintiff had a right, and that the defendants have done him wrong; and that by consequence of law, he must have some remedy to vindicate his right to repair the wrong;

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“3. The third thing to be shewn is, that the remedy the plaintiff pursued by bringing this action, is the proper remedy allowed by the ancient law of England.

“This action is that, which is called in the law, “An action upon the Case;” that is, founded upon the particular case of the party injured.

“The law, in all cases of wrong and injury, hath provided proper and adequate remedies.

“1. When a man is injured in his person, by being beaten or wounded, the law gives him an action of trespass, assault, and battery; if by being imprisoned, an action of false imprisonment.

“2. If his goods be taken away, or trespass done unto his house or lands, an action of trespass lies to repair him in damages.

“3. If a man hath a franchise, and is hindered in the enjoyment thereof, the proper remedy is by an action upon the case.

“The plaintiff in this case hath a privilege and a franchise; and the defendants have disturbed him in the enjoyment thereof in the most essential part, which is his right of voting.

“4. Where any officer or minister of justice, entrusted with the execution of the process of law, does an injury, an action on the case lies against him. If the sheriff will not execute a writ, by arresting the party defendant, or taking his goods, the plaintiff shall have his action upon the case, because he refused to do his duty to the plaintiff’s damage.

“The precept which the defendants received from the sheriff, in this case, was founded upon the King’s writ; and the defendants are commanded to cause two burgesses to be elected for the {227} borough of Aylesbury, of which they are to give notice; and to admit every one, who hath a vote, to make use of it; if they refuse any man to vote who hath a right, they act contrary to the duty of their office.”

It was objected, “That it did not appear that the persons for whom the plaintiff voted were elected, nor that they would have been elected if his vote had been admitted.”

The answer is, “That it is not material, whether the person for whom the plaintiff voted was chosen, or would have been chosen if his vote had been taken: his right and privilege is, to give his suffrage, to be a party in the election; if he be excluded from it, he is wronged, though the persons for whom he would have given his vote were elected.”

“The right of action must accrue upon the refusal of the vote, and is never to be made better or worse by the return, which is a matter *ex post facto*.

It was said in the arguing this case, “That the plaintiff had no damage, or at least that there was no such injury or damage done to him as would support an action.”

The answer to that is, “That the law will never imagine any such thing as *injuria sine damno*; every injury imports damage in the nature of it. If a man pick a lock, and come into an house without the consent of the owner, perhaps there is no pecuniary damage done to the value of a farthing, yet the owner shall have an action against him, and recover damages for the invasion of his possession and property.” There are many cases of the same nature, which have been determined upon this ground. In the case between Turner and Starling. 24 Car. II. in Com. Ban. and afterwards in Ban. Reg. the plaintiff Turner, amongst others, stood to be one of the Bridgemasters of London Bridge, which officer is to be elected by a Common Hall of the {228} City of London. The question was, “Who had the greatest number of voices?” The plaintiff demanded the poll; and the defendant, being then Lord Mayor of London, refused it. It was adjudged, “That the action was maintainable for refusing the poll, because every candidate has a right to have it; and though perhaps, if the poll had been granted to the plaintiff in that action, it might have been against him, yet the denial of that right was a good ground of action.”



“Upon the same reason, 29 E. 3. 18. was determined, and also the case of Hunt and Dowman, 2 Car. 478. 2 Rolls, 21.

“It is apparent, by what has been said, that the plaintiff in this present case hath been injured, in being denied his right; and no good reason can be assigned, that so affects this case as to make it differ from other cases, though to that purpose several matters were urged and insisted upon. As first, “That this would be the occasion of many actions.”

“If that be so, there is the greater reason to support this action, to punish the many wrongs that have been done, which will prevent any more of the like nature. If offences multiply, remedies against them ought to be advanced. If other officers of boroughs have been, or shall be, guilty of the like misfeazances as these defendants been, it is fit they should be liable, as these defendants are, to make satisfaction. If one man be beaten and imprisoned, is it any objection against his having an action, because all others who shall be as evilly treated as he hath been shall have the like remedies? The only means to hinder corruptions, that will soon become frequent among those officers of boroughs and corporations, is to let them see that they are obnoxious to the law, and that their purses must make satisfaction to all whom they shall injure in this manner. It is true, if one act which tends to the injury of many persons be committed, no one person injured shall be allowed to have action, because the rest might have the {229} same, Co. 5 Rep. 72. Williams’s case, 3 Cr. 664. Fineux versus Hovenden; the case of not saying divine service in a chapel of a manor to the lord and tenants, or for stopping of a lane or common way; because the defendant for one act would have a multitude of suits against him, the injury alike affecting a multitude. But the refusal of every vote is a distinct act. The party grieved, whose vote was denied, can only bring an action for the refusal; the others, whose votes were admitted, are not concerned. And if an officer denies an hundred who have a right, these are a hundred several wrongs, for which he ought to be liable to as many several actions; as, if a man will make it his business to fling stones, and shall hit a hundred several men, he must make satisfaction to them all. But surely this is so far from being an objection, that it is a strong argument to support the action; for if the mayor or bailiff of a borough shall have liberty to refuse men who have votes, he can easily make a majority to vote on his side; and then what will become of elections? The officer will return him that is elected by a majority of his own making, by excluding the votes of others that have a right.

“This would encourage officers to be partial and corrupt; and to return divers persons to be elected in that manner, who at least must have possession of seats in the House of Commons for some time, and give voices in the making of laws and imposing of taxes, until the right of election be determined.

“And though, upon hearing the cause in the House of Commons, this matter may be set right at last; yet what can compensate for the mischief that may be done to the kingdom in the mean time, by the votes of those who shall be partially returned, and are not the representatives of the people of the place who are to choose them?

“Besides, the fore-mentioned rule against multiplying actions, is confined to such acts where there is another remedy to be had {230} but where there is no other remedy but an action, the wrong-doer must answer to so many several actions as there are persons injured. Suppose a man will plough up the ground in which a hundred persons

have common, he must answer all their actions. If the inhabitants of a town have a common watering place, and a stranger stops the current, whereby the water is diverted, every inhabitant shall have his action, because there is no other remedy.

“The injured plaintiff, in this case, has no other remedy besides this action; no indictment lies, because it is a personal wrong to the party, and no wrong to the public; but only in the consequence of it, as an evil example, which tends to the encouragement of other such officers to commit the like transgressions. Nor is there any danger to an honest officer, that means to do his duty; for where there is a real doubt touching the party’s right of voting, and the officer makes use of the best means to be informed, and it is plain his mistake arose from the difficulty of the case, and not from any malicious or partial design, no jury will find an officer guilty of such a case, nor can any court direct them to do it, for it is the fraud and the malice that entitles the party to the action. In this case, the defendants knew the plaintiff to be a burgess, and yet fraudulently and maliciously hindered him from his right of voting; and justice must require that such an obstinate and unjust ministerial officer should not escape with indemnity.

“That the officer is only ministerial in this case, and not a judge, nor acting in a judicial capacity, is most plain; his business is only to execute the precept, to assemble the electors to make the election, by receiving their votes, computing their numbers, declaring the election, and returning the persons elected. The sheriff or other officer of a borough, is put to no difficulty in this case, but what is absolutely necessary in all cases. If an execution be against a man’s goods, the sheriff must at his peril take notice what goods a man has.

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“Another objection was made, in respect to the novelty of the action; it was said, “Never any such action was brought.” \ \ extra or missing “ marks \ \

In answer to this objection it may be said, “That probably there have not been many occasions given for bringing such suits.” It is to be hoped, that very few have ever been so presumptuous, as to dare to make an obstinate and malicious refusal of an undisputed vote. If the case has happened before, perhaps the party, out of consideration that only small damages were to be expected, might be discouraged, and think it better to acquiesce. And it is probable, the ill-designing officer would be at least so cautious, as to refuse the votes of such persons only, as he thought, by reason of the meanness of their circumstances, were unable to vindicate their right. It is not every one that has such a true English spirit as the plaintiff, who could not sit down meanly under a wrong done to him in one of the most valuable privileges of an Englishman. It is not the novelty of the action that can be urged against it, if it can be supported by the old grounds and principles of law. The ground of law is plain, certain, and indeed universal, that where any man is injured in his right, by being either hindered in or deprived of the enjoyment thereof, the law gives him an action to repair himself.

“The case of Hunt and Dowman, which was 16 Jac. 1. A<sup>o</sup> Domini 1618, of an action by the landlord against the tenant, for hindering him from searching his house to see whether it was in repair, was never brought before that time; and that of Turner and Starling was not brought till 23 Car. II.

“The law of England is not confined to particular precedents and cases, but consists in the reason of them, which is much more extensive than the circumstance of this or that case. “Ratio legis est anima legis;” et, “Ubi eadem ratio, ibi idem jus,” are known maxims.

“An action against the master of a ship, for that the ship lying in {232} the river of Thames was robbed, was maintained upon the same reason as against a common carrier; yet such an action was never known until 23 Car. II. in the case of Moss and Slue. 1 Cr. 15 Jones 93. Palmer 313. Smith and Cranshaw, an action of the case was brought for maliciously, and without any probable cause, indicting the plaintiff of high treason. This was the first action that was ever brought in such a case, and yet it was adjudged maintainable, upon the same reason as upon a malicious indictment of felony. 2 Leving, 250. Heming and Beal; an action of the case was brought against the mayor of a town, for refusing the plaintiff to give his vote at the choice of a new mayor; and there was not any scruple made but that the action did well lie, though that was the first precedent.

“It was granted, that if a freeman, who hath a right to give his vote for the choice of a mayor, be denied his vote, he may maintain an action upon the case.

“There can be no difference between that case and this, unless it can be supposed that the right to vote at the election of a mayor, is of higher estimation in the eye of the law, than a right to choose Members to serve in the High Court of Parliament.

“This action is not only founded upon the reason of the common law, but it hath the sanction of an Act of Parliament; videlicet, the Statute of West. 2. cap. 24 , which says, “That whensoever from thenceforth it shall fortune in Chancery, that in one case a writ is found, and in a like case falling under like right, and wanting in like remedy, none is found; the clerks of the Chancery shall agree in making a writ, and by consent of men learned in the law, a writ shall be made; lest it should happen hereafter, that the King’s court might fail in ministering justice to complainants.”

“The objection most insisted on was, “That this is a matter relating to Parliaments, and ought to be determined by the law {233} and custom of Parliaments; and for that reason, is not cognizable in the Queen’s courts.”

In answer to this objection, it was shewed,

“First, That this case is proper, in the nature of it, to be determined in the Queen’s court.

“2. There is no other provision made for the plaintiff, who is highly injured in his right, but by bringing his action in the courts of law, that have power to determine of men’s lives, liberties, and properties.

“First, The case, in the nature of it, is proper for the Queen’s courts. This will be apparent, if the several rights of electing Members to serve in the House of Commons be considered.

“The right of choosing knights of the shire is founded upon the elector’s freehold. Matters of freehold are determinable originally and primarily in the Queen’s courts, by the rules and methods of common law, by a jury sworn, and by the evidence of witnesses upon oath; and as the right of the freehold is determinable there, so are all benefits, rights, and advantages depending thereupon, or belonging thereto.

“If a freeholder’s voice be refused by a sheriff, what is it should hinder the Queen’s court from trying and determining this matter, like all other questions of freehold, by a jury, upon the oaths of witnesses, or evidence in writing, whether the plaintiff that supposes himself wronged was a freeholder or not?”

“The right of choosing citizens and burgesses depends either upon prescription or custom, or upon letters patents. These are also primarily and originally cognizable by the Queen’s courts: customs and prescriptions are triable by the country; that is, by a jury of twelve men of that county where the custom is alledged to be. This is known law in all cases without exception.

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“And as to letters patents, if pleaded specially, the court must judge of them; and if either party conceives the court hath judged amiss, he hath his remedy by writ of error, till at last it comes where it will receive a final judgment. So that every right which an elector can have is proper for the determination of the Queens’s courts. There are various ways of election in different boroughs; but they all depend upon charters or customs, and therefore are not more difficult to determine than other franchises or liberties, which depend upon the same foundations.

And whereas it was said, “That by a late Act of Parliament in 7 and 8 W. III. the last determination of the House of Commons concerning the right of elections is to be pursued;” it amounts to no more than this, that the officer who is to make the return, is to take care to return him to be elected who is chosen by a majority of electors, qualified according to the last determination of the House of Commons. If he does so, he incurs no danger, he is not liable to an action. But the House of Commons itself is not bound by that rule. Now suppose the officer will deny a man a vote, who, according to the last determination there, ought to have one, and this the officer did well know; what is it hinders him that had right, according to that determination, from bringing his action against the officer who hath injured him? It cannot be the Act of Parliament, for the Queen’s courts are by law the first and original expounders of the statutes of this realm.

“But, secondly, there is no other court or jurisdiction appointed by the law of England, for determining the right and repairing this injury but the Courts of Westminster.

“It is a general rule, “That whoever impeaches the jurisdiction of one court, must entitle some other court to have a jurisdiction of that cause;” but that is impossible to be done in this case.

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It was said, “That the determination of the right of elections of Members to serve in Parliament, is the proper business of the House of Commons, which they would be always very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election, without determining the right of electors; and if electors were at liberty to prosecute suits, toughing their right of giving voices, in other courts, there might be different judgements, which would make confusion, and be dishonourable to the House of Commons; and that therefore such an action was a breach of their Privilege.”

As to these objections, several answers were given.

“It was admitted, that the House of Commons exercise a jurisdiction in determining the right of election of their own Members; and though the time may be assigned when that jurisdiction was exercised in another place, yet there has been a usage long enough to hinder that point from being drawn in question, especially after the sanction given to it by the Act made in the seventh year of King William’s Reign.

“But though it be true, that the merit of the election of a Member be a proper subject for the House of Commons to judge of, because they only can give the proper and most effectual remedy, by excluding the usurper, and giving the possession of the place to him who has the right; yet there is a great difference between the right of the electors, and the right of the elected: the one is a temporary right to a place in Parliament *pro hac vice*: the other is a freehold, or a franchise. Who has a right to sit in the House of Commons, may be properly cognizable there; but who has a right to choose, is a matter originally established, even before there is a Parliament; a man has a right to his freehold by the common law; and the law having annexed his right of voting {236} to his freehold, it is of the nature of his freehold, and must depend upon it. The same law that gives him his right, must defend it for him; and any other power that will pretend to take away this right of voting, may as well pretend to take away the freehold upon which it depends.

“To say the plaintiff, in this case, may apply to the House of Commons, is not sufficient, unless proved. Never any single elector of any county or borough, did complain to the House of Commons, that he was debarred of his vote, and desire them to determine his particular right.

“Sometimes some of those who have right to choose, in a borough, have complained, that persons have been returned by the officer who were not duly elected, as being an injury done to the whole community of the borough, to have a person without right sit there as their representative; but this is only to bring the merits of the election in question, of which that House hath cognizance; and therefore, as incident and necessary thereto, they may try the right of electors, which of them, by custom or letters patents, have voices. But this is no more than all courts have. In the ecclesiastical courts, which proceed according to the civil law, if the suit be originally proper for their jurisdiction, they have power to determine things foreign thereto; as if letters patents or conveyances of lands come in question, though primarily and originally determinable in the courts of common law. Matrimony is properly under the jurisdiction of the ecclesiastical court; and if a question arises between the supposed married parties in their life-time, or upon dower or bastardy, it shall be tried and determined there. But when an action is brought by a man and woman, supposing her to be his wife, if the defendant pleads in abatement, that they were not married, it shall be tried by a jury where the action was brought. So if any one’s title to lands depends on a marriage, if an action is brought to try the {237} title, the marriage may be determined by a jury. This shews plainly, that, because the House of Commons may determine who are electors, and who are not, incidentally, and so far only as it is necessary to try the right of the election, it doth not follow, that, when the right of election is not in question, they can try the right of an elector.

“When the right of the candidate is examined in the House of Commons, it is in order to determine which person hath the right to join with them in making of laws, and other public services; and if, in order to the determining this point, the House of Commons must judge of the electors, they do it only to this purpose. But the courts of law judge of an elector’s right wholly to another end; as it is a legal right to assert that, and to repair in damages the elector, who is wrongfully hindered from exercising it. This is what the House of Commons cannot do, nor to this day was there ever any application made to them to do it; and, it may be reasonably supposed, they will not now being to take it upon them.

“It commonly takes up a great part of the time of a session to determine the cases of elections, because they can be sure the House is composed of such as have a right to sit; but should they once pretend to take cognizance of particular men’s complaints, in order to decide the rights of electors, it would be impossible for them to have leisure to employ themselves about the *ardua et urgentia negotia regni*, the safety and defence of the kingdom, for which the writ calls them together. It is granted, that the deciding of the right of electors is a matter of great weight, and in consequence concerns the lives and liberties of the subjects of England; but the law hath provided a proper remedy to be pursued in the ordinary methods of justice, a remedy that is adequate, where damages may be recovered. The plaintiff, in this case, knew he had a right by law to give his vote, and when he found {238} himself deprived of it, he resorts to the law for his remedy. And it is probable most of the electors of England will be of his mind, and think it for their interest to resort to the courts of Westminster Hall, for asserting this great right of their’s upon occasion, where they may prove their case by witnesses upon oath, and have their damages assessed by their countrymen duly sworn; nothing of which can be done, if they are to seek for a remedy in the House of Commons.

“Where a man is injured, if he cannot bring his action to recover the thing itself he hath lost by the injury, the law will always give him damages in lieu thereof.

It was said, in the debate of this case, “That instances were to be given, where the party injured did not recover damages, as in case where one has a right of presentation, and is disturbed, he could not recover damages at the common law; and that was resembled to the right of an elector, which was said to be only a right of nomination.” But the answer to this objection is plain. “There the law gives the party a remedy to recover the presentation, the thing that was taken from him, to which he was restored by the judgment. But in the present case, there there is no possibility for the plaintiff to recover the thing he has lost, which was his vote at the election; for that election is over, and can never be had again; so that the plaintiff cannot possibly have any reparation, unless it be in damages; and this sort of reparation the House of Commons cannot give him.”

“If the plaintiff, and all other injured electors, should be obliged to go to the House of Commons for satisfaction, it may be reasonably supposed, the Parliament may be dissolved, before it could come to his turn to have his cause heard. What would be the consequence of this? If the plaintiff must be thereby without remedy, would not the law be notoriously defective? And yet none will say, that another Parliament did ever take cognizance of {239} any injury done upon account of an election to a preceding Parliament. But suppose the next House of Commons will determine it, what

endless work would the House of Commons be engaged in! For probably the ensuing election would make as many new questions as that which went before, and which the Parliament did not live long enough to dispatch.”

As to what was objected, “That the same matter may come in question in the House of Commons, where it may be determined that this plaintiff hath no right, so that great confusion would arise from different judgments in different courts;” it is no more than what may happen every day in Westminster Hall, where the several courts may be of various opinions upon the same question, and yet no hurt is done to the public; nay this is no more than happens often in the House of Commons, where the right of election in the same borough, is decided different ways in different Parliaments, and they do not think themselves dishonoured by it.

“This contrariety of judgment can never appear; for the House of Commons never gives a direct judgment on this or that individual elector’s right. The voting is either upon a general question of the right of the competitors, or where the right of election in the borough is placed; whether all inhabitants, or those under a particular qualification, or whether the whole commonalty, or a selected number, have voices; and all these are but ways and means to determine the right of election.

“If the House of Commons judge of the right of a particular elector at any time, it is only *pro ista vice*, so far as it relates to the particular case before them. But surely the House never thought the elector’s freehold finally concluded thereby, because he is no party to that suit; his right came not there in question originally, but consequentially, in a cause litigated between other persons, to which he is no party; and it cannot be agreeable to {240} right reason, or the principles of law, for a man’s right to be conclusively determined in a cause between other parties.

“And after all, where is the damage to the public, if there should be a variety in the determination of the House of Commons and the Courts of Westminster? It is not impossible in the nature of things; for the courts of law have great advantages, which the House of Commons want; they want the help of juries, and the power of giving oaths; and they ought not to be displeased with their electors, if they resort to courts provided with these powers, for asserting the right of election; especially when it is considered, that the person whose pretensions the House of Commons approves of, will sit there, which is all they are concerned in. They are the elected; and it would be strange, if that should entitle them to challenge the sole power of deciding the rights of their electors, which is indeed to choose their electors.

It was urged, as a great argument against the maintaining this action, “That it had been adjudged in the case of Mr. Onslow in the 33d of King Charles the Second, That no action did lie at common law, for a false return of a Member to sit in Parliament; and that, in the case of Bernardiston and Soames, it was adjudged, the candidate could not maintain an action against the sheriff for a double return; and if the person elected to serve in Parliament, cannot maintain an action against the officer, it was urged, a *fortiori*, that the person electing, who perhaps is but a cobbler, ought not to be allowed to have such an action.”

It was answered, “That the law of England has no respect to persons; if an elector be a cobbler, he is a freeman of England, and has that great privilege belonging to him, to be represented in Parliament.” It was remembered, with what great variety of

opinion among the judges, that case of Sir Sam. Bernardiston was determined, and what an alarm that judgment gave to the House of Commons; to such a degree, that in the session of {241} Parliament, 1679, a committee was appointed to enquire into it as a grievance; and it was observed, that the great design of the act of Parliament made in the seventh year of the late King (which was often mentioned in the debate of this case, to other purposes) was, to cure the many inconveniencies arising from that judgment, and the judgment in Mr. Onslow's case, which only followed Bernardiston's, and was judged upon the authority of it. But there is no resemblance between those cases and the case of an elector. In Bernardiston's case, of a double return of Members, the reason on which the judgment was founded was, that a double return was no return which the law took notice of, but was only allowed of by the custom of Parliament. When an officer, who doubts, makes a double return, he submits to the judgment of the House of Commons; and if that House admits of such return, as they had often done, it would be hard the law should subject a man to an action, for submitting a matter of fact (the truth of which the officer doubts) to the determination of those who have a jurisdiction of the matter, and approve the manner of such a return.

“In the other case, of a false return of a Member, several reasons may be assigned for the judgment, which are not applicable to the case of an elector. Perhaps it might be, because such a return is a manifest injury to every one of the electors (though principally to the candidate); and therefore it might fall within the reason of William's case, above mentioned, that every elector might sue him, and therefore none of them severally can maintain the action. But there is another reason very obvious, because the candidate has a proper remedy to recover his place, from which he is excluded by the false return: the right of election is cognizable in the House of Commons; there he will recover his seat in Parliament, which is what the law has the principal regard to, and there is no reason he should have another remedy elsewhere.

“It is absurd to say, the electors right of choosing is founded {242} upon the law and custom of Parliament; it is an original right, part of the constitution of the kingdom, as much as a Parliament is, and from whence the persons elected to serve in Parliament do derive their authority, and can have no other but that which is given to them by those that have the original right to choose them. This doth not touch the jurisdiction claimed and exercised by the House of Commons, to try the right of the election of their own Members; they who pretend to be admitted to sit there, ought to make out their right to the House; but there is no ground to infer from thence, that the House hath power to try or determine the right of other persons who are not their Members, and do not pretend to any place amongst them.

It was said, “That, if this action were allowed, there would be a way found out for the Lords to let themselves into, to judge of the right of the Members of the House of Commons to sit there, and, by parity of reason, to judge of their other privileges; as if actions were brought for words spoken in the House of Commons, or other things happening in that House, which would be of ill consequence.”

But it was said, in the first place, “That this objection was little applicable to the present case, because it was no relation to the sitting of that Member, for whom the elector, who brings his action, gave his vote.”



And, secondly, “If things are so ordered by the constitution of the English government, that the ultimate resort in point of judicature is lodged with the Lords; let the case concern what it will, when it is brought before them by writ of error, they are bound to give judgment one way or other.” And as to the particular instance mentioned, relating to words spoken in the House of Commons, it was said, “There never was a greater attempt made upon liberty of speech in the House of Commons, than by the information brought in the King’s Bench, {243} 5 Car. I. against Sir John Elliot, Denzil Holles, and Benjamin Valentine, esquires, for words spoken in the House of Commons:” they pleaded to the jurisdiction of the court, as being for what was done in Parliament, and therefore ought not to be examined or punished elsewhere; but judgment was given against them, and great fines imposed upon them (Cro. Car. 181.) In the Parliament which met in 1640, these proceedings were taken into consideration with great warmth; and, the 8th July 1641, it was resolved, in the House of Commons, “That the exhibiting of that information was a breach of the privilege of Parliament, and that the over-ruling of the plea to the jurisdiction of the court, and the judgment, and all that followed thereupon, was against the law and privilege of Parliament;” and many other severe votes were passed. Thus the matter rested, till after the restoration of King Charles the Second. But, when things grew to be settled, and there was leisure to consider of the consequences of former proceedings, the House of Commons began to think, that those votes were not to be depended upon, as a sufficient security in a case of so high a nature, since upon liberty of speech all Parliamentary debates were founded, and they could not think that great privilege safe, while so solemn a judgment stood in force: therefore in 1667, the consideration of this matter took up a great part of the session; and the best expedient they could find out was, First, to come to a resolution among themselves, that the judgment, given 5 Car. I. in that case, was an illegal judgment, and against the freedom and privilege of Parliament, and then to present this resolution of theirs to the Lords, at a conference, which was done 10 December 1667, and to desire their concurrence. The next day the Lords concurred in the resolution; and, at the same time (which was the thing aimed at and desired by the House of Commons) the Lords ordered the Lord Holles to bring a writ of error in Parliament, to the end here might be a judicial determination of that great point, which {244} was done accordingly; and, on the 15th April 1668, that cause coming to be heard in Parliament, the judgment in the King’s Bench was reversed, to the great satisfaction of the House of Commons.

“So little did the House of Commons entertain jealousies of this kind, that they themselves resorted to the judicature of the Lords, in the manner that has been mentioned upon so weighty an occasion.

It was objected, “That many inconveniencies would follow, if this action were allowed;” but they were very sparing in giving particular instances of those inconveniencies.

“But nothing is plainer than that, by the plaintiff’s prevailing in this action, great inconveniencies will be prevented, and the subject’s right and property secured against the partialities and corruption of officers, who are trusted in a matter of so great moment as the receiving and allowing their suffrages upon elections.

“This tends to encounter false returns in the first approach and to have just returns, is all the House of Commons ought to desire.

“How endless would the inconveniencies be, if this action did not lie? How would occasions of complaint be multiplied? The officers who had the return, would become the masters of elections, and admit and reject electors as they pleased, with impunity; for, if the electors are only to seek for a remedy before the House of Commons, it would be a remedy worse than the disease; the greatest part of their cases would never be determined for want of time; and they who could get their cases heard could have no amends, that is, no damages given them for reparation of the wrong; besides the absurdity of having, for the most part, the parties to the injury, those who sit by a false return, parties to the judgment.

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“So that to deny this action, is to deny the benefit of the law, in a matter of the most tender concern to an Englishman.

“To pretend it to be a breach of privilege of the House of Commons, for an elector to seek for remedy at law, if he be wrongfully excluded of his vote, is very strange.

“That certainly can never be esteemed a privilege of Parliament, that is incompatible with the rights of the people. Every Englishman is entitled to reparation for the injuries done to his rights and franchises, in the ordinary and common methods of justice, where the juries who try, and the witnesses who give evidence, are to be upon their oaths. Magna Charta, cap. 29. is very express; “No freeman shall be disseised of his freehold, or liberties, or free customs, unless by the lawful judgment of his Peers, or by the law of the land.”

“By the lawful judgment of the Peers, in the case of a Commoner, is meant by a jury of lawful men, upon their oaths.

“If one be injured in such a manner as the plaintiff in this action hath been, no man can say, that per legem terræ, by the law of the land, he can have a remedy for satisfaction, and asserting his right, in the House of Commons. If there be any such law, it must be either statute law, or common law. No statute gives him such remedy; nor doth the common law, because that is constant usage for time immemorial; and there is not one precedent can be produced, that ever any man, upon such an occasion, did ever apply to the House of Commons for relief.

“Upon the fourteenth day of January 1703, the House of Lords reversed the judgment; and gave judgment, “That the plaintiff should recover.”

This state of the case being read, and approved of, the House came to the following resolutions: (videlicet.)

“It is resolved, by the Lords spiritual and temporal in Parliament {246} assembled, That, by the known laws of this kingdom, every freeholder, or other person having a right to give his vote at the election of Members to serve in Parliament, and being willfully denied or hindered so to do, by the officer who ought to receive the same, may maintain an action in the Queen’s courts against such officer, to assert his right, and recover damages for the injury.”

“It is resolved, by the Lords spiritual and temporal in Parliament assembled, That the asserting, that a person, having a right to give his vote at an election, and being hindered so to do by the officer who ought to take the same, is without remedy for such

wrong by the ordinary course of law, is destructive of the property of the subject, against the freedom of elections, and manifestly tends to encourage corruption and partiality in officers who are to make returns to Parliament, and to subject the freeholders and other electors to their arbitrary will and pleasure.”

“It is resolved, by the Lords spiritual and temporal in Parliament assembled, That the declaring Matthew Ashby guilty of a breach of Privilege of the House of Commons, for prosecuting an action against the constables of Aylesbury, for not receiving his vote at an election, after he had, in the known and proper methods of law, obtained a judgment in Parliament for recovery of his damages, is an unprecedented attempt upon the judicature of Parliament, and is, in effect, to subject the law of England to the votes of the House of Commons.”

“It is resolved, by the Lords spiritual and temporal in Parliament assembled, That the deterring electors from prosecuting actions in the ordinary course of law, where they are deprived of their right of voting, and terrifying attornies, solicitors, counsellors, and serjeants at law, from soliciting, prosecuting, and pleading, in such cases, by voting their so doing to be a breach of privilege of the House of Commons, is a manifest assuming a power to {247} control the law, to hinder the course of justice, and subject the property of Englishmen to the arbitrary votes of the House of Commons.”

“It is ordered, by the Lords spiritual and temporal in the Parliament assembled, That the report made from the Lords Committees appointed to draw up the state of the case, upon the writ of error lately depending in this House, wherein Matthew Ashby was plaintiff, and William White and others defendants, and the resolutions made this day relating thereunto, shall be forthwith printed and published; and that the Lords Committees who drew the said report, or any three of them, do give directions therein.

“It is ordered, by the Lords spiritual and temporal in Parliament assembled, That the right honourable the Lord Keeper of the Great Seal of England, do send to all the sheriffs in the several counties of England and Wales, the state of the case, upon the writ of error lately depending in the House of Peers, wherein Matthew Ashby was plaintiff, and William White and other defendants, with the resolutions of the House of Lords relating thereto; and also do order the several sheriffs to communicate one of them to each city and borough within their precinct; and every sheriff to have as many reports sent him, as shall be necessary for each city and borough to have one.”

*Die Martis 13<sup>o</sup> Martii, 1704.*

This day the Duke of Bolton, from the Lords Committees appointed to draw up the state of what proceedings have been in this House, or at conferences with the House of Commons, in relation to the five Aylesbury men (videlicet) Daniel Horne, Henry Bass, John Paton, junior, John Paty, and John Oviat; and an humble address to be presented to her Majesty, “That she would please to grant the petitions of two of the Aylesbury men (videlicet) {248} John Paty and John Oviat, and to grant them her Majesty’s warrant for authorizing the cursitor to make out their writs of error, as is usual in such cases;” reported a representation and address.

Which being read, was agreed to by the House, and is as followeth (videlicet);

“We, your Majesty’s most dutiful and loyal subjects, the Lords spiritual and temporal in Parliament assembled, are under an unavoidable necessity of making our humble application to your Majesty, upon an occasion, which, as it is very grievous to

us, so, we fear, it may be uneasy to your Majesty; but the proceedings of the House of Commons, in relation to five burgesses of the town of Aylesbury, John Paty, John Oviat, John Paton, Henry Bass, and Daniel Horne, have been so very extraordinary, and the consequence of such proceedings may prove so fatal to the properties and liberties of the people of England, and so directly tend to the interruption of the course of justice, to the eluding the judicature of Parliament, and to the diminution of your Royal Prerogative, that we cannot answer it to your Majesty, to the kingdom, and to ourselves, without setting them before you in a due light.

“One Matthew Ashby, a burgess of the borough of Aylesbury brought an action upon the case, at common law, against the constables of the town Aylesbury (being the proper officers to return Members to serve in Parliament for that place) for having by contrivance fraudulently and maliciously hindered him to give his vote at an election. In this action, a verdict was found for him; but a judgment was given against him in your Majesty’s court of Queen’s Bench; which was reserved upon a writ of error brought in Parliament, where he obtained judgment, to recover his damages for the injury; and afterwards had execution upon that judgment.

“The five persons above-named, being burgesses of the same {249} borough, and having (as they conceived) had the like wrong done them by the constables there, and supposing the law to be equally open to all Englishmen, did severally commence and prosecute actions against those officers, in order to recover their damages.

“And for so doing, they were sent for to the Bar of the House of Commons, and committed prisoners to Newgate, the fifth day of December last, during the pleasure of the House of Commons; as having acted contrary to the declaration, in contempt of the jurisdiction, and in breach of the privilege, of that House.

“These proceedings are wholly new and unprecedented. It is the birthright of every Englishman, who apprehends himself to be injured, to seek for redress in your Majesty’s courts of justice; and if there be any power, that can controul this right, and can prescribe when he shall and when he shall not be allowed the benefit of the laws, he ceases to be a freeman, and his liberty and property are precarious.

“The Crown lays claim to no such power; and, we are sure, the law has trusted no such authority with any subjects whatsoever.

“If a man mistakes his case, in believing himself to have a good cause of suit when he has not; if he mistakes his court, by applying to an incompetent jurisdiction; he will fail of relief, and be liable to costs, but to no other punishment; he is not guilty of a crime, nor is it a contempt of the court that has the proper jurisdiction.

“But these men were guilty of no mistake; the point of law was settled by the judgment of that court, which is allowed to be the last resort; and this will continue to be the law, till it be altered by the legislative authority. They saw their neighbour quietly and unmolested reap the fruit of the judgment he had obtained; and yet, for pursuing the same remedy, they are condemned to an indefinite imprisonment, during the pleasure of the House of Commons.

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“This method does introduce an uncertainty and confusion never before known in England.

“The most arbitrary governments cannot shew more direct instances of partiality and oppression.

“The point of law is judicially settled; and yet the House of Commons take upon them to punish men by imprisonment, for endeavouring to have the benefit of what is so established for law.

“We humbly observe to your Majesty, That the first thing they alleged in the warrant of commitment, as the offence of these five persons is, “That those actions were brought contrary to a declaration of the House of Commons.”

“It was never yet heard (when there was a House of Lords in being, and a King or a Queen upon the throne) that the House of Commons alone claimed a power, by any declaration of theirs, to alter the law, or to restrain the people of England from taking the benefit of it; nor have their declarations any such authority, as to oblige men to submit to them, at the peril of their liberty.

“If they have such a power in any case, they may apply it to all case as they please; for, when the law is no longer the measure, will and pleasure will be the only rule.

“The certainty of our law is that which makes the chief felicity of Englishmen: but if the House of Commons can alter the laws by their declarations, or (which is the same thing) can deprive men of their liberty if they go about to take the benefit of them, we shall have no longer reason to boast of that part of our constitution.

The next thing alledged in the warrant is, “That the commencing and prosecuting these actions, was a contempt of the jurisdiction of the House of Commons.”

“Such a jurisdiction was never claimed by the House of Commons, till upon this occasion; and if this novelty of jurisdiction {251} be founded on their new authority of declaring, they will stand and fall together.

“The House of Commons have for a long time exercised a jurisdiction over their own Members, by allowing or disallowing their elections, as they saw cause; but they have never before entertained a notion, that they had a jurisdiction over their electors, to determine (finally and exclusively of all other courts) the particular rights of those to whom they owe their being.

Your Majesty’s royal writ commands, “That the several electors make choice of persons to represent them in Parliament, in order to do and consent to such things as should be ordained there, relating to the state and defence or the kingdom and the church;” for which the Parliament is called. And they obey the command, in proceeding to choose Members for the Parliament then summoned; but neither the writ which requires them to choose, nor the indenture by which the return is made, import any thing whereby it may be inferred, that the electors put into the power of their representative their several rights of election, to be finally disposed of at their pleasure.

“It was an interest vested in them by law before the election; and which the law will preserve to them to be exercised again in the like manner, when your Majesty shall be pleased to call another Parliament.

“It was not possible for the electors to suspect that such a pretence would ever be set up by their representatives, when, in the course of so many ages, the House of Commons had never taken upon them to try or determine the right of any particular elector, unless incidentally, and only in order to decide a question of the title of some Member of their own House to sit amongst them.

“The right of election is a legal interest, incident to the freehold, or founded upon custom, or the letters patents of your Majesty’s royal ancestors, or upon particular acts of Parliament, and {252} must be tried and determined like other legal interests; and this consideration does manifestly shew the absurdity of pretending that such rights can be decided by the House of Commons, where there is neither a power of administering an oath in order to discover the truth, nor power of giving damages, which is the only reparation the elector is capable of receiving in such a case. Therefore, if the electors, when they are deprived of their rights, have no place to resort to but the House of Commons, the right of election would be a right without a remedy, which indeed is no right at all. And it is put into the power of the officers, who have the return of Members to serve in Parliament, to reject the votes of as many electors as they please, without being liable to make any reparation in damages to the parties, which is a notion not very likely to preserve the freedom and impartiality of elections.

The third thing alledged against these men, in the warrant of commitment is, “That, by bringing these actions, they have broken the privilege of the House of Commons.”

“A breach of the privileges of Parliament is certainly a great offence; and of all others, the House of Lords ought to be the last who should go about to lessen or excuse it, as having a like interest with the Commons in the preservation of the privileges of Parliament.

“But, however it might seem the interest of the Lords to be silent, while the House of Commons are setting a-foot new prestences of privilege, because they may share in the advantage; yet we think it our duty and our interest to do all we can to preserve the Constitution entire, and not to sit quiet when we see innovations attempted, which tend to the diminution of the rights of the Crown, or the prejudice of the subject; because the best and surest way to preserve the rightful privileges of Parliament is, to abide by those that are certain and known; and it is not in the {253} power of either or both Houses to create new privileges to themselves.

“It never was thought a breach of the privileges of Parliament, to prosecute an action against any man who was not entitled to privilege of Parliament; and therefore, since the late constables of Aylesbury had no title to privilege of Parliament at the time when those actions were commenced or prosecuted, we cannot imagine upon what foundation the pursuing these actions can be voted a breach of privilege by the House of Commons.

“It seems very necessary it should be known upon what rule this pretence is grounded, that the people of England may be at a certainty, and see some limits set to the claims of privilege.

“To serve the turn, it has been said, “There are privileged cases, as well as privileged persons;” but no instance as been produced, whereby this distinction can be applied to justify these commitments.

“Actions at common law have been brought, upon false returns and double returns of Members to serve in Parliament, as in the cases of Sir Samuel Bernardiston and Mr. Onslow, which proceeded to judgment, and a writ of error was brought in one of them, and the plaintiff could not prevail in either of those suits: and yet it was never pretended that the commencing or prosecuting those actions was a breach of privilege

of Parliament, nor were the persons concerned in them imprisoned or censured, though there was a much greater colour for such a pretence in those cases, because the question there directly concerned the right of sitting in Parliament; and consequently those would have been indeed privileged cases, if any such distinction had been once thought of in those days; whereas, in the actions brought by these five men, neither the plaintiffs nor defendants were Members of Parliament, nor did the actions relate in any manner to the right of sitting there.

“The opinion of the House of Commons at that time was very {254} different from what it is now: When the judgment of the King’s Bench (where Sir Matthew Hale sat then chief justice), which passed in favour of Sir Samuel Bernardiston, “That the action was maintainable,” was reversed in the Exchequer chamber, the House of Commons was so far from thinking it for their advantage to have their Members deprived of the benefit of the common law, that in the year one thousand six hundred seventy-nine, a committee was appointed to enquire touching the reversing that judgment, and by whose procurement and solicitation, and by what ways and means, the same was reversed, and the names of the particular judges that were concerned. And when afterwards that judgment in the Exchequer chamber was affirmed in Parliament, the House of Commons never thought themselves secure against the corruptions of the officers who were to take the poll and make returns at elections, till they had got an act in the 7th and 8th year of the late king, which gave a remedy in Westminster Hall for false and double returns; so little contented were they in their own cases, with the jurisdiction of the House of Commons, and the remedy to be had there, which now they so fiercely contend their electors should entirely acquiesce in. And we cannot but think it manifest partiality in those gentlemen, to go about by such violent means to deprive their electors of recovering of damages when they are wronged in being deprived of giving votes, since they thought it necessary for themselves to have that advantage when they are injured in their own elections.

“The sufferings of those unfortunate men have not ended here, and the rights of the free-born subjects of England have received a further and no less dangerous wound in their persons.

“These five men having endured a long and chargeable imprisonment, and despairing of their liberty any other way, were advised to sue out writs of habeas corpus, returnable in your Majesty’s court of Queen’s Bench, hoping to obtain their discharge by {255} the help of that court, where the judgment ought to be given according to the laws of the land, without regard to any votes or declarations or commands to the contrary. But this endeavor proved unsuccessful; and they were remanded to Newgate by three of the judges of that court, contrary to the opinion of the Lord Chief Justice Holt.

“We shall not presume to offer any opinion to your Majesty upon occasion of this judgment at present, because it is not regularly brought before the House; and we only mention it, because the House of Commons took such offence at the bringing these writs of habeas corpus, that, on the four and twentieth of February last, they voted, “That whoever had abetted, promoted, countenanced, or assisted the prosecution of those writs, were disturbers of the peace of the kingdom, and endeavoured, as far as in them lay, to overthrow the rights and privileges of the Commons in Parliament.”

“This is a very heavy charge; and, if it be so criminal a thing for a prisoner to pray a habeas corpus, it does not only affect those who are in present concerned, but ought to touch every Commoner of England in the most sensible manner.

“Liberty of person is of all rights the most valuable, and of which, above all other things, the law of England is most tender, and has guarded with the greatest care, having provided writs of several kinds, for the relief of men restrained of their liberty, upon any pretence, or by any power whatsoever; that so, in every case, they may have some place to resort to, where an account may be taken of the reason and manner of the imprisonment, and the subject may find a proper relief, according to his case.

“No crime whatsoever does put an Englishman into so miserable a condition, that he may not endeavor, in the methods of law, to obtain his liberty; that he may not, by his friends and agents, sue out a habeas corpus, and have the assistance of solicitors {256} and counsel, to plead his cause before the court where he is to be brought.

“The court is bound by the law to assign him counsel, if there be occasion; and to give judgment upon his case, as it stands upon the return of the habeas corpus; and to remand, discharge, or bail, the prisoner, as the cause of this commitment appears there sufficient or insufficient in law; and, if what is alledged as the cause of imprisonment appears to be no crime in law, it is not the authority of those who made the commitment that can excuse that court for remanding the prisoner.

“This is the law of England; but, according to these resolutions of the House of Commons, if a man has the unhappiness (though through ignorance or mistake) to do an act which shall be voted a breach of privilege, he becomes in a worse condition than any felon or traitor; his confinement makes it impossible for him in person to solicit and procure a habeas corpus; and if any have charity enough to assist him, or to plead for him, in order to shew to the court the insufficiency of the commitment in matter of law, they become liable to lose their own liberty, and are involved in the same guilt of breach of privilege. So that, let the imprisonment be upon the most trifling occasion imaginable, if it be by order of the House of Commons, every Commoner must submit to it without redress; no friends can help them, no other authority can deliver them, till your Majesty shall put an end to that session.

“The Lords have just a concern as the House of Commons can have, to maintain the authority, and keep up the awe, of parliamentary commitments; and they will always do it as far as justice and the usage of Parliaments will allow.

“There have been cases, particularly that of the Earl of Shaftesbury, where persons committed by the House of Lords, even Members of that House, have sued out writs of habeas {257} corpus; and, upon the returns of those writs, have been brought before the court of King’s Bench, and their counsel have been heard on their behalf; and yet no censure ever passed upon them, for these endeavours to obtain their liberty, or upon their agents, solicitors, or counsel.

“The House of Commons formerly acted with more reserve upon so nice an occasion as the liberty of the subject; for, in the year 1680, when a writ of habeas corpus was served upon the Serjeant at Arms attending the House of Commons, in the behalf of Mr. Sheridan, who stood committed by order of that House; after the House was made acquainted that such a writ was served upon their officer, and had entered into very long debates upon the matter, they did not think fit to interpose, nor to pass



any censures upon the persons concerned in procuring the writ, or in appearing in behalf of the prisoner; but left the Serjeant at Arms at liberty to obey the command of the habeas corpus, which he did accordingly, by carrying this prisoner before the judge where the habeas corpus was returnable.

“The House of Commons have, in former ages, shewn a great and steady concern for the freedom of the persons of their fellow-subjects; and, upon their petitions, many excellent laws have been made, to protect liberty against all unlawful restraints by any authority, even that of the Crown. But now it is insisted, that their own imprisonments are out of the reach of those laws, and their legality not to be examined.

“In the third year of the reign of your royal grandfather, the House of Commons made a noble stand for the English liberties; and shewed, by undeniable evidence, that the causes of the imprisonment must be expressed in all cases, that so it might appear, upon the return of the habeas corpus, whether they were sufficient in point of law.

“It could not then have been imagined, that the successors {258} of those men would ever have pretended to an arbitrary and unlimited power of depriving their fellow-subjects of their liberties; or vote it to be criminal, so much as to inquire into the validity of their commitments.

“There is another occasion of offence, which the House of Commons have taken against John Paty and John Oviat, two of these prisoners, who, thinking themselves wronged in their being remanded to Newgate, by the opinion of the major number of the judges of the court of Queen’s Bench, humbly petitioned your Majesty for a writ of error, in order to bring this judgment before your Majesty in Parliament; and it is certain, the subject is never concluded by any judgment, till he comes to the last resort fixed by law in that case.

“The House of Commons, being informed of these petitions, came to a resolution, which they laid before your Majesty, “That the commitments of that House were not examinable in any other courts whatsoever; that no writ of error lay in this case; and that, as they had expressed their duty to your Majesty in giving dispatch to the supplies so they had an entire confidence in your Majesty, that you would not give leave for the bringing any writ of error.”

“The first position in this vote is very general, and the consequences of it are plain. If the commitments of the House of Commons are examinable in no other place, then no man in England, how innocent soever, is secure of his liberty, longer than the House of Commons pleases; and men may be allowed at least to wish that it were not so, though they may have a very high opinion of the justice of that House.

It has been held as an undeniable maxim, “That whoever executes an illegal command, to the prejudice of his fellow-subjects, must be answerable for it to the party grieved.”

“Let it be supposed, then, that an action of false imprisonment {259} was brought against the Serjeant of the House of Commons, and that the defendant justifies his taking the plaintiff into custody by virtue of the warrant of that House; and it appears, upon the face of the warrant, that the cause of the commitment was no crime in law; and the plaintiff demurs: What must the judges do in such a case? Will it be possible for them to avoid examining into the commitment, and so give judgment one way or other? Or can it be pretended, that a writ of error may not be brought on such a

judgment? And is not the court, before which the writ of error is brought, under a necessity to do justice thereupon, as the law requires.

As to the second thing they have take upon them to assert, “That no writ of error lies in the case;” we affirm to your Majesty, with great assurance, That by our constitution, the House of Commons have no right or pretence to determine whether that be so or not. The right of judging when a writ of error is properly brought, is by law entrusted to that court to which the writ of error is directed; and therefore we shall not at present say any thing to your Majesty in an extra-judicial way, and before the proper time, as to that point, whether a writ of error, brought upon a judgment for remanding prisoners upon a habeas corpus, can be maintained.

“Which way that question will be decided hereafter, when the writs of error are returned into the Parliament, is not at all material in respect to the petitions of the prisoners which now lie before your Majesty: for unless your Majesty be pleased to grant the writs of error according to their prayer, the matter cannot come to the proper decision in Parliament, and justice will be manifestly obstructed.

“Whether the writs of error ought to be granted, and what ought to be done upon the writs of error afterwards, are very different things. The only matter under your Majesty’s consideration {260} is, whether, in right and justice, the petitioners are not entitled to have the writs of error granted.

“We are sure, the House of Commons, in the year 1689, was of opinion, that a writ of error, //260-1// even in cases of felony and treason; is the right of the subject, and ought to be granted at his desire, and is not an act of grace and favour, which may be denied or granted at pleasure: so that, as far as the opinion of the House of Commons ought to have weight in such a question (whatever the present opinion of that House is) they then thought a writ of error was the right of the subject in capital cases (where only it had been at any time doubted of.)

“But that it is a writ of right in all other case, has been affirmed in the law books, is verified by the constant practice, and is the opinion of all your present judges, except Mr. Baron Price and Mr. Baron Smith.

“The law, for the better protection of property and liberty, has formed a subordination of courts, that men may not be finally concluded in the first instance; but this is a very vain institution, if they be left precarious in the method of coming to the superior court. All suits are begun, as well as carried on, by the authority of your Majesty’s writs; and the subject has a like legal claim to all of them. The petition for a writ of error returnable in Parliament, is only matter of form and respect to your Majesty (like the petitions which the Speaker makes, in the name of the Commons, at the beginning of every Parliament, for those privileges, which they do not believe to depend upon the answer to those petitions), and is no more to be refused than any other writ throughout the cause.

“To affirm the contrary, is to allow an arbitrary latitude, to intercept justice, and to make it depend upon private advices and {261} extra-judicial determinations, whether any causes at all shall be brought to judgment before the High Court of Parliament.

“These things being considered, how extremely surprising is an address from such a body as the House of Commons, “That your Majesty would not give leave for such a writ.”

“And no less surprizing is what they insinuate as the reason of their confidence in your Majesty, that you would hearken to such an address, “that they have given dispatch to the supplies.” They proceeded surely in the matter of the supplies with a nobler aim, for the safety of your Majesty’s crown and person, and for the delivering the kingdom from the oppression of French power, employed to set an unjust pretender upon your Majesty’s throne.

“These are good reasons for disposing of the people’s money: their liberties, and all that is valuable to them, depend entirely upon the good success of the war; and they have used, in all ages, to part freely with their money, for the defence of their liberties and properties, and the removing of grievances and oppressions.

“But this is the first time a House of Commons have made use of their having given the people’s money, as an argument, why the Prince should deny writs of right to the subject, obstruct the course of justice, and deprive them of their brithrights.

“On the six and twentieth day of February, the House of Commons proceeded to carry on their resentments to greater extremities; and voted, “That the gentlemen who pleaded as counsel for the five prisoners, upon the returns of the writs of habeas corpus, and the agents and solicitors who assisted them, were guilty of a breach of privilege;” and ordered them to be taken into custody; which order has been executed.

“This seems to be so great an excess, that it is hard to find words proper for expressing it. When Cromwell committed Mr. Maynard to the Tower, for assisting one Coney as his counsel upon a habeas corpus, a celebrated author expresses the detestation due {262} to such a fact in these words: “It was the highest act of tyranny that ever was seen in England; it was shutting up the law itself close prisoner, that no man might have relief from or access to it.”

“But, as strange and unjustifiable as this appears, we beg leave to take notice of another thing yet more irregular, (if it be possible). While the matter was depending before your Majesty, upon the petitions for writs of error; after the House of Commons had made an address to your Majesty, “That you would not give leave for the bringing writs of error,” after your Majesty had, by your gracious answer, signified to them, “That this matter, relating to the course of judicial proceedings, was of the highest importance; and therefore your Majesty thought it necessary to weigh and consider very carefully what was proper for you to do;” and after they had voted to take this very answer of your Majesty’s into consideration; the day following, they ordered the five prisoners to be removed from Newgate, and taken into the custody of the Serjeant at Arms attending the House of Commons; and this order was executed at midnight, with such circumstances of severity and terror as has been seldom exercised towards the greatest offenders.

“Your Majesty is the only proper judge how highly disrespectful this action is to your royal person and authority.

“But it concerns us to say, that such a proceeding tends directly to the depriving the petitioners of that justice, which they were endeavouring to obtain by means of the writs of error.

“While your Majesty was deliberating how to put an end to a matter, which they only had made difficult by an unreasonable address, the House of Commons rightly apprehended, that justice would prevail with your Majesty over all other considerations; and therefore (as far as possible to disappoint the prisoners of the fruit they {263} expected from these writs of error, when granted) they transferred them in the mean time to another prison.

“This practice of removing prisoners from one custody to another, has been ever complained of as manifest oppression, and most evidently destructive of the liberty of the subject. It is a mischief provided against, in express words, by the Act made in the reign of your royal uncle King Charles the Second, for better securing the liberty of the subject, “That, if any person, being a subject of this realm, shall be committed to any prison, or in custody of any officer whatsoever, for any criminal or supposed criminal matter, the person shall not be removed from the said prison or custody, into the custody of any other officer (unless it be by habeas corpus, or some other legal writ);” and this upon the great penalties mentioned in that Act. The penalties in the Act were new; but the law of England was the same before the making it. The shifting of men from one prison to any other, while they are using means in a course of law to recover their liberty, is inexcusable cruelty, and against the plain rules of natural justice; for, by such artifices, imprisonments, however unlawful, might be made perpetual; and the subject, as he was at the point of being discharged from one prison, might be, without end, removed to another.

“May it please your Majesty,

“Your dutiful subjects, the Lords spiritual and temporal, were so solicitous to avoid any thing which might give a pretence to interrupt the necessary and early provision for the war, in order to improve the wonderful successes God had given to your arms, that, though they were sensible the imprisonment of these men, in the manner and upon the pretences above-mentioned, was a manifest attempt to elude the judicature of Parliament, and of pernicious example to the liberty and property of the subject, yet they forbore to take notice of it, till they were in a manner enforced by {264} petitions from the prisoners, presented for four and twentieth of February last, and by the unjustifiable proceedings of the House of Commons the same day, which we have already mentioned to your Majesty.

“But then the Lords found it absolutely necessary to enter into a consideration of the whole matter, as it appeared to them; and, upon the seven and twentieth of February, they came to the following resolutions:

“Resolved, that neither House of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament.”

“Resolved, That every freeman of England, who apprehends himself to be injured, has a right to seek redress by action at law; and that the commencing and prosecuting an action at the common law, against any person (who is not entitled to privilege of Parliament), is no breach of the privilege of Parliament.”

“Resolved, That the House of Commons, in committing, to the prison of Newgate, John Paty, John Oviat, John Paton, Henry Bass, and Daneil Horne, for commencing and prosecuting actions at the common law against the late constables of Ailesbury, for

not allowing their votes in the election of members to serve in Parliament, upon pretence that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privilege, of that House, have assumed to themselves alone a legislative authority, by pretending to attribute the force of a law to their declaration; have claimed a jurisdiction not warranted by the Constitution; and have assumed a new privilege, to which they can shew no title by the law and custom of Parliaments; and have thereby, as far as in them lies, subjected {265} the rights of Englishmen, and the freedom of their persons, to the arbitrary votes of the House of Commons.”

“Resolved, That every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right, by his agents or friends, to apply for, and obtain, a writ of habeas corpus, in order to procure his liberty by due course of law.”

“Resolved that for the House of Commons to censure or punish any person for assisting a prisoner to procure a writ of habeas corpus, or, by vote or otherwise, to deter men from soliciting, prosecuting, or pleading upon, such writ of habeas corpus in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example, by denying the necessary assistance to the prisoner upon a commitment of the House of Commons, which has ever been allowed upon all commitments by any authority whatsoever.”

“Resolved, That a writ of error is not a writ of grace, but of right; and ought not to be denied to the subject, when duly applied for (though at the request of either House of Parliament); the denial thereof being an obstruction of justice, contrary to Magna Charta.”

“These resolutions were delivered to the Commons, at a conference, the eight and twentieth of February, and they took time to consider of them till the seventh of March; upon which day, at their desire, a second conference was had: and though it was too apparent, by what was delivered by the Commons at that conference (which consisted of injurious invectives against the House of Lords, and tedious recitals of precedents, in no sort applicable to the present subject of debate) that their design was either to {266} provoke the Lords to such a degree as might necessitate them to break off all correspondence, or, by engaging them in new matters, to draw things to such a length as might prevent the bringing these debates to any issue during the session; yet the Lords immediately desired a free conference, which was afterwards had with the Commons.

“We are so desirous that your Majesty should be made fully acquainted with all the passages relating to this dispute between the two House, that we humbly beg leave to annex, to this our representation, what passed at the first and second conferences; and also (as far as we have been capable of recollecting in so short of time) the substance of what was said at the free conference, and in our debates, in maintenance of the resolution of the House of Lords.

“But we take it to be a duty necessarily incumbent on us, to observe to your Majesty, the manner in which we have been treated by the House of Commons at these conferences; so that from thence your Majesty, according to your great wisdom, may judge to what such proceedings do naturally tend. They told us, “That the judicature of

the House of Lords was unaccountable in its foundation, and inconsistent with the Constitution.” If they mean it so ancient that no account can be given of its foundation, it is true, but there is reason to believe it began with the Monarchy; and we are sure it has continued without interruption, unless during that unhappy interval when a pretended House of Commons destroyed the Church and the Monarchy, as well as the House of Lords. As many ages as the Constitution of English governments has lasted, this judicature has consisted with it, and formed a noble and necessary part of it; and therefore these gentlemen will hardly be believed, against so long an experience, “That it is inconsistent with the Constitution.”

“They also charge the Lords, in direct terms, with usurping {267} the hearing appeals; with making advances upon the Constitution; with contriving to bring liberty and property into the bottomless and insatiable gulph of the Lords judicature, and with direct reproaches as to the manner in which that judicature has been exercised; and, in the most contemptuous was, told us, “They forbore to mention the instances, because they hoped we would reform.”

“We desire no other judge but your Majesty, how such a treatment of us becomes these gentlemen; and we dare appeal to all your subjects, for witnesses of the irreproachable manner of administering justice in the House of Lords.

“We hope, the great displeasure the House of Commons had conceived against us, may prove of some real service, and of useful caution to your Majesty; for it has drawn them directly to own (what was but too visible before) that they are aiming at more power, and a larger share of the administration, than is trusted with them by the nature of our government.

They directly complained, “That, by the Constitution, the judicature in the last resort was not placed in the same hands with the legislature;” though they cannot shew it to be so, in any country where the government is not arbitrary, and the Prince’s will the law. They have been long endeavouring to break in upon the Lords share in the legislature, of which we could mention too many instances to your Majesty, from an ancient claim, “That aids to the Crown are to begin in the House of Commons, and that the Lords could not alter the sums.” They have of late years pretended (but without any reason, and against the known usage of Parliament) that we could make no alterations in any parts of a money bill, though it have no relation to the money: and upon that foot, when they have a mind to get any thing passed into a law, of the reasonableness of which they have despaired to convince the Lords, they have tacked to it a money bill, {268} in order to put the Crown and the Lords under the unhappy necessity, either to agree to a law they might think prejudicial to the public, or to lose the money; which, perhaps at the time, was absolutely necessary to the saving the kingdom.

“By this method they assume to themselves the whole legislative authority; taking, in effect, the negative voice from the Crown, and depriving the Lords of the right of deliberating upon what is for the good of the kingdom. For this reason, the Lords had, in a very solemn manner, resolved never to suffer such impositions for the future, let the importance of the bill be never so great. This resolution was well known; and yet, in this present session (as appears by the printed votes of the eight and twentieth of November last) a great number of the gentlemen of the House of Commons, to the manifest danger of disappointing the supplies of the year, which must

have been the ruin of the whole confederacy, and delivering up of Europe into the hands of France, made an attempt to tack to the land tax a bill, which had been rejected in two precedent sessions of Parliament.

“Thus the House of Commons have formerly set on foot several attempts against that share in the legislature which is placed in the Lords; but this is the first time they have published their desire to be let into the judicature of Parliament.

“Whatever they would insinuate upon this occasion, we desire not to meddle with the choice of the Commons representatives; we willingly leave that matter where it is; and in what manner it is exercised there, how impartially, and how steadily, is so well known by experience to most parts of the kingdom, and so universally understood, that the people will be extremely desirous their estates and properties should be subject to such determinations.

“It is not strange the free conference ended without success, when the Commons came to it with such temper, as appears by the votes of the eighth of March, made after they themselves had {269} consented to the free conference: if those votes had been published soon enough, it would have fully convinced the Lords, how vain a thing it was to confer with them further upon the matters in debate at the former conferences; for, not content with what they had done before, upon information that their Serjeant had been served with two writs of habeas corpus, returnable before the Lord Keeper, in behalf of Mr. Montagu and Mr. Denton, two of the gentlemen who had been of counsel with the five prisoners, they came to a resolution, “That no Commoner, committed by them for breach of privilege, or contempt of the House, ought to be, by habeas corpus, made to appear before any other judicature,” and required their Serjeant to make no return, or yield any obedience, to those writs; and that, for such refusal, he had the protection of the House of Commons.

“It has been always held the undoubted prerogative of the Crown, to have an account of the reason why any subject is deprived of liberty; and it has ever been allowed, that, by the known common law, it is the right of every subject under restraint, upon demand, to have his writ of habeas corpus, and thereupon to be brought before some proper court, where it may be examined, “Whether he be detained for a lawful cause;” and the statutes made in the reign of your royal grandfather and your royal uncle have enacted, “That, in all cases, writs of habeas corpus be granted, and obeyed by the respective officers,” upon great penalties.

“But these votes import a direct repeal of those laws, as to all persons committed by the House of Commons. It is no longer worth disputing, whether a person committed by them, though for a fact which appears to be both lawful and necessary, may be delivered by any court; for, by this new law, he shall never be brought thither; and the Serjeant is not only warranted, but commanded openly, to contemn your Majesty’s royal writs of habeas {270} corpus, brought upon the Act of the one and thirtieth of King Charles the Second, which is an invasion of your prerogative, never before heard of in England.

“Your Majesty does not claim an authority to protect any of your officers for disobeying a known law. The habeas corpus Act, in time of imminent and visible danger, was, in the late reign, suspended by Acts of Parliament for some short time; and yet (so sacred was that law held) that those Acts passed with great reluctancy; and

one of the arguments that prevailed most, for agreeing to that temporary suspension, was, “That is would be an unanswerable evidence to all future times, that this Act could never be suspended afterwards by any less authority than that of the whole legislature.” But we live to see a House of Commons take upon them to suspend this law by a vote.

They ordered, “That the Lord Keeper of your Great Seal should be acquainted with their resolutions, to the end the writs of habeas corpus may be superseded, as contrary to law and privileges of their House.” They are contrary to no law, but that of these votes; which surely are none of the laws the Lord Keeper was sworn to observe.

But yet “he is to act at his peril.” They have ordered this law to be published to him by their Clerk.

“The Lord Keeper is a Commoner; and, if he disobeys, ‘tis a breach of privilege; and if he should carry it so far as to order him into custody, he may seek, but is not to have, relief from any habeas corpus.

“We humbly beg pardon of your Majesty, for this long and melancholy representation; which we could not avoid, without being guilty of treachery to your Majesty, and to our native country.

“The five persons immediately concerned are but poor men; {271} but, we well know, your Majesty’s justice and compassion extends itself to the meanest of your subjects.

“The matters in dispute are of the highest consequence: your Majesty’s prerogative, the reverence due to laws, and the liberties and properties of all the people of England, are concerned, and at stake, if these encroachments prevail.

“We do not pretend to solicit your Majesty to put a stop to these innovations; your own wisdom will suggest the most proper methods. We have endeavoured to do our duty, in laying the whole matter before you.

“We humbly beg leave so far to resume what has been said, as to present your Majesty a short view of the unhappy condition of such of your subjects have right of giving votes for chusing Members to serve in Parliament, which has hitherto been thought a great and valuable privilege; but, by the late proceedings of the House of Commons, is likely to be made only a dangerous snare to them, in case they who may be hereafter chosen to serve in Parliament, shall think fit to pursue the methods of this present House of Commons.

“If they refrain from making use of their right, in giving their votes, they are wanting in their duty to their country, by not doing their parts towards the chusing such representatives as will use their trust for the good of the kingdom, and not for the oppression of their fellow-subjects.

“If the officer, who has the right of taking the suffrages, refuse to admit them to give their votes, they must either sit down by it, and submit to be wrongfully and maliciously deprived of their rights; or, if they bring their actions at law, in order to assert their rights, and recover damages for the injury (as all other injured men may do in like cases), they become liable to indefinite imprisonment, by incurring the displeasure of those who are elected.

“If, being thus imprisoned, they seek their liberty by habeas {272} corpus (the known remedy of all other subjects) they do not only tie their own chains faster, but



bring all their friends and agents, their solicitors and counsel, into the same misfortune with themselves.

“If they think themselves to have received injury by the judgment upon the habeas corpus, and seek relief by writ of error (the known refuge of those who suffer by any wrong judgment), all that assist them in that matter are likewise to lose their liberties for it; and they themselves will be removed to new prisons, in order to avoid the justice of the law.

“We humbly conclude, with acquainting your Majesty, That we have been informed, by the petition of two of the prisoners, that they have been long delayed (though they have made their applications in due manner for writs of error). We are under a necessary obligation, for the sake of justice, and asserting the judicature of Parliament, to make this humble address to your Majesty, That no importunity of the House of Commons, nor any other consideration whatsoever, may prevail with your Majesty to suffer a stop to be put to the known course of justice; but that you will be pleased to give effectual orders for the immediate issuing of the writs of error.”

“The substance of what was offered by the Lords, at the first conference with the Commons:

“The Lords have desired this conference with the House of Commons, in order to a good correspondence between the two Houses; which they will always endeavor to preserve.

“When either House of Parliament have apprehended the proceedings of the other to be liable to exception, the ancient parliamentary method hath been to ask a conference; it being ever supposed, that when the matters are fairly laid open and debated, that which may have been amiss will be rectified, or else the House {273} that made the objections will be satisfied that their complaint was not well grounded.

“Such hopes as these have induced the Lords to command us to acquaint you, “That, upon consideration of the petition of Daniel Horne, Henry Bass, and John Paton, junior, and also of the petition of John Paty and John Oviat, complaining to the House of Lords, that they have been prisoners in Newgate for about twelve weeks, upon several warrants signed by the Speaker of the House of Commons, bearing date the fifth of December last, for their having commenced and prosecuted actions at common law against the late constables of Aylesbury, for not allowing their votes at an election of Members to serve in Parliament; which actions, they alledged, they were encouraged to bring, by reason of a judgment given in Parliament, upon a writ of error brought in the last session, by one Ashby against White and others; and also representing, by the same petitions, what had been done by them respectively since their said commitment, in order to obtain their liberty; and praying the consideration of the House of Peers upon the whole matter; and also upon consideration of a printed paper, intituled, “The Votes of the House of Commons,” signed with the Speaker’s name, and dated the twenty-fourth of this instant February; the House of Lords found themselves obliged to come to several resolutions, which they have commanded us to communicate to you at this conference, and are as follow:

“1. It is resolved, by the Lords spiritual and temporal in Parliament assembled, That neither House of Parliament hath any power, by any vote or declaration, to create

to themselves any new privilege, that is not warranted by the known laws and customs of Parliament.”

“2. Resolved, That every freeman of England, who apprehends himself to be injured, has a right to seek redress by action at law; and that the commencing and prosecuting {274} an action at common law, against any person (not entitled to privilege of Parliament), is no breach of the privilege of Parliament.”

“3. Resolved, That the House of Commons, in committing to Newgate Daniel Horne, Henry Bass, and John Paton, junior, John Paty, and John Oviat, for commencing and prosecuting an action at common law against the late constables of Aylesbury, for not allowing their votes in election of Members to serve in Parliament, upon pretence that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privilege, of that House, have assumed to themselves alone a legislative authority, by pretending to attribute the force of a law to their declaration; have claimed a jurisdiction not warranted by the Constitution; and have assumed a new privilege, to which they can shew no title by the law and custom of Parliament; and have thereby, as far as in them lies, subjected the rights of Englishmen, and the freedom of their persons, to the arbitrary votes of the House of Commons.”

“4. Resolved, That every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right, by his agents or friends, to apply for, and obtain, a writ of habeas corpus, in order to procure his liberty by due course of law.”

“5. Resolved, That for the House of Commons to censure or punish any person, for assisting a prisoner to procure a writ of habeas corpus, or, by vote or otherwise, to deter men from soliciting, prosecuting, or pleading upon, such writ of habeas corpus, in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example, by denying the necessary assistance to {275} the prisoner, upon a commitment of the House of Commons; which has ever been allowed, upon all commitments by any authority whatsoever.”

“6. Resolved, That a writ of error is not a writ of grace but of right; and ought not to be denied to the subject when duly applied for (though at the request of either House of Parliament); the denial thereof being an obstruction of justice, contrary to Manga Charta.”

“In these resolutions, the House of Lords have expressed that regard and tenderness which they have always had, and will ever maintain, for the rights of the people of England, and for the liberties of their persons; and also their zeal against all innovations to the prejudice of the known course of the law, whereupon that happiness of our Constitution does depend: and they hope that, upon recollection, the House of Commons will be of the same opinion, in all the particulars resolved by the Lords, and agree with their Lordships therein.”

The substance of what was offered by the Commons, at the second conference with the Lords:

“The Commons have desire this conference with your Lordships, in order to preserve that good correspondence between the two Houses, which the Commons shall always endeavor sincerely to maintain; and which is so particularly necessary at this

time of common danger, that the Commons would not engage in any thing that looks like a dispute with your Lordships, were it not for the necessity of vindicating, from a manifest invasion, the privileges of all the Commons of England (with which the House of Commons is intrusted); even those privileges which are essential, not only to the well-being, but to the very being of an House of Commons; and the preventing the ill consequences of those misunderstandings, which, if they are not speedily removed, must otherwise interrupt {276} the happy conclusion of this session, and the proceedings of all future Parliaments.

“It was this consideration alone that so long prevailed with the House of Commons, not to insist on due reparation, for those violent and unparliamentary attempts made by your Lordships upon their rights and privileges at the end of the last session of Parliament; but to apply themselves to the giving the speediest dispatch to those supplies, which her Majesty so earnestly recommended from the throne; which are so necessary, to enable her Majesty to pursue the advantages that have been obtained against the common enemy, by the great and glorious successes of her Majesty’s arms, and which are now delayed in your Lordships House in so unusual a manner.

The Commons do agree with your Lordships, “That, when either House of Parliament have apprehended the proceedings of the other to be liable to exception, the ancient parliamentary method is often been to ask a conference; because it ought to be supposed, that when the matters are fairly laid open, and debated, that which may have been amiss will be rectified; or else, the House that made the objections will be satisfied that their complain was not well grounded:” but your Lordships seem so little to desire to have matters fairly laid open and debated, that, to the great surprise of the Commons, when your Lordships had invited them to a conference about some ancient fundamental liberties of the kingdom, they found only the ancient and fundamental rights of the House of Commons, and their proceedings censured, and treated in a manner unknown to former Parliaments; and that your Lordships had anticipated all debates, by delivering positive resolutions: and these proceedings of your Lordships, grounded only upon the petition of criminals, that had fallen under the just censure and displeasure of the Commons, and upon a printed paper, which was not regularly before your Lordships.

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“Though this manner of proceeding, as well as the matter of your Lordships resolutions, might have justified the House of Commons in refusing to continue conferences with your Lordships, as their predecessors have done upon less occasions; and though the Commons cannot submit their privileges to be determined or examined by your Lordships, upon any pretence whatsoever; yet, that nothing may be wanting on their part to induce your Lordships to retract these resolutions, they proceed to take them into their consideration.

Your Lordships first resolution is (videlicet):

“That neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament.”

“As the Commons have guided themselves by this rule, in asserting their privileges; so they with your Lordships had observed it in all your proceedings. This had entirely taken away all colour for disputes between her Majesty’s two Houses of Parliament, and many just occasions of complaint from those the Commons represent. This would effectually put an end to that encroachment in judicature, so lately assumed by your Lordships, and so often complained of by the Commons; we mean, the hearing of appeals from courts of equity in your Lordships House. This would have hindered the bringing of original causes before your Lordships; and your unwarrantable proceedings upon the petition of Thomas Lord Wharton, complaining of an order of the court of Exchequer, bearing date the fifteenth of July, 1701, for filing the record of a survey of the honour of Richmond and lordship of Middleham, in the county of York: an attempt, which (contrary to the ancient legal judicature of Parliament, heretofore exercised for the relief of the subject oppressed by the power of the great men of the realm) was, in favour of one of your own body, to {278} suppress a public record, which all her Majesty’s subjects has as undoubted right to make use of: an attempt that tends to render all fines and recoveries, and other records (upon which estates and titles depend) precarious; and, consequently, subjects the rights and properties of all the Commons of England to an illegal and arbitrary power.

“A due regard to the same rule would have prevented your Lordships entertaining the petitions mentioned at the last conference; which set forth,

“That the Lords having given judgment, in the case of Ashby and White (videlicet);

“That, by the known laws of this kingdom, every freeholder, or other person having a right to give his vote at the election of Members to serve in Parliament, and being willfully denied or hindered so to do, by the officer who ought to receive the same, may maintain an action in the Queen’s courts against such officer, to assert his right, and recover damages for the injury;” The petitioners thereupon brought the like actions in their own cases.

“Whereby an extra-judicial vote of your Lordships is stated as a judgment of Parliament, and standing law, in that case; your Lordships having no foundation for the entertaining such petitions, unless that, after having assumed to yourselves the hearing of appeals from courts of equity, you would not bring appeals to your Lordships from the proceedings of the Commons, who are not accountable to your Lordships for them.”

Your Lordships second resolution is;

“That every freeman of England, who apprehends himself to be injured, has a right to seek redress by action at law; and that the commencing and prosecuting an action at common law against any person (not entitled to privilege {279} of Parliament) is no breach of the privilege of Parliament.”

“To which the Commons say, That every freeman, every subject of England, as a right to seek redress for any injury; but then such person must apply for that redress to the proper court, which hath, by ancient laws and usage, the cognizance of such matters: for, should your Lordships resolution be taken as an universal proposition, all distinction of the several courts (videlicet) common law, equity, ecclesiastical,

admiralty, and other courts, will be destroyed; and in this confusion of jurisdiction, the High Court of Parliament is involved, in your Lordships resolution.

“However, the Commons conceive it no wonder your Lordships should favour the universal proposition, “That all rights whatsoever are to be redressed by actions at law,” when your Lordships pretend to have the last resort in cases of judicature by writs of error, so that your Lordships are in this only extending your own judicature, under the colour of a regard and tenderness for the rights of the people, and liberties of their persons.

The Commons are surprized to find your Lordships assert, “That the commencing and prosecuting an action against a person not entitled to privilege of Parliament, is no breach of the privilege of Parliament,” since it is most certain, that to commence and prosecute an action, which would bring any matter or cause, solely cognizable in Parliament, to the examination and determination of any other court, is more destructive to the privileges of Parliament, than to commence and prosecute an action against a person only who is entitled to such privilege.

“That some matters and causes are solely cognizable in Parliament, hath ever been allowed by the sage judges of law, and is evident from many precedents; and to bring such causes to the determination of other courts, strikes at the very foundation of all parliamentary jurisdiction, which is only basis and support even of {280} that personal privilege to which the Members of either House of Parliament are entitled; and, consequently, to commence and prosecute any action, whereby to draw such causes to the examination of other courts, is equally a breach of the privilege of Parliament, whether the defendant, against whom such action is brought, is entitled to the privilege of Parliament or not; which, besides the nature and reason of the thing, is fully evident from the constant usage of each House of Parliament, in committing for contempts only against your respective bodies, as appears from many precedents upon the Journals of both Houses.”

Your Lordships third resolution is thus (videlicet):

“That the House of Commons, in committing to Newgate Daniel Horne, Henry Bass, and John Paton, junior, John Paty and John Oviat, for commencing and prosecuting an action at common law against the constables of Aylesbury, for not allowing their votes in election of Members to serve in Parliament, upon pretence that their so doing was contrary to a declaration, a contempt of the jurisdiction, and a breach of the privilege, of that House, have assumed to themselves alone a legislative authority, by pretending to attribute the force of a law to their declaration, have claimed a jurisdiction not warranted by the constitution, and have assumed a new privilege, to which they can shew no title by the laws and customs of Parliament; and have thereby, as far as in them lies, subjected the rights of Englishmen, and the freedom of their persons, to the arbitrary votes in the House of Commons.”

“In answer to which, the Commons affirm, That the said commitment is justified by ancient precedents, and by the usage and customs of Parliament, which is the law of Parliament, and the rule by which either House ought to govern their proceedings; {281} and that the terms of “assuming to themselves alone a legislative authority of attributing the force of a law to their declaration, of claiming a jurisdiction not warranted by the Constitution, of assuming a new privilege, to which they can shew no

title by the law and custom of Parliament, and of arbitrary votes,” are more applicable to this resolution of your Lordships, which hath no one precedent to justify it.

“According to the known laws of usage of Parliament, it is the sole right of the Commons of England, in Parliament assembled, (except in cases otherwise provided for by Act of Parliament) to examine and determine all matters relating to the right of election of their own Members.

“And, according to the known laws and usage of Parliament, neither the qualification of any elector, nor the right of any person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, excepting such cases as are specially provided for by Act of Parliament.

“And, were it otherwise, the mayors, bailiffs, and other officers, who are obliged to take the poll at elections, and make a return thereupon, would be exposed to multiplicity of actions, vexatious suits, and insupportable expences; and such officers would be subjected to different and independent jurisdictions, and inconsistent determinations, in the same case, without relief.

“And the exercise of this power by the House of Commons, is warranted by a long uncontested possession, and confirmed by the Act that passed 7<sup>o</sup> & 8<sup>o</sup> Gul. Tertij, cap. 7. And the House of Commons must be owned to be the only jurisdiction that can allow the elector his vote, and settle and establish the right of it; the last determination in that House being, by that Act of Parliament, declared to be the standing rule for the right of election in each respective place.

“Nor can any elector suffer either injury or damage by the {282} officer’s denying his vote; for, when the elector hath named the person he would have to represent him, his vote is effectually given, both as to his own right and privilege, and as it avails the candidate in his election, and is ever allowed when it comes in question in the House of Commons, whether the officer had any regard to it or no.

“In the beginning of the Parliament held the 28 Eliz. Mr. Speaker acquaints the House, “That he had received, by the Lord Chancellor, her Majesty’s pleasure, That she was sorry the House was troubled with the matter of determining the chusing and returning of knights for the county of Norfolk; that it was improper for the House to meddle in it, which was proper for the Lord Chancellor, whence the writs issued out, and whither they were returnable; that her Majesty had appointed the Lord Chancellor to confer therein with the Judges, and, upon examining the same, to set down such course as to justice and right should appertain.”

“November 9th. A committee was appointed to examine and state the circumstances of the return of the knights for the county of Norfolk.

“And on Friday, November 11, Mr. Cromwell reports the case of the Norfolk election very largely; in which report are these following resolutions:

“1. That the said writ was duly executed.

“2. That it was a pernicious precedent, that a new writ should issue, without the order of this House.

“3. That the discussing or judging of this, and such like differences, only belonged to the said House.

“4. That, though the Lord Chancellor and Judges are competent judges in their courts, they are not so in Parliament.

“5. That it should be entered in the Journal Book of the {283} House, “That the first election is good; and that the knights then chosen were received and allowed as Members of the House, not out of any respect the House had or gave to the Lord Chancellor’s judgment therein passed, but merely by reason of the resolution of the House itself, by which the said election had been approved.”

“6. That there should be no message sent to the Lord Chancellor, not so much as to let him know what was done therein, because it was derogatory to the power and privilege of the said House.”

It also appears, “That Sir Edmond Anderson, Lord Chief Justice of the Common Pleas, was acquainted, “That the explanation and ordering of the cause appertained only to the censure of the House of Commons, not to the Lord Chancellor and the Judges; and that they should take no notice of their having done anything in it.”

“Accordingly Mr. Farmer and Mr. Gresham were received into the House, and took the oaths; being admitted only upon the censure of the House, not as allowed by the Lord Chancellor or the Judges; and so ordered to be set down and entered by the Clerk.

“And this right of the Commons to determine their own elections has never been disputed since the case of Sir Francis Goodwyn, 1 Jac. I. when the Lords would have inquired into the proceedings of the House of Commons upon his election. But the Commons then told their Lordships, “It did not stand with the honour of the House, to give account to their Lordships, of any of their proceedings or doings.

“And in the reasons of their proceedings in that case, which they laid by petition before the King, among other things they say, “They are a part of the body to make new laws; yet for any {284} matter of privileges of their House, they are, and ever have been, a court of themselves, of sufficient power to discern and determine without the Lords, as the Lords have always used to do theirs without them.”

“In which reasons, as well as in their apology afterwards to that Prince, the House of Commons did, above a hundred years since, so clearly, and with so much strength of reason, assert their rights in the matter of the election of their Members, that the Commons think it their duty to resist all attempts whatsoever to invade them.

“And, upon this occasion, it may not be improper to cite the opinion of the House of Commons had of the Judges intermeddling in matters of their elections, as they have delivered it in the aforesaid apology, in these words, (videlicet):

“Neither thought we that the Judges opinion (which yet in due place we greatly reverence) being delivered with the common law (which extends only to inferior and standing courts) ought to bring any prejudice to this High Court of Parliament; whose power, being above the law, is not founded on the common laws; but they have their rights and privileges peculiar to themselves.”

“When the Earl of Shaftesbury was Lord Chancellor, writs issued, during a prorogation of Parliament, for electing Members in the room of those that were dead; the King himself was so cautious, as to the regularity of this proceeding, and had so much regard to the privileges of the House of Commons, that, at the next session of Parliament, 5<sup>o</sup> February 1672, he spoke to the Commons from the throne, in these words:

“One thing I forgot to mention, which happened during this prorogation. I did give orders for the issuing some writs for the election of Members, instead of those that are dead, that the House might be full at their meeting; and I am {285} mistaken if this be not according to former precedents. But I desire you will not fall to other business till you have examined that particular; and I doubt not but precedents will justify what is done. I am as careful of all your privileges, as of my own prerogative.

“6th February, 1672, the House of Commons took that matter into consideration; and several precedents being cited, and the matter at large debated, and the general sense and opinion of the House being, “That, during the continuance of the High Court of Parliament, the right and power of issuing writs, for electing Members to serve in this House, in such places as are vacant, is in this House; who are the proper judges also of elections and returns of their Members.”

“Thereupon it was resolved, “That all the elections upon the writs issued since that last session are void; and that Mr. Speaker do issue out his warrant to the Clerk of the Crown, to make out new writs for those places.” Which was done accordingly.

“No other court than the House of Commons hath ever had the determinations of the elections, or any cognizance of such causes, except where by Acts of Parliament directed. And such an action as those against the late constables of Aylesbury, to bring the right of voting in an election in question in the courts of law, is a new invention, never heard of before; which (as new devices in the law are generally attended with inconveniencies and absurdities) was plainly to subject the elections of all the Members of the House of Commons to the determination of other courts.

“This undoubted privilege and jurisdiction, the Commons think, will warrant these commitments, if the late declaration (which is agreeable to, and cannot lessen, their ancient right) had ever been made.

“For it is the ancient and undoubted right of the House of {286} Commons, to commit for breach of privilege; and the instances of their committing persons (not Members of the House) for breach of privilege, and that to any of her Majesty’s prisons, are ancient, so many, and so well known to your Lordships, that the Commons think it needless to produce them.”

“And it being the privilege of the House of Commons, to have the sole examination and determination of all causes relating to their elections as aforesaid:

“It follows, that any attempt to draw such causes to the determination of any other court, is a breach of the privilege of the House of Commons, for which the person offending may be committed by the Commons.

“And here we cannot but take notice of that unreasonable, as well as unnatural, insinuation, whereby your Lordship endeavour to separate the interest of the people from their representatives in Parliament; who pretend to no privileges, but upon their account, and for their benefit; and are sorry to say, they are thus severely reflected on by your Lordships, for no other reason, but for their interposing to preserve the rights of the people, and their liberties, from your Lordships arbitrary determinations.”

Your Lordships fourth resolution is,

“That every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right, by his agents or friends, to apply for, and obtain, a writ of habeas corpus, in order to procure his liberty, by due course of law.”



“The Commons do not deny, that every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right to apply, by his agents or friends, in order to procure his liberty by due course of law, provide such application be made to the proper place, and in a proper manner; as, upon the commitments of the House of Commons (which sometimes are not, as other commitments, in order to bring to trial, but are, in cases of breach of {287} privilege and contempt, the proper punishment of the House of Commons), the application ought to be to that House.

“The Commons are so willing to allow and encourage every Englishman to apply, by his friends or agents, to obtain a writ of habeas corpus, in order to procure his liberty by due course of law, that they have not censured any person merely for applying for such writ of habeas corpus, even in case where, by due process of law, the prisoners cannot be discharged; for the Commons must observe, that in many cases a prisoner cannot, upon a writ of habeas corpus, obtain his liberty, as in cases of commitment in execution, or for contempt to any court of record, or by virtue of mesne process, or the like; and in the act of habeas corpus several cases are expressly excepted.

“And that no person, committed for any contempt or breach of privilege by the House of Commons, can be discharged upon a writ of habeas corpus, or by any other authority than that of the House, during that session of Parliament, is plain from the following precedents:

“23 Maii, 1<sup>o</sup> Jac. I. Jones the prisoner to be sent for hither, and to attend his discharge from the House.

“That the prisoners committed by us, cannot be taken from us, and committed by any other.

“In May 1675, the House of Commons having resolved, “That there lay no appeal to the judicature of the Lords from courts of equity, and that no Member of the House should prosecute any appeal from any court of equity before the House of Lords,” Serjeant Pemberton, Serjeant Peck, Sir John Churchill, and Charles Porter, Esquire, were committed to the custody of the Serjeant of the House, for breach of privilege, in having been of counsel at the Bar of the House of Lords, in the prosecution of a cause depending upon an appeal, wherein Mr. {288} Dalmahoy, a Member of the House of Commons, was concerned. But the Serjeant having been by force prevented keeping them in custody, the Commons did, the 4th June 1675, acquaint the Lords, at a conference, as followeth, (videlicet):

“We are further commanded to acquaint you, That the enlargement of the persons, imprisoned by order of the House of Commons, by the Gentleman Usher of the Black Rod, and the prohibition, with threats, to all officers and other persons whatsoever, not to receive or detain them, is an apparent breach of the rights and privileges of the House of Commons; and they have therefore caused them to be retaken into the custody of the Serjeant at Arms, and have committed them to the Tower.”

“The said counsel were afterwards committed to the Tower, for a breach of privilege, and contempt of the authority of the House.

“And the House being informed, “That the Lords had ordered writs of habeas corpus, for bringing the counsel to the Bar of their House,” the Commons passed the following resolutions:

“On 7th June, 1675. Resolved, nemine contradicente, That no person, committed for breach of privilege by order of this House, ought to be discharged, during the session of Parliament, but by order of warrant of this House.

“Resolved, nemine contradicente, That the Lieutenant of the Tower, in receiving and detaining in custody Sir John Churchill, Serjeant Peck, Serjeant Pemberton, and Mr. Porter, performed his duty according to law; and for so doing, he shall have the assistance and protection of this House. {289} “Resolved, nemine contradicente, That the Lieutenant of the Tower, in case he hath received, or shall receive, any writ, warrant, order, or commandment, to remove or deliver any person or persons committed for breach of privilege, by any order or warrant of this House, shall not make any return thereof, or yield any obedience thereunto, before he hath first acquainted this House, and received their order and directions how to proceed therein.

“Ordered, That these resolutions be immediately sent to the Lieutenant of the Tower.”

“Afterwards the Lieutenant of the Tower gave the House an account, “That he refused to deliver the Counsel, upon the Lords order, signified to him by the Black Rod, because they were committed by this House; and that, after he had received the votes of this House, he had writs of habeas corpus brought him, to bring the Counsel to the House of Lords at ten of the clock the next morning;” and humbly craved the direction of the House what to do.

“Mr. Speaker intimated to him, “He should forbear to return the writs.”

“And the House came to several other resolutions:

“9th June, 1675. Resolved, nemine contradicente, That no Commoner of England, committed by order or warrant of the House of Commons, for breach of privilege, or contempt of that House, ought, without order of that House, to be, by any writ of habeas corpus or other authority whatsoever, made to appear and answer, and do and receive a determination in the House of Peers, during the session of Parliament wherein such person was committed.

“Resolved, nemine contradicente, That the order of the House of Peers, for the issuing out of writs of habeas corpus, concerning Serjeant Peck, Sir John Churchill, Serjeant {290} Pemberton, and Mr. Charles Porter, is insufficient and illegal; for that it is general, and expresses no particular cause of privilege, and commands the King’s great seal to be put to writs not returnable before the said House of Peers.

“Resolved, nemine contradicente, That the Lord Keeper be acquainted with these resolutions, to the end that the said writ of habeas corpus may be superseded, as contrary to the law, and the privileges of this House.

“Resolved, nemine contradicente, That a message be sent to the Lords, to acquaint them, “That Serjeant Peck, Sir John Churchill, Serjeant Pemberton, and Mr. Charles Porter, were committed, by order and warrant of this House, for breach of the privilege, and contempt of the authority, of this House.”

“22d March, 1697. Charles Duncombe, Esquire, having been committed by order of this House, and afterwards discharged by order of the House of Lords, without the consent of this House;

“Resolved, That no person, committed by this House, can, during the same session, be discharged by any other authority whatsoever.

“Resolved, That the said Charles Duncombe be taken into the custody of the Serjeant at Arms attending this House.”

“These are some instances, among many others that might be produced upon this occasion; and the last cannot but be particularly remembered by some noble Lords, that then sat in the House of Commons, and strenuously asserted this privilege of the Commons.

Your Lordships fifth resolution, (videlicet):

“Resolved, That for the House of Commons to censure or punish any person, for assisting a prisoner, to procure a writ of habeas corpus, or, by vote or otherwise, to deter men {291} from soliciting, prosecuting, and pleading upon, such writs of habeas corpus, in behalf of such prisoner, is an attempt of dangerous consequence, a breach of the many good statutes provided for the liberty of the subject, and of pernicious example, by denying the necessary assistance to the prisoner, upon a commitment of the House of Commons, which has ever been allowed upon all commitments by any authority whatsoever.”

“The Commons take this to be another instance of your Lordships breach of your own rule: Your lordships being no judges of their privileges; though, by this resolution, you seem to make a judgment, without having heard, and knowing, what the Commons have to alledge for them.

“This attempt, therefore, in your Lordships, is of dangerous consequence, tending to a breach of the good understanding between the two Houses, and of most pernicious example. The Commons late proceedings, in censuring and punishing the Counsel that have pleaded upon the return of the writs of habeas corpus, in behalf of these prisoners, if duly considered, is a great instance of the temper of the House of Commons. For this House did not interpose, when the prisoners applied to the Lord Keeper and the Judges to be bailed; and had the lawyers shewn so much modesty, as to have acquiesced in the opinion of the Lord Keeper and all the Judges, that these prisoners were not bailable by the statute of habeas corpus, the Commons had never taken any notice of it; but they would not rest satisfied without bringing on again this case: and the privileges of the Commons were, with great licentiousness of speech, denied and insulted in open court, not with any hope or prospect of relief of the prisoners (who in this whole proceeding, have apparently been only the tools of some ill-designing persons, that are contriving every way to disturb the freedom of the Commons elections), but in order to vent these {292} new doctrines against the Commons of England, and with a design to overthrow their fundamental rights. And, after so much inveteracy shewn to the Commons, they could not do less than declare the abettors, promoters, countenancers, or assisters, of a prosecution so carried on, to be guilty of conspiring to make a difference between the two Houses of Parliament, to be disturbers of the peace of the kingdom, and to have endeavoured, as far as in them

lay, to overthrow the rights and privileges of the Commons of England in Parliament assembled.

“And the Commons, in committing the lawyers, have only done that right to their body, which your Lordships have frequently practised in case of personal privilege, where any single Member of your Lordships House is concerned.

Your Lordships last resolution, (videlicet):

“That a writ of error is not a writ of grace, but of right, and ought not to be denied to the subject, when duly applied for (though at the request of either House of Parliament), the denial thereof being an obstruction of justice, contrary to Magna Charta.”

“The Commons shall not enter into any consideration, whether a writ of error is of right or of grace; they conceiving it not material in this case, in which no writ of error lies: nor was ever any writ of error brought or attempted in the like case before; and the allowing it in such cases, would not only subject all the privileges of the House of Commons, but the liberties of all the people of England, to the will and pleasure of the House of Lords.

“And when your Lordships exercise of judicature upon writs of error is considered, how unaccountable is its foundation, how inconsistent it is with our Constitution (which in all other respects is the wisest and the happiest in the world), to suppose that last resort in judicature and the legislature to be differently placed:

“And when it is considered how that usurpation in hearing of {293} appeals from courts of equity, so easily traced, though often denied and protested against, yet still exercised, and almost every session of Parliament extended:

“It is not to be wondered, that, after the success your Lordships have had in these great advances upon our Constitution, you should now at once make an attempt upon the whole frame of it, by drawing the choice of the Commons representatives to your determination; for that is a necessary consequence, from your Lordships encouraging the late actions, and your countenancing a writ of error, which, if allowed upon such a proceeding, might as well be introduced upon all acts and proceedings of courts or magistrates of justice. And though the present instance has been brought on under the specious pretence of preserving liberty, it is obvious, the same will as well hold to controul the bailing and discharging prisoners in all cases.

“And the Commons cannot but see how your Lordships are contriving, by all methods, to bring the determination of liberty and property into the bottomless and insatiable gulph of your Lordships judicature; which would swallow up both the prerogatives of the Crown, and the rights and liberties of the people; and which, your Lordships must give the Commons leave to say, they have the greater reason to dread, when they consider in what manner it has been exercised; the instances whereof they forbear, because they hope your Lordships will reform; and they desire rather to compose the old, than to create any new differences.

“Upon the whole, the Commons hope, that, upon due consideration of what they have laid before your Lordships, you will be fully satisfied they have acted nothing in all these proceedings, but what they are sufficiently justified in, from precedents and the known laws and customs of Parliament; and that your Lordships have assumed and

exercised judicature contrary to the known laws {294} and customs of Parliament, and tending to the overthrow of the rights and liberties of the people of England.”

“Some of the arguments that were made use of by the Lords, in their debates, and at the free conference, to maintain their own resolutions, and answer the objections of the Commons.

The House of Commons made two objections to the manner in which the Lords proceeded at the first conference. They said, “They had anticipated all debates, by delivering positive resolutions; whereas this is the proper and ordinary method of proceedings between the two Houses: When one House has formed an opinion, they communicate it to the other, to the end that, if it be found reasonable, it may be approved; or if, upon examination, it be disliked, the causes of the disagreement may be shewn, in order to convince the other House of their mistake.”

“The second objection made to the manner of the Lords proceedings was, “That the resolutions were grounded upon the petitions of criminals, who had fallen under the just displeasure of the Commons; and upon a printed paper, not regularly before the House of Lords.”

“As to the first part of the objection; the Lords did (as just Judges always do) consider the matter of the petitions, and not the person of the petitioners. And, as to the second part, the Lords said, “The printed paper, mentioned by the Commons, was the votes of the House of Commons, of the 24th of February, signed by the Speaker. If the Commons had disowned that paper, there had been some weight in this objection; but, if they think it regular to print and publish their votes to the people, the Lords will always think it regular to take notice, and make use of those papers, as they see occasion. And it seems strange, for the Commons to object to the taking notice of their votes, when the only {295} colour they have hitherto pretended for their first displeasure at the five prisoners was, that they did not take notice of some votes of theirs (which they call their declaration) made during their last session. And the printing their votes is the only method they have yet taken, for the promulgation of the new laws they take upon them to make.

“The Lords had no occasion to say any thing in defence of their first resolution, because the Commons did not think fit to avow in words, that they had a power to create new privileges by their votes; though they have manifestly attempted it in practice, and particularly in the case of the five prisoners.

“As to the unjust reflections which the Commons made upon the House of Lords, as if they had entertained original causes, and were guilty of some encroachments in hearing appeals from courts of equity;

“The Lords avowed their claim of a jurisdiction in hearing the determining appeals from courts of equity; and could shew a continued exercise of it, more ancient than the determination of elections in the House of Commons, which yet the Lords do not go about to call in question. But they deny their having meddled with any original causes, or that the case particularly mentioned by the Commons was at all of that nature.

“The Lords did not understand what the Commons meant, by saying “the Lords had founded their second resolution upon an extra-judicial vote.” The judgment, in the case of Ashby and White, was given with great deliberation, and founded upon

undeniable reasons, and unquestionable authorities; and the Lords condescended so far in that matter, as to direct the state of that case, and the grounds of that judgment, to be drawn up and printed.

“The second resolution of the Lords consists of two assertions:

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“First, That everyman, who apprehends himself to be injured, has a right to seek redress by action at law.

“Secondly, That the prosecuting actions at the common law, against any person not entitled to privilege of Parliament, is no breach of privilege.”

“What the Commons objected to the universality of the first part of that resolution, as if it would destroy all distinctions of courts, and make a confusion of jurisdictions, did arise only upon a plain mistake. The Lords mentioned actions in general, without confining what they said to actions at common law, or affirming that actions for all sorts of injuries may be brought in any one court.

“As to the insinuation, “That the Lords had no other aim, than to extend their own jurisdiction, by the seeming regard and tenderness they shewed for the rights and liberties of the people:” the answer is, “The only just way of interpreting men’s meaning, is by observing what they act.”

“The Lords have acted with true regard to liberty and property on this occasion, as well as in all others. They have voluntarily owned themselves to be restrained; at the same time they desire the Commons not to go about to create new privileges: the Lords claimed nothing new; and the Commons cannot with reason desire them to give up, what the law and the Constitution have placed in them, the judicature in the last resort.

“The principal thing insisted upon by the House of Commons against this resolution was, “That there are privileged cases, as well as privileged persons;” but they did not think fit to give any instances of such privileged cases as were any ways applicable to the matters in dispute; that is, that were so entirely of the cognizance of the House of Commons, that the bringing an action at common law in those cases was a contempt to the House of Commons: and, unless that could be done, this distinction of privileged {297} cases from privileged persons, will have no weight to justify the commitment of the five Aylesbury men. If men mistake, and bring actions in Westminster Hall for matters cognizable in Parliament, so that they can have no relief in the courts below; it does not follow from thence, that they ought to be committed for breach of privilege on that account.

“The determining of elections is admitted to be the business of the House of Commons; and yet it is certain, that the prosecuting actions at common law, for false or double returns, was never thought to be contempt to the House of Commons, nor was any body punished or committed upon that account in the cases of Sir Samuel Bernardiston and Mr. Onslow.

“The freedom of speech in Parliament is the most necessary and the most acknowledged privilege of the House of Commons; and yet, when an information was brought in the King’s Bench, against Sir John Eliot and others, for words spoken in the House of Commons, and judgment was given against them in that court, the Commons did not think it sufficient to condemn that judgment by votes of their own House, but brought those votes up to the Lords, and desired their concurrence; which was given:

and immediately thereupon a writ of error was brought in Parliament, and the judgment regularly reversed there. And it cannot be denied that, upon this occasion, the most valuable privilege of the House of Commons was brought under the judgment of the Lords, as well in their judicial as in their legislative capacity.

“The case of Richard Strode, and the Act of Parliament which passed upon that account in the fourth year of King Henry the Eighth, was that which was principally insisted on by the House of Commons, in the case of Sir John Eliot, for justifying their undoubted privilege of freedom of speech, and shewing the injustice of what was done in that case by the court of King’s Bench.

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“The case of Strode might be used by the Lords as another instance, to shew that this distinction of privileged cases will not serve the purpose of the House of Commons, to justify the commitments of the Aylesbury men. He was prosecuted in the Stannary Courts, for words spoken, and bills offered, in the House of Commons, in order to be passed into laws; and upon that account was imprisoned, and condemned to pay considerable sums, and petitioned the House of Commons to be relieved in that matter: The House of Commons did not then pretend to put a stop to those suits, or to commit the persons concerned in them; but thought the only remedy, against those prosecutions and others of like sort, was, to prepare a bill, in order to be passed into a law, for making void the judgments against Strode; and took that occasion, by the same bill, to declare the law in general, and to give an action to all persons who should be afterwards vexed or molested for the like causes, in which they should recover treble damages and costs of suit.

“There is no case that can more properly be called a privileged case, with respect to the House of Peers, than the determining of peerage: and yet, if that matter comes to be incidentally a point in any case depending in the courts in Westminster Hall, they must proceed to determine of it as they think the law to be; and the Lords have not gone about to hinder it, nor found fault with them upon that account.

“The courts in Westminster Hall must of necessity judge of the privileges of Parliament in many cases. When any person prays a writ of privilege (which was always the way anciently when men desired the benefit of privilege, and it is often practised yet upon occasion); the court where the writ is prayed must judge whether the party has right to privilege or not.

“Suppose the Serjeant of the House of Commons should kill, or be killed, in the execution of a warrant of the House: upon an {299} indictment for murder, the court must necessarily judge of the legality of the warrant.

“The Commons supposed cases, of affronts to the person of the Speaker, or of reproachful words spoken of the whole House of Commons, as instances of what they called privileged cases:

“There is no doubt but either of these cases would be contempts, and such as might be punished by the House. But most certainly these were also such offences as might be prosecuted in Westminster Hall; and if the Attorney General should bring informations upon them, it could never be pretended that he would be guilty of a breach of privilege of the House of Commons.

It was urged, “That in privileged cases, the votes of the House of Commons were like prohibitions to the ecclesiastical courts; and that, when prohibitions were served upon the Judges in the admiralty or ecclesiastical courts, it was a contempt for them to proceed farther.”

The answer to this is, “That prohibitions to ecclesiastical and admiralty courts were founded upon a particular reason: The proceedings in those courts are according to the civil or canon law; and therefore it was necessary, to preserve the Constitution, and restrain those courts from making invasions upon the common law, that a guard should be set upon them, and a power fixed to restrain them: and this power is lodged in the courts of Westminster Hall; who are trusted with the issuing writs of prohibition to the ecclesiastical and admiralty courts, from time to time, upon complaints made to them; and these writs of prohibition must be served personally upon the Judge of the admiralty or the ecclesiastical Judges, who will be liable to attachments if they proceed, after such service, until such time as they have shewn the nature of the suit to the courts from which the prohibition issued; and if the suit be properly of ecclesiastical or admiralty cognizance, the court must {300} grant a consultation, whereby they are at liberty to proceed again. This is a known and settled method of legal proceedings. But the votes of the House of Commons were never yet resembled to the Queen’s writs; no court is bound to take notice of them; on the contrary, the Judges are bound not to take notice of them, but to act according to the known law. Nobody has power to prohibit the courts in Westminster Hall; the Judges there are sworn to proceed to do justice, notwithstanding any command under the great seal or privy seal, or by any other authority whatsoever. And the subjects of England have no longer an inheritance in the common law, if the Judges are to take notice of the votes of either House of Parliament, and regulate their judgments accordingly.

“The votes would not always be uniform in either House; and it appears, by the present dispute, that the two Houses might often differ in matters of importance: and the Judges would be under difficulty which of the Houses to obey; and if they yielded obedience to both, they would be obliged to act very contradictorily.”

What was said against the third resolution of the Lords, was, first, “That thereby the Lords took upon them to judge of their privileges.”

To this it was said, “That if the House of Commons, under the name of privilege, would proceed to do things inconsistent with the known prerogatives of the crown, with the known privileges of the Lords, contrary to the laws, or destructive to the liberties of the people, the Lords were bound to tell them, These are not the Commons privileges.” If, by saying, “They only are judges of their own privileges,” they would deprive the Crown and the Lords from taking notice of the manifest innovations, and objecting to them as there was occasion, the {301} Commons might take to themselves the whole government without controul.”

“They were challenged to produce precedents, to warrant the commitments of men only for proceeding in suits at law against those who had done them wrong, and had no pretence of privilege.

“The Lords did not dispute the power of the Commons in examining and determining the elections of their own Members, nor of inquiring into all matters relating to the determination of that question, particularly their examining into the



qualifications of electors; and agreed, that what they determined would be binding as to the right of the Member to sit in the House: but that determination would not bind the right of any elector; for he was no party to that dispute of the election; he was not heard for himself, nor was his cause in agitation before the House; and the action brought by the elector has no manner of relation to the sitting of the Member, but is only for recovery of damages upon account of the particular injury done him by the officer at the election.

“Suppose there was a contest about two persons, which was mayor of a town: The court where that cause was tried, in order to a determination of the right, must perhaps examine into the rights of those who voted. But would it be pretended, that the electors would be bound by the opinion of the court in that case; and that they could not bring their actions, to recover damages against the officer who willfully refused their votes, however the question was decided as to the mayor? So that it was begging the question, to pretend that, because the House of Commons can try the right of the Member to sit, therefore they only have a power to decide finally the rights of the several electors.”

There is no weight in the objection, “That, if these suits were allowed, the officers who are obliged to take the poll would be exposed to multiplicity of actions.”

“The law is so in all cases of elections of officers. He who {302} is to take the poll is bound to do his duty at his peril. If he acts with an honest intention, though he should be guilty of a mistake, he is in no danger, for no jury ought to find him guilty. But if an officer willfully and maliciously refuses to admit those who have right to give their votes, every one of them may sue him, in any proper court, as they see cause; and the more he wrongs, the more he ought to suffer. And which would be the greater mischief, that the officer who does injustice should be subject to actions; or that he should be at liberty to reject as many rightful votes as he thinks fit, without being liable to make any reparation? And which is the part a House of Commons ought to take?”

The Lords observed, “That the natural order of things seemed to be quite inverted in this dispute; the House of Commons were taking part against the freedom of law, against the liberty of men’s persons, and against the right of their electors.”

“As to the several precedents insisted upon, they conclude nothing to the present question, every one of them relating to the right the House of Commons claims of determining the elections or returns of their Members, which they are in the quiet possession of; and the general expressions, which are found in the relation of these precedents, can be understood only with respect to the subject matter of those cases.

“The first precedent, in the 28th of Queen Elizabeth, is of a double return for the county of Norfolk. Though the Lords do not deny that such cases are proper to be determined by the House of Commons, yet this precedent does not go far towards asserting their right; for, in that case, the second writ was quashed by the Chancellor and Judges, before the determination made by the House of Commons: and in the citing this precedent, they have not rightly stated the words of the Queen’s message, or of the resolutions of the House of Commons, as will appear by Sir Simon {303} D’Ewes’ Journal, and they could not say they had any original Journal of that time.

“As to the second precedent they cited, which is the case of Sir Francis Goodwin, in the first year of King James the First, which they made use of to prove their own power of determining elections, and that they were not to give an account of their

proceedings therein to the Lords; it appears by their own Journal, that they had not stated that case fairly; and that in fact the Lords, at the desire of the Commons themselves, were mediators between them and the King in that dispute, and that the Commons at last yielded the point; and, notwithstanding their determination in favour of him, submitted that a new writ should issue, for choosing a Member in the place of Sir Francis Goodwin; and though there be mention in the Journal, of a letter wrote by Sir Francis Goodwin, desiring that his third writ should issue, yet that could make no difference in the case; for it will not be pretended that a Member could give up the right of his electors, and the judgment of the House.

“But all this makes nothing to the justification of the commitment of the Aylesbury men.

“The precedent cited in 1672, relates only to the right of issuing writs for the election of Members during the continuance of the Parliament; the ordering of which was voted to be in the House of Commons only, and is not at all disputed at this time.

“The Lords never disputed the Commons power of committing for breach of privilege, as well persons who are not of the House of Commons, as those who are. The question is only, “Whether a matter, that has no relation to the sitting of any Member in Parliament, may be made a breach of privilege, by being called so in a vote, or having that name given to in a warrant of commitment;” that is, in other words, “Whether they have power to create to themselves new privileges by their votes,” for they {304} will never be able to prove an usage of committing men for resorting to law in such cases; and it will be hard for them to convince those whom they represent, that this arbitrary oppressing poor men is, or can be understood to be, only an interposing to preserve the rights and liberties of the people of England.

“The Commons did not deny the Lords fourth resolution, otherwise than by saying, “That the application was to be made to the proper place; and that, where the commitment is by the House of Commons, there is no place to apply to for liberty, but that House.”

“The Lords thought this to be a position very fatal to liberty, for it places an arbitrary and absolute power of commitment in the House of Commons. Tyranny may be in many, as well as in a single person. The thirty tyrants of Athens carry that name with as heavy an imputation as any single person.

The Lords never said, “That every prisoner who brings his habeas corpus ought to be discharged, or that there are not cases excepted out of the habeas corpus act.” What they insist upon is, that a prisoner, brought before a proper court, by habeas corpus, where it does appear that the matter he stands committed for is no crime in law, ought to be discharged, by whatsoever authority he was committed, or by whatsoever name the fact is called in that commitment.

“Several precedents were mentioned by the Commons. First the case of one Jones; but it did not appear who he was, nor what his case was, nor who would have taken him from the Commons; and therefore there can be no pretence to draw any inference from such a precedent.

“The Lords wondered to find any weight laid on the votes passed in the year 1675. It is well known, the kingdom was at that time generally grown weary of that Parliament, which had been continued above thirteen years; and there was a great

number in {305} both Houses who watched for any advantage to make their longer continuance impracticable.

“And there happening a question at that time “Whether there might be a proceeding in appeals before the House of Lords, in cases where Members of the House of Commons were parties;” this was so managed, that, in about a month’s time, matters were grown to such a height between the two Houses, that all correspondence was in a manner broken off between them; and they proceeded to make such votes, and to do such acts, from day to day, on either side, as they thought would most provoke.

“The Commons cited some of these votes, which were passed in their House towards the height of the contest; and the Lords might as well have cited other votes of the House of Lords, in contradiction to them, which were altogether as high, and are at least of as much authority, as those of the House of Commons: so that it is hard to imagine what use there can be of citing such precedents, which did occasion two prorogations one after the other, and must always have as bad consequences whenever they are followed.

“The House of Commons took the same exception to the Lords fifth resolution as they did to their third, “That they therein made themselves judges of the privileges of the House of Commons.” And the Lords contented themselves with giving them the same answer.

“What the House of Commons said in respect to their censuring and punishing the counsel who pleaded at the Queen’s Bench bar, upon the return of the habeas corpus, in behalf of the prisoners, seemed very remarkable: “That it was because they were not not so modest as to acquiesce in the opinion of the Lord Keeper and the Judges, that the prisoners were not bailable by the habeas corpus act; and they would not have taken notice of them, but because they would not rest satisfied, but would bring {306} on the cause again; where the privileges of the House of Commons were, with great licentiousness of speech, denied and insulted in public court, without any hopes or prospects of relief of the prisoners, but in order to vent new doctrines against the Commons.”

“This seemed to be a kind of excuse for the committing of the counsel; but it does in no sort agree with the votes relating to this matter, which passed in general terms, and may be cited for precedents hereafter for committing counsel (with a good reason as the votes in 1675) when these secret motives which induced the House of Commons in this case will not appear.

“The vote of the 24th of February, ordered the Committee to examine what persons had been concerned in pleading upon the writ of habeas corpus, not what was said by counsel in their pleadings. And the votes against the several gentlemen of the 26th of February are, “That, by pleading upon the return of the habeas corpus on behalf of the prisoners, they were guilty of breaking the privileges of the House of Commons.”

“It does not appear that there was any complaint of what they said, at least there was no vote against them for their words; and, indeed, if the charge against them had been for words supposed to be spoken, it would have been a most unaccountable hardship to have hurried them into custody, without ever bringing them to the House, to hear their accusation, or to be heard as to what they had to say for themselves.

“It does not appear that these gentlemen were ever heard, or indeed were at all concerned, as to the writs of habeas corpus brought before the Lord Keeper and the Judges in the vacation time: but suppose they had, and suppose they were satisfied that, as the habeas corpus act was drawn, these men might not be so clearly bailable by the Judges in vacation time, by virtue of these writs which were formed upon that statute; and yet they might {307} be of opinion, that the prisoners had a reasonable prospect of obtaining relief upon writs of habeas corpus brought at common law.

“If they thought so, it was not upon slight grounds, as appeared by the consequence; for the Lord Chief Justice of the court of Queen’s Bench, whose learning and judgment is well known, and as universally esteemed as his integrity, was clearly of opinion that they were entitled to the relief they prayed for their clients.

“The Commons may give what hard words they please to these gentlemen’s appearing to plead in behalf of the prisoners upon the writs of habeas corpus. They may call it inveteracy shown to the Commons, and a conspiring to make a difference between the two Houses, and to disturb the peace of the kingdom. But, after all that can be said, the fact will only be, that four gentlemen, lawyers by profession, retained in a case of liberty upon a habeas corpus brought by five poor prisoners, did their duty in their profession, and, for so doing, were themselves imprisoned by the House of Commons, and denied the benefit of the habeas corpus act; and this the House of Commons called, “doing right to their body.”

“No lawyer has suffered for serving his client, even against the Crown. If the learned in that profession may safely open the law, when the prerogatives of the Crown are in question, it will seem very hard they should be punished for doing it in a case of privilege. To deprive men under restraint of assistance of their friends, exceeds the severity of any court but that of the Inquisition, the very name of which ought to strike all Englishmen and Protestants with horror.

“The last resolution of the Lords was not contradicted by the House of Commons; and therefore the Lords took it for granted, that as it no longer contested, but that a writ of error is a writ of right, and not of grace, consequently that the Commons did no longer insist upon that part of their address, “That the Queen would not give leave for a writ of error.”

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As to what was said by the Commons, “That it was not material, whether writs of error were of grace or not, because they did not lie in the case of the petitioners.” The Lords said, “That whether the writs of error could be maintained or not, in point of law, was not the cognizance of the House of Commons, not the matter in dispute between the two Houses.

*Martis, 13<sup>o</sup> die Martii 1704.*

PRAYERS,

Mr. Bromley reported, That the managers for the free conference with the Lords had (according to order) drawn up what passed at the said free conference; which they had directed him to report to the House: Which he read in his place, and afterwards delivered in at the Clerk’s table.

Ordered, That the said report be entered upon the Journals.

And the same is as followeth:

That the Lords, who appeared as managers, and spoke at this free conference, were the Earl of Sunderland, the Lord Ferrers, the Bishop of Salisbury, the Lord Hallifax, the Lord Wharton, and the Duke of Devonshire, Lord Steward.

That the free conference was begun by the managers for the Lords; who said, This conference was desired, to maintain a good correspondence between the two Houses; which was never more necessary, than at this time.

That the delivering resolutions, at their first conference, was parliamentary; and instanced the resolutions 3<sup>o</sup> Car I<sup>mi</sup>, \\ appears to be so in original \\ which produced the petition of right.

That the Lords look upon the Commons to be a great part of the Constitution, which cannot be preserved, but by doing right to both Houses.

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That every part of the body politic, as well as the body natural, ought to be kept within due bounds: an excess in any member will weaken the whole.

That this Constitution is the wonder of the world, and glory of this nation: 'tis founded upon liberty, and property; and the House of Commons hath been a great fence and bulwark of liberty.

That the Lords resolutions are very well founded, and justified by the laws of the land; as is their judicature in this case.

That it was proper for them to receive the petitions, and make these resolutions thereupon.

That the Lords are the great court of judicature; and when the courts below have differed in opinion, there has been resort to the Lords for their judgment; as in the case of kindred of half blood claiming shares of intestates estates.

That, when such a complaint comes before the Lords, they ought to give their opinion as to the law of the land; and that was the foundation of their present resolutions.

That the first resolution was, in effect, agreed to by the Commons, though they go off to foreign matters, of which the Lords take no notice.

That the law of the land can be altered only by the legislature.

That the second resolution asserts the subject's redress by action at law, &c.

That all Constitutions have reckoned this their safety, that every man, from the highest to the lowest, hath the protection of the law.

That, according to our Constitution, the subject may contest his right with the Crown, and upon equal terms, with that respect which is due.

That this resolution only asserts the right, does not state the respective {310} courts, where the redress is to be had: if the party mistakes the court, he is punished by costs of suit.

The term of "privileged causes" is new, and the distinction unknown.

To support the third resolution, it was urged.

That the breach of privilege was not well grounded.

That it belongs to the Crown to make declarations. The Commons did indeed make ordinances; and, when their Prince was murdered, they came to declarations.

That a law, without promulgation, cannot have force to make an offence.

The liberty of men's persons is the greatest privilege, and not to be taken away, but in known cases: the invading of it was shook the best Constitutions.

That the taking away the liberty of one mean person, once endangered the government of Rome.

That both Houses may commit for breach of privilege, but cannot declare any thing to be a privilege, without good grounds; nor, consequently, make any thing a contempt, that is not known to be so.

That commitments or censures have not been usual upon actions at law, though such actions have brought the proceedings or privileges of either House in question.

That in the case of freedom of speech, which is the greatest privilege, there was a judgment in King Charles the First's reign, in the heat of those times, against some Members for speeches in Parliament. This the Commons first condemned, and then by conference brought it before the Lords, who came to a resolution that it was erroneous, and desired the Lord Hollis to bring his writ of error; and thereupon it was reversed by the Lords, in the time of Car. II. which shews the care the Lords had of the Commons privileges.

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That in Soames and Bernadiston's case, the commons did not concern themselves only in support of the action, when in 1678 they examined the judgment of reversal as a grievance.

That the Lords had not interposed in any suits, which concerned the proceedings of their House.

That the Earl of Banbury (as he was called) was by the Lords adjudged to be no Peer. This was examined in the King's Bench, where, in abatement of an indictment of murder against him, as Charles Knolles, Esq; he pleaded his title of an Earl; and, in avoidance of that, the order of the Lords was replied, and was examined by the court, and disallowed.

That the late Bishop of St. David's was prosecuted in the spiritual court, and deprived, though a Member of that House; and the Lords did not interpose.

That it is the wisdom of all governments to have the law open, and that's the difference between a legal and an arbitrary government.

That the Lords don't meddle with the Commons right of determining their own elections; they have a settled possession of it, which is a right: but if all the rights of subjects concerned in those elections are to be determined there, that will bring all questions of freehold, and the allowance of all charters, and all liberty and property, before them.

That a freeholder of forty shillings per annum has a right of inheritance, to which he is born; and if his vote is denied, he is damnified, and loses the credit of his vote; and if he shall only come to the House of Commons, they can neither give him damages, or costs of suit.

That a freehold cannot be determined by any court, which cannot give an oath.

That the precedents produced, concern only the right of determining elections in general.

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And an action by an elector, for this right of voting, does not avoid the election.

To maintain the fourth resolution, they said,

That it may be lawful for a man to apply for his liberty, where he cannot have it.

That the proceedings in 1675, produced as a precedent in this case, were upon a matter contested between the two Houses, and resolved differently in the Lords House: Topham, and the lieutenant of the Tower, were both turned out; and the ferment was so high, that the Parliament was prorogued, and soon after dissolved.

The fifth resolution is consequence of the fourth.

That the commitment of the lawyers was not for licentious speech, as was insinuated at the last conference, but for pleading upon the return of the writs of habeas corpus.

That 'tis the particular character of that odious court, called the Inquisition, that nobody dares appear for, or resort to, a person imprisoned there, but he is left to the mercy of the court.

That lawyers are not to be answerable for every thing they argue; they are to do their duty for their clients, and the court is to judge of it.

The Commons declining the last resolution is an agreeing it; though not so parliamentary, as it would have been to have agreed it directly.

That the Lords are the only proper judges, whether the writ of error lies before them.

To these arguments your managers answered,

That they agreed the necessity of a good correspondence between the two Houses, especially at this time of common danger, and that the Commons had fully shewn their desire to maintain that good correspondence, by condescending to meet their Lordships at this free conference, although their ancient and fundamental {313} privileges had been called in question, and denied, by their Lordships, and that in an extraordinary and very unparliamentary manner.

That the delivery of resolutions is so far from being the only method of conferences, that the more usual method has been to offer reasons without resolutions; and it would be very difficult to give any instance, before this, of either House delivering positive resolutions at a conference, without the reasons at the same time to support them, and that induced them to make such resolutions.

That the Commons answer to the Lords first resolution is not foreign to the subject-matter of the conference, because the Commons apprehend the subject-matter to be, their Lordships denying the privileges of the Commons on the one hand, and their extending their own judicature beyond its proper limits on the other; and therefore the Commons could not but take notice, how far their Lordships had transgressed in the exercise of an unwarrantable judicature, in contradiction to that very rule they had laid down for the test of the proceedings of the Commons, and by which the Commons had strictly governed themselves.

That the Commons cannot create new privileges; yet in Coke's 13 Reports, fol. 63, 'tis said, the privilege of Parliament, either of the Upper House or of the House of Commons, belongs to the determination or decision only of the court of Parliament; for every court hath a right to adjudge their own privileges, according to the Book of E. 4th. Sir John Paston's case.

To their Lordships arguments for their second resolution your managers answered,

That every person injured hath a right to seek redress; but then that redress must be fought in the place, where the matter is properly cognizable.

To what the Lords offered upon the third resolution, your managers answered,  
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That matters of election do not belong to the courts below, but only to the House of Commons, which hath been in long possession of them.

That there was an Act of Parliament, made in the time of King Henry the Sixth, to give an action for a false return of Members to serve in Parliament, because no such action lay at common law, it relating to elections.

That double returns not being within that statute, no action lay in the courts of common law, for making any double return, till the statute 7 and 8 William III.

That, besides the instances given in the answers the Commons gave to the Lords resolutions at the last conference, this distinction, as to privileged case, is fully and undeniably warranted by the statute, made in the 1st year of King William and Queen Mary, intituled, "An Act, declaring the rights and liberties of the subject, and settling the succession of the Crown;" where, among other endeavours of the late King James, to subvert and extirpate the laws and liberties of the kingdom, these are mentioned, "by violating the freedom of election of Members to serve in Parliament, and by prosecutions in the court of King's Bench for matters and causes only cognizable in Parliament."

Besides, that there privileged cases, as well as privileged persons, appears from hence: a prohibition, and afterwards an attachment, lies, for suing in the spiritual court, for a temporal cause determinable in the temporal court. There are divers laws within this realm, of which the common law is but one; as appears in Coke's 1st Inst. f. 11. B. where he mentions, *lex et consuetudo Parlamenti, et lex communis*, as distinct laws.

As there are several laws, so there are several courts and jurisdictions, and several causes proper for those several laws, and several jurisdictions. Of these the high court of Parliament is the first. *Lex et consuetudo Parlamenti*, is a great branch of the {315} Law of England; and many causes are to be determined only by that law, as appears in the Inst. fo. 23.

Of such causes, as are in their nature parliamentary, and to be determined by the law of Parliament, the common law and common law Judges have nothing to do; as further appears, 4 Inst. fol. 14, 15. where the expressions are very suitable to the present controversies.

That the persons persisting in the prosecution of such actions, after prohibition by the Commons, for that such causes belong to their jurisdiction, the committing them for the breach of their privileges in that particular is no more than is done by the common law courts for a like contempt; as, when persons will sue, after a prohibition, to the spiritual courts; and the Commons usual way to defend their privileges, against such invasions, has been by committing the tools and instruments thereof.

It is a fundamental maxim of the law and custom of Parliament, which is the highest and noblest part of the law of England, and particularly adapted to the



preservation of the liberties of this kingdom, that the two houses are independent of one another, and sole judges of their own rights and privileges. That their Lordships did admit the Commons have a privilege to judge of the rights of their own electors to one intent, but not to another; but if the Commons have such a privilege to one intent, they must be judges of it to all intents and purposes whatsoever; and being sole judges thereof, their judgment cannot be legally called in question, either by writs of habeas corpus, writs of error, or otherwise, in any other court; and, consequently, the proceedings in Westminster Hall, and in the House of Peers, and the judgment given there, are all null and void, and coram non iudice.

The Commons commitment, for commencing these actions, is no more than what they, and their predecessors, have in all times practised in cases of breach of privilege.

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In answer to what the Lords had offered upon the fourth resolution, your managers insisted, The application of friends, for the liberty of any person imprisoned, ought to be in a proper place, and in a proper manner; which, in this case, ought to have been only to the House of Commons, and by the petition of the persons they had committed.

That the proceedings in 1675 were so well grounded, that they must be precedents to the Commons to follow at all times upon the like occasions.

To what the Lords offered upon the fifth resolution, your managers answered,

The licentiousness of speech, used by the lawyers, was only mentioned among other particulars of the provocations they gave the House of Commons; but they were committed for pleading, upon the returns of the writs of habeas corpus, in behalf of the prisoners committed by the House of Commons; which the Commons, who are the only judges of their own privileges, take to be a great breach of the privilege of their House.

To the last resolution your managers insisted, That no writ of error likes in that case: and there may be cases, wherein no writ of error lies, was their Lordships opinion in the case upon the late Bishop of St. David's, who brought his writ of error, upon the court's not granting him a prohibition.

The case of Sir Thomas Armstrong, mentioned by their Lordships, was particular, in that the Commons then apprehended he was entitled to a writ of error, within the meaning of the statute of Edward the Sixth.

Your managers further urged, the novelty of the action in the case of Ashby and White, of which no footsteps can be found in any book of laws, or in any record, although we have faithful reports of all memorable cases for four hundred years past, and the occasion of such an action must frequently have happened.

The Lords themselves, when they had no design upon the privileges {317} of the Commons, were of opinion, in the case of Sir Samuel Bernardiston, in the first year of King William, that no such action lay; and there is no one reason can be offered, to maintain this action, but held more strongly in the case of Sir Samuel Bernardiston, as damages, costs, &c. And it is an absurd distinction to say, that in this case the right of election cannot come in question, because the determining the right of the electors doth generally determine the right of the elected, and almost all controverted elections depend upon the qualifications of the electors.

That the Commons had shewn such a disposition to maintain a good correspondence with their Lordships, though their Lordships, in the case of Ashby and White, had, contrary to the judgment of the courts below, allowed the action, upon which the plaintiff had taken out execution, and levied the money, that the Commons took no notice of it, and were willing to let the matter fall, which might occasion any contest in this time of public danger; but when other actions of the like nature were still commenced and prosecuted, whereby all elections would be brought to the determination of the Lords, or at least, in time, so influenced, as that the Lords would in effect chuse the Commons, and thereby the independency of the two Houses would be destroyed, which is the great safety of the Constitution; then it concerned the Commons, who are the representatives of the people, to oppose what would be so fatal to our Constitutions.

The bringing writs of habeas corpus, upon the commitments of the Commons, and a writ of error thereupon, before the Lords, would bring all the privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon such writs of error.

Nay, such writs of error, upon every habeas corpus, would bring the liberty of every Commoner in England to the arbitrary disposition of the House of Lords.

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And if a writ of error cannot be denied in any case, and the Lords alone are to judge, whether the case be proper for a writ of error, then all the Queen's revenue, all her prerogatives, and all the lives and liberties of the people of England, will be in the hands of the Lords; for every felon, burglar, and traitor, will be entitled to a writ of error before the Lords, and they will have even power of life and death.

And by writs of error and appeals, as already exercised, they will have all our properties; by such new invented action they will have all our elections; and by such writs of habeas corpus, and writs of error thereupon, they will have all our privileges, liberties, and even lives, at their determination; who determine by vote, with their doors shut, and it is not certainly known who it is that hurts you.

The novelty of these things, and the infinite consequence of them, is the greatest argument in law that they are not right.

The Commons are not contending for a small thing, but for their all.

Especially, since the Lords have found out a way to distress the Government, by detaining the money, given by the Commons, which must come last to them, because the money bills must begin with the Commons; and if, by that means, they can extort writs of error, where they never were heard of, the Commons must commit the persons employed in all such innovations, or else they must lose, by such contrivances, all that they have.

In the case of Denzill Hollis, Sir J. Eliot, &c. in 1667, the Commons declared the judgment, given in 5<sup>o</sup> Car. I<sup>mi</sup>. to be an illegal judgment, and against the privilege of Parliament; and this they did of themselves, before they acquainted the Lords therewith.

Afterwards, because it concerned the Lords, as well as the {319} Commons, they imparted their resolutions to the Lords, who concurred with the Commons; and the writ of error, which was afterwards brought was at the desire and instance of the Lords,

and not at all by the desire of the Commons; they rested upon their own resolution, that it was an illegal judgment. Vid. Cro. Car. at the end of the book.

The Lords, by way of reply, said further, That this is a cause of liberty and property, and judicial proceedings, which the Commons had endeavoured to stop.

That the conference therefore asked by the Lords, upon the fundamental rights and liberties, was proper.

That they are the same terms the Commons used, 3<sup>o</sup> Car. when their liberties were attacked.

That the true method of conference is not by way of question and answer, but by resolutions; which are not so binding, but if the Lords are convinced by argument, they may retract them.

That the Lords sure may regularly take notice of this printed paper, when it contains such declarations, as all persons are bound to take notice of, at the peril of commitment.

That the right of the House of Commons to determine their own elections is not in question, or intended to be changed; but the two precedents, produced to support them, are very much mistaken.

That the case of Sir Francis Goodwin is not fairly stated, the word “order” being omitted in the Commons answer to the Lords message, relating to the Commons proceedings in this case; which refers to a particular order of the House of Commons, they having before determined that election: That it is not taken notice, that the Lords went with the Commons to the King, and were mediators; and that, at the last, a new writ issued for a new election.

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That in the stating the precedent, 28 Eliz. the Commons have not taken notice that the election was, in the case, determined by the Judges.

That the Commons did not confine their resolution to Armstrong’s case; but it is general and absolute, that a writ of error, in felony or treason, is of right, and not of grace.

That by the writ of error, brought in the late Bishop of St. David’s case, upon the denial of a prohibition, and disallowed by the Lords, it appears, when a record comes improperly before them, they are so just as to dismiss it.

That, instead of proving the law, the consequences are urged; which is not right arguing.

That the question is, Whether the Queen is bound to grant a writ of error? If she is, it will be hard for any body of men to interpose with the Crown, and stop it, to hinder that fiat, which, by the opinion of the Judges, she ought to give:

She is obliged to it by Magna Charta: Nulli negabimus, nulli deferemus justitiam.

That, whether a writ of error lies or not, will afterwards be proper for the judgment of this court, as it is of any other court, where a writ of error is returnable.

That the Commons are very safe, and may depend on the Lords will be as tender of their privileges, as of their own.

That, whatever privileges accrue to the Commons, will accrue to the Lords also: if the commitments of the Commons are free from the cognizance of the Courts below, those of the Lords will be so too.

That 3<sup>o</sup> Car. the Commons maintained, that the measure of persons being bailable, is not from the authority that committed, but from the cause of commitment.

Your managers further observed, this subject-matter was scarce {321} ever in conference before between the Lords and Commons, and will seem strange to posterity.

That the Lords concern for liberty and property cannot be equal with that of the Commons; for the Lords liberty is better fenced, and consequently their property too, than that of the Commons.

The Lords are less interested in the event of this conference, than the Commons, who are the trustees of those who sent them, and are bound in duty and interest, to preserve their liberty and property; and having but a triennial duration, which is at this time near expiring, it is not to be imagined they will infringe what they are intrusted with, and so much concerned to maintain, and that so notoriously, that the Lords should complain, who are much less concerned, but more to be feared, as their designs, as well as honours, may be hereditary.

At the first conference six resolutions were delivered, as matters of undoubted truth and law.

And the proceedings of the Commons are to be tried by these rules, though they were no parties to the making them.

The first is not to be excepted against; only is an insinuation, as if the Commons had practised the contrary; which they are not conscious of.

To the second: There are many injuries, for which no action at law is allowed; as, if a judge gives a wrong judgment, the redress by writ of error is no satisfaction for the damage.

So for other acts of a judge, or court of justice; as denying a writ of habeas corpus, or bail; not action lies, but upon the late statute.

That their Lordships not making any distinction between matters and causes, which were exempt from the cognizance of the common law courts, as being solely cognizable in Parliament, and causes, which were exempt only in respect of the persons sued being entitled to privilege of Parliament, seems to be the occasion {322} of the mistakes their Lordships have entertained in relation to the proceedings of the Commons: that the House of Commons is a court of judicature in many respects, and, such, hath, as well as other courts, causes proper and peculiar to its jurisdiction.

That the law books, and particularly the Lord Coke, speaks of matters of Parliament, which are not to be determined by the common law, but according to the law and usage of Parliament.

“That all matters, moved or done in Parliament, must be questioned and determined there, and not elsewhere,” has been heretofore asserted by the House of Commons, as their ancient and undoubted right, and has been allowed, both by the Judges of law, and by their Lordships; and when the Judges in the King’s Bench, in the fifth year of King Charles the First, upon an information against Sir John Eliot, Mr. Hollis, and others, hold, that matters done in the House of Commons, if not done in a parliamentary way, might be questioned elsewhere, that judgment was afterward reversed in Parliament.

That their Lordships allowed all matters relating to elections, ought to be determined solely by the Commons: and though their Lordships attempted to make a

distinction between the right of elections and the right of electors, yet their Lordships cannot find room for such a distinction, unless they would say, the right and qualification of the electors was a matter not relating to elections.

That by the Parliament Roll, 11 Richard II. it appears, a petition was exhibited by Parliament, and allowed by the King, that the liberties and privileges of Parliament should be discussed by the Parliament, and not by any other courts, nor by common or civil law; and, therefore, when the Judges have been asked their opinions in matters of Parliament, they have answered, that the privileges of Parliament ought to be determined there, and not by any other; as they did in the case of Thorpe, Speaker of the House of Commons, 31 Hen. VI.

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That these matters are not exempt from the determination of other courts in respect of the persons sued, for then they might be determined there, after the time of privilege was expired; whereas it is evident, that such matters and causes cannot be determined in any other courts, than that of Parliament, after the expiration of the time of privilege, any more than before.

That these matters are determinable in Parliament, although the persons prosecuted are not entitled to the privilege of Parliament, as appears by many instances; particularly, by that of the mayor of Westbury, in the eighth year of Queen Elizabeth; who, for taking four pounds, to get a person elected a burgess for that borough, was fined and imprisoned by the House of Commons, although he was not a person entitled to the privilege of Parliament.

That it may as well be said, that an action is maintainable for refusing any of the Lords a right of precedency in Parliament; yet it cannot be imagined the House of Peers would be content, the same should be brought in question in any the courts of law, and decided by a jury of Commoners.

But the same arguments will hold for maintaining such an action, to recover damage for refusing precedency to him that hath right to it, as for maintaining an action to recover damages for refusing to take down upon the poll the vote of an elector; for it may with equal reason be said in both causes, that the plaintiff hath a right; that the defendant refused him that right; that such refusal is an injury; and, consequently, ought to be repaired in damages.

As to the third resolution; the Commons are not accountable to the House of Lords, or any other court, for what they did in that matter.

Their privileges being rights peculiar to that House, what is their privilege, and the breach of it, is only examinable, and to be judged, by themselves.

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The courts of Westminster Hall have that deference for each others judgment, that in commitments for contempt or misdemeanour, which are frequent every term, another court, though superior, will not redress the prisoner by habeas corpus, or otherwise, but he must address to the court that committed him; must less can an inferior court do it.

The House of Commons therefore expected the same deference from those courts, which they pay each other, and also from the Lords House what is due to a co-ordinate jurisdiction; the Commons taking themselves to be superior to any Court in

Westminster Hall, and not allowing any court in this government to be their superior, as their predecessors have done.

The Commons do not intend, by their declaration, to make a new law; but barely declare what the law was, and prohibit any person to act contrary.

The term “declaration” is not peculiar to the Prince, but is a familiar term in Westminster Hall.

The commitment was not for acting contrary to the votes of Commons, but for acting contrary to law, after the law was notified to them by that declaration, and they thereby prohibited to proceed in that course.

To set this in a true light: If a man sues in the admiralty, or ecclesiastical court, for a matter properly cognizable at common law, the party shall not indeed be committed for commencing that suit; but if the defendant in such suit obtains a prohibition, which declares what the law is, and gives the plaintiff notice that his suit is contrary to law, and therefore prohibits him to proceed any further therein, if he does proceed an attachment will issue, to arrest him for breach of the prohibition as it is said, though, in truth, it is for acting contrary to law, after he had been admonished what the law was.

Now there is no difference between the declaration complained {325} of and the prohibition mentioned, but in the name only: both declare what the law is, both admonish the person offending, and both command him not to proceed; so that there is as much reason to complain of a prohibition at law, as of the declaration mentioned in the resolution.

To the fourth resolution; if it respects the prisoners committed by the Commons, they apprehend the application ought to be to their House.

For the fifth resolution; the Commons have the same exceptions to it, as they had to the third resolution: for if counsel, attornies, or solicitors, are prohibited, and act contrary to the order of any court, they are guilty of a contempt of that court, and for such contempt may be taken into custody.

To their Lordships last resolution; it is very true, that in the last reign the House of Commons did so resolve in the cause of Sir Thomas Armstrong, as hath been cited; which case was, that Sir Thomas Armstrong was indicted for high treason, and afterwards fled beyond sea, where he was at the time of the exigent awarded against him; and afterwards, within a year after the exigent awarded, he was brought prisoner into England, and would have a writ of error; but it was denied him; upon which the House of Commons made the resolution mentioned. At the common law, if a person had been guilty of a capital or any other crime, and had been in England at the time of the indictment found against him, but was beyond sea at the time of the exigent awarded, and thereupon an outlawry was had, the person outlawed might at any time afterwards have reversed that outlawry, for that error in fact; the practice whereupon was, that persons guilty of treason would fly beyond sea, and there stay till the witnesses against them were dead, and then return into England, reverse their outlawry, and become safe. To remedy which mischief, was the statute of Edward the Sixth made, which takes {326} away that error in treason, unless the person outlawed rendered himself to the chief justice within a year after the outlawry: within which exception was the case of Sir Thomas Armstrong, as the Commons apprehended; which

was the reason of the resolution. And, in other cases, the practice since that resolution has been otherwise; for in the case of Salusbury, who was attainted of felony for counterfeiting the stamps, a writ of error was denied him, though he petitioned for the same. But if this resolution is aimed at a writ of error, for denying a habeas corpus, or denying to bail, or discharge persons committed by the House of Commons, this resolution is very wide from the purpose; for whether a writ of error be a writ of right, or a writ of grace, in all cases where a writ of error does lie; yet their Lordships resolutions cannot be carried so far as to make a writ of error lie in the case, where there is no judgement pronounced, as there never is in the case of a habeas corpus, or in any thing relating thereunto; for if an habeas corpus is denied, or if granted, and the persons thereupon denied to be bailed or discharged, this is no such judgment, but that the same, or any other court, may grant a habeas corpus, and discharge or bail the person committed.

Your managers added, the Commons hoped it would be no difficulty to convince the Lords, that these resolutions were both unreasonable and unparliamentary, and they have not been much justified; and certainly it cannot be parliamentary or reasonable, for the Lords to condemn the Commons, in the case of their own privileges, when the Lords are no judges of them: and therefore, though the Commons have now entered into this debate with their Lordships, it was never meant to subject their proceedings to the Lords examination, but only to satisfy the Lords, and all mankind, that the Commons have not done any extravagant thing.

That a noble Lord said, they did not intend to interrupt the Commons in the determination of their elections:

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The Commons are beholden to them for that; for otherwise, when they thought fit, they might as well meddle with that, as several other things they have late taken upon them.

The Commons hope their Lordships will consider what the Constitution is, and think it not reasonable, that any part should exceed its due bounds; but there have been great invasions made upon it by their Lordships, and some instances of that kind have been delivered at the last conference; and it would be easy to shew, that the judicature, which of late has been assumed by the Lords, is not consistent with the Constitution.

A writ of error, in this case, the Commons take to be such; and the Commons would be blameable for admitting of it, since no such writ does lie; and the Commons have done well in advising her Majesty not to grant it, since it is against law.

The Commons find no such writ ever brought.

It is said, their Lordships will do right to the Commons upon it; but the Commons can never think it reasonable to trust in liberties of the people of England to their Lordships pleasure; for they that have power to do right, have power to do wrong; and power is so often abused, that the Commons can never suffer the Lords to assume this new power to themselves. Were we certain power could never be abused, an arbitrary, and what is called a tyrannical power, would be the best in the world; for that, not being tied to any rule, would apply the remedies proper in all cases: but since this is not to be expected, the Commons were in the right to stop this writ of error. They find one

thing has brought on another; and therefore, for the future, shall oppose any further progress of this nature.

It was further urged by the Lords, in reply, that, if such a writ of error wants a precedent, it is a new sort of imprisonment has occasioned this.

That the consequences, urged by gentlemen, cannot avail.

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That, if the law be so, nothing but the legislature can alter it.

That it is said, the Lords cannot judge of the privilege of the House of Commons. They don't say they can: there may be no occasion: but from precedents it appears, they have done it by writ of error, and at the desire of the Commons.

That not only the Lords, but all mankind, will judge of what is not their privileges, if they claim that which neither sense, nor reason, nor law, will justify.

That, if the Commons say, to bring an action at law against persons not privileged, is a breach of privilege, all mankind will say it is not.

That this comes upon a petition of five men to the Lords, setting forth, they have been imprisoned by the Commons, for bringing their actions against the constables of Aylesbury, and for suing out writs of habeas corpus, and are at least delayed in a writ of error.

The question lies in a narrow compass;

Whether they have a right to bring their actions at law?

If so, it is injustice to imprison them for doing it; a hardship to deny them writs of habeas corpus, and a greater to imprison their counsel and agents, for endeavouring to procure them their liberty.

That their right is settled by a judgment of law, which will ever remain, till altered by the legislature.

But a declaration of one House, or both Houses, cannot alter the law.

That the Lords intend not to disturb the Commons in their right of judging only as to their own members.

That the material difference is between judging of the right of the electors, and the right of the elected.

And there may be cases, as here, where the election is not in question, and yet the electors receive great damage in being denied their vote.

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That the right of freehold is a man's birthright, and cannot be taken from him but by law.

That if any person be injured by any officer whatsoever, he may be law seek for reparation; otherwise there is a right without remedy; which is no right at all.

In answer to this, your managers said,

This action is of the first impression; and 'tis a good argument, that no such action lies, because none was ever brought before; and especially, because occasions cannot be presumed to have been wanting in every new election of Members to serve in Parliament; nay, many, more justifiable than in the late case of Ashby and White; where the plaintiff was a person likely to become chargeable to the parish, and therefore removed by the order of two Justices. And this, by the way, brings in mind the printed case of Ashby and White, from the report of the Lords committees; where it



is given in answer, “no such action before was brought, that few had such a true English spirit as that plaintiff;” though, it was said, he was then a cobbler, and formerly had been a hostler; and his breast, it seems, was first warmed with this true English spirit, which was rather a spirit of faction.

And it is worthy of observation, that in this case the costs and charges sustained by Ashby, or somebody for him, could not be less than one hundred pounds more than the costs and damages he recovered; so that it was infælix victoria, and no benefit, but a loss, to him.

A noble Lord was pleased to say further, that though he would not pretend to judge of the Commons privileges, yet he might of what was not their privilege. That argument appears very strange; since the Commons say, the matter in question is their privilege; and if the Lords saying it is not, is sufficient to divest them of it, the same method may divest the Commons of all the rest. The Commons are not going about to create new privileges, but continue {330} the possession of those, which their predecessors ever enjoyed and exercised, and which they think neither this nor any other future House of Commons can ever depart from.

The Lords afterwards receded from the generality of their second and last resolutions.

They said, the second, so far as that every one, who apprehends himself injured, has a right to seek redress, was general; but what followed of an action at law, was confined to the present case.

So the sixth, though it was general, was to be understood in this particular case. As to what was said, that none but a superior court can take cognizance of what another does; it was answered,

That when the Earl of Shaftsbury was committed by the House of Lords for contempt, he was brought by habeas corpus to the court of King’s Bench: this was complained of to the House of Lords; but they passed it over, being of opinion, a man might seek for liberty where he would.

The Lords judicature is too sacred a thing to be touched.

Your managers thereupon returned, they wished their Lordships had said that at the beginning; it would have saved much time, and shortened the debates; for the Commons think their privileges as sacred, as the Lords can their judicature.

Your managers proceeded to say,

That as nothing offered at this conference, or the last, was meant to submit or lessen the privilege of the Commons, much less had any thing in the precedents, in the time of Queen Elizabeth, and Jac. I. produced at the last conference, any tendency that way.

And in answer to some objections made to those precedents, your managers said, the Commons did not take upon them to set forth the whole proceedings, which are very long; but though they had not their books there, to make out their quotations, they can depend upon what they have stated, to be true.

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In the precedent of Sir Francis Goodwin’s case, cited by the Commons, there are no omissions, that, duly considered, can make that case less to the advantage of the Commons on this occasion: for if the word “order” be omitted, and taking the answer to

have been, “that they did conceive, it did not stand with the honour and order of the House, to give account of any their proceedings or doings,” that will little alter the case; since it is plain, from the entry on the Journal, the Commons, in returning this answer, had regard chiefly to the precedent then quoted, 27 Eliz. when the Commons refused to give the Lords any reason (though the Lords desired them) for the rejecting, at the first reading, a bill the Lords had sent down to the Commons. The reasons for the Commons proceedings in this case were prepared by themselves, which they did communicate to the Lords; but the Lords were not to add or diminish; and though some Lords were present at the Commons delivering their reasons, there is a material distinction upon the Commons Journals, of those Lords being present as Lords of the Council, and not as Lords of the Parliament.

And the noble Lord, who took notice of the Commons omission in the stating of this case, and pretended to state it fully and truly himself, omitted, that the new writ was ordered to issue at the request of Sir Francis Goodwin, by his letter; which, for the satisfaction of the House, was read, and entered on the Journal, before any question for the new election was made.

In that of the 28th Eliz. the Commons did not at the last conference omit to take notice of the Judges determination; but it is justly stated, as a matter the Commons, in the examination of that case, were informed of, but did not respect; the Commons then asserting themselves to have the sole determination in that case.

Your managers further urged,

Though the Commons do not submit their privileges, it may be {332} proper to ascertain what they claim, with the reason, why they are at this time the more concerned to oppose all attempts upon them.

They do agree, the right of voting may be grounded upon freehold, charter, or prescription; and they do not pretend to draw them from the courts of common law, when, as such, they come there originally, immediately, and directly, in question.

But it is as plain, when the right of voting in an election is the thing originally, immediately, and directly, in question, that is solely cognizable in the House of Commons, whose determination is the standing rule for all places; and if the elections only were examinable by the Commons, and every elector’s vote was examinable elsewhere, the consequence of such different determinations is fully stated, as delivered at the last conference: which common and known difference, of coming originally, or collaterally and incidentally, in question, will answer the case of the Earl of Banbury; where the order of the House of Lords came only incidentally in question, upon an indictment for murder. Nor is here an injury in this case that requires an action, much less damages: the elector’s vote, upon every election, depends upon its own true foundation, as the elector then stands entitled by freehold, charter, or prescription, whether he was entitled, or was allowed, or refused, at any former election, or not.

Nor is damage always necessary to a remedy. That which is specific, and gives the right, is the most noble and complete remedy; damages being only secondary, substituted by way of recompence, where the other cannot be had; as appears by many instances in the law.

The Commons had great reason to assert their ancient right, and withstand these late and new attempts upon the Constitution, which in every step have been unprecedented; viz. the action, the habeas corpus, and the writ of error.

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The action was never known, though the like occasions have been as frequent, as elections; unless these Aylesbury men have more refined notions of their rights and privileges, than others ever had.

As to the habeas corpus, the argument is so much stronger, as liberty is dearer than property.

As to the writ of error; though the Lords resolution is general, they now assert it to be of right only in this case.

As the Commons at the last conference waved the point of a writ of error being of right, or of grace, so they do now, not by ways of admission, but as it is not material in this case.

But thus much may be observed, that this is not the common case, where the question arises and falls under the determination of the Judges of the law, which is of petitions of right, and writs of error, in the courts of Westminster (as that of Sir Thomas Armstrong's was) where the Queen is party: there it is in the room of a suit against the Crown; and, if denied, the party has no remedy.

This petition to the Queen, for a writ of error in Parliament, is properly a parliamentary case, and is the same when the Queen is party, or not; and seems some remnant of our ancient Constitution, where all petitions were to the King in Parliament, or to the King, and his great Council (which was distinct from the House of Peers) and were examined by tryers, whether fit for the Parliament to proceed upon, or not; and to say, that, upon such examination, they could not be rejected, is to say, that examination was insignificant.

And if in this case no writ of error lies, it cannot then be said, that the denying of it is an obstruction of justice, or contrary to Magna Charta.

That a writ of error lies not in any proceeding on an habeas corpus, has been the uniform opinion of former times, as appears {334} in a case of the city of London, 7<sup>o</sup> Jac. reported by the Lord Chief Justice Coke, in his 8th Report, where one under an arrest, for the penalty in a bye-law, brought his habeas corpus; and the Judges took it for a ground, that no issue or demurrer could be joined upon the return, nor could any writ of error lie upon their award; and upon that, as a principle, grounded their resolution, fol. 128.

And that this never came directly in question, is, because a writ of error in such case was never asked, much less had, upon a bare commitment of any court whatsoever; and it is hard to imagine, that there is any lawful resort, or appeal for liberty, left untried at this day, when so many in all times have had occasion to apply for it especially considering the frequent commitments of both Houses of Parliament.

That the Commons are not surprized, to find the Lords make such a shew of submitting their privileges of the courts of Westminster, when it is in order to draw all the rights and privileges of both Houses to their own final determination; and much less, when they consider, how insignificant all courts of justice are rendered, while their Lordships exercise the last resort in judicature.

The several attempts in the way of judicature, which have been made upon the Constitution, are so many reasons for the Commons at last to make a stand.

The very form of writs of error in Parliament is altered in a most material part.

It is still returnable into Parliament generally, and the judgment is entered per curiam Parliamenti.

But where the ancient form, which appears in Rastall's Entries, fol. 302, was, ut de consilio et advisamento Dominorum spiritualium et temporalium, ac Communitatum, in Parlamento nostro existentium, ulterius pro errore corrigendo fieri faciamus quod de jure, &c.

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Of late, as appears by a writ of error, printed in the Lord Chief Justice Saunders' 2d Report, fol. 228. (and agreeable to that are all modern ones) that word "Communitatum" is omitted.

This is only touched, for an instance, that even the highest records, which ought to derive to us our Laws and Constitution pure and intire, have been corrupted.

And to proceed to instance some modern innovations upon our Constitution in point of judicature:

In December, 18 Jac. I. it appears by the Lords Journal, that an appeal to the Lords from a court of equity, was by them acknowledged to be as new and unprecedented, as any of the attempts which occasion the present conference.

Here the Lords interrupted your managers, affirming, that they were restrained from entering into debate of their judicature of appeals from equity, as foreign from the subject-matter of the last conference. But it was answered and insisted by your managers, that this was part of the matter offered at the last conference.

And your managers declared, that they had more to offer, and were ready to proceed upon the subject-matter of the last conference, in such manner as they thought their duty to the Commons of England required, if their Lordships thought fit to hear them: whereupon the Lords did rise, and broke off the conference.

A PETITION of the Governor and Company of Merchants of London trading to the East Indies was read; and Sir Samuel Bernardiston, Sir William Rider, and others, of the Company, being called in, and owning the Petition; and the matter of grievance, and extent of the power and jurisdiction of the House of Lords therein complained of, being debated;

Ordered, That this Petition be referred to the Committee appointed, by the order of the 22d of February last (to consider of the Privileges of this House, and the jurisdiction and manner of proceeding of the House of Lords, and to enquire into precedents concerning the same, as to the case of Mr. Fitton, and such like cases) to take this case also into consideration, in point of grievance and extent of jurisdiction, and to search into precedents concerning the same, and to report it, with their opinions thereon, to the House; and they are to meet this afternoon, in the Speaker's chamber, and to sit *de die in diem*, and speed their report; and it is particularly recommended to //336-1// Mr. Solicitor General to take care of dispatch in this business, and all the Gentlemen of the Long Robe; and Sir William Thompson, Sir John Frederick, &c. are added to the Committee.

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*Die Veneris, 24<sup>o</sup> April, 1668.*

Sir Robert Atkins reports from the Committee, to whom the Petition of the Governor and Company of Merchants of London trading to the East Indies was committed, That the Committee had fully examined the matter, that they found all the allegations of the Petition to be true, and therefore have proceeded to these Votes; which he read, and after delivered the same in at the Clerk's table: which Votes are as followeth, viz.

1. That the proceedings of the House of Lords, upon the Petition of Thomas Skinner, Merchant, against the Governor and Company of Merchants of London trading to the East Indies,—Sir William Thompson, and several other Members of the House of Commons, being Members of the said Company,—are a breach of the Privilege of the House of Commons.

2. That the House of Lords assuming and exercising a jurisdiction, and taking cognizances of the matters set forth and complained in the Petition of Thomas Skinner, Merchant, against the Governor and Company of Merchants of London trading to the East Indies; and their Lordships over-ruling of the plea of the said Governor and Company, put in to the jurisdiction of the said House of Lords;—the said cause coming before the House originally only upon the complaint of the said Thomas Skinner, and the matters in the said Petition complained of, concerning the taking away of the said petitioner's ship and goods, and assaulting his person, being relievable in the ordinary courts of law;—is contrary to the law of the land, and tends to the depriving of the subject of the benefit of the known law, and introducing of an arbitrary way of proceeding.

3. That the House of Lords, in the cause depending before them, upon the Petition of Thomas Skinner, Merchant, against {338} the Governor and Company of Merchants of London trading to the East Indies, allowing of affidavits taken before Masters of the Chancery, and a Judge of the Admiralty, as proof in the said cause, wherein also the Governor and Company had no liberty to cross-examine the said persons making such affidavits; and the House of Lords not granting a commission to the said Governor and Company for the examination of their witnesses, the same being desired by the said Governor and Company, is illegal, and a grievance to the subjects.

The Votes being again read;

Resolved, &c. That the debate of the Report be adjourned, and taken into consideration the first business on Monday morning.

*Die Lunæ, 27<sup>o</sup> April, 1668.*

Ordered, That the Report concerning the jurisdiction of the House of Lords, in the case of the East India Company, be taken into consideration to-morrow morning.

*Die Martis, 28<sup>o</sup> April, 1668.*

Resolved, &c. That the debate of the Report touching the judicature of the House of Lords, in the case of the East India Company, be adjourned till Saturday morning next.

*Die Mercurij, 29<sup>o</sup> April, 1668.*

Ordered, That the matter upon the Report touching the jurisdiction of the House of Lords, in the case of the East India Company, be proceeded in on Saturday morning, as it stands appointed.

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*Die Veneris, 1<sup>o</sup> Maij, 1668.*

Resolved, &c. That Thomas Skinner, Merchant, be sent for in custody of the Serjeant at Arms attending this House, for his breach of Privilege, in commencing and prosecuting a suit by petition in the House of Lords, against the Company of Merchants trading to the East Indies, wherein several Members of this House are parties concerned, and in procuring a judgment therein, and serving the same on the Deputy of the Company, and endeavouring to execute the same whilst the Members are attending the service of this House.

Resolved, &c. That the debate of the matter of the jurisdiction of the Lords, in the case of the East India Company, be the first business to-morrow morning; and that the House, in the next place, read the ingrossed Bill for his Majesty's supply: nothing to intervene.

*Sabbati, 2<sup>o</sup> Maij, 1668.*

The House then proceeded in the consideration of the matter touching the jurisdiction of the House of Lords, in the cause of the Merchants of London trading to the East Indies, and the Petition of the Company was again read.

The Votes of the Committee, to which the Petition was committed, were again read.

The first Vote, as to the breach of Privilege, was read a second time, and postponed.

The second Vote, touching the Lords' jurisdiction, was read the second time.

The Order of Reference from the Lords to the Judges, and the Judges' Certificate, wherein Mr. Skinner, as to the matters {340} complained of in his petition, was relievable in the courts of law and equity, were read.

The copies of the Petition of Mr. Skinner to the Lords, and the plea put in thereto by the Company, were read.

The second Resolve of the Committee was twice read, and debated, and some alterations and amendments proposed thereto.

The last Resolve was twice read, and debated, as also some other matters proposed, on the Petition concerning the assault on the person of Skinner, and the breach of Privilege by Skinner's proceedings.

Resolved, That it be referred to Sir Robert Atkins, Mr. Vaughan, &c. or any three of them, to consider of the whole matter, and to bring in the Votes, altered and drawn up according to the present debates, and the sense of the House thereupon, against this afternoon.

*Post Meridiem.*

Sir Robert Howard reports from the Committee, to whom it was referred to consider of the whole matter of the debate upon the Resolves returned from the Committee to which the Petition of the Merchants of London trading to the East Indies was committed, and to bring in the Votes altered and drawn up according to the debate and sense of the House, That the Committee had drawn up the Resolves accordingly; which he read, and after delivered the same in at the Clerk's table; and the Votes were twice read, and, upon the question, severally agreed: which are as followeth, viz.

1. That the Lords taking cognizance of, and their proceeding upon the matter set forth and contained in the petition of Thomas Skinner, Merchant, against the Governor and Company of Merchants of London trading to the East Indies, concerning the taking {341} away the petitioner's ship and goods, and assaulting his person; and their Lordships over-ruling the plea of the said Governor and Company (the said cause coming before that House originally only upon the complaint of the said Skinner) being a common plea, is not agreeable to the laws of the land, and tending to deprive the subject of his right, ease, and benefit, due to him by the said laws.

2. That the Lords taking cognizance of the right and title of the Island in the petition mentioned, and giving damages thereupon against the said Governor and Company, is not warranted by the laws of this kingdom.

3. That Thomas Skinner, Merchant, in commencing and prosecuting a suit, by petition in the House of Lords, against the Company of Merchants trading to the East Indies, wherein several Members of this House are parties concerned with the said Company in their particular interests and estates—and in procuring judgment therein, with direction to be served upon the Governor, being a Member of this House, or upon the Deputy Governor of the said Company of Merchants—is a breach of the Privilege of this House.

Resolved, &c. That the petition of the Merchants trading to the East Indies, and the two first Votes of this House now passed, relating to the jurisdiction of the Lords, be delivered by a message at the Lords Bar, with reasons for enforcing the said Votes; and it is referred to Mr. Vaughan, Mr. Solicitor General, &c. or any two of them, to prepare and draw up the said reasons.

The House being in a debate whether the Lords shall be desired to suspend or vacate their further proceeding in this business; {342} Resolved, &c. That the further debate of this matter be adjourned till Monday morning next, and to be taken up the first business.

*Die Lunæ, 4<sup>o</sup> Maij, 1668.*

Ordered, That a conference be desired with the Lords, upon occasion of a petition delivered to this House by the Company of Merchants of London trading to the East Indies.

Ordered, That Sir Robert Carr do go up to the Lords and desire a conference.

Ordered, That it be referred to the Committee who brought in the last Votes concerning the jurisdiction of the House of Lords, in the cause of the East India Company, to prepare reasons to be insisted on at the conference to be had with the Lords.

*Post Meridiem.*

Sir Robert Howard reports from the Committee appointed to consider of reasons to be insisted on at the conference with the Lords, concerning the Jurisdiction of the Lords in the case of the East India Company, that the Committee had met, and prepared reasons to be insisted upon accordingly, which he opened to the House.

*Die Veneris, 8<sup>o</sup> Maii, 1668.*

Ordered, That it be referred to the Members that did manage the conference with the Lords, in the case of the Merchants of London trading to the East Indies, to prepare and draw up in writing the reasons and arguments by them insisted on at the conference, in justification of the Votes of this House; to the end {343} the same may be in a readiness to be entered in the Journal of this House.

*Post Meridiem.*

A message from the Lords by Sir William Child and Doctor Crofts:

Mr. Speaker,

The Lords desire a present conference with this House, in the Painted Chamber, upon the subject matter of the last conference.

And accordingly the messengers being called in, Mr. Speaker acquaints them, that the House had agreed to the present conference desired.

Ordered, That the persons formerly appointed to manage the conference, do again attend and manage this conference with the Lords; and that Mr. Comptroller, Sir Thomas Meres, &c. be added to the former managers.

Sir Robert Howard, Mr. Solicitor, Mr. Vaughan, and the other managers of the conference with the Lords, report the proceedings therein, and the Votes of the Lords delivered at the conference; which being read and debated;

Resolved, &c. That the petition of the East India Company delivered to this House, touching the proceedings of the House of Lords in the case of Thomas Skinner, is not scandalous:

Resolved, &c. That the delivery of the said petition of the East India Company to this House, and the entertaining thereof, and the proceedings and Votes of this House thereupon, were no breach of the Privilege, or an encroachment upon the jurisdiction of the House of Lords; but very proper and fit for this House, without breach of the fair correspondency which ought to be between the two Houses:



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The question being propounded, That whosoever shall be aiding or assisting in putting the order or sentence of the House of Lords, in the case of Thomas Skinner against the East India Company, in execution, shall be deemed a betrayer of the liberties of the Commons of England;

The question being put, That that question be now put;

The House divided.

The Noes went out.

Tellers for the Yeas, Sir Rob<sup>t</sup> Carr, 53.

Sir Tho<sup>s</sup> Littleton;

Tellers for the Noes, Sir J<sup>o</sup> Duncombe, 84.

Sir J<sup>o</sup> Talbot;

And so it passed in the negative.

Resolved, &c. That a message be sent to the Lords, to acquaint them that this House doth take notice of the desire of the Lords, at the last conference, for a good union to be kept between both Houses; and that it is the opinion of this House, that the best expedient to preserve such union is, that all proceedings be forborne upon the sentence and judgment of the Lords, in the case of Thomas Skinner against the East India Company; and that Sir Andrew Riccard, Sir Samuel Bernardiston, Mr. Rowland Gwyn, and Mr. Christopher Boone, be set at liberty; this House being unsatisfied with their Lordships reasons offered at the last conference.

*Die Sabbati, 9<sup>o</sup> Maii.*

The House then resumed the consideration of the question before proposed; which being again debated,

Resolved, &c. That whosoever shall be aiding or assisting in putting the order or sentence of the House of Lords, in the case of Thomas Skinner against the East India Company, in execution, {345} shall be deemed a betrayer of the rights and liberties of the Commons of England, and an infringer of the Privileges of this House.

Resolved, &c. That the Votes of the Lords, delivered at the last conference, be kept in the hands of the Clerk of this House, but not entered in the Journal.

*Die Martis, 19<sup>o</sup> Octobris, 1669.*

Resolved, &c. That a Committee be appointed to peruse the Journals of this House, and to state and report how the case in point of Privilege between the two Houses stands, upon the case of the East India Company and Skinner; and that it be referred to Mr. Garraway, Mr. Swynsen, &c.

*Die Jovis, 21<sup>o</sup> Octobris, 1669.*

Mr. Solicitor General reports from the Committee appointed to peruse the Journals of this House, and to state and report the case in point of Privilege between the two Houses, arising upon the case of the East India Company and Skinner, the whole series of the petitions, votes, orders, conferences, and proceedings in that matter, before the adjournment of the House, the 9th of May, 1668; and what hath been done in the House of Lords from the time of the last conference; and that they had not only imposed a fine on Sir Samuel Bernardiston, one of the Members of the East India Company, of three hundred pounds, but also committed him to the custody of the Black Rod, for his pretended crime in contriving and abetting the petition of the

Company to this House; and that upon search in the office of Sir Robert Long, Auditor of the Receipts of the Exchequer, in Mr. Lovyng's office, one of the {346} Tellers, an entry is found upon record, dated the 10th of August, 1668, of the said fine of three hundred pounds imposed on Sir Samuel Bernardiston by the Lords: and it is pretended that one Mr. Loope, clerk to Mr. Lovyng, received the money, and made the bill, upon which a tally was struck for Sir Samuel Bernardiston, and delivered to him that paid the money, whom Mr. Loope says he knows not; and that thereupon Sir Samuel Bernardiston had been set at liberty, by which means the sentence and proceedings of the Lords, and their jurisdiction, seemed to be asserted against the Votes and Privileges of this House, and the liberties of the Commons of England.

In which Sir Samuel Bernardiston seeming to have complied, by submitting to the Lords sentence, and payment of the fine by them imposed, the House being desirous to have an account therein, and being informed that Sir Samuel Bernardiston was at the door, commanded him to be called in; and being called in to the Bar of the House, Mr. Speaker did acquaint him with the proceedings aforesaid, and demanded of him why he had paid the fine, and submitted to the sentence of the Lords' House? Sir Samuel Bernardiston returned his answer to this effect following, viz.

Mr. Speaker,

Whereas it is said that I, Sir Samuel Bernardiston, did pay three hundred pounds upon the Lords sentence against me, I do hereby declare that I did not pay it or any part of it; neither did the East India Company, or any person by their or my order, pay the same, nor do I own thanks to any man for paying it; but if you please, Mr. Speaker, to give me leave, I will give you a narrative of the same.

Upon Saturday the 9th of May, 1668, so soon as the Commons' House (in obedience to his Majesty's commands) had adjourned themselves, I was presently called as a delinquent, upon my knees, {347} to the Bar of the Lords' House, and demanded what I had to say for myself, why the judgment of that House should not pass upon me, for having a hand and being one of the contrivers of a scandalous libel against that House? To which my reply was, that I knew not myself to be concerned in any scandalous libel; but true it was, I did deliver a petition to the House of Commons, in behalf of the East India Company, by their order, being Deputy Governor; and I did it out of no other design than to preserve the Company's interest and estate, according to my oath and duty of my place. Then I was commanded to withdraw, and others were called in. Soon after some of the Lords came to me in their Lobby, and told me the House was highly incensed against me; that I should presently be called in again; and if I did not then submit myself, and own my fault, I must expect the indignation of the House of Peers to fall upon me. And being called in the second time, it was demanded what further I had to say for myself before judgment shall pass against me? When I repeated my former discourse, adding, that I had no design to create any difference betwixt the two Houses, but to preserve the Company's estate; yet, if I had thereby offended their Lordships, I humbly begged their pardon. Being then commanded to withdraw again, was afterwards called in; and being upon my knees, sentence was pronounced to pay three hundred pounds fine to his Majesty, to lie in custody of the Black Rod without bail until the money was paid: and accordingly Sir John Eyton, Usher of the Black Rod, kept me in his custody until the 10th day of August following;

when, at nine of the clock at night, he came to me, and said, "Sir Samuel, I am come to discharge you from your imprisonment; and I do discharge you, and you may now go when and where you please." I then demanded how that unexpected releasement came to pass, and to whom I was beholding for the same? He replied, "You are discharged upon honourable terms; but {348} pray ask me no questions, for I must make you no answer; yet, if I see you to-morrow, after the House is adjourned, I will tell you more: there is a mystery in it, but I have sufficient authority for what I do."

Sir Samuel Bernardiston being withdrawn, and the matter again debated,  
Resolved, That it is the opinion of this House, that Sir Samuel Bernardiston hath in this matter behaved himself as a good Commoner of England.

The House then fell into a debate of some expedients for settling the difference, in point of Privilege and Jurisdiction, between the two Houses; and after several motions, and proposals made,

The question was propounded, That a Committee be appointed to bring in a Bill for settling the difference between the Lords and this House.

But the time not serving for debate thereof;

Resolved, &c. That the debate of this matter be adjourned till to-morrow morning, ten of the clock.

*Die Veneris, 22<sup>o</sup> Octobris, 1669.*

The House reassumed the debate of the matter upon the question propounded yesterday, for appointing a Committee for bringing in a Bill for settling the difference in point of jurisdiction between the Lords and this House; and the matter being long debated;

Resolved, &c. Nemine contradicente, That a Committee be appointed to prepare and bring in a Bill upon the debates of the House; viz. Mr. Solicitor General, Mr. Serjeant Maynard, &c.; and it is recommended to Mr. Solicitor General to take care to expedite the Bill.

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Ordered, That the Clerk of this House do attend the Members, who did the last sessions manage the conference with the Lords in the case of the East India Company and Skinner, and desire them that they would prepare and perfect the arguments and reasons used at the conference, and deliver them to be entered in the Journal of this House.

And that no other Committee do sit in the mean time, but the Committee appointed to prepare and bring in the Bill.

*Die Lunæ, 25<sup>o</sup> Octobris, 1669.*

Sir Thomas Meres reports, That the Committee had considered of the debate of the House, and had penned a Bill to settle the question of jurisdiction between the Lords and this House.

A Bill to settle the question of jurisdiction between the Lords and this House was read the first time.

Resolved, &c. That this Bill be read the second time to-morrow morning.

*Die Martis, 26<sup>o</sup> Octobris, 1669.*

The Bill for settling the question of jurisdiction between the Lords and this House was read the second time.

Resolved, &c. That the Bill be committed to Mr. Solicitor General, Lord Richardson, &c.; and they are to consider of the debate of the House, and how to extend the Bill to the Lords' jurisdiction in criminal matters, and to expedite their report by Friday.

*Die Veneris, 29<sup>o</sup> Octobris, 1669.*

Sir Robert Atkins reports from the Committee, to which the Bill for settling the question of jurisdiction between the Lords and {350} this House, had been committed, several amendments agreed by the Committee to be made to the Bill; which he read, with the coherence, in his place, and after delivered the same in at the Clerk's table.

The amendments were read the first time.

The first amendment was read the second time, and upon the question agreed.

The second amendment was read the second time, and upon the question agreed.

The third amendment was read the second time.

Resolved, &c. That these words "not being a Peer of the realm," be inserted after the word "persons," in the amendment.

Resolved, &c. That the word "examination" be omitted in this amendment.

The rest of the amendments were read the second time, and, upon the question, severally agreed to.

The House then fell into debate of omission of some, and addition of other clauses to the Bill, and some other alterations to be made thereto; and in particular, whether the clause for vacating the judgments against Sir Samuel Bernardiston, and for cancelling and obliterating the Journals and proceedings relating thereto, should stand in the Bill, or be omitted.

The question being put, That the clause do stand in the Bill;

The House was divided.

The Noes went out.

Tellers.

Sir Thomas Meres      142 for the Yeas.

Mr. Vaughan;

Lord Fanshaw,      108 for the Noes.

Sir Thomas Strickland;

And so it was resolved in the affirmative, that the clause should stand in the Bill.

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Resolved, &c. That the Bill be re-committed, upon the debate of the House, to the former Committee; and all that shall come are to have voices; and they are to meet this afternoon, at four of the clock, in the Speaker's chamber, and to send for persons, papers, and records.

*Die Sabbati, 30<sup>o</sup> Octobris, 1669.*

Sir Robert Atkins reports from the Committee, to which the Bill for declaring and ascertaining the jurisdiction of the House of Lords was re-committed, some further amendments to be made, and a proviso to be added to the Bill; which he read, with the coherence, in his place; and after delivered the same in at the Clerk's table; which being twice read, and the words "or forty days" being, upon the question, agreed, and inserted in the second amendment; and these words "bodies politic or corporate," upon

the question, agreed, and inserted in the proviso; with these additions, the amendments and proviso were, upon the question, agreed to.

Resolved, &c. That the Bill, with the amendments and proviso agreed to, be ingrossed.

*Die Mercurij, 3<sup>o</sup> Novembris, 1669.*

An ingrossed Bill, concerning certain proceedings in Parliament, was read.

Resolved, &c. That the said Bill do pass //351-1//; and that the title {352} shall be, An Act concerning certain proceedings in Parliament: and the Lord St. John is to carry up the Bill to the Lords.

*Die Jovis, 4<sup>o</sup> Novembris, 1669.*

Resolved, &c. That Sir Robert Atkins do carry up the Bill, concerning certain proceedings in Parliament, to the Lords.

*Die Lunæ, 22<sup>o</sup> Novembris, 1669.*

A message from the Lords, by Sir William Child and Sir Thomas Estcourt:

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Mr. Speaker,

The Lords have sent you down a Bill//353-1//, intituled, An Act for the limiting of certain trials and causes in Parliament, and Privilege of Parliament; and for future ascertaining the trial of Peers, and all other his Majesty's liege people: to which they desire the concurrence of this House.

Ordered, That this Bill be read on Thursday next, at ten of the clock.

*Die Mercurij, 24<sup>o</sup> Novembris, 1669.*

Ordered, That the reading of the Bill sent down from the Lords, for the limiting of certain trials and causes in Parliament, and Privileges of Parliament; and for the future ascertaining the trial of Peers, and all other his Majesty's liege people; be adjourned till Saturday Morning, ten of the clock.

*Die Sabbati, 27<sup>o</sup> Novembris, 1669.*

The Bill sent from the Lords, for limiting certain trials and causes in Parliament, and Privileges of Parliament; and for the future ascertaining the trial of Peers, and all other his Majesty's liege people; was read the first time.

The question being put, That this Bill be read the second time;

It passed in the negative.

The House falling into debate of expedients relating to the matter of the said Bill;

Resolved, &c. That the further debate thereof be adjourned till Wednesday morning next.

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*Die Mercurij, 1<sup>o</sup> Decembris, 1669.*

Resolved, That the debate appointed for this day, concerning trials and Privileges in Parliament, be adjourned till Saturday morning next.

*Die Sabbati, 4<sup>o</sup> Decembris, 1669.*

The House then, according to former order, resumed the debate of the matter concerning trials and Privileges in Parliament.

The House of Commons being informed, that Sir Samuel Bernardiston, a Commoner of England, has been called before the House of Lords, and hath had a

judgment passed upon him, and a fine imposed, and a record made thereof in the Exchequer, mentioning the fine to be paid;

Resolved, &c. That a conference be desired of the Lords upon the matter aforesaid, and other proceedings relating thereunto; and also upon the proceedings concerning Thomas Skinner and the East India Company.

Resolved &c. That a Committee be appointed to prepare and draw up reasons, to be insisted upon at the conference to be had with the Lords touching the matter aforesaid; viz. Mr. Solicitor General, Mr. Serjeant Maynard, &c.; and the special care of this matter is recommended to Mr. Solicitor General, Sir Robert Howard, and Sir Thomas Lee.

*Die Martis, 7<sup>o</sup> Decembris, 1669.*

Ordered, That the report of Sir Robert Howard, from the Committee appointed to prepare reasons to be used at the conference with the Lords, be heard this day, next after the report from the Committee of Elections.

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Sir Robert Howard reports from the Committee appointed to prepare and bring in reasons to be insisted upon at the conference to be had with the Lords, in the matter relating to the East India Company and Skinner, and Sir Samuel Bernardiston, That the Committee had met according to the commands of the House, and had taken deliberate consideration of the whole matter; but found they were disabled to prepare reasons, without a ground-work of some particular heads agreed by the House, to the justification whereof the reasons might be applied; and that the Committee had prepared some heads, drawn up into five several resolves; which he read in his place, and tendered to the House for their approbation; and the same being again read, are as followeth, viz.

1. That it is an inherent right of every Commoner of England, to prepare and present petitions to the House of Commons, in case of grievance, and the House of Commons to receive the same.

2. That it is the undoubted Right and Privilege of the House of Commons, to judge and determine touching the nature and matter of such petitions, how far they are fit or unfit to be received.

3. That no Court whatsoever hath power to judge or censure any petition prepared for, or presented to the House of Commons, and received by them, unless transmitted from thence, or the matter complained of by them.

4. Whereas a petition by the Governor and Company of Merchants trading to East India was presented to the House of Commons by Sir Samuel Bernardiston and others, complaining of grievances therein—which the Lords have censured, under the notion of a scandalous paper or libel—that the said censure and proceeding of the Lords against the said Sir Samuel Bernardiston are contrary to, and in subversion of, the Rights and Privileges of the House of Commons, and Liberties of the Commons of England.

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5. That the continuance upon record of the judgment given by the Lords, and complained of by the House of Commons, in the last session of this Parliament, in the case of Thomas Skinner and the East India Company, is prejudicial to the Rights of the Commoners of England.

Ordered, That the report delivered in by Sir Robert Howard be taken into consideration, the first business to-morrow morning.

*Die Mercurij, 8° Decembris, 1669.*

The House then resumed the consideration of the report of Sir Robert Howard, of the heads and proposals brought in from the Committee appointed to draw up reasons to be insisted on at the conference to be had with the Lords, in the matter concerning the East India Company and Skinner, and Sir Samuel Bernardiston.

The first head was twice read; and, with the addition of the word "of," upon the question, agreed to.

The second head was read twice; and, with the alteration of the word "retain" for "receive," upon the question, agreed.

The third proposition was twice read, and some amendments made thereto.

The question being put to agree to this proposition;

The House divided.

The Noes went out.

Tellers:

Mr. Morice, ) For the Yeas, 109.

Mr. Steward; )

Sir J° Talbot ) For the Noes, 73.

Col. Reames; )

And so it was resolved in the affirmative.

The fourth proposition was twice read; and the words "under {357} the notion of" omitted, and the word "as" inserted in the stead of it: and the proposition thus amended, upon the question agreed.

The fifth proposition was read twice, and upon the question agreed.

1. That it is an inherent Right of every Commoner of England, to prepare and present petitions to the House of Commons in case of grievance, and of the House of Commons to receive the same.

2. That it is the undoubted Right and Privilege of the House of Commons, to judge and determine touching the nature and matter of such petitions, how far they are fit or unfit to be received.

3. That no court whatsoever hath power to judge or censure any petition prepared for, or presented to and received by, the House of Commons, unless transmitted from thence, or the matter is complained of by them.

4. That whereas a petition, by the Governor and Company of Merchants trading to the East Indies, was presented to the House of Commons by Sir Samuel Bernardiston and others, complaining of grievance therein, which the Lords have censured as a scandalous paper or libel; the said censure and proceedings of the Lords against the said Sir Samuel Bernardiston are contrary to, and in subversion of, the Rights and Privileges of the House of Commons, and Liberties of the Commons of England.

5. That the continuance upon record of the judgment given by the Lords, and complained of by the House of Commons in the last session of this Parliament, in the case of Thomas Skinner and the East India Company, is prejudicial to the Rights of the Commons of England.

Resolved, That the Committee formerly appointed to draw up reasons to be used at the conference with the Lords, be revived, {358} and do sit this afternoon, and prepare reasons and arguments to justify the propositions agreed to, and prepare and propose what is fit to be offered or desired of the Lords; and that these Members following be added to the said Committee, viz. Sir Walter Yonge, Mr. Seymour, &c.

*Die Veneris, 10<sup>o</sup> Decembris, 1669.*

Sir Robert Howard reports from the Committee, to which it was referred to prepare and draw up reasons to be used at the conference with the Lords, in the matter of the East India Company and Skinner, and Sir Samuel Bernardiston, to justify the resolves of this House; and also two propositions thereupon to be made to the Lords, which he read, and after delivered the same in at the Clerk's table; and, the same being twice read, and with some amendment upon the question agreed, are as followeth:

To the first, second, and third, depending on one another:

1. It hath been always, time out of mind, the constant and uncontroverted usage and custom of the House of Commons, to have petitions presented to them from Commoners, in case of grievance public or private; in evidence whereof, it is one of the first works that is done by the House of Commons, to appoint a Grand Committee to receive petitions and informations of grievances.

2. That in no age that we can find, ever any person, who presented any grievance, by way of petition, to the House of Commons, which was received by them, was ever censured by the Lords without complaint of the Commons.

3. That no suitors for justice, in any inferior court whatsoever in law or equity, exhibiting their complaint for any matters proper to be proceeded upon in that court, are therefore punishable criminally, though untrue, or sueable by way of action in any other {359} court wheresoever; but are only subject to a moderate fine or amercement by that court: unless in some cases specially provided for by Act of Parliament, as appeals, or the like.

4. In case men should be punishable in other courts, for preparing and presenting petitions for redress of grievances to the House of Commons, it may discourage and deter his Majesty's subjects from seeking redress of their grievances, and by that means frustrate the main and principal end for which Parliaments were ordained.

To the fourth proposition:

1. That no petition, nor any other matter depending in the House of Commons, can be taken notice of by the Lords without breach of Privilege, unless communicated by the House of Commons.

2. Upon conclusion of the four first propositions, it is further to be alleged, That the House of Peers (as well as all other courts) are, in all their judicial proceedings, to be guided and limited by law: but if they should give a wrongful sentence, contrary to law, and the party grieved might not seek redress thereof in full Parliament—and to that end repair to the House of Commons, who are part of the Legislative Power, that either they may interpose with their Lordships for the reversal of such sentence, or prepare a Bill for that purpose, and for the preventing the like grievance for the time to come—the consequence thereof would plainly be, both that their Lordships judicature would be boundless and above law, and that the party grieved should be without remedy.



As to the fifth proposition;

The Committee refer to the former reasons, offered against the judgment of the Lords against the East India Company, in the last session of this Parliament.

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Propositions to the Lords:

1. That the Lords be desired to vacate the judgment against Sir Samuel Bernardiston, given the last session of this present Parliament.

2. That the Lords be also desired to vacate the judgment against the East India Company, in the case of Thomas Skinner, given by the Lords the last session of this Parliament//360-1//.

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APPENDIX, N° 3. (p. 84.)  
*Extract from Anderson's History of Commerce, p. 248.*  
*England's Annual Revenue.*

"IN tome x, page 113 and 114, of the Fœdera, we have a curious record (well worth transcribing) exhibiting the annual revenue of the kingdom of England, anno 1421, and its application [Declaratio proficuorum regni, et onerum supportandorum]; viz.

*Receipts.*

	£.	s.	d.
"1. The revenue arising from the Custom in the several ports of England, from wool exported	3,976	1	2
"2. The Subsidy on wool (i. e. the inland duty)	26,035	18	8½
"3. The small Customs	2,438	9	1¼
"4. Twelve pence per pound on goods rated ad valorem	8,237	10	9½
Total	40,687	19	9¼

[But the printed record makes the total (by mistake) but £.40,676. 19s. 9d.1/4.; in Roman numerals, XL,DCLXXVI £. XIX Sol. IX Den. Qu.]

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	£.	s.	d.
"5. The casual revenue for one year past, viz. Sheriffs receipts," [for the quit rents, fee-farm rents, &c. were still received and accounted for in the Exchequer by the Sheriffs of counties] "escheats, duties on sale of provisions, and on other necessities, wards, marriages, &c. paid into the Exchequer	15,066	11	1
Total revenue,	55,754	10	10¼

*Annual Payments, viz.*

"1. For the annual (maritime) guard [custodia] of England, 8,000 marks	5,333	6	8
"2. The like for Calais and its marches in war time	19,119	5	10
"3. For guarding the east and west marches of Scotland, with Roxburgh castle, in time of war	19,500	0	0
"4. For the guard of Ireland, 2,500 marks; i. e.	666	13	4

[The smallness of this sum confirms what Sir John Davis and others justly remark, viz. That the entire reduction of Ireland to the laws and government of England, was much neglected now, and long after.]

“5. For the guard of the castle of Frounsake, 1,000 marks; i.e.

666      13      4

“6. For the fees [pro feodis] of the Treasurer, Keeper of the Privy Seal, the Judges of both Benches, the Barons of the Exchequer, and other Officers of the King’s Court

3,002      17      6

“7. To the Collectors and Comptrollers of the King’s Customs and Subsidies in the several ports of England, for their salaries [de regardis] paid at the receipt of the Exchequer

547      0      0

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£.              s.              d.

“8. To sundry Dukes, Earls, Knights, and Esquires, to the Abbess of Shene, and to divers other persons, for their annuities at the Exchequer

7,751      12      7½

“9. To sundry persons for their annuities, out of the Customs of sundry ports of England

4,374      4      3

“10. For fees of the Customers and Comptrollers of the several ports of England, allowed them at the Exchequer yearly

274      3      4

Total yearly payments, according to the particulars

62,235      16      10½

Which total is just £. 10,000 more than this record makes the total to be, viz. £. 52,235. 16s. 10d. ½; probably owing to the sum for the marches of Calais, or else of that for Scotland, being set down £. 10,000 too much.

“And thus” (adds the Record) “the receipts at the Exchequer exceed the payments the sum of £. 3,507. 13s. 11d. ½; out of which saving the following charges are to be supplied, viz.

“1. For the King’s and Queen’s chamber [camera].

“2. For the household of the King and Queen.

“3. For their wardrobe.

“4. For the building of a new tower at Portsmouth.

“5. For the office of the Clerk of the King’s ships [navium Regis]” (i. e. probably only such as were, at any time, in his pay.)

“6. For the keeping of the King’s lions, and the salary of the Constable of the Tower of London.

“7. Item, for the artillery, and divers other necessaries for the King’s war.

“8. Item, for the expence of the King’s prisoners.

“9. For the King’s embassies.

“10. For sundry messengers [pro diversis nunciis], for parchment, and other disbursements and necessaries.

“Item, for the expence of the Duchess of Holland.

“And the following articles will still remain unprovided for, viz.

The old debts of the towns of Harfleur and Calais—Of the King’s wardrobe and household—Of the Clerk of the King’s ships—and, Of the Clerk of the King’s works—For the arrears of annuities or yearly salaries—To the executors of King Henry IVth’s will, for discharging his debts—and lastly, For the present King’s debts, when Prince of Wales.

“This account was laid before the King of Lambeth, by the Lord Treasurer of England, in the presence of the Archbishop of Canterbury, and sundry other Lords spiritual and temporal, and the great Officers of the Crown.”

See also, in the fourth volume of the printed Rolls of Parliament, p. 433, in the 11th and 12th of Henry VI. in the year 1433, a very particular account of the King’s income and expences, under all the several articles, as brought before Parliament by Ralph Cromwell, the Treasurer of England; in order to shew that the King’s expences exceeded his income by the sum of £. 35,000 per annum.

See also, in the fourth volume of the printed Rolls of Parliament, p. 433, in the 11th and 12th of Henry VI. in the year 1433, a very particular account of the King’s income and expences, under all the several articles, as brought before Parliament by Ralph Cromwell, the Treasurer of England; in order to shew that the King’s expences exceeded his income by the sum of £. 35,000 per annum //364-1//.

“MR. PYM did say, he was commanded by the Knights, Citizens, and Burgesses of the House of Commons, to represent to your Lordships their desire and care to preserve a union and correspondence with your Lordships, which may not only express the honour and respect which they bear to this illustrious Body of the Nobility, and the Great and High Court of Peers, but may be effectual to give expedition to both Houses, in those great and urgent affairs for which his Majesty was pleased to assemble this Parliament.

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“The great Privileges belonging to this High Court of Parliament are not airy and matters of pomp, but have in them reality and efficacy; whereby this Great Council of the Kingdom is enabled to perform all those noble functions which belong to them, in respect of the Legislative Power and Consiliary Power, and as they are the great and highest Court of Resort and Judicature in the Kingdom: and these Privileges have been ever dear, and he hoped shall be, to both Houses.

“As there are general Privileges belonging to the whole body, so there are others more peculiar belonging to either House; and of these the House of Commons shall be ever tender.

“For the Court of Parliament is not only a rule, but a fountain of order; and, if any confusion should be brought in here, there would be danger it might from hence be derived to other inferior jurisdictions of the kingdom.

“Among these peculiar Privileges, there is one great Privilege which was acknowledged by your Lordships in the last conference, “That the matter of Subsidy and Supply ought to begin in the House of Commons.”—This (he said) he had no directions to go about to prove by argument or precedent, because it was admitted by your Lordships. The House of Commons do not conceive you vary from your justice, or from your good intentions to them; though, in the proceedings of that conference, your Lordships have been transported beyond the grounds which your Lordships had set to yourselves.

“Your Lordships, in the last conference, have been pleased to affirm, “That, the matter of Subsidy and Supply naturally belonging to the House of Commons, your Lordships would not meddle with it, no not so much as to give advice:” yet after you were pleased to declare, that you have voted in your Lordships' House, “That it was most necessary and fit that matter of Supply should have the precedency of all other business; and, this being done, your {367} Lordships would freely join with them in all things concerning matter of Religion, Propriety of Goods, and Liberty of Parliament.”

“Now, my Lords, if you have voted this, you have not only meddled with matter of Supply, but, as far as in ou lies, \ so in original, including extra spaces \ have concluded both the matter and order of proceeding; which the House of Commons

takes to be a breach of their Privilege: for which he was commanded to desire reparation from your Lordships.

“He said, the House of Commons hath not directed him to propound any way of reparation; not doubting but your Lordships' wisdom and justice will find out a way to make up this breach, and to provide that this precedent may not be prejudicial to the House of Commons for the future.

“He said he was further commanded to let your Lordships understand, that, from the enumeration of those three particulars, Religion, Propriety of Goods, and Privilege of Parliament, the House of Commons do collect that your Lordships have taken notice of some proceedings in their House concerning those particulars; which is a breach of another great Privilege of that House, solemnly established in Parliament, and called “the Indemnity of the Commons.” Whereupon they have commanded him to desire, That, for better maintaining of a good understanding between both Houses, your Lordships would forbear to receive any information, from any whatsoever, concerning the proceedings and conclusions in the House of Commons, till they shall be brought to you by themselves; not doubting but all their resolutions shall be such as shall manifest to your Lordships, and to the whole world, their zeal and faithful endeavours to maintain the greatness and the lustre of his Majesty's Throne, the safety and prosperity of the Kingdom, and the comfort and contentment of both Houses.”

APPENDIX, N<sup>o</sup> 5. (p. 110.)  
*Extracts from the Journals.* (Vol. ix. p. 235.)  
*Bill for an Imposition on Foreign Commodities.*

APRIL 13th, 1671.—The House proceeded to the reading the amendments and clauses, sent from the Lords, to the Bill for an imposition on foreign commodities; which were once read.

And the first amendment sent from the Lords, being for changing the proportion of the impositions on White Sugars from one penny per pound to a halfpenny half farthing, was read the second time and debated.

Resolved, &c. *Nemine contradicente*, That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords.

Ordered, That it be referred to Mr. Attorney General, &c. &c. &c. or any five of them, to prepare and draw up reasons, in order to a conference to be had with the Lords, to shew them why the Commons do not agree with their Lordships amendments and provisos to the Bill, &c. and report the same to the House: and they are to meet this afternoon, at five of the clock, in the Speaker's Chamber.

14th of April, 1671.—Sir Robert Howard reports from the Committee appointed to consider of reasons to be used at the conference to be had with the Lords, the said reasons; which he read and opened to the House, and were approved of by the House.

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Resolved, &c. that a conference be desired with the Lords, upon the subject-matter of the last conference; and that Mr. Waller do carry up the message to the Lords.

Ordered, That the managers of the aforesaid conference to be had with the Lords, upon the Bill, &c. in their reasons and arguments, do insist upon the rates of impositions on merchandizeable commodities; and that impositions made by the Commons are not to be altered by the Lords.

15th of April, 1671.—The House then attended the conference with the Lords, upon the reasons of disagreeing with their Lordships to their amendments to the Bill, &c. &c.

And the managers thereof report, that they had attended the conference accordingly.

20th of April, 1671.—A message from the Lords by Sir John Coell and Sir William Beversham, desiring a present conference with the House of Commons, in the Painted Chamber, upon the subject-matter of the last conference concerning the Bill, &c.

The Messengers being called in, Mr. Speaker acquaints them, That the House had agreed to a present conference upon the subject-matter of the last conference, concerning the Bill, &c.

Ordered, That the former managers do manage this conference.

Mr. Attorney General reports from the conference had with the Lords, That the single point insisted on at the conference, was the matter of Privilege, arising upon the Lords alterations of the rate upon sugar, imposed by this House; and the reasons

offered, and precedents insisted on, by the Lords, in justification of their privilege therein; which he opened and read to the House.

Resolved, &c. That it be referred to the persons who did manage the conference, to consider of the matter of the last conference reported from the Lords, and the reasons and precedents relating thereto; and to report the matter, with their opinions {370} therein, to the House; and to search for precedents, and send for papers and records, or to direct the perusal of them, as they shall find convenient: and Mr. Powle and Mr. Waller are added to the Committee.

Ordered, That it be referred to Colonel Birch, Sir John Birkenhead, &c. &c. or any two of them, to peruse the Journal of the House of Lords, for the proviso in the time of Hen. VIII. insisted upon by their Lordships, at the conference upon the Bill of impositions, &c.

Ordered, That the Committee appointed to draw up reasons for the intended conference to be had with the Lords upon the said Bill, &c. do sit to-morrow morning, at nine of the clock, to perfect the same.

22d of April, 1671.—Mr. Attorney General reports the Conference had with the Lords.

Resolved, &c. That the Lords reasons, and the answer of this House, be entered in the Journal of this House: Which are as followeth, viz.

*Thursday, April 20.*

This conference was desired by their Lordships, upon the subject matter of the last conference, concerning the Bill for impositions on merchandize, &c. wherein the Commons communicated to the Lords, as their resolution, “That there is a fundamental right in that House alone, in Bills of rates and impositions on merchandize, as to the matter, the measure and the time.”

And though their Lordships had neither reason nor precedent offered by the Commons to back that resolution, but were told that this was a right so fundamentally settled in the Commons, that they could not give reasons for it—for that would be a weakening of the Commons' Right and Privilege—

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Yet the Lords in Parliament, upon full consideration thereof, and of that whole conference, are come to this resolution, *Nemine coutradicante*, “That the power exercised by the House of Peers, in making the amendments and abatements in the Bill, intituled, “An Act for an additional Imposition on several Foreign Commodities, and for Encouragement of several Commodities and Manufactures of this Kingdom,” both as to the matter, measure, and time, concerning the rates and impositions on merchandize, is the fundamental, inherent, and undoubted right of the House of Peers, from which they cannot depart.”

*Reasons, &c.*

1st. The great happiness of the government of this kingdom is, that nothing can be done in order to the legislature, but what is considered by both Houses, before the King's sanction be given unto it; and the greatest security to all the subjects of this kingdom is, that the Houses, by their constitution, do not only give assistance, but are mutual checks, to each other.



2dly. Consult the writs of summons to Parliament, and you will find the Lords are excluded from none of the great and arduous affairs of the kingdom, and church of England; but are called to treat and give their counsel upon them all, without exception.

3dly. We find no footsteps in record or history for this new claim of the House of Commons. We would see that charter or contract produced, by which the Lords diverted themselves of this right, and appropriated it to the Commons, with an exclusion of themselves: till then, we cannot consent to shake or remove foundations, in the laying whereof it will not be denied that the Lords and Grandees of the kingdom had the greatest hand.

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4thly. If this right should be denied, the Lords have not a negative voice allowed them in Bills of this nature; for if the Lords, who have the power of treating, advising, giving counsel, and applying remedies, cannot amend, abate, or refuse a Bill in part, by what consequence of reason can they enjoy a liberty to reject the whole? When the Commons shall think fit to question it, they may pretend the same grounds for it.

5thly. In any case of judicature, which is undoubtedly and indisputably the peculiar right and privilege of the House of Lords, if their Lordships send down a Bill to the Commons for giving judgment in a legislative way, they allow and acknowledge the same right in the Commons to amend, change, and alter such Bills, as the Lords have exercised in this Bill of impositions sent up by the Commons.

6thly. By this new maxim of the House of Commons, a hard and ignoble choice is left to the Lords, either to refuse the Crown supplies when they are most necessary, or to consent to ways and proportions of aid, which neither their own judgment or interest, nor the good of the government and people, can admit.

7thly. If positive assertion can introduce a right, what security have the Lords, that the House of Commons shall not, in other Bills (pretended to be for the general good of the Commons, whereof they will conceive themselves the fittest judges), claim the same peculiar privilege, in exclusion of any deliberation or alteration of the Lords, when they shall judge it necessary or expedient?

8thly. And whereas you say, this is the only poor thing which you can value yourselves upon to the King,—their Lordships have commanded us to tell you, that they rather desire to increase, than any wise to diminish, the value and esteem of the House of Commons, not only with his Majesty, but with the whole kingdom; {373} but they cannot give way that it should be raised by the undervaluing of the House of Peers, and an endeavour to render that House unuseful to the King and kingdom, by the denying unto it those just powers, which the constitution of this government, and the law of the land, hath lodged in it, for the service and benefit of both.

9thly. You did, at the conference, tell us, that we did agree to a book of rates without so much as seeing it, and that never book of rates was read in the Lords' House; and that the said book of rates was signed by Sir Harbottle Grimston, then Speaker of the House of Commons, and not sent up, lest the Lords' Speaker might sign it too.

The book of rates, instanced in by the House of Commons, was made in a way different from all former books of rates, and by an assembly called without the King's

writs; and which wanted so much the authority of Parliament, that the Act they made was no Act, till confirmed by this Parliament: and though the work, which happily succeeded in their hands, for restoration of the ancient government of the kingdom, will ever be mentioned to their honour,—yet no measure for parliamentary proceedings is to be taken from this one instance, to the prejudice of the right of the Crown, in making books of rates; and of the Lords, in having their due consideration thereof when they shall be enacted in Parliament: which was so far from being according to former usage, that the Lords, considering the necessity and condition of that time, and there being no complaint, passed that Bill upon three readings, in one day, without so much as a commitment; little imagining the forwardness of their zeal to the King's service, in such a time, would have created an argument in the future against their power. And if the Lords never did read books of rates in their House, it is as true that the House of Commons do not pretend, nor did shew, that ever any was read there but this.

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Introduce the precedents thus:

Though where a right is so clear, and reasons so irrefragable, it is not to be required of those who are possessed of the right to give precedents to confirm it—but those, who dispute the right, ought to shew precedents or judgments to the contrary, not passed *sub silentio*, but upon the point controverted—yet the Lords have commanded us to offer, and leave with you, the following precedents:

By records both ancient and modern it doth appear,

1. That the Lords and Commons have consulted together, and conferred one with another, upon the subject of Supply to the King; and of the manner how the same may be levied, as the 14 Ed. III. N<sup>o</sup> 5 . "Apres grand tret & parleance entre lez Grantz et les ditz Chevaliers, et autres des Communes esteans en dit Parliamente, est accordes et assentus par tous les Grants et Communes, &c.:"—that they grant to the King the ninth of corn and wool.

Another, 29 Ed. III. N<sup>o</sup> 2.: and another more particularly in 51 Ed. III. N<sup>o</sup> 18 , where certain Lords were named, from time to time, to confer with the Commons for their better help in consulting for the raising money.

And this was sometimes by the King's command; as the 22 Ed. III. N<sup>o</sup> 3 .

Sometimes by motion or appointment of the Lords; as the 5th Ed. III. N<sup>o</sup> 8 ; and in the case of the great contract for tenures and purveyances, 7 Jac. 14 February, 1609.

And sometimes by desire of the Commons; as the 47 Ed. III. N<sup>o</sup> 6. 4 Ric. II. N<sup>o</sup> 10, 11, 12, 13, 14, 15, upon a great sum demanded for the King, the Commons come to the Lords, and desire a moderation of the sum, and their consideration how it shall be levied. And it is very observable in this Record, N<sup>o</sup> 13, which saith, "That the Lords sent for the Commons often before them, {375} and shewed to them their advice how the same shall be levied; and thereupon was granted, by Lords and Commons, twelve pence of every man:" 6 Ric. II. N<sup>o</sup> 14. And in the case of the great contract before mentioned, 7 Jac. 18 June, 1610, the Commons, at a conference, desired to know what project their Lordships will propound for levying that which shall be given, other than upon land; and afterwards, by the Commons answer to the Lords proposal, agreed, that the manner of levying it may be in the most easeful and contentful sort, that by both

Houses can be devised. See the whole proceedings of this intended contract, which doth in several remarkable instances shew that the House of Commons themselves did allow the House of Peers their part, in treating and debating on the subject of money to be levied for his Majesty.

2dly. That, in Aids and Subsidies, the Lords have anciently been expressly joined with the Commons in the gift; as in the first we can meet with in our Statutes—that, in the body of Magna Charta, cap. xxxvii, “The Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our subjects, have given unto us the fifteenth part of all their moveables,” which undoubtedly included merchandize: and this style the ancient grants of Subsidies, and the modern ones too, do retain (the troublesome time of the war between the Houses of York and Lancaster only excepted); and even then it was, “The Commons, by advice and consent of the Lords, do give and grant.”—Till the beginning of King Charles the First, by the words, “We your Majesty's loyal subjects in Parliament assembled,” the Lords 'implicitly'—or by the words, “We the Lords spiritual and temporal, and Commons in Parliament assembled,” the Lords 'expressly' are joined in the grant, as by perusal of the Statutes will appear.

3dly. That in Subsidies of this nature, viz, 'Customs,' the {376} Lords have joined with the Commons in the grant of them; and that in the very beginning of those impositions; as when forty shillings on every sack of wool (a native home commodity) was granted to Ed. I. in the third year of his reign, to him and his heirs—the grant is, “Magnates, Prælati, et tota communitas concesserunt.” See Patent Roll, 3 Ed. I. M. 1. N<sup>o</sup> I. —As also in other Patent Rolls, where Subsidies are recited; as 15 Ed. III. N<sup>o</sup> I. M. 12. the Close Roll and the Patent Roll of 3 Ed. I. M. 6.

And more particularly in Impositions of this very species, 'Tonnage and Poundage,' the Lords were, even at the first beginning, joined with the Commons in the grant; as the Parliament Roll, in 47 Ed. III. N<sup>o</sup> 10. the first establishment of it by Act, doth declare; where it is expressly, “The Lords and Commons do grant.” And this style did continue in Acts of this nature till the end of Ric. II.; after which, in those troublesome times, the style was various till King Henry VIII.'s time; and the style of Acts of Tonnage and Poundage was, “We the Commons, by advice and consent of the Lords spiritual and temporal, do give and grant.” This form of gift, in Tonnage and Poundage, lasted Edward VI. Q. Mary, Elizabeth, and King James's time, as the Statutes themselves do declare.

5thly. And, to prove most undeniably that the Lords have their share in the gift of Aids and Supplies to the King, see the Act 9 Hen. IV. commonly called “The Indemnity of the Lords and Commons;” which provides expressly that the Lords shall commune apart by themselves, and the Commons by themselves: and at the latter end enacts, that the King shall thank both the Lords and Commons for Subsidies given to him.

6thly. That the Lords may make amendments and alterations in Bills which grant Tonnage and Poundage (the very question now between us) appears in an ancient book, case 33 Hen. VI. {377} fol. 17, which was a consultation of all the Judges of England, and the Master of the Rolls, and the Clerk of the Parliament, called to inform them of the manner of proceedings in Bills of Parliament; where it is said, That if the Commons grant Tonnage and Poundage to endure for four years, and the Lords grant it but for two years, it shall not be carried back to the Commons, because it may stand

with their grant, but must be so inrolled. And that the Lords have made amendments and alterations in Bills granting Tonnage and Poundage, appears by that of the 1 Ed. VI. and 1 Q. Eliz.; and even in the very point now in dispute, such amendments as do lessen the sum to the King, as 1 Hen. VIII.

Read the proviso:

We have seriously consulted our judgments and reasons, to find objections, if it were possible, against this power of the Lords; and are so far from finding any, that we are fixed in opinion, that the want of it would be destructive to the government and peace of the kingdom, and the right of the Crown in balancing and regulating of trade, and the making and preserving leagues and treaties with foreign princes and states: and the exercise of it cannot but be for the security of all, and for the ease and benefit of the subject.

The modesty of your ancestors, in these arduous affairs, gave great deference to the wisdom of the Lords.

Their Lordships are very far from desiring to obstruct this gift, no, not for a moment of time, much less for ever, as was hinted to them at the last conference: and therefore they desire the House of Commons to lay it to heart, and consider, if it should happen (which they heartily wish it may not) that there should be an obstruction upon occasion of this difference, at whose door it must lie; theirs, that assume to themselves more than belongs to them, to the prejudice and diminution of the others right; or theirs, that do only exercise that just, lawful, and necessary power, which, {378} by the very nature and constant practice of Parliament, is, and for many ages hath been, vested in both Houses.

Their Lordships had under their consideration and debate, the desiring a free conference with your House, upon the reasons of the amendments in difference between the Houses. But when they found that you had interwoven your general position with every reason you had offered upon particulars, it seemed to them that your judgments were prepossessed; and they hold it vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade: and have therefore applied themselves only to that point, which yet remains an impediment in the way of free and parliamentary debates and conferences; which must necessarily be first removed, that so we may come to a free conference upon the Bill itself, and part with a fair correspondence between the two Houses.

*Saturday, 22d of April.*

The Commons have desired this conference, to preserve a good correspondence with the House of Peers, and to prevent the ill consequences of these misunderstandings, which may possibly interrupt the happy conclusion of this session, and of all future Parliaments too, if they be not very speedily removed.

Wherein the Commons are not without hopes of giving your Lordships full satisfaction in the point in question; and that without shaking any foundations, unless it be such as no man should lay, much less build upon, the foundations of a perpetual dissention between the two Houses.

Three things did surprize the Commons at the former conference, concerning the Bill for an additional imposition on several foreign commodities.

First, That, where they expected a discourse upon some amendments to that Bill, they met with nothing but a debate of the liberties of their House, in the matter, measure, and time of rates {379} upon merchandize; with a kind of a demand, that these liberties might be delivered up to your Lordships, by our public acknowledgment, before there should be any further discourse upon that Bill.

Secondly, That your Lordships should declare so fixed and settled a resolution in this point, before you had so much as heard what could be replied in defence of the Commons.

Thirdly and lastly, That your Lordships should be so easily induced to take this resolution, if there be no other motives for it than those precedents and reasons which your Lordships have been pleased to impart to us.

The Commons confess, that the best rule for deciding questions of right between the two Houses, is the law and usage of Parliament; and that the best evidences of that usage and custom of Parliament, are the most frequent and authentic precedents.

Therefore the Commons will first examine the precedents your Lordships seem to rely upon; then they will produce those by which their right is asserted; and, in the last place, they will consider the reasons upon which your Lordships ground yourselves.

By the nature of the precedents which your Lordships produce, there is an evident departure from the question, as the former conference left it. There the doubt was narrowed to this single point, Whether your Lordships could retrench or abate any part of the rates which the Commons had granted upon merchandize? Here the precedents do go to a joint power of imposing and beginning of taxes, which is a point we have not yet heard your Lordships to pretend to, though this present difference prepares way for it.

Therefore, either these precedents prove too much, by proving a power of imposing; or they prove nothing at all, by not proving a power of lessening.

And yet they do not prove a power of imposing neither: for {380} these words, "The Lords and Commons grant," must either be understood, *reddendo singula singulis*; that is, the Lords grant for themselves, and the Commons grant for the Counties, Cities, and Boroughs, whom they represent: or else the word "grant" must be understood only of the Lords assent to what the Commons grant; because the form of law requires that both join in one Bill, to give it the force of a law.

This answers the Statute of Magna Charta, cap. 37. and those few instances where it is said, "The Lords and Commons grant;" viz. 47 Ed. III. N<sup>o</sup> 10. 4 Ric. II. N<sup>o</sup> 10, 11, 12, 13, 14. 6 Ric. II. N<sup>o</sup> 14. But what answers can be given to those ancient and modern precedents and Acts, where the grant moves, and is acknowledged to come, from the Commons alone? of which a multitude shall be hereinafter mentioned.

The case of 14 Ed. III. N<sup>o</sup> 5, "Apres grand tret et parleance enter les Grantz et Chevaliers et Communes fuit assentus, &c." is no grant of the ninth sheaf, as your Lordships cited it to be; but an agreement that the //380-1// nones, granted in a former Parliament, should now be sold, because the money came not in fast enough.

22 Ed. III. N<sup>o</sup> 3, which your Lordships cite, to prove that the King did sometimes command the Lords to consult with the Commons about raising money, proves little of that; but it proves expressly that the Commons granted three fifteenths: and, as the

grant runs wholly in their own name, so the record is full of many reasons why they could grant no more, and upon what conditions they granted so much.

And yet all these records, wherein the Lords advised with the {381} Commons about raising money, though they seem to make a shew in your Lordships paper, yet they prove two things of great importance to the Commons. First, That all Acts must begin with the Commons; else the Lords needed not to have conferred about the Acts, but might have sent down a Bill. Secondly, That, when they are begun, the Lords can neither add or diminish; else it was in vain to adjust the matter by private conference beforehand, if the Lords could have reformed it afterwards: which shews how little service the records of 29 Ed. III, N<sup>o</sup> 11, 51 Ed. III. N<sup>o</sup> 18, can do your Lordships in the present question.

From the time of Ric. II. your Lordships come to 7 Jac. to tell us of the treaty between the Lords and Commons, touching the contract for tenures in capite; wherein the Lords and Commons being to be purchasers, it was less subject to objection to confer both of the method and manner how the price agreed might be paid, for the satisfaction of the King. But this matter hath so little affinity with the present question of lessening rates upon merchandize, given by the Commons, that nothing but a scarcity of precedents could ever have persuaded your Lordships to make use of this instance.

As for the precedent of 3 Ed. I. cited by your Lordships, the Commons have most reason to rely upon that case. Your Lordships say, in the beginning of Impositions, when forty shillings upon a sack of wool was granted to Ed. I. and his heirs, the Lords joined in the grant; for the words are, "Magnates, Prælati, et tota Communitas concesserunt;" wherein are these mistakes;

First, That record was not a grant of forty shillings upon a sack, as your Lordships suppose, but a reducing of forty shillings upon a sack (which Ed. I. took before Magna Charta was confirmed) to half a mark, viz. six shillings and eight pence per sack: and it was at the prayer of the Commons, as some books say, and cite for it 3 Ed. I. Rot. Fin. Memb. 24.

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Secondly, The record which your Lordships cite is twice printed, once in the second part of the Institutes, page 531; and again in the fourth part of the Institutes, page 29: and by both those places it is evident, that the 'concesserunt' is to be applied only to the 'tota Communitas,' and not to the 'Magnates;' for this was a grant of the Commons only, and not a grant of the Lords. And to demonstrate this beyond all possibility of scruple, the printed books do refer us to the Statute of 25 Ed. I. cap. 7. called 'Confirmationes Chartarum,' wherein it is expressly so declared by Act of Parliament: for by the last Statute it appears, that //382-1// the male tot' \\ extra or missing single ' mark \\ of forty shillings upon a sack was again demanded by Ed. I.; and was therefore now abrogated, saving to the King and his heirs the demi-mark upon a sack of wool, granted by the Commonalty; which is the very same grant of 3 Ed. I. cited by your Lordships in the present question.

But this is also a convincing evidence, that these words, "The Lords and Commons grant," are words of form; and made use of in such cases where the grant did certainly proceed from the Commons alone. And to clear this point yet more fully by a

modern precedent, we pray your Lordships to take notice of the Statute of 2 and 3 Ed. VI. cap. 36, where a relief is given to the King by Parliament: and in the title of the Act, as also in the body of it, it is still called all along the grant of the Lords and Commons; yet in 3 and 4 Ed. VI. cap. 23, this former Act is recited, and there it is acknowledged to be only a grant of the Commons.

And as for the case of 9 Hen. IV. called The Indemnity of the Lords and Commons, these things are evidently proved by it:

1st. That it was a grievance to the Commons, and a breach of {383} their Liberties, for the Lords to demand a Committee to confer with about Aids.

2dly. That the Lords ought to consider by themselves, and the Commons by themselves, apart.

3dly. That no report should be made to the King of what the Commons have granted, and the Lords assented to, till the matter be perfected; so that a plain declaration is made, That the Commons grant, and the Lords assent.

4thly. That the gift ought to be presented by the Speaker of the Commons.

The book case of 33 Hen. VI. 17. is the weakest of all; for the words are, " Si les Communs grant Tonnage p' 4 ans, & S'urs grant mes p' deux ans, ceo ne serra reliver aux Communs; mes, viâ versâ, si Communs grant p' 2 ans, & S'urs p' 4, ceo ne fer' reliver."

Now, 1st. This was no opinion of any Judge, but only of Kirkby, Cl' de Parl'.

2dly. This was a case put by the bye, and not pertinent to the matter in hand.

3dly. 'Tis impossible to be law, being against the constant practice and usage of Parliament: for then your Lordships may not only lessen the rates and time, but you may choose whether you will send us the Bill or no back again, with amendment; which was never heard of: And, if that may be, why was it not done so now?

4thly. That Clerk says, your Lordships may increase impositions too; which part of the case you thought not fit to cite, because you pretend not to it.

5thly. Brook, Parl'm 3, puts a quære upon the case, as it deserved.

But if the law books are to be heard in this matter, 30 H. VIII. Dyer 43, is a judicial authority, where subsidy is defined to be a tax, "Assess p' Parliament & grant al Roy p' les Communs {384} durant vie de chest' ou Roy tantu p' defence des Merchants sur le Mere."

The provisoes in the Bill of 1 H. VIII. which your Lordships seem mainly to rely upon, we conceive to be of no force at all, unless it be against your Lordships; for, by your Lordships' Journals, the case was this—The Bill itself did not pass till 3 H. VIII.; and upon the 43d day of the Parliament the Lords assented to it: afterwards, upon the 45th day, two provisoes came in; one, touching the Merchants of the Hanse Towns; another, touching the Merchants of the Staple of Calais. Both were signed by the King and the Chancellor: and the Bishop of Winchester did declare, that the signing of those provisoes by the King's own hand was enough, without the consent of either House. So that the addition of those provisoes proves nothing for which your Lordships cited them: Because,

1st. They were signed by the King.

2dly. They were brought in, against all course of Parliament, after the Bill passed.

3dly. The provisoes were nothing but a saving of former rights, usually considered in former Acts of that nature.

4thly. Your Lordships' Journal declares, that the King, without those provisoes, might have done the same thing by his prerogative. Only this may be fit to be observed by the way; that, as the Bill was a grant of the Commons alone, so the thanks for that Bill was given to the Commons alone, and so appears upon the endorsement of that very record.

The precedents for the Commons, which on the sudden we find (for we have had but few hours to search) are all these following:

11 E. I. Walsingh. 471. *Populus dedit Regi tricesimam partem bonorum.*

25 E. I. Walsingh. 486, & pag' 74. *Populus dedit Regi denarium nonum.*

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7 H. IV. Walsingh. 566. *Postquam milites Parliamentares diu distulissent concedere Regi Subsidium, in fine tamen fracti concessere.*

6 H. IV. Walsingh. 564. *Subsidium denegatum fuit, proceribus renitentibus.*

So hitherto, when granted, the Commons gave it; when denied, the whole Bill rejected; never abated.

1 E. III. Stat. 2. C. 6. The Commons grieved, that when they granted an Aid, and paid it, the taxes were reviewed.

18 E. III. Cap. I. Statute at Large. The Commons grant two fifteenths: the Great Men grant nothing, but to go in person with the King.

36 E. III. Cap. 11. The King, having regard to the grant made by the Commons, for three years, of wool and leather, grants that no Aid be levied but by consent of Parliament.

21 R. II. N. 75. Is the first grant of tonnage and poundage for life; and it was given by the Commons alone.

2 H. VI. N. 14. The Commons grant tonnage and poundage for two years.

31 H. VI. N. 7, 8, 9, 10. The Commons grant tonnage, &c. for life.

8 Ed. IV. N. 30. The Commons grant two tenths and two fifteenths.

12 E. IV. C. 3. The grant for tonnage and poundage for life is recited to be by the Commons, and most of the rates mentioned in the Bill.

The wars of York and Lancaster are so far from weakening these precedents, it strengthens them rather; for no man can think the Lords were then in less power, or less careful of their rights, than your Lordships are now: wherefore, if in those days those {386} forms were approved by those mighty men, it is a sign the right is clear.

I H. VIII. Commons, by assent of the Lords, grant tonnage.

15 H. VII. In Ireland, was the first grant of tonnage and poundage: but it is said, "At the prayer of the Commons, it is enacted;" which, in a kingdom where they are not tied to forms, shews the clear right.

I Ed. VI. Cap. 13; 1 Mar. Cap. 8; 1 El. Cap. 19. "We, your poor Commons," by advice, &c. grant: and also avers the right, time out of mind, to be in the Commons. In like manner, this Statute of the 1st of El. Cap. 19, gives us occasion to put your Lordships in mind of another precedent, which appears in your own Journals, Wednesday, 15 Feb. I Eliz. : for, while the Bill was passing, the inhabitants of Cheshire and Wales petition the Lords, upon the second reading, "That, forasmuch as they were



subject to pay the Queen a certain duty, called Mises, that therefore they might be excused of the Subsidy, and abated their parts of it.' The Lords, who then knew they had no power to diminish any part of the Aid granted by the Commons, did therefore address themselves to the Queen in their behalves. The Queen commands an entry to be made in the Journal of the House of Lords, 'That she was pleased that the Cheshiremen and the Welchmen should be respited the Mises when they pay Subsidies, and respited the Subsidies when they pay Mises;' which is a strong proof, that, as the Commons alone grant, so nobody can diminish their grant: else what need had the Lords to apply themselves to the Queen for it?

17 Car. I. Tonnage and poundage was granted once for a month, then again for three months; but still the grant was by the Commons. In those days (how tumultuous soever) the Commons did not rise against the Lords; they agreed well enough.

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12 C. 11. Cap. 4. Tonnage.

Cap. 24. For £. 70,000.

Cap. 23. Excise for life.

12 C. 11. Cap. 27. For £. 420,000.

Cap. 19. £. 70,000 more.

13 C. II. Cap. 3. £. 1,260,000.

14 C. II. Cap. 10. Chimney money.

15 C. 11. Cap. 9. Four Subsidies.

16 & 17 C. II. Cap. 1. Royal Aid.

17 C. II. Cap. I. Oxon. £. 1,250,000.

18 C. II. Cap. I. Poll Bill.

19 Car. II. Cap. 8. Eleven Months Tax.

20 Car. II. Cap. 1. £. 310,000 Wine.

22 C. II. Cap. 3. Wine and Vinegar.

23 Car. Subsidies, 12 *d.* per pound.

Additional Excise.

Import on the Law.

And the preamble of this very Bill now in question.

All grants of the Commons:—yet none of those Bills were ever varied by your Lordships, or your predecessors: which, if there had been such a right, would some time or other have been exercised, though in very small values, purposely to preserve that right.

Thus an uninterrupted possession of this Privilege, ever since 9 H. IV. confirmed by a multitude of precedents both before and after, not shaken by one precedent for these 300 years, is now required to be delivered up, or an end put to all further discourse: which opinion, if it be adhered to, is, as much as in your Lordships lies, to put an end to all further transactions between the Houses, in matter of money: which we pray your Lordships to consider.

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Because there appears not to the Commons any colour, from the precedents cited by your Lordships, why your opinions should be so fixed in this point, we suppose the main defence is in the reasons which have been given for it.

That paper begins with an observation, that your Lordships had neither reason nor precedent offered by the Commons to back their resolution; and yet concludes with an answer to a precedent then cited by the House of Commons, viz. the Act of Tonnage and Poundage, now in force. And if your Lordships heard but one precedent then, you have now a great number, besides those of 3 E. I. and 1 H. VIII. and 9 H. IV. and divers others your Lordships furnished us with.

Before the Commons answer to your Lordships' reasons in particular, they desire to say first, in general, that it is a very unsafe thing, in any settled government, to argue the reasons of the fundamental constitutions; for that can tend to nothing that is profitable to the whole.

And this will more sensibly appear to your Lordships, if the grounds and foundations of Judicature be examined.

For there are several precedents in Parliament, and some in Book cases, which prove, that the Judicature is not to be exercised by all the Lords, but only such as the King is pleased to appoint.—So is the Book case of 22 E. III. 3 A. 6; and so is the Parliament Roll, 25 E. III. N. 4 ; and divers other Rolls of Parliament.

Several other precedents there are, where the Commons, by the King's good pleasure, have been let into a share of the very Judicature.—So are the 42 E. III. N. 20, 21; 31 H. VI. N. 10; 8 Ed. IV. Hugh Brice's case; in the Rolls of Parliament. Some precedents there are, where it was assigned for error in the House of Peers, that the Lords gave judgment without petition or assent of the Commons.—So is 2 H. V. N. 13.

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Would your Lordships think it safe that a dispute should now be made of the very rights of Judicature, because we have such precedents?

If usage for so long a time has silenced all disputes touching your Lordships' Judicature, shall that usage be of no force to preserve the Privileges of the Commons from all further question?

Also there is a precedent of an Act of Parliament passed by the King and Commons alone, without the Lords, viz. 1 E. VI. C. 5 ; and that twice approved, viz. 1 Eliz. C. 7. and 5 Eliz. C. 19 ; which do both allow and commend this Act.

Shall we therefore argue the foundations of the Legislature, because we have such precedents.

But to come to particulars:

1st. Your Lordships' first reason is, from the happiness of the Constitution, that the two Houses are mutual checks upon each other.

*Answer.* So they are still; for your Lordships have a negative to the whole.

But, on the other side, it would be a double check upon his Majesty's affairs, if the King may not rely upon the quantum, when once his people have given it; and therefore the Privilege now contended for by your Lordships is not of use to the Crown, but much the contrary.

2dly. Your Lordships' reasons, drawn from the writ of summons, is as little concluding: for though the writ does not exclude you from any affairs, yet it is only *de quibusdam arduis negotiis*, and must be understood of such as, by course of Parliament, are proper; else the Commons, upon the like ground, may entitle

themselves to Judicature; for they are also called *ad faciend' & consentiend' de quibusdam arduis & super negotiis antedictis*.

3dly. Your Lordships proceed to demand, Where is that record {390} or contract in Parliament to be found, where the Lords appropriate this right to the Commons, in exclusion of themselves?

*Answer.* To this rhetorical question the Commons pray they may answer by another question: Where is that record or contract by which the Commons submitted that Judicature should be appropriated to the Lords, in exclusion of themselves?

Wherever your Lordships find the last record, they will shew the first endorsed upon the back of the same roll.

Truth is, precedents there are, where both sides do exercise those several rights; but none, how either side came by them,

4thly. If the Lords may deny the whole, why not a part? Else the Commons may at last pretend to bar a negative voice.

*Answer.* The King must deny the whole of every Bill, or pass it; yet this takes not away his negative voice. The Lords and Commons must accept the whole general pardon, or deny it; yet this takes not away their negative.

The Clergy have a right to tax themselves; and it is a part of the privilege of their Estate. Doth the upper Convocation House alter what the lower grant? Or do the Lords or Commons ever abate any part of their gift? Yet they have a power to reject the whole. But, if abatement should be made, it would insensibly go to a raising, and deprive the Clergy of their ancient right to tax themselves.

5thly. Your Lordships say, Judicature is undoubtedly ours; yet, in Bills of Judicature we allow the Commons to amend and alter: why should not the Commons allow us the same Privilege in Bills of Money?

*Answer.* If Contracts were now to be made for Privileges, the offer might seem fair: but yet the Commons should profit little by it; for your Lordships do now industriously avoid all Bills of that nature; and chuse to do many things by your own power, which ought to be done by the Legislative: of which we forbear the {391} instances, because your Lordships, we hope, will reform them; and we desire not to create new differences, but to compose the old.

6thly. Your Lordships say, you are put to an ignoble choice, either to refuse the King's supplies when they are most necessary; or to consent to such ways and proportions, which neither your own judgment, nor the good of the government or people, can admit.

*Answer.* We pray your Lordships to observe, that this reason, 1st. makes your Lordship's judgment to be the measure of the welfare of the Commons of England:

2dly. It gives you power to raise and encrease taxes, as well as to abate: for it may sometimes, in your Lordships' judgments, be for interest of trade to raise and increase a rate, as well as to lessen it: and then, still, you are brought to the same ignoble choice, unless you may raise the tax.

But it is a very ignoble choice put upon the King and his people, that either his Majesty must demand, and the Commons give, so small an aid, as can never be diminished, or else run the hazard of your Lordships' re-examination of the rates;

whose proportions in all taxes, in comparison to what the commonalty pay, is very inconsiderable.

7thly. If positive assertion can introduce right, the Lords have no security; but the Commons may extend a right, as they judge it necessary or expedient.

*Answer.* We hope no assertions or denials, though never so positive, shall give or take away a right. But we rely upon usage on our side, and non-usage on your Lordships' part, as the best evidences, by which your Lordships, or we, can claim any Privilege.

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8thly. Your Lordships profess a desire to raise our esteem with his Majesty and the whole kingdom; but not by the under-valuation of the House of Peers

*Answer.* We have so great confidence in his Majesty's goodness, that, we assure ourselves, nothing can lessen his Majesty's esteem of our dutiful affections to him: and we hope we have deserved so well of our country, by our deportment towards his Majesty, that we shall not need your Lordships' recommendations to any who wish well to his Majesty, or the present government.

But we are so far from wishing to raise an esteem by any diminution of your Lordships' honour or Privileges, that there never was any House of Commons, who had a more just and true respect of that noble constitution of a House of Peers; of which your Lordships have had frequent instances, by our consenting to several clauses in former Bills, for the securing and improving your Lordships' Privileges.

9thly. We are sorry to see your Lordships undervalue the precedent of this last Act of Tonnage and Poundage; because, though it were an Act of the last Convention, it was confirmed in this Parliament; and because the right of the Commons, there asserted, was pursuant to a former precedent in 1642; and possibly had not passed so, if the younger Members of that Convention had not learned, from some of those great and noble Lords, //392-1// who now manage the conference for your Lordships and were then Commoners, that this was the undoubted right of the Commons.

To conclude: The Commons have examined themselves, and {393} their proceedings; and find no cause why your Lordships should put them in mind of that modesty, by which their ancestors shewed a great deference to the wisdom of the Lords: for they resolve ever to observe the modesty of their ancestors; and doubt not, but your Lordships will also follow the wisdom of yours.

IT was unanimously resolved,

That the thanks of the House be returned to Mr. Attorney General //393-1//, for his great pains and care in preparing and drawing up the reasons, delivered to the Lords, in answer to their reasons, which was by him performed to the great satisfaction of this House, in vindication of their Privilege, and the just and undoubted Right of the Commons of England.

And Mr. Speaker did accordingly deliver the thanks of the House to Mr. Attorney General.

APPENDIX, N<sup>o</sup> 6. (p. 111.)  
*Extracts from the Journals.* (Vol. ix. p. 418.)  
*Bill for building Thirty Ships.*

11th April, 1677. A Message from the Lords, desiring a present conference with this House, in the Painted Chamber, upon the Bill for raising the sum of five hundred eighty-four thousand nine hundred seventy-eight pounds two shillings two pence halfpenny, for the speedy building thirty ships of war.

And the messengers being withdrawn;

Resolved, &c. That this House doth agree to a present conference with the Lords, in the Painted Chamber, upon the Bill, &c. &c.

The messengers being called in;

Mr. Speaker acquaints them, that this House had agreed to meet the Lords at a present conference in the Painted Chamber, upon the subject-matter desired by their Lordships.

Resolved, &c. That Sir John Trevor, Mr. Powle, &c. &c. &c. do attend, and manage the conference.

Sir Thomas Meres reports, from the conference had with the Lords upon the Bill, &c. some amendments agreed by the Lords to be made to the Bill; with their Lordships reasons for the same.

Resolved, That the consideration of the said amendments be adjourned till tomorrow morning, after the debate touching the message sent from his Majesty.

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12th April, 1677.—The amendments, sent from the Lords to the Bill, &c. were read.

Resolved, &c. That this House doth not agree to the said amendments.

Ordered, That it be referred to those members that did attend, and manage the conference with the Lords, to prepare and draw up reasons to be offered at a conference to be had with the Lords: and that Sir Richard Temple be added to them.

13th April, 1677.—Sir Thomas Meres reports, from the Committee to whom it was referred to prepare and draw up reasons for not agreeing with the Lords to the amendments to the Bill, &c. several reasons agreed by the Committee; which he read in his place; and after delivered the same at the Clerk's table; where the same were twice read; and, upon the question, agreed; and are as followeth:

“The Commons have desired this conference, to preserve a good correspondence with the House of Peers; and to offer such reasons as have moved the Commons to disagree with your Lordships, in those amendments that were sent down by your Lordships, to a Bill, intituled, An Act, &c.

First, To answer such reasons as have been offered by your Lordships at the last conference, the Commons observe, that your Lordships have founded most of your arguments upon this distinction—that where the account of any Aid granted in Parliament, hath been required by the said Acts to be made in Parliament, in order only to the auditing, passing, and discharging of the said account, that there it hath been received to the Commons only: but where the same hath been required, in order to the

examination and punishment of any misapplication or misdemeanor, there your Lordships conceive yourselves equally, if not more eminently, entitled to such an account: and, by this rule, you are pleased to construe the two Statutes, of the one-and-twentieth of King {396} James, and the Statute of the nineteenth of Charles II. cap. 9, intituled, "Accompts of several Sums of Money, how to be taken:" which distinction the Commons cannot in any ways allow: nor will the same appear to be warranted by the said Statutes; for these reasons;

For that, though your Lordships have a judicial power vested in you, upon complaint or impeachment of the House of Commons, upon any misapplication or misdemeanor committed by any of the persons intrusted by this Bill; yet your Lordships are altogether improper to take cognizance thereof originally, or by way of enquiry, or otherwise than in a judicial way: and although your Lordships, in your legislative capacity, may have right to require any account, upon record, to be brought before you, for your information; the Commons conceive your Lordships are not entitled thereby, in your judicial capacity, to proceed thereupon, unless the same had been brought regularly before you in a judicial way: for that such an early inquiry or examination might prepossess and anticipate your Lordships' judgments, as to any impeachment or complaint of the House of Commons against such offenders, and consequently render the account, reserved hereby to the Commons, to be of little or no use for the ends for which it was chiefly designed.

For that the Statute of the one-and-twentieth of King James, before mentioned, did require such account to be given to the Commons, not only in order to the determining and discharge of such account, but also, and principally, for the punishment of such misdemeanors, that should be committed by any of the persons intruded in the receiving, issuing, or disposing of the said monies, as will appear by the very words of the Act; all their dealing, doings, and proceedings, being made examinable and determinable by the Commons; and, in case of the offence of a Commoner, to be imprisoned in the Tower by the Commons; and of an offence by a {397} Peer, upon presentment of such offence by the Commons, to be imprisoned by the Peers; and, both in case of the Commons, and Peers, to undergo such further punishment as to justice shall appertain, according to the quality of the offence. Which clearly proves, that the said Act was not only to pass and discharge the account, but for the punishment of misdemeanors; and is a full and clear precedent for the Commons in this point. And as for the Act of the 19th of this King, they desire your Lordships would observe, that that act was only to erect a Commission with extraordinary powers, to take an account of monies that had been already given, and not made accountable by the grants thereof to the Parliament: and the account only of the Commissioners doings and proceedings therein, was by them to be given to the King's Majesty, and both Houses of Parliament, for their information and satisfaction; and so it is declared in the very preamble of the said Act: which precedent the Commons conceive not at all applicable to the matter in hand.

They further offer to your Lordships, That the grant of all Aids to the King is by the Commons; and that the terms, conditions, limitations, and qualifications of such grants, have been made by the Commons only.

And further, That the returning of such an account to the Lords, the Commons not only conceive it altogether improper, for the reasons aforesaid, in order to the punishment of offenders; but also, as it may relate in case of a good disposition and management to the encouragement of granting further or greater Aids to the King, it doth properly belong to the Commons only; since your Lordships do allow, that such Aids can only begin and be enlarged by the Commons.

And, lastly, we find, That the Act of the one-and-twentieth of King James is not the first precedent, whereby the account of monies given was reserved only to the Commons.

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Ordered, That a conference be desired with the Lords, upon the subject-matter of the last conference: and that Sir Richard Temple doth go up to the Lords to desire the same.

Sir Richard Temple acquaints the House, That the Lords had agreed to a present conference, in the Painted Chamber, as desired.

Ordered, That those Members that did attend, and manage the former conference, do attend, and manage this conference.

Sir Thomas Meres acquaints the House, that they had attended; and had delivered the reasons for not agreeing to the Lords amendments to the Bill, intituled. An Act, &c.

14th April, 1677.—A message from the Lords, by Sir Miles Cooke and Sir John Franklin:

Mr. Speaker, the Lords desire a present free conference with this House, in the Painted Chamber, upon the amendments, sent from the Lords, to the Bill, &c.; concerning which amendments the two last conferences were had,

Resolved, &c. That this House doth agree to a present free conference with the Lords in the Painted Chamber, as desired.

The messengers being called in;

Mr. Speaker acquaints them, That this House hath agreed to meet the Lords, at a present free conference in the Painted Chamber, as desired.

Ordered, That the Members that did attend, and manage the former conferences, do attend, and manage this free conference.

Sir Thomas Meres reports, from the free conference had with the Lords, That they had attended, and delivered their reasons and precedents.

A debate arising in the House, whether the House should adhere to the Bill, &c. without amendment;

Ordered, That such Members, as did manage the free conference, {399} do, search the Journals, for precedents touching adhering to Bills.

*Post Meridiem.*—The question being put, to agree to the amendments, sent from the Lords, to the Bill, &c.;

The House divided.

The Yeas go forth.

Tellers Sir Gilbert Talbott,

Mr. Mallett;

For the Yeas, 27.

Tellers Sir Eliab Harvey,

Mr. Neale; For the Noes, 156.

And so it passed in the negative.

Resolved, &c. That, upon the report of what was offered at the last free conference, the House of Commons cannot agree to the amendments, sent from the Lords, to the Bill, &c.

Ordered, That such Members, as managed the last free conference, do withdraw; and consult together touching reasons to be offered at a free conference to be had with the Lords upon the subject-matter of the last free conference: and that Colonel Byrch and Sir Thomas Littleton be added to them.

Ordered, That a free conference be desired with the Lords, upon the subject-matter of the last free conference: and that the Lord O'Brian do go up to the Lords to desire that free conference.

The Lord O'Brian acquaints the House, That he had attended the Lords; and desired a free conference with them upon the subject-matter of the last free conference: and that the Lords had agreed to a free conference with this House on Monday morning, at ten of the clock, in the Painted Chamber.

16th April, 1677.—The Members that did manage the last free conference did attend, and manage the free conference desired by this House, and agreed to by the Lords, on Saturday last, upon {400} the subject-matter of the last free conference, upon the amendments, sent from the Lords, to the Bill, &c.

Sir Thomas Meres reports, from the free conference, That they had attended, and delivered their reasons; and had left the Bill with the Lords.

*Post Meridiem.*—A message from the Lords, by Sir William Beversham and Sir Miles Cooke:

Mr. Speaker, The Lords have agreed to leave out their amendments, &c.



APPENDIX, N<sup>o</sup> 7. (p. 112)  
*Extracts from the Journals. (Vol. ix. p. 505.)*  
*Bill to disband Forces, &c.*

25th June, 1678, SIR Richard Temple reports from the Committee appointed to draw up reasons to be offered at a conference to be had with the Lords, for not agreeing with the Lords in their amendments to the Bill, intituled, "An Act for granting a Supply to his Majesty, for enabling him to pay and disband the forces which have been raised since the 29th of September last," That the Committee had agreed upon reasons to be offered at a conference; and upon a proviso to be added to the said Bill: which he read in his place; and afterwards delivered the same in at the Clerk's table: and the reasons being twice read, were, upon the question, agreed: and are as followeth:

The Lords having agreed with the Commons in this Bill; That there is no further occasion of the forces raised since the 29th day of September last; and sent to the Commons some amendments; the Commons find themselves obliged to disagree with the Lords' amendments, by reason of the methods and rights of their House, in a matter very tender to them. But, for answering the end which the Lords seem to aim at, the Commons will offer an expedient; which they conceive warranted by precedents; viz.

The Earl of Thanet's Bill, entered into the Lords' Journal, February, 74: which the Lords then grounded upon a precedent in 35 of Queen Eliz. In both which, provisos were added by the {402} Lords, after the Bill sent from the Lords to the Commons, not relating to any amendments made by the Commons.

The proviso being twice read;

Resolved, &c. That the proviso be ingrossed.

Ordered, That a conference be desired with the Lords, upon the amendments made by the Lords to the Bill, intituled, An Act, &c.: and that Sir Richard Temple do go up to the Lords, to desire the conference.

Sir Richard Temple acquaints the House, That the Lords had agreed to a present conference, in the Painted Chamber.

The proviso, being ingrossed, was read the third time.

Resolved, &c. That the proviso be added to the Bill.

Ordered, That the persons who were appointed to draw up the reasons, do attend, and manage the conference:

Who did attend; and offered the reasons; and left the proviso and Bill with the Lords.

26th June, 1678.—A message from the Lords, desiring a present conference with this House, in the Painted Chamber, upon the subject-matter of the last conference.

The messengers being withdrawn;

Resolved, &c. That this House doth agree to meet the Lords at a present conference, in the Painted Chamber.

And the messengers being called in;

Mr. Speaker acquaints them, That this House had agreed to meet the Lords at a present conference, in the Painted Chamber.

Ordered, That the Members who did attend, and manage the former conference, do attend this conference.

Sir Thomas Meres reports from the conference had with the Lords, That the Lord Privy Seal did manage the conference; and that what was delivered, was to the effect following; viz.

“The Lords have appointed this conference upon the subject-matter of the last conference, concerning the Bill, intituled, An {403} Act, &c.; and to preserve that good correspondence which ought to be between the two Houses, in the course of parliamentary proceedings in passing of Bills; and for which, in your introduction to the last conference, you intimated the same was desired by the Commons.

“Their Lordships finding, that as the Bill came up to them limited to so very short a time for the execution of it; and that, under the penalties of forfeitures and disabilities to bear office, on those who should not do their work according to the purport of the Bill, within the time prefixed; which their Lordships found absolutely impossible; they therefore proceeded by such amendments as made the Bill practicable, by assigning further periods of time, viz. for disbanding the forces in England to the 27th of July; and for those beyond sea, to the 24th of August; and for apprentices to return to their masters, to the 29th of September. To all which amendments, you tell their Lordships, the Commons find themselves obliged to disagree with them, by reason of the methods and rights of your House, in a matter very tender to you; but did not communicate to their Lordships, what those methods and rights were.

“But, for answering the end which you told their Lordships they seem to aim at, you offered them an expedient in the proviso then delivered; which you conceived was warranted by two precedents, which you mentioned.

“We are commanded, at this conference, to let you know, that the Lords have disagreed to your proviso, and for these reasons.

“First, That where you have found their amendments so necessary, that by the expedient proposed you have enlarged the periods even beyond their amendments, their Lordships conceive you have in effect consented thereunto, and the course of Parliament {404} is not to help that by a new proviso, which might and hath been done by the change of days, as was by their amendments.

“Secondly, The precedents you produced were both in cases where defects were found in Bills, not remediable any other way: which therefore both Houses easily agree.

“Thirdly, You observed rightly, that those provisos added by the Lords, after the Bill sent by them to the Commons, did not relate to any amendments made by the Commons; whereas the proviso, now added by the Commons, relates to two of the amendments made by the Lords.

“Fourthly, Their Lordships take notice, that though you seem to disagree to all the amendments, yet in your expedient you take no notice of the amendments relating to apprentices; without which, the provision which seems to be made for them in the Bill, will be merely illusory.

“Fifthly, It is very doubtful, whether the proviso, as penned, takes off the forfeitures and disabilities.

“Sixthly, If the proviso should be added, the clauses of the Bill would be inconsistent with it; the same Bill appointing short days under great penalties, and enlarging the days without penalties.

“For these reasons, their Lordships, as they have disagreed to your expedient, do insist upon their amendments; and desire your speedy concurrence in this Bill so amended, that his Majesty may not want the money, so necessary to his service, and the kingdom's quiet.”

The first amendment sent from the Lords to the Bill, intituled, An Act, &c. was read.

Resolved, &c. That this House doth not agree with the Lords in the said amendment.

The second amendment to the said Bill being read;

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Resolved, &c. That this House doth not agree with the Lords in the said amendment.

The third amendment being read;

Resolved, &c. That this House doth agree with the Lords in the said amendment.

Resolved, &c. That this House doth adhere to the proviso to be added to the said Bill.

Ordered, That the Members who did attend, and manage the conference, do meet this afternoon, in the Speaker's Chamber; and consider of reasons to be offered at a free conference, to be had with the Lords: and that Mr. Serjeant Maynard, Mr. Solicitor General, Mr. Williams, and Sir Robert Howard, be added to them.

27th June, 1678.—Ordered, That Sir Henry Ford do go to the Lords, to desire a free conference, upon the subject-matter of the last conference.

Sir Henry Ford acquaints the House, That the Lords had agreed to a free conference, to-morrow, at eleven of the clock, in the Painted Chamber, upon the subject-matter of the last conference.

Ordered, That Sir Robert Sawyer be added to the persons appointed to manage the conference: and that the Serjeant at Arms do give him notice hereof, that he may prepare himself.

28th June, 1678.—The Members appointed did then attend, and manage the free conference with the Lords, upon the subject-matter of the last conference.

Sir Thomas Meres acquaints the House, That the Members appointed had attended, and delivered their reasons at the free conference; and left the Bill with the Lords.

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A message from the Lords, by Sir Edward Low and Sir Andrew Hacket: Mr. Speaker, The Lords desire a present free conference with this House, in the Painted Chamber, upon the subject-matter of the last free conference.

And the messengers being withdrawn;

Resolved, That this House doth agree to meet the Lords at a present free conference, in the Painted Chamber, upon the subject-matter of the last free conference.

And the messengers being called in;

Mr. Speaker acquaints them, That the House had agreed to meet the Lords at a present free conference, in the Painted Chamber, upon the subject-matter of the last free conference.

Sir Thomas Meres reports, from the conference had with the Lords, That the Lord Privy Seal did manage the conference; and did acquaint them, that the Lords had voted to adhere to the amendments, and to disagree to the proviso: but did not offer any reasons.

Resolved, &c. That this House doth adhere to the proviso to be added to the Bill, intituled, An Act, &c.

Resolved, &c. That this House doth adhere to the not agreeing to the first and second amendments made by the Lords to the Bill, intituled. An Act, &c.

1st July, 1678.—Resolved, &c. That a free conference be desired with the Lords, upon the subject-matter of the last free conference; and that Sir Thomas Stringer do go up to the Lords to desire the same.

The House took into consideration the first and second amendments made by the Lords to the Bill, intituled, An Act, &c.

Resolved, &c. That this House doth adhere to the words of the {407} said Bill mentioned in the first and second amendments made by the Lords to the said Bill.

Sir Thomas Stringer acquaints the House, That the Lords had agreed to a free conference, upon the subject-matter of the last free conference, to-morrow, at eleven of the clock, in the Painted Chamber.

2d July, 1678.—The Members that were appointed to manage the free conference, did attend the same.

And being returned;

Ordered, That the Members, who did manage the conference, or any three of them, do prepare and draw up a state of the rights of the Commons in granting of money; with the reasons and proceedings that were offered and had at the conferences: and they are to consider how the rights of this House may be asserted; and also of the methods and manners of proceedings in conferences between the two Houses: and they are to meet this afternoon, in the Speaker's Chamber.

3d July, 1678.—Mr. Solicitor General reports from the Committee to whom it was (amongst other things) referred to prepare and draw up a state of the rights of the Commons in granting of money—a Vote agreed by the Committee: which he read in his place, and afterwards delivered the same in at the Clerk's table: where the same was read, and, upon the question, agreed; and is as followeth, viz.

Resolved, &c. That all Aids and Supplies, and Aids to his Majesty in Parliament, are the sole gift of the Commons: And all Bills for the granting of any such Aids and Supplies ought to begin with the Commons: And that it is the undoubted and sole right of the Commons, to direct, limit, and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords.

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15th July, 1678.—Sir Richard Temple reports from the Committee appointed (amongst other things) to prepare a slate of the reasons and proceedings had and offered at the conference had with the Lords, upon the amendments made by the Lords

to the Bill, intituled, An Act, &c.—a State agreed by the Committee: which he read in his place; and afterwards delivered the same in at the Clerk's table: where the same was read.

Ordered, That the entering of the said report in the Journal be respited until further order.

*The Substance of what passed at the free Conference //409-1// is as followeth.*

SIR Thomas Meres introduced the free conference in the usual form, for maintaining a good correspondence with the Lords; and further did take notice, that the Lords, at the last free conference, did seem not to understand what the House meant by that reason of the first conference for their disagreement—“That they were obliged to disagree to the Lords amendments by the rights and methods of the House:”—he said, the Commons could not have imagined that their Lordships had not sufficiently understood their meaning, since the points of the Lords making amendments to Aides have been lately soe fully debated and settled, upon the occasion of some amendments sent downe to the Commons to a Bill of Supply for the building of thirty ships, where the Commons did assert and make good—“That the grant of all Ayds to the King is by the Commons; and that the terms, conditions, limitations, and qualifications of such grants have been made by the Commons only;” that therefore they supposed there was noe need of further explanation or debate of the matter that had been soe solemnly settled and yielded to by the Lords: but if their Lordships would again revive it, and make it a dispute, they were ready, on the behalfe of the Commons, to maintaine their rights.—Whereupon the Lords that managed the said conference {410} did agree to decline it; the Lord Shaftsbury declaring, “The House of Lords did totally disavow the thought or design of bringing any Privilege of the House of Commons in question, or of endeavouring to gaine any point upon them; and that they had offered the said amendments merely because the times were soe short, that it was become impracticable:” and soe it was agreed by the managers on both sides, that we should proceed only upon debate of those reasons offered by the Lords against the provisoe added by the House of Commons as an expedient: Whereupon Sir Richard Temple proceeded to answer the aforesaid reasons; and for his method proposed, that he would apply himself, in the first place, to the two last reasons offered by their Lordships at the last conference, being the sole objections against the matter contained in the said provisoe, and the sufficiency of the said expedient; and that he would at present decline saying any thing to the three first reasons, relating singly to the rights and methods of the House, the dispute whereof their Lordships had agreed to wave; in hopes, that if he should clear those objections made to the substance of the provisoe, their Lordships would not differ upon forms in a matter for dispatch, whereof their Lordships had expressed so great a sense of the importance of it, in relation to the King's service, and quiet of the minds of the people, at the last conference.

As to the 5th objection, wherein your Lordships say, Its very doubtful whether the provisoe, as it is penned, takes off the forfeitures and disabilities;—it was answered, that there was only a general enacting clause for the disbanding of the forces, at the times therein limited, according to such rules and means as the King should appoint, or the Act prescribe: but with noe forfeitures or disabilities relative thereunto; the penalties and forfeitures in the said act, relating only to the levying and paying in of the money to the Exchequer, or to the misapplication or diversion of it after {411} the

receipt; soe that this objection, and part of the 6th or last objection, are wholly founded upon a mistake.

As to the 6th objection, That, if the said provisoe should be added, the clauses of the Bill would be inconsistent with it, the same Bill appointing short daies under great penalties, and enlarging the daies without penalties—to this it was answered, That, besides the mistake of the penalties, the provisoe was well consistent with the rest of the clauses of the Bill, and more than their Lordships' amendments.

1st. More suitable to the ends of the Bill; for that their Lordships did remove the day for a month, without any condition or provision that the same should be begun and proceeded with in the mean time: but that the Commons had not in their provisoe departed from their days appointed in the Bill, but conditionally, in case the King should find, by reason of the distance of the forces, or by any other just impediment, the same could not be effected within the times limited by the Bill; and with express provision, that the disbanding should be proceeded with as near the times appointed in the said Bill, as the matter would beare.

2dly. More suitable to the clauses of the Bill; for that the general enacting clause of disbanding, did leave the trust in the King, as to the manner of it, and soe doth this provisoe; and nothing is more consistent in itself, than, when there is a time limited for the doeing any thing in the body of a Bill, by a provisoe to enlarge the time in certain cases and upon certaine conditions; the end of all provisoes being to qualify something in the body of the Act.

Having thus cleared the objections, he offered to their Lordships, as a further reason for their concurrence with the provisoe, That the times limited in the Bill having been judged sufficient by the Commons for that worke, when it was sent up; and, if {412} now it becomes impracticable, it hath soe fallen out by the progress and delay the Bill hath had with your Lordships; which defect, since the Commons are nevertheless willing to supply, by an expedient agreed by your Lordships to be parliamentary, and twice practiced by yourselves, and fully answering the ends of your Lordships' amendments—they cannot doubt, that your Lordships, (where there is soe great a compliance of the Commons, and for that they have alsoe agreed with you in the amendment of that to the apprentices, which have fully satisfied your fourth objection) will not further insist upon your amendments, to occasion any unnecessary disputes, but concur with this expedient, in a matter soe highly necessary for his Majesty's service, and the satisfaction of this kingdom.

To this the Lord Anglesey endeavoured to make some reply; chiefly insisting, that it was doubtful to the Lords, whether the penalties did not extend further than to the misapplication of the money; but made out nothing from the words of the Act, the clauses having been read by Sir Richard Temple, before his argument: he also endeavoured to justify the Lords, that the times in the Bill that came up were too short, and that they had not unnecessarily delayed the passing of the Bill.

But my Lord Shaftsbury did singly insist upon this point—that in probability, the Bill might not be passed before the first time limited in the Act was elapsed; and thereupon thought it very improper to stand in the Bill, and in that regard prest their amendments as necessary:—to which it was replied by Sir Thomas Lee, Sir Robert Sawyer, and others, That if their Lordships would please to agree, it might very well

pass on Monday, before the time was elapsed; however, that the body of the Bill was relative to the first day of the session; and although there was a time appointed for the doing of a thing therein, which might be elapsed before the passing of the Bill, yet it was not incongruous, especially {413} since the provisoe, if past, would be part of the Bill, and in construction but one sentence with the former clause to which it relates; and is as much as is to say, that the disbanding shall be at such a time; but in such cases as are expressed in the provisoe, shall not be till such time: which is very proper, and solves the objection.—The Lord Shaftsbury did further insist, that it would appear by the Lords' Journall, that the Royall assent was given to this Act, after the time elapsed; which might draw into question whether any of the penalties in the Bill should take effect, in case of the misapplication of the money:—to which it was answered, That the Royall assent is to be tried by the record itselfe, and not by the Journall of the Lords; and that would be relative only to the first day of the session.

There were some interlocutory discourses, wherein the managers for the Commons did assert their rights, as at the beginning of the conference they had done, some of the Lords, that managed the conference, having offered something against it; but the same being immediately waved by some others of the Lords, the conference ended without further debate upon that point.

Sir Thomas Meres, at the third free conference, said to this effect, That the Commons doe only give and grant, in all Bills of Aide, and have the sole right to direct to what ends and purposes such Aid shall be disposed; for that in common reasoning, if the Commons only can give, they alsoe must have the power to dispose, Cujus est dare, ejus est disponere; and that their Lordships had, by their amendments, made a change of the end and purpose to which the Commons had disposed the money given in this Bill; and therefore they had resolved to adhere to the words in the Bill, and the provisoe excepted to: and that the Commons did herein differ with their Lordships upon point of right, and not of expediency; which latter matter, he observed, that their Lordships only argued for; and that this way the second adherence of the {414} Commons, whereby the House was finally concluded. He prest their Lordships to an agreement and unanimity, as well for the good of the nation, which was now much disquieted because of this army; as also because we were vallued by other nations abroad according to our agreement and unanimity at home, especially at this conjuncture; and, that now the matter wholly lay with their Lordships, their House being free to embrace the expedient; and that there was others ready to make out, that the Lords' amendments were contrary to the rights and methods of the Commons in Parliament, as he hath asserted.

After Sir Thomas Meres spoke, my Lord Anglesey, on the behalfe of the Lords, interposed, and made severall objections against the proceedings of the Commons—that they would come to a free conference after they had made resolutions of adhering; as alsoe, that they should say, they were bound up by two adhereings; and declared, that the practice of adhereing was altogether new; and that twenty of them could not bind either House during free conferences: he alsoe declared, that, as to the point of right, they were not prepared to enter into any such debate, having been waved at the former conferences, and not being the point insisted upon by the Lords; that the Lords expected arguments of prudence, and not of right: for those that have been offered of



that kind, he says, he thought they all made for the Lords, and for our compliance with them in the amendments; pretending that the times were too short, that were sent up by the House of Commons, by which it became impracticable, and not by their delays; and that they had offered these amendments to supply this defect: and that, since we had agreed the thing, to be necessary, and had offered a longer time by provisoe, he thought the desire of union should prevail with us to comply with their Lordships amendments. My Lord Shaftsbury alsoe added, That the Lords did not insist upon these amendments otherwise than to help a matter that was impracticable, {415} and improper to stand in the Bill; and that in matters of impropriety or incongruity, which might sometimes happen by the mistake of the Clerk, he supposes the Commons will not oppose, that the Lords may rectify such mistakes; and wholly waved that we should enter into a debate of right.

Sir Richard Temple, on the behalfe of the Commons, offered some answers to the exceptions that had been made by my Lord Anglesey:—That nothing was more parliamentary than to proceed with free conferences, after adhering; and, on the contrary, after a free conference, the usage of Parliament had always been to proceed with free conferences; and not to returne againe to a conference: for which he need not vouch other authority than the practice of the Lords, at the last free conference desired by them, where they delivered their resolves of their House, to adhere to their amendments, at a free conference, without offering other reasons:—that the practice of adhereing had been very ancient, though not allways in those words; and that after two adhereings of one House, it had allways been the course of Parliament, that that House was concluded; and that otherwise transactions between the two Houses upon conferences would become endless; and that a free conference was more necessary after a final adhering of one House, than ever, to persuade that House that was free, to comply and pass the Bill, which otherwise would be lost:—that at the former free conferences the matter seems to be left thus,—that the provisoe was fully cleared from all objections, and admitted by their Lordships to answer the ends of their amendments; and that it was parliamentary to make use of such an expedient, in a case which could not be rectified or helped in an ordinary way; which your Lordships pretended your amendments to be: which the Commons can in noe ways allow; for, that at the beginning, and all along the conferences, the Commons have insisted that it is against their rights and methods of Parliament {416} for your Lordships to make such amendments; this is the chief ground why the Commons have adhered, and doth therefore, in their opinion, necessitate them to enter into the debate of the rights of the House, and methods of Parliament, (being the only point remaining in difference between the Houses) which he was ready to proceed in, if their Lordships thought fit: but the managers on behalfe of the Lords did wholly wave it. Afterwards, Mr. Solicitor, Sir Robert Howard, and others on the behalfe of the Commons, offered severall prudentiall reasons why their Lordships should comply with the provisoe of the Commons; as that, by the passing of this provisoe, which is agreed on all hands to be an expedient warranted by precedent to supply any defect, and rectify any mistake in a Bill, their Lordships could run noe hazard of drawing in question any right or privilege of either House; but, should the Commons assent to their amendments, the Commons should absolutely give up a point of right, which they had been long possessed of, and

hath lately, after much contest and debate, been yielded to them:—that the conjunctures abroad much required unity at home, and to decline reviving any disputes between the two Houses; and that rather any expedient should be embraced:—that the dispatch of the Bill tending soe much to the satisfaction and quiet of the people, in the speedy disbanding of the army, did require noe less:—and much more to this effect. But, in conclusion, the Lords willing to end the conference, Sir Thomas Meres concluded the conference, with pressing the Lords to a concurrence with the provisoe, upon the reasons that had been offered; as alsoe, for that, if any thing had stuck with them as to the point of right, the Commons had offered to cleare that point to their Lordships' satisfaction; and thereupon offered to deliver the Bill and the amendments to their Lordships: when, unexpectedly, my Lord Privy Seale declared, that the House of Lords had made an order, that their Lordships should not take back the {417} Bill and the amendments; and then, varying from what he had offered before, at the beginning of the conference, asserted, that the first adherence of the Lords had concluded them; and that they were not obliged by course of Parliament to take the Bill back: which being observed to him, and how unparliamentary it was for them to refuse the Bill and amendments, much more especially to make an order soe to to doe, after the Bill was sent downe by them to the Commons, and that they have not received the resolutions of the Commons thereupon; and to make such a resolution when the Bill was out of their hands, and after the grant of a free conference; and to declare it after they had heard the Commons' reasons and debates at the same free conference. After which, the Bill, with the amendments, was againe tendered to be delivered to them, and their concurrence desired: but they still refusing it, the Bill, with the amendments, was left before them on the table, and the Commons departed to their House.

APPENDIX, N<sup>o</sup> 9. (p. 114.)  
*Extracts from the Journals.* (Vol. x. Page 133.)  
*Additional Poll Bill.*

15th May, 1689. SIR William Williams reports from the Committee, to whom it was referred to prepare reasons, to be offered at a conference, why this House doth not agree with the Lords in their second amendment to the Additional Poll Bill, That they had prepared the same accordingly; and directed him to report the same to the House: Which he read in his place; and afterwards delivered the same in at the Clerk's table: where the same were read; and are as followeth; viz.

REASONS for disagreeing with the Lords in the amendment to the Bill, intituled, 'An additional Act, to an Act, intituled, "An Act for the raising Money by a Poll, and otherwise, towards the reducing of Ireland;" —wherein the Lords, p. 1, l. 27, after the word "Act," insert a clause, for the Lords appointing Commissioners to rate themselves, in respect of their offices and personal estates, and freeing their persons from imprisonments, and for appointing a Collector to receive their assessments.

The Lords, by this clause in this Bill, assume to themselves the naming and appointing of persons to rate the Peers for their offices and personal estates, upon another Act of this present Parliament, for raising money by a Poll and otherwise, towards the reducing of {419} Ireland; and insert in this clause, That the Peers are not to be otherwise rated; and enact in this clause, That the Peers shall not be subjected to the imprisonment of his or their persons; and do therein further declare, That the rates and taxes to which the Lords and Peers of this realm are or shall be liable, by the said Act for raising money by a Poll, shall be received by a Collector to be nominated by the Peers; which Collector shall cause the same to be paid into his Majesty's receipt of Exchequer.

The said Act for raising money by a Poll, being an Act for the raising and levying of money upon the subjects of this realm, for an Aid to the King and Queen, towards the reducing of Ireland; the Money and Aid to be so raised and levied, and all Money, Aids, and Taxes, to be raised or charged upon the subjects in Parliament, are the gift and grant of the Commons in Parliament, and presented by the Commons in Parliament; and are, and always have been, and ought to be, by the constitution and ancient course and laws of Parliament, and by the ancient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament; and to be laid, rated, raised, collected, paid, levied, and returned for the public service, and use of the government, as the Commons shall direct, limit, appoint, and modify the same: and the Lords are not to alter such gift, grant, limitation, appointment, or modification of the Commons in any part or circumstance, or otherwise to interpose in such Bills, than to pass or reject the same for the whole, without any alteration or amendment, though in ease of the subjects. As the Kings and Queens, by the constitution and laws of Parliament, are to take all or leave all, in such gifts, grants, and presents from the Commons; and cannot take part and leave part; so are the Lords to pass all, or reject all, without diminution or alteration.

The Lords, in this clause, contrary to the constitution, ancient course, and laws of Parliament, would enact many material alterations in this Bill, by appointing certain Peers to be Commissioners, {420} to rate all Peers, without distinction, for their offices and personal estates: whereas no Commissioners are named by the Commons in this Bill, to rate any person or persons whatsoever; but leave it to the King, to name and appoint Commissioners, as the Bill expresses:—and this clause enacts, That Peers shall not be otherwise rated: which is exclusive of the manner and method of rating by the Commons in this Bill; and that in a clause inserted in a Bill, wherein the offices and personal estates of the Peers are no ways rateable, taxable, or concerned; yet with relation and reference, and to govern and alter not only the method of taxing and proceeding upon another Act, already passed in this present Parliament, but to alter that very law, which passed by consent of the Lords spiritual and temporal, without the proposed alterations or amendments in this clause.

This clause doth further enact, an exemption to the persons of Peers from imprisonments: which may be introductive of a privilege to the Peers against the prerogative of the Crown; and is certainly altogether foreign to the subject-matter and provisions of this Bill.

This clause doth also alter the said Act already passed, in the naming of a Collector for the Peers, and in the payment of their rates into the Exchequer: this new method of proceeding, if admitted, must much weaken the ancient and undoubted rights of the Commons, in granting Aids and Supplies to the Crown, and the course of Parliaments in such grants; and may turn to precedent hereafter against the right of the Commons in Parliament.

Resolved, That the said reasons be re-committed to the same Committee; and that they do meet this afternoon.

Ordered, That Sir Christopher Musgrave, Colonel Birch, Mr. Sacheverell, be added to the said Committee.

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18th May, 1689.—Ordered, That Mr. Attorney General, Sir Thomas Clarges, Mr. Solicitor General, Colonel Birch, be added to the Committee, to whom it is referred to prepare reasons to be offered at a conference with the Lords, touching the amendments to the additional Poll Bill.

22d May, 1689.—Sir Thomas Littleton reports from the Committee to whom it was referred to prepare reasons, &c. That they had prepared reasons accordingly: Which he read in his place; and afterwards delivered the same in at the Clerk's table: where the same were once read throughout; and afterwards a second time, one by one; and, upon the question severally put thereupon, agreed unto by the House; and are as followeth:

REASONS for disagreeing with the Lords in the amendment to the Bill, intituled, An Act, &c. &c.

The Lords, p. 1. l. 27, after the word "Act," insert, a clause for the Lords appointing Commissioners to rate themselves in respect of their offices and personal estates, and freeing their persons from imprisonment, and for appointing a Collector to receive their assessments.

To which clause the Commons disagree.

1. Because the Bill, now in question, taxes Commoners only.

2. Because the Poll Bill, already passed, hath sufficiently provided for taxing all the nobility; to which the Lords have consented.

Ordered, That Colonel Tipping do go up to the Lords, and desire a conference with their Lordships, upon the subject-matter of the amendments by their Lordships proposed to be made to the additional Poll Bill.

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Colonel Tipping acquaints the House, That he having been (according to their order) with the Lords, to desire a conference, they do agree to a present conference, in the Painted Chamber.

Resolved, That the Committee, to whom it was referred to prepare the reasons, be the managers of the said conference.

The managers went to the conference accordingly.

27th May, 1689.—A message from the Lords, by Mr. Justice Eyre and Mr. Baron Turton:

Mr. Speaker, The Lords desire a present conference with this House, in the Painted Chamber, upon the subject-matter of the last conference upon the additional Poll Bill.

And then the messengers withdrew.

Resolved, That this House do agree to a present conference with the Lords, as desired.

And the messengers being called in again;

Mr. Speaker acquainted them therewith.

Resolved, That the persons who managed the last conference, do manage this conference.

Ordered, That Mr. Finch be added to them.

The managers went to the conference accordingly;

And being returned;

Mr. Hamden reports from the conference, That the managers had attended the Lords; and that the Lord Huntingdon managed the conference; and said, That the Lords insisted upon their amendments; and gave their reasons for the same, as followeth; viz.

1. That it is the common course of Parliaments to pass explanatory Acts of any thing that has been omitted, or ill expressed, in any other Act padded in the same session: and one of that sort has passed in this present session.

2. That the House of Commons have, in this Bill, taken care of the Serjeant's-Inn, and the Inns of Court and Chancery, that they should be rated by their own Members; and that, since there {423} is no comparison to be made between them and the Peers of England, therefore the Peers ought to be rated by none but those which are of their own House.

3. That the House of Peers, out of their extraordinary zeal for the reducing of Ireland (the Poll Bill coming up so late to them from the House of Commons, that they had not so much time to deliberate upon every part of it as had been necessary, if so pressing an occasion would have allowed it) did make this omission: which, for that reason, ought not to turn to their prejudice; it being their undoubted right, which has

been preserved in all former Poll Bills; and particularly in the last, which was passed in the 29th year of King Charles the Second; the proviso of that Bill being conceived in the same terms with the proviso now offered.

A debate arising in the House thereupon;

Resolved, That the debate be adjourned till to-morrow morning.

28th May, 1689.—Resolved, That the adjourned debate, upon the report from the conference touching the amendments to the additional Poll Bill, be resumed to-morrow morning, the first business.

29th May, 1689.—The adjourned debate, upon the report from the conference with the Lords, touching the amendments to the additional Poll Bill, was resumed.

And the question being put, That the House do agree with the Lords therein;

It passed in the negative, *Nemine contradicente*.

Resolved, That a message be sent to the Lords, to desire a free conference, upon the subject-matter of the amendments to the additional Poll Bill.

Ordered, That Mr. Hamden, senior, Sir John Trevor, Mr. Finch, be added to the persons that managed the last conference.

30th May, 1689.—Ordered, That the Lord Eland do go up {424} to the Lords, to desire a free conference, upon the subject-matter of the last conference.

The Lord Eland reports, That, he having been, according to the order of the House, with the Lords, to desire a free conference, the Lords do agree to a free conference, to-morrow morning, at eleven of the clock.

31st May, 1689.—The managers, yesterday appointed, went to the free conference with the Lords, upon the subject-matter of the last conference: and being returned,

Sir Thomas Littleton reports, from the free conference, That the managers appointed had attended the same; and, that the Earl of Rochester, Earl of Huntington, and Bishop of Salisbury, managed the same for the Lords: that the Commons urged their reasons, why they did not agree with the Lords to add the clause, by them proposed, to the additional Poll Bill; viz.

That, in this additional Poll Bill, none but Commoners were taxed; and thence inferred, that their Lordships had no colour of reason to meddle in that Bill, to name Commissioners to tax the Peers, in a Bill that did not tax the Peers.

That there was no omission in the former Poll Bill, that was passed and agreed to by the Lords, for want of nomination of Commissioners to tax them: but, by consent of both Houses, at passing of the other Bill, the nomination was left to the King; indeed so restrained, as the King was to name them out of the Commissioners in the Aid Act: but that they were to tax all the King's subjects, Lords and Commons: and their Lordships passing that Bill, the Commons did think they had concluded themselves in this matter; and thought it hard, their Lordships should come, in a subsequent Bill, to supply a defect of a former Bill.

That the Lords said, They had passed the former Bill by inadvertency, being desirous to give a quick dispatch, by reason of {425} the pressing occasions: and that they had divers precedents, whereby they might name Commissioners; but they overlooked it in the former Bill, and thought it hard it should turn to their prejudice.

That the Commons answered, That they did think, that if there had been such an omission, that no Commissioners had been named at all, the Commons would have

consented that their Lordships should have named Commissioners, rather than their Lordships should not be taxed. But there were Commissioners before; and the Commons thought that it went a great way to repeal the Act: for the Commissioners that were named in the former Poll Bill, might probably be entered upon their office, and taxing the Lords; or that they will do it, if this clause be not admitted: therefore, if these Commissioners, as the law stands, and the Lords have consented, have authority to tax them, the Commons thought it would be a repeal of that law, at least pro tanto; for their authority must cease, who have an authority by the former law.

That the Lords insisted much upon it, why the Commons should deny them to name new Commissioners in this additional Poll Bill, though the Lords are not taxed by it; having given them a handle, by naming new Commissioners for the Serjeant's Inn, Inns of Courts and Chancery.

That the Commons did very reasonably distinguish with them, in that matter; for that, if the Lords had done no more than the Commons, it might have borne a further debate, viz. if they had pursued the method of the other Bill, that the King should name such of the Peers, as he thought fit, to tax them: For, why do they name Commissioners here? There was no naming by Lords or Commons; that had been manifestly against the other Bill. But the Commons left it to the King, to appoint Commissioners of the Members of the several Serjeant's Inn, Inns of Court and {426} Chancery, as he should think fit: and they name no particular persons, as the Lords did: and the reason why the Commons did this was, because there is a pretended kind of privilege, whereby they will deny other Commissioners to enter into their jurisdictions; and did so on the last Poll Bill, because there were no Commissioners of them named. And so, that this part of the tax might not be lost, the Bill provided, that the King might name Commissioners of themselves: but they did not name new Commissioners. And that, upon the whole matter, the Commons left it with their Lordships to consider whether they will agree, or no.

A message from the Lords, by Sir Miles Cooke and Mr. Methwyn:

Mr. Speaker, We are commanded by the Lords, to acquaint this House, That the Lords do desire a present free conference in the Painted Chamber, upon the subject-matter of the last free conference.

And then the messengers withdrew.

Resolved, That this House doth agree to a present free conference, as the Lords do desire.

And the messengers being called in again, Mr. Speaker acquainted them therewith.

Resolved, That the members that managed the last free conference, do manage this free conference.

The managers went to the conference accordingly:

And being returned,

Sir Thomas Littleton reports, from the free conference, That the managers appointed had attended the same: that the Earl of Rochester managed it for the Lords; and said, That, he had reported, from the last free conference, the reasons given by the Commons, and their own, to their House: upon which, considering the same, their Lordships were come to a resolution of {427} adhering to their own amendments: and

that the Earl of Rochester gave this reason; For that, he said, it did appear, that, in former Bills, the Lords had a right of naming their own Commissioners: and, though they had omitted it, out of their zeal to give dispatch to the former Act; yet, he said, afterwards, the Commons in this additional Bill, taking care that other Commissioners should be now made than in the other Bill, that handle, he said, they took to retrieve their right; as he thought they might do; and that they had adhered to the clause.

Resolved, That this House doth adhere to the Bill, without the amendments proposed by the Lords.

Resolved, That the Committee be appointed, to consider of the methods of proceeding between the two Houses upon conferences in passing of Bills.

And it is referred to the Committee, to whom it was referred to prepare reasons to be offered at a conference with the Lords upon the additional Poll Bill.

Ordered, That Sir Robert Howard be added to the said Committee: and they are to meet this afternoon, at four of the clock, in the Speaker's Chamber.

Resolved, That a message be now sent to the Lords, to acquaint them, that this House hath adhered to the additional Poll Bill, without the amendments proposed by the Lords.

Ordered, That Sir Rowland Gwyn do go up to the Lords with that message.



APPENDIX, N<sup>o</sup> 10. (p. 144.)  
*Extracts from the Journals.* (Vol. x. p. 236.)  
*Coffee, Tea, and Chocolate Bill.*

24th July, 1689. A Message from the Lords, by Sir Miles Cooke and Mr. Methwyn:

Mr. Speaker, The Lords have agreed to the Bill for collecting the duty upon coffee, tea, and chocolate, at the Custom-house, with some amendments, to which they desire the concurrence of this House.

And the messengers being withdrawn;

The said amendments were read; and are as followeth:

1 Skin, l. 26, for "twentieth of July," read "tenth of August."

At the end of the Bill, add Clause (X.)

"Provided always, and it is further enacted and declared, by the authority aforesaid, That every merchant or other importer, having paid the said duties and impositions in and by this Act appointed to be paid for any of the said goods or merchandizes, herein before made liable to the payment thereof, who shall, within twelve months next after such his importation thereof, again ship off, and carry the same out of this kingdom, or any port thereof, to any parts beyond the seas; that such merchant, or other importer, on such his exportation thereof, shall be repaid the duties, so by him paid, by virtue of this Act, of so much of the said goods and merchandizes which he shall so export or ship off."

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The first of the amendments being read a second time;

And the question being put, That the House do agree with the Lords in the said amendment;

It passed in the negative, Nemine contradicente.

The second of the said amendments being read a second time;

And the question being put. That the House do agree with the Lords in the said amendment;

It passed in the negative, Nemine contradicente.

Resolved, That a Committee be appointed to prepare reasons, to be offered at a conference with the Lords, why this House doth not agree with the Lords in the said amendments.

And it is referred to Sir Thomas Lee, &c. &c. &c. or any three of them: and they are to meet this afternoon, at four of the clock, in the Speaker's Chamber.

25th July.—Resolved, That the Committee appointed to prepare reasons, to be offered at a conference with the Lords, why this House doth not agree to the amendments proposed by the Lords to the Bill, &c. do withdraw, and sit during the sitting of the House.

Sir John Trevor reports from the Committee, appointed to prepare reasons, to be offered at a conference with the Lords, why this House doth not agree with the Lords in the amendments by them proposed to be made to the Bill, &c. That the Committee had prepared the same accordingly: and he read them in his place, and afterwards delivered

the same in at the Clerk's table: where the same were read; and agreed unto by the House; and are as followeth; viz.

REASONS to be given to the Lords at a conference, against their amendments to the Bill, &c.

1. The Commons have always taken it for their undoubted privilege (of which they have ever been jealous and tender) that in all Aids given to the King by the Commons, the rate, or tax {430} ought not to be any way altered by the Lords. The amendment made by your Lordships, being in point of time, the Commons hope your Lordships will not, at this time, renew a question concerning the method of granting Aids, which has formerly, in instances of like nature, occasioned great debates; and which may now beget many conferences, spend much time, and end in great inconveniences.

2. This amendment, proposed by your Lordships, makes the Bill incoherent: for both Houses having agreed, that the forfeitures should commence from the 20th of July, it will look strange, that the forfeitures should begin before the duty is made payable.

3. Ships are now arriving daily with the commodities mentioned in the Bill; which will be a loss to the King, by putting the commencement of the duty so far off.

4. As to the proviso, which your Lordships have sent to the Commons, the Commons do disagree to it; and for that do refer to their first Reason; the proviso being an alteration and lessening of the grant made by the Commons. And the Commons do, for these reasons, hope your Lordships will agree with them; and not revive old disputes.

Resolved, That a conference be desired with the Lords, upon the subject-matter of the said amendments.

Ordered, That Mr. Pelham do go up to the Lords, to desire the said conference.

Mr. Pelham acquaints the House, That he having, according to their order, been up to the Lords to desire a conference; they do agree to a present conference, in the Painted Chamber.

Resolved, That the Committee, to whom it was referred to prepare the reasons for the said conference, do manage the conference.

Then the managers went to the conference accordingly:

And being returned;

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Mr. Hamden reports, from the conference with the Lords, That the managers had attended the same, and delivered their reasons, why this House doth not agree with the Lords, in the amendments to the said Bill.

27th July.—A message from the Lords, by Sir Miles Cooke and Mr. Methwyn:

Mr. Speaker, The Lords desire a present conference with this House, in the Painted Chamber, upon the subject-matter of the amendments to the Bill, &c.

And the messengers withdrew.

Resolved, That this House doth agree to a conference with the Lords, as is desired.

And the messengers being called in again, Mr. Speaker acquainted them therewith.

Resolved, That the Committee, who managed the last conference touching the said amendments, do manage this conference.

And the managers went to the conference accordingly:

And being returned;

Sir John Trevor reports, from the conference with the Lords, That the managers appointed had attended; and that the Duke of Bolton and Earl of Rochester managed the conference on the part of the Lords; and that they said the Lords had agreed with this House as to the matter of the first amendment by them proposed, and waved their amendment: but that they insisted upon adding the clause to the Bill; and gave their reasons for the same, as followeth:

REASONS to be given to the Commons, at a conference, for the Lords insisting on their proviso to the Bill for collecting the duties upon coffee, &c.

The Lords are much surprised at the assertion of the Commons, That, in all Aids given to the King by the Commons, the {432} rates or tax ought not to be any way altered by the Lords; since they conceive it hath always been their undoubted right, in case of any Aids given to the King, to lessen the rate or tax granted by the Commons; whereof several precedents might be given, which, at the present, they are willing to forbear, that they may not revive old disputes.

But as to the present proviso now offered by the Lords, their Lordships are of opinion, this general point is not the case now in difference; it being neither an alteration, nor lessening of the duty laid upon these commodities. For what is proposed to be drawn back upon the exportation of them, cannot be said to lessen the rates imposed upon them. It does indeed take away so much from the King's income; but adds much more to the benefit of trade, of which the Lords conceive they are equal and competent judges: and therefore they think they are very well founded to insist on the proviso.

And that the Duke of Bolton said further, That he hoped a good correspondence between the two Houses would be maintained; for that they were Englishmen as well as the Commons.

Which report being read at the table;

And the question being put, That the House do agree with the Lords in the said amendment to add the said clause;

It passed in the negative, *Nemine contradicente*.

Resolved, That the Committee, who managed the said conference, do prepare reasons to be offered at a free conference with the Lords, why this House doth not agree with the Lords in the amendment for adding the said clause.

Ordered, That Mr. Finch, &c. &c. &c. be added to the said Committee: and that they do meet on Monday morning next, at eight of the clock, in the Speaker's Chamber.

APPENDIX, N<sup>o</sup> 11. (p. 115.)  
*Extracts from the Journals.* (Vol. x. p. 645.)  
*Bill for an additional Act for appointing Commissioners to state  
the Public Accounts, &c.*

28th Jan. 1691. A Message from the Lords by Sir John Francklyn and Sir John Hoskyns:

Mr. Speaker, The Lords have agreed to the Bill, intituled, "An additional Act for appointing and enabling Commissioners to examine, take, and state the Public Accounts of the Kingdom," with some amendments; to which amendments they desire the concurrence of this House.

And then the messengers withdrew.

Then the House proceeded to take into consideration the amendments made by the Lords to the Bill intituled, An Act, &c. &c. &c.

And the same being read, are as followeth, viz.

Prefs 1, line 31, after "Esquire" add "Sir Cyrill Wych, Sir Philip Meadows, John Hampden, Esquire, and Alexander Davenant, Esquire.

line 32, for "four" read "six".

Prefs 5, line 22, for "four" read "six".

Prefs 6, line 10, for "four" read "six".

line 14, for "four" read "six".

line 21, for "four" read "six".

line 38, for "four" read "six"

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Prefs 7, line 1, for "four" rad "six".

line 8, for "four" read "six".

line 15, for "four" read "six".

Prefs 8, line 11, for "four" read "six".

line 20, for "four" read "six".

line 32, for "four" read "six".

Prefs 9, line 31, for "four" read "six".

And the said amendments being read a second time, one by one, were, upon the question severally put thereupon, disagreed unto by the House.

Ordered, That a Committee be appointed to prepare reasons to be offered at a conference with the Lords touching the said amendments.

And it is referred unto Mr. Harley, Sir Edward Seymour, &c. &c. &c. to prepare the same. And they are to meet to-morrow morning, at nine o'clock, in the Speaker's Chamber; and to sit during the sitting of the House.

29th January, 1691.—Mr. Herbert reports. That the Members appointed had prepared reasons to be offered at a conference with the Lords, touching the amendments made by their Lordships to the additional Bill, &c.; which reasons they had directed him to report to the House; and which he read in his place; and afterwards delivered in at the table: where the same were read, and agreed unto by the House; and are as followeth, viz.

1. This Bill is for reviving the Act passed the last session, in order to perfect the stating of the accounts; in which the Commissioners, named by the Commons, have already made a considerable progress.

2. In all Acts that have ever passed for taking accounts of public money, the Commissioners have been always named by the Commons only; and, in particular, in an Act passed the 19th {435} Car. II. intituled, "An act for taking the Accounts of the several Sums of Money therein mentioned;" which Act empowers the Commissioners therein named to take account not only of money granted by the Commons, but also other sums of the public revenue: and although that Act requires an account to be given to the King's Majesty, and to both Houses of Parliament, yet all the Commissioners thereby constituted were named solely by the Commons.

3. The Commons, by this Bill, appoint those, whom they name Commissioners, to do that out of Parliament, which, during the session of Parliament, is the proper work of the House of Commons; in whom, by the laws and customs of the kingdom, the power of granting Supplies to the Crown is vested, as an essential part of their constitution: and the taking and examining the accounts thereof is of right in them also; and they being the representatives of all the Commons, no Commoner can be named but by them.

4. The disposition, as well as granting money by Act of Parliament, hath ever been in the House of Commons: and these amendments relating to this disposal of money to the Commissioners, added by the amendments, do intrench upon that right. And therefore the Commons, for these reasons, do disagree with their Lordships, in all their Lordships' amendments to the said Bill.

Resolved, That a conference be desired with the Lords upon the subject-matter of the amendments made by the Lords to the said Bill.

Ordered, That Mr. Herbert do, upon Monday morning next, go to the Lords, and desire the said conference.

1st February, 1691.—Mr. Herbert reports, That he having, according to their order of Friday last, been with the Lords to desire a conference upon the amendments made by their Lordships to the {436} Bill, intituled, An additional Act, &c. the Lords do agree to a conference presently, in the Painted Chamber.

Ordered, That the Members, who prepared the reasons to be offered at the said conference, do manage the said conference.

And the managers went to the conference accordingly.

And being returned;

Mr. Herbert reported, That they had attended the conference; and given the reasons why this House doth not agree with the Lords in the said amendments.

5th February, 1691.—A message from the Lords, by Sir Miles Cooke and Sir James Astry;

Mr. Speaker, The Lords do desire a conference with this House this morning, at eleven of the clock, in the Painted Chamber, upon the subject-matter of the last conference.

And then the messengers withdrew.

Resolved, That this House doth agree to a conference with the Lords, as they desire.

And the messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Members, who managed the last conference, do manage this conference.

Then the managers appointed went to the conference.

And being returned;

Sir Joseph Tredenham reports, That they had attended the said conference: and that the Lord Rochester managed the conference on the part of the Lords; and acquainted them, That the Lords had desired this conference, for the continuance of the good correspondence between the two Houses: and that the Lords were not satisfied with the reasons given by this House, touching the amendments to the Bill intituled, An additional Act, &c.; and that they do insist on all their amendments to the Bill: and that, in answer {437} to the reasons given by this House against the said amendments, the Lords gave the reasons following, viz.

To the first and second reasons offered by the Commons, the Lords answer, That the Commissioners named by the Commons having already made some progress in the stating the accounts, the naming of some new ones can be of no prejudice to the perfecting that work; the nature of taking and stating accounts being such, that new men, being joined with others, may be very capable of going on with the remainder of that work.

The Lords do agree, That, in the Act passed in the nineteenth of King Charles the Second, for taking accounts, the Commissioners thereby constituted were named by the Commons; and the Lords did agree to it, both because they approved of the number and quality of the persons, and because, they, being not Members of the House of Commons, might always be sent for, at the pleasure of the Lords, to explain any matters relating to those accounts. But the Lords having now had experience by the last Act, which constituted no Commissioners but only such as were of the House of Commons, that their Lordships cannot have those Commissioners at any time before them, to answer such questions, or explain such doubts, as their Lordships may have occasion to enquire into—or even to intimate such points, as seem to have been omitted, either in the accounts, or the observations made thereupon—is one very great reason why the Lords have found it necessary to name such in this Bill, as their Lordships may, from time to time, receive informations from; without which, their Lordships examining into the accounts will prove defective and dilatory.

To the third and fourth reasons their Lordships reply, That they are unwilling to enter into a dispute with the Commons, what is the proper work of either House, in relation to the granting Supplies to the Crown, or taking or examining the accounts thereof; because they would avoid any controversies of that kind with the {438} House of Commons, especially at this time; having by experience found that such debates have frequently been attended with ill consequences to the public. But upon this occasion their Lordships conceive it is very plain, that, since this Bill provides that the accounts shall be laid before the Lords, it must be likewise owned that it is the proper work of this House to examine them: and by no means can their Lordships acquiesce in the reason given by the House of Commons, that, they being the representatives of all the Commons, no Commoner can be named but by them; because that would, by the same

parity of reason, deprive their Lordships of the power of assigning counsel to any man impeached by the House of Commons, which in cases of misdemeanor they have always done: and, by the late Bill for regulating trials in cases of treasons, it was agreed by both Houses, that counsel should be allowed in cases of treason, even upon impeachments; which counsel must have been assigned by the Lords, and out of Commoners.

Lastly, The House of Lords cannot allow the disposition, as well as granting of money by Act of Parliament, to have been solely in the House of Commons; and much less can their Lordships consent, that the Lords have not always had a right of naming any persons to be employed in the public service by Act of Parliament, and assigning them such salary for their pains, out of the Exchequer, as should be agreed on in that Act of Parliament: and, for these reasons, their Lordships do insist on all their amendments to the said Bill.

And, after consideration had of the said report,

It was resolved, That this House doth insist upon their disagreement with the Lords in the amendments to the said Bill.

Resolved That a free conference be desired with the Lords upon the subject-matter of the last conference.

Ordered, That the Members who managed the said conference {439} do meet this afternoon, at four o'clock, in the Speaker's Chamber, and prepare for the said conference.

6th February, 1691.—Ordered, That Sir Joseph Tredenham do go to the Lords, and desire a free conference with the Lords, upon the subject-matter of the last conference.

Sir Joseph Tredenham reports, That he having, according to order, been at the Lords, to desire a free conference upon the subject-matter of the last conference, the Lords do agree to a free conference accordingly; and appoint the same upon Monday morning next, at twelve o'clock, in the Painted Chamber.

8th February.—Then the managers appointed went to the free conference, desired on Saturday last with the Lords, upon the subject-matter of the last conference.

And being returned;

Sir Joseph Tredenham reports, That they had attended the said free conference, according to the order of the House, and acquainted the Lords, that this House had insisted on their disagreeing with their Lordships in the amendments to the Bill for appointing and enabling Commissioners to examine, take, and state the public accounts of the kingdom.

10th February.—A message from the Lords by Sir John Francklyn and Sir Robert Legard:

Mr. Speaker, The Lords do desire a free conference with this House, this day at one o'clock, in the Painted Chamber, upon the subject-matter of the last free conference.

And then the messengers withdrew.

Resolved, That this House do agree to a free conference with the Lords, as they do desire.

And the messengers were called in again, and Mr. Speaker acquainted them therewith.

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Then the managers appointed went to the free conference with the Lords.

And being returned;

Sir Edward Seymour reports, That the managers had attended the free conference; and that the Lord Rochester managed the same on the part of the Lords, and brought the Bill, and read the title of it, for appointing and enabling Commissioners to examine, take, and state the public accounts of the kingdom; and acquainted them, That the reasons given at the last conference had been reported to the Lords, and that they had had due consideration of them; but that, notwithstanding, they did not depart from their amendments to the Bill but did adhere to their amendments: and delivered the Bill and amendments back again. And the same were brought up to the table.

Ordered, That a report of the two last free conferences be made to the House upon Saturday morning next.

13th February.—Sir Joseph Tredcnham, according to the order of the day, reports the two last free conferences with the Lords as followeth, viz.

That the conference was begun by the managers for the Commons; who acquainted their Lordships, that the Commons had desired this free conference, to preserve that good correspondence which had hitherto continued between the two Houses.

That they had solemnly and deliberately considered their Lordships' amendments to a Bill from the Commons, intituled, An Act, &c. and the reasons which induced their Lordships to insist on those amendments, but had not found them sufficient to convince them; and they still disagree with the Lords in those amendments, and insist on that disagreement.

That the particular knowledge the Commons had of the Commissioners named in the Bill, recommended them to their nomination; and the progress those Commissioners have already made in {441} stating those accounts, has justified the Commons' good opinion of their abilities and integrity.

That to add new Commissioners, must of necessity delay the perfecting this work, and would hazard the rendering the Bill (which continues only for a year) ineffectual. For the Commissioners proposed in their Lordships amendments, will find themselves by their oath, and to answer their Lordships expectations, obliged to inform themselves as well of what hath already undergone the scrutiny of the present Commissioners, as in those particulars which shall hereafter become the subject of their enquiry: and that such retrospect cannot be consistent with the dispatch the Bill requires.

That in answer to their Lordships argument, derived from the quality of the Commissioners named in the Bill, it was demanded, Whether their Lordships could have any assurance, that the Commissioners they proposed will not be elected in the vacancy of this, nor in any succeeding Parliament, wherein these accounts may be required? Should that happen, their Lordships amendments would not be useful to attaining the end intended.



That the Commons could not determine how far the quality of the Commissioners named in the Act of accounts, made in 19 Car. II. prevailed with their Lordships in agreeing thereto: there was, indeed, no Member of the Commons of that Committee which met at Brooke House with great reputation; but how little they effected, how soon they were dissolved, and how the fruits of their labours became abortive, is fresh in memory.

That from thenceforth the Commons with better success, reposed trusts of this nature in their own Members. Of such were the Committee for disbanding the army, constituted 31 Car. II.; such are the Commissioners in the Act whereunto this Bill relates. It might with as good logic be argued, that their Lordships agreed {442} to those last recited Acts—because the Commissioners therein named were then Members of the House of Commons—as that their Lordships were induced to an agreement with the Commons in the nomination of the Commissioners of Brooke House, because they were not of the House of Commons. But, from this variety in the precedents, it may be more reasonably inferred that their Lordships have, from time to time, agreed to the Commissioners named by the Commons, without respect to their quality, and because the right of such nomination is in the Commons only.

That the measures by which both Houses are to govern themselves, are derived either from precedent or reason. Their Lordships had not offered any precedent in justification of insisting on these amendments. If there be any force in the argument their Lordships derive from the clause in this Bill, which provides, That the accounts shall be laid before the King, and both Houses of Parliament—it extends as well to vest a right in their Majesties to nominate such Commissioners, as in their Lordships; for it equally relates to both.

That the title and design of the Bill is, to appoint Commissioners to examine, take, and state the public accounts of the kingdom; which, during the session of Parliament, is the proper work of the House of Commons: and no inference can be more natural, than that it is in the Commons only to name Commissioners for the exercise of that authority, which is an essential part of their constitution.

That they desired to know the end their Lordships would propose to themselves by such enquiry. Should any misapplication of money, or default of distribution, appear in these accounts, their Lordships cannot take cognizance thereof originally; nor otherwise, even in their judicial capacity, than at the complaint of the Commons: should a failure or want of money appear, it is not in {443} the Lords to redress it; for the grant of all Aids is in the Commons only.

That such an enquiry can only be of use to the Commons, to direct their future supplies: and herein the last commission proved useful this session, the Commons supplying the defects of the fund upon the expences in the excise. If there be a redundancy, the Commons only can apply it to the charge of the ensuing year; if there be discovered misapplications or undue preferences, the Commons only can frame the accusations, and lay them before their Lordships for judgment.

That the managers added, that, though this Bill be thought so useful at this time as cannot be sufficiently expressed, yet nothing can be of greater importance to the public, than the maintaining the just and distinct rights and privileges, which each state of this kingdom enjoys, according to our constitution. The Lords have many high

privileges to recommend their Lordships to the favour of their prince, and to support their figure in the government; but the Commons have little besides this one of giving money and granting aids. This is their undoubted and inherent right; and therefore every thing that intrenches on that, the Commons may be allowed to be extremely jealous of.

That the liberty of naming Commissioners to take account of the public money is a necessary dependance of this right, is evident. Their Lordships will consider that, when any Aids are given, the Commons only do judge of the necessities of the Crown; which cannot otherwise be made manifest to them, than by enquiring how the money which hath been granted, and the revenue of the Crown, have been expended and applied. If the several branches of the public revenues are rightly considered, it will be found there is some particular use to which they were originally assigned; there are some necessary charges incumbent on {444} the King, in the administration of the government, which those Supplies are to defray; there is no fund set aside for contingencies, no provision made for casual and incident charges, but all extraordinary expences require an extraordinary supply. And when the Commons do think fit to erect such a commission, the expence made in the execution of it must, soon or late, be drawn from the Purse of the people: and since the burden must inevitably light upon their shoulders, they only can be judges of the weight which is fit to be imposed, and to assign the quantum of the charge, which in this case is proportionable to the number of the Commissioners. So that this doth not only relate to this undoubted right of the Commons, but doth finally end in raising of money itself; which being a privilege derived to them from their ancestors, and continued by the uninterrupted practice of all ages, it is a right the Commons cannot depart from, but must for ever assert, support, and maintain.

For although the Lords, in the preamble of the third reason, seem to wave the dispute, yet having in their last reason disallowed the right of the Commons, in granting, limiting, and disposing public Aids, the Commons think it of the highest concern that this affair, being the main hinge of the controversy, should be cleared and settled.

That the ancient manner of giving Aids was by indenture, to which conditions were sometimes annexed: the Lords only gave their consent, without making any alteration. And this was the continued practice until the latter end of Henry the Fifth, and in some instances until Henry the Seventh.

That in the famous record, called “The Indemnity of the Lords and Commons,” settled by the King, Lords, and Commons, on a most solemn debate in 9 Hen. IV, it is declared, That all Grants and Aids are made by the Commons, and only assented to by the Lords.

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That the modem practice is, to omit the Lords out of the granting, and naming them parties only to the enacting clause of Aids granted to the Crown: to which their Lordships have always concurred; and, on conferences, departed from their attempts of minute alterations in Acts relating thereunto.

That if then all Aids be by the grant of the Commons, it follows that the limitation, disposition, and manner of account, must likewise belong only to them.

And that although the account, then stated, was ordered, by the 19 Car. II. and the Act to which this Bill relates, to be brought before their Majesties and both Houses of Parliament, this was a voluntary act, and no concession of the Commons: for when their Lordships insisted upon it, as of right, in 31 Car. II. it was denied; and their Lordships, after several conferences thereupon, withdrew their amendments to that Bill.

That the Lords, who appeared as managers, and spoke at this conference, were the Earl of Devonshire, the Earl of Nottingham, and the Earl of Rochester.

That the substance of what was delivered by the Lords was to this effect:

That their Lordships are willing, at all times, to meet with the Commons at conferences, and free conferences, with an equal desire to continue a good correspondence between both Houses; and have often condescended in some things, rather than to go on with further debates: for though conferences are the best way of reconciling any difference between the two Houses, yet they are marks to the world that there is such a difference; and the Lords, even in this case, would have condescended to depart from their amendments, if they had not judged them to be of such consequence, that they could not do it.

That they took notice, that it hath been said that debates of this kind ought to be governed either upon reason or precedent; and they would endeavour to proceed upon both.

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That, in the Act 31 Car. II. for disbanding the army, there was no direction to give any account to either House; and in the Act in the year 1677, for the building of ships, there was no accounts to be given to the House of Lords: so that these precedents, which the gentlemen of the House of Commons insisted upon, are not very applicable in the matter of debate; for in the last Act, and the Bill now depending, there is a clause, that an account shall be given to both Houses.

That the Lords had experienced, by the last Act, that the enquiries their Lordships are directed to take by this Act are defective and dilatory, for want of Commissioners that can attend them, and are able to explain such things as they may have occasion to enquire into: and it cannot be imagined that ever they can have that satisfaction by writing to them, which they may arrive at by personal examination.

That it is very true, that, in the Act of 19 Car. II. for taking the public accounts, there were no Commissioners named by the Lords; but it is as true, those Commissioners were not Members of the House of Commons: and they had no reason to disagree in that matter, because this objection did not lie against them.

That their Lordships declined all arguments concerning the Rights of the Commons, in granting, limiting, and disposing public Aids, and therefore forbore to answer any arguments of that kind; for that the business now depending relates only to the taking accounts, and directing such part of the revenue, as is not appropriated, to the payment of salaries to such persons as are employed therein: which their Lordships take to be quite another thing.

That the Commons urged it with great weight, "If their Lordships could shew no precedent for doing this." But if there be any such precedents, their Lordships did hope

the Commons would allow them for reasons: for it is not to be supposed these precedents were made without reasons.

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That the Commons insist, they are the representatives of all the Commons of England; and that the Lords can name no Commoner or Commissioner, nor appoint money to such persons for these services. It appears by the Journals of the Lords (and it is to be supposed in those of the Commons likewise) that in the Poll Bill, August 1660, the Lords named Commissioners for the Cinque Ports, and expunged some in Kent and Sussex; to all which the Commons agreed. In an Act 31 Car. II. for disbanding the forces, the Lords added Bennet Lord Sherrard, and the Commons agreed.

That in an Act made 12 Car. II. for speedy disbanding the army, the Lords named Commissioners that were Peers, who were to be joined with Commissioners named by the Commons; and afterwards, in an additional Act for disbanding the remainder of the army, John Walker was added a Commissioner by the House of Lords, and his salary was twenty shillings per diem: which last precedent comes directly up to be a precedent in point; only, in the amendments now offered, there are four who are to have £. 500 per annum each, and he was one who had £. 365 per annum.

That it was insinuated by some of the gentlemen of the House of Commons, That the end their Lordships could propose to themselves, by such an enquiry, must be either to discover what offences have been committed in the misapplication, or whether there be a failure of the money for the ends for which it was intended; and that to neither of these their Lordships enquiry can be of use: for as to the punishment, it must be by impeachment; and if there be any want of money, the Lords cannot come at it. This their Lordships look on as an objection to the clause itself, but not to their naming Commissioners to satisfy their Lordships in relation to the accounts—That there are other uses may be made of these accounts. The Lords may have leisure to enquire {448} into these accounts, whilst the Commons are employed on other weighty occasions: and the Lords may take notice (for there is an account of it in the printed Votes, licensed by the Speaker) that the Commons have not made so great a progress in those accounts as their Lordships have done: and, should the Lords discover miscarriages, they may order a prosecution of them in the Exchequer, lay them before the House of Commons, or represent the matter to the King.

That there are some precedents in Richard II.'s time: and it seems to be implied in the precedents quoted in the year 1677, about the Act for building thirty ships, that the House of Commons have not, of themselves, a right to take these accounts. For the dispute then was not about the Commissioners, but the laying the accounts before the Commons alone; for, had they power to call for them themselves, an Act would not have been necessary: and the precedent of the Lords receding at that time, ought not to be reckoned to their disadvantage; because from their suspending their privileges at that time, which they did with a protestation, and from the thirty ships that were built thereupon, it is that we sit here in safety.

That in that dispute it was acknowledged, that it was the inherent right of the Lords to call for the accounts: so that it is no extraordinary thing that the Commons have now done; for this Bill gives the Lords and Commons an equal right to call for the accounts. And since the Commons cannot call for these accounts so well as by this Bill,

wherein they have named persons under their own jurisdiction, as Members of your House; it is but reasonable they likewise should name such Commissioners as they may have authority to call upon: for the Commons will hardly allow them authority to send for the Members of the House of Commons.

On the whole, since the Bill had allowed their Lordships to take the accounts, their Lordships desired to know what reason {449} there could be, why they should not be allowed the proper methods of coming at these accounts?

That the managers for the Commons, by way of reply, said,

That the precedents in 1660, 31 Car. II. and additional Bill in 12 Car. II. were no grounds for their Lordships insisting to add and appoint Commoners; because in those the Lords had the consent of the Commoners, signified to their Lordships by their representatives in Parliament. But the Lords have no right to impose an office or burden upon any Commoner without their own consent; and, in the course of the legislature, the Lords have no means to know, neither hath a Commoner any way to signify his consent or dissent, but by his representatives in Parliament. To insist to appoint Commoners, after their dissent is signified in the proper parliamentary way, is to insist upon a right of appointing Commoners, and imposing a burden upon them, without their consents; which their Lordships never pretended to, no more than the Commons to nominate and appoint Peers in any Commissions.

That in the Aid given 2<sup>o</sup> of their Majesties reign, the Lord Durseley was inserted a Commissioner. In case the Lords had not signified his dissent, he had been a Commissioner: and yet that would not have been a precedent of the Commons' right of appointing a Peer to be a Commissioner, and insisting upon it. But the Lords, by amendment left him out; and the Commons agreed to the amendment, though in a Money Bill; conceiving they had no right to insist upon naming a Peer without the consent of the Peers, who only can bind their own Members: neither can the Peers pretend to a larger right over the Commons,

That their Lordships in their reasons say, That if they may not nominate Commoners Commissioners, by parity of reason they may be deprived of assigning counsel upon impeachments for {450} misdemeanor, and in cases of high treason, where matter of law appears:

That the Commons conceive this is not a natural consequence. For, in cases of impeachment, they act in their judicial capacity; and the law gives the party accused a right to have counsel: and their Lordships assign counsel, when the party cannot get counsel to assist him; and the law enables their Lordships to do it. But there is no law which entitles them to nominate Commissioners for passing accounts.

That their Lordships alleged, That, in the Bill for regulating the trial of treason, both Houses agreed that their Lordships might assign counsel in cases of impeachment for high treason.

That the Bill not passing, that cannot be urged as a precedent.

That as the Lords cannot supply the want, that being the act of the Commons—nor punish the misapplication, till complaint is made by the Commons—so neither can their Lordships acquaint the Commons at a conference that there hath been a misapplication of the money: because that were giving judgment before the matter came judicially before them.

That the Lords cannot punish a Commoner, except for breach of their privilege, without an information made by the Commons.

That since no fruit can be had by their Lordships enquiry, why should they nominate Commissioners, not being their representatives?

And that to insist upon it at this time is most unseasonable, when the Commons, for the support of the government, lay under the heavy burden of so many taxes: which weight will be much increased, by being denied the satisfaction of knowing how their money is disposed of, and having those skreened from justice who misapplied the same; which must necessarily happen by denying to agree with the Commons.

That in answer to what was said by their Lordships, That, in {451} case of the building the thirty ships, it was admitted their Lordships had a right to take the account—it was admitted with this distinction, that, as to the stating and examining the accounts, it belonged only to the Commons; but that the Lords claimed the cognizance of the accounts, in their judicial capacity, for their information in cases of misdemeanor.

That as to the question which their Lordships ask, To what end are these accounts to be laid before them? to which there seems some difficulty to make an answer—the Commons cannot but observe from thence, their Lordships' right to demand to have those accounts is not very clear; for it is a strange kind of right, for which it is hard to give a reason.

Upon consideration whereof it was resolved, That this House doth adhere to their disagreeing with the Lords to the amendments made by the Lords to the Bill, intituled, An additional Act, &c. &c.: and that this House doth adhere to the Bill, as it was sent up from this House.

APPENDIX, N<sup>o</sup> 12. (p. 119.)  
*Extracts from the Journals.* (Vol. xiii. p. 31 8.)  
*Bill for Aid by forfeited Estates.*

8th April, 1700. A Message from the Lords, by Mr. Baron Powys, and Mr. Baron Hatsell:

Mr. Speaker,

The Lords have agreed to the Bill, intituled, "An Act for granting an Aid to his Majesty, by Sale of the forfeited and other Estates and Interests in Ireland, and by a Land Tax in England, for the several purposes therein mentioned;" with some amendments: to which they desire the concurrence of this House.

And then the messengers withdrew.

The House proceeded to take the said amendments into consideration: and the same were read; and are as follow, viz.

Prefs 3, l. 23, after "notwithstanding" add the proviso marked A.

At the end of the rider which comes in after the word "made," in the last line of the 42d prefs, insert the clauses marked B and C.

Prefs 100, l. 12. leave out from "term" to "and" in the 8th line of the 101st Prefs.

Clause A.—"Provided, that nothing in this Act shall be construed to vest in the said trustees any other powers, interests, or estates, as to estates in tail, of any of the forfeitures in Ireland by this Act vested in them, than the King has, or {453} may have, at any time before the last day of Trinity term, 1700."

Clause B.—"Provided always, and be it enacted by the authority aforesaid, that no grant of any manors, lands, or tenements, sum or sums of money, to any person or persons in this Act before mentioned, shall take any effect, or vest any estate or interest, in any of the said persons, until the King's most excellent Majesty shall by his letters patents, under the Great Seal of Ireland, grant such manors, lands, or tenements, sum or sums of money, to such person or persons, and for such estate and interest, as are hereinbefore particularly named or mentioned."

Clause C.—"Provided always, that nothing in this Act shall be construed to confirm the outlawry of any person, who was not outlawed till after his death."

The first amendment being read a second time;

And the question being put, That the House do agree with the Lords in the said amendment;

It passed in the negative, *Nemine contradicente*.

The second amendment being read a second time;

And the question being put, That the House do agree with the Lords in the said amendment;

It passed in the negative, *Nemine contradicente*.

The third amendment being read a second time;

And the question being put, That the House do agree with the Lords in the said amendment;

It passed in the negative, *Nemine contradicente*.

Resolved, That a conference be desired with the Lords upon the subject-matter of the said amendments.

Ordered, That a Committee be appointed to draw up reasons, to be offered to the Lords at the said conference.

And it is referred to Mr. Harley, Sir Richard Onslow, &c. &c. {454} &c. and they are to withdraw into the Speaker's Chambers, and make their report with all convenient speed.

Sir Edward Seymour reported from the said Committee, That they had drawn up reasons, to be offered at the said conference; which they had directed him to report to the House; which he read in his place; and afterwards delivered in at the Clerk's table: where the same were read, and agreed unto by the House; and are as follow, viz.

The Commons cannot agree to the amendments made by your Lordships to this Bill; for that all Aids and Supplies, granted to his Majesty in Parliament, are the sole and entire gift of the Commons: and as all Bills for the granting such Aids and Supplies begin with the Commons, so it is the undoubted and sole right of the Commons to direct, limit, and appoint, in such Bills, the ends and purposes, considerations, limitations, and qualifications of such grants; which ought not to be changed or altered by your Lordships.

This is well known to be such a fundamental right of the Commons, that to give reasons for it, has been esteemed by our ancestors to be a weakening of that right.

The Commons therefore leave the Bill, and the amendments, with your Lordships; together with the ill consequences that may attend the not passing this Bill.

Ordered, That the Lord Marquis of Hartington do go to the Lords, and desire the said conference.

9th April.—The Lord Marquis of Hartington reported to the House, That he having, according to their order, been at the Lords, to desire a conference upon the subject-matter of the amendments made by their Lordships to the Bill, intituled. An Act, &c. the Lords do agree to a conference, and appoint the same presently in the Painted. Chamber.

Ordered, That the Committee who drew up the reasons for the said conference, do manage the conference.

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And the managers went to the conference:

And being returned;

Sir Edward Seymour reported the conference; and that they had given the Lords the reasons for disagreeing to their Lordships' amendments; and left the Bill and amendments with the Lords.

10th April.—A message from the Lords, by Mr. Meredith and Sir Richard Holford:

Mr. Speaker,

The Lords do desire a present conference with this House, in the Painted Chamber, upon the subject-matter of the last conference.

And then the messengers withdrew.

Resolved, That the House doth agree to a conference, as the Lords do desire.



And the messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Members who managed the last conference do manage this conference.

And the managers went to the conference:

And being returned;

Sir Edward Seymour reported, That those, who the House were pleased to command, had met the Lords at the conference; and that it was managed, on the part of the Lords, by the Lord President, who was pleased to open the conference in this manner:

Gentlemen of the House of Commons,

I shall not trouble you with any reasons to introduce this conference. The reasons that relate to the differences between us are contained in a paper; and I hope they are proposed in that manner, as will tend always to the maintaining a good correspondence between the two Houses: which paper is as followeth, viz.

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The Lords do insist on their amendments to the Bill for, &c. &c. &c.

Because the reasons given by the Commons, against their Lordships' amendments, do no ways relate to the matter contained in the said amendments.

Because, though there be nothing in the said amendments relating to Aids and Supplies granted to his Majesty in Parliament, yet the Commons have thought fit to take occasion thereupon to assert a claim to their sole and entire right, not only of the granting all Aids in Parliament, but that such Aids are to be raised by such methods, and with such provisions, as the Commons only think proper. If the said assertions were exactly true, which their Lordships cannot allow, yet it could not with good reason follow from thence, that the Lords may not alter or leave out, according to their amendments, when the saving the estates of innocent persons, and of such as have been outlawed after their death, makes such amendments necessary.

And the Lords think it unreasonable and unjust to vest in the trustees any greater or other estate, than was in the forfeiting person, or than the King may legally have; since thereby not only many innocent persons, who come in by descent or purchase, or other valuable considerations, might suffer equally as criminals; but it is possible that men, who with the utmost hazard of their lives have been defending the government, may forfeit as traitors: and they cannot apprehend that, by any law of this land, or by any rule of reason or justice, any person ought to be outlawed after his death; since it is condemning a man unheard, and allowing him no opportunity of making his innocence appear.

The Lords admit the resumption of the forfeited estates in Ireland to be a thing necessary, by reason of the great debt due to the army, and others, which they earnestly desire to see discharged; and are therefore very willing and desirous to give their consents to any {457} reasonable Bill the Commons shall send them up to that purpose. But the Lords can by no means consent that the Commons shall take upon them to dispose of any of the said forfeitures to any private persons; it being the sole and undoubted right of the Crown, to be the distributor of all bounties; and being contrary to all the laws and course of Parliaments, to give Aids, Supplies, or Grants, to any but

the King only: and as the contrary practice is totally new and unprecedented, so in process of time it may become of the last ill consequence to the public.

The Lords cannot agree to the clauses, that create an incapacity in the Commissioners or Managers of the Excise for sitting in this Parliament: because the qualification of Members to serve in Parliament is a thing, if proper to be meddled with at all, that hath been thought fit by the Commons to be in a Bill by itself: and the joining together in a Money Bill things so totally foreign to the methods of raising money, and to the quantity or qualification of the sums to be raised, is wholly destructive of the freedom of debates, dangerous to the privileges of the Lords, and to the prerogative of the Crown: for by this means things of the last ill consequence to the nation may be brought into Money Bills, and yet neither the Lords nor the Crown be able to give their negative to them, without hazarding the public peace and security: and it seems a great hardship to the counties and places, who chose such Members, to deprive them of their service, since they knew them to be Commissioners of Excise at the time they chose them; and since the Commons admit them to be proper persons to serve either in Excise or Parliament, though not at the same time. So that there seems to be no other reason of distinguishing these Commissioners, but what is common to all other officers of the Crown; and the question, whether such an alteration may be convenient, must needs be a doubt with the Lords, since the Commons have not been able, this very session, to satisfy themselves with the Bill, and the considerations they have entertained upon that subject.

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The Lords do seriously consider the dangers and inconveniences that are likely to happen by the loss of this Bill, and by the difference betwixt the two Houses; and are heartily sorry for them, and desirous to avoid them by all the means they can: as does manifestly appear by their having complied, and overlooked the irregularities of Bills of the like nature; and at the same time by entering in their books, to be seen by every body, their just sense of the wrong, and their resolution of asserting that fundamental right, of the exercise of which there are many precedents extant in their books. But since they find that such their kind intentions, of maintaining a good correspondence with the Commons, have had no other effect but to introduce greater impositions upon them, and such as will certainly prove destructive of the ancient and excellent constitution of our government—since the Lords have no objection to the resumption, nor to design to invade the least right of the Commons, but only to defend their own, that they may transmit the government and their own rights and privileges to their posterity, in the same state and condition that they were derived down to them from their ancestors—they think themselves wholly discharged from being in the least accessory to any such dangers or inconveniences; and conceive they are sufficiently justified before God and man, in withstanding such innovations and invasions upon our constitution and our laws, as must necessarily prove the destruction of them.

Resolved, *Nemine contradicente*, That this House doth insist upon their disagreement with the Lords in the said amendments.

Resolved, That a free conference be desired with the Lords upon the subject-matter of the two last conferences.

Ordered, That Mr. Boyle do go to the Lords, and desire the said free conference.

Mr. Boyle reported to the House, That he having, according to order, been at the Lords to desire a free conference, the Lords {459} do agree to a free conference accordingly; and do appoint the same presently in the Painted Chamber.

Ordered, That the Members who managed the two last conferences, do manage the free conference.

And the managers went to the conference.

And being returned;

Sir Edward Seymour reported, That they had met the Lords at the free conference, and discharged the commands of the House thereat, and left the Bill and amendments with the Lords.

A message from the Lords, by Mr. Meredeth and Sir Richard Holford:

Mr. Speaker,

The Lords have agreed to the Bill, intituled. An Act, &c. &c. &c. without any amendments.

And then the messengers withdrew.

11th April.—Sir Edward Seymour acquainted the House with what he had insisted upon at the free conference yesterday with the Lords, upon the subject-matter of the amendments made by the Lords to the Bill, intituled. An Act, &c. and moved that the same might be entered upon the Journal.

Ordered, That the same be entered upon the Journal.

And the same is as followeth, viz.

That Sir Edward Seymour said to the Lords to this effect: That this was a conference upon the subject-matter of the amendments made by their Lordships to the Bill, intituled, An Act, &c. That the Commons had desired it for the preserving of the forms of a free conference; but yet that there was very little room left for debate, since the right of the Commons was contained and declared in their former reasons, from which they should never depart; and that the giving any other reasons than what they had before given, would be a diminution of that right: and that the managers did not therefore enter into any debate of the Lords' reasons for the said amendments.

APPENDIX, N<sup>o</sup> 13. (p. 121.)  
*Extracts from the Journals.* (Vol. xiv. p. 178.)  
*On the Lords examining Commissioners of Accounts.*

4th Feb. 1702. A Message from the Lords, by Sir John Francklin and Doctor Edisbury:  
Mr. Speaker,

We are to acquaint this House, that the Lords have appointed a Committee to consider of the observations in the book of accounts, laid before them by the Commissioners of Accounts the 15th of January; and also those delivered the 2d instant, from the said Commissioners: that the Committee met yesterday morning, and have proceeded upon the first observation, and the additional observation relating to the auditor of the Receipt of the Exchequer: and those Commissioners being Members of this House, the Lords do desire that this House will give leave that those Commissioners, or some of them, should attend the said Committee to-morrow, at ten of the clock in the forenoon.

And the messengers withdrew.

Resolved, That this House will return an answer to the Lords by messengers of their own.

And the messengers were called in again, and Mr. Speaker acquainted them therewith.

Resolved, That this House will take the said message into consideration at one o'clock this day.

Ordered, That the consideration of the message from the Lords {461} this day, relating to the Commissioners of accounts, be adjourned till to-morrow, twelve o'clock.

5th Feb. 1702.—The House proceeded, according to order, to take into consideration the message from the Lords yesterday, relating to the Commissioners of Accounts.

And the same being read;

Resolved, That a Committee be appointed to inspect the Journals, and search precedents, relating to what hath been done, upon the Lords desiring Members of this House to attend the House of Lords, and in relation to the Lords inspecting and examining accounts.

And it is referred to Sir Chr. Musgrave, Colonel Granville, &c. &c. &c. or any five of them; and they are to meet this afternoon, at five o'clock, in the Speaker's Chamber.

12th Feb.—Ordered, That the Committee appointed to inspect the Journals, &c. do make their report to-morrow morning.

Ordered, That the said Committee do search the Journals of the House of Lords, what proceedings they have made in relation to the observations of the Commissioners for taking, examining, and stating the public accounts of the kingdom; and report the same to the House.

13th Feb.—Colonel Granville reported from the Committee appointed to inspect the Journals, and search precedents, relating to what hath been done, upon the Lords desiring Members of this House to attend the House of Lords, and in relation to the Lords inspecting and examining accounts; and to search the Journals of the House of

Lords, what proceedings they have made in relation to the observations of the Commissioners for taking, examining, and stating the public accounts \ \ an odd typographic with the 'o' and the 'c' run together; should read accounts \ \ of the kingdom; {462} that they had searched the Lords Journals accordingly; and he read in his place what they found therein.

Also, that the Committee had inspected the Journals of this House; and that what they found therein applicable to the present occasion, was in the Journals 1691 and 1697: and he delivered the said reports in at the Clerk's table; where the: same were read, and are as follow:

*“The Report of the Lords’ Journal.*

*Die Mercurij, 11° Novembris, 1702.*

“Ordered, by the Lords spiritual and temporal, in Parliament assembled, That the Commissioners for accounts do lay before this House in writing, with all convenient speed, their proceedings upon the public accounts, in pursuance of an Act of Parliament.

*Die Veneris, 15° Januarii, 1702.*

“This day Mr. King, Secretary to the Commissioners appointed by a late Act of Parliament to take, examine, and state the public accounts of the kingdom, delivered at the Bar an account of the general state of the receipts and issues of the public revenue, between

The feast of St. Michael, 1700, and

The feast of St. Michael, 1701; and also

The feast of St. Michael, 1701, and

The feast of St. Michael, 1702;

with their observations thereupon.

*Die Martis, 26° Januarii, 1702.*

“The House being this day moved, That a day may be appointed for taking into consideration the book of public accounts {463} now before this House; it is ordered by the Lords spiritual and temporal, in Parliament assembled, That the said book of accounts shall be taken into consideration on Tuesday next, at eleven o'clock.

*Die Lunæ, 1° Februarii, 1702.*

“It is ordered by the Lords spiritual and temporal, in Parliament assembled, That the Commissioners of accounts do lay before this House to-morrow, at eleven o'clock, what further observations they have made in relation to the accounts, since the delivery of the general state of receipts and issues of the public revenue into this House.

*Die Martis, 2° Februarii, 1702.*

“The order being read for taking into consideration the book of accounts;

It is thereupon ordered by the Lords spiritual and temporal, in Parliament assembled, That the Queen's Remembrancer do immediately bring to this House the imprest rolls transmitted to him since November, 1699.

Then the title of the book of accounts was read, and the Commissioners observations thereupon.

After which it was proposed to read the observations upon the accounts, paragraph by paragraph.

And the first paragraph being read;

The Lord Halifax was heard thereto.

Then the House being informed, That Mr. Gregory King attended at the door, from the Commissioners of Accounts, as ordered yesterday;

He was called in, and at the Bar delivered the Commissioners of Accounts further observations.

Then the observations delivered this day were read.

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The Queen's Remembrancer attending, was called in, and delivered the imprest rolls transmitted to him since 1699, as ordered.

“The House being moved to appoint a Committee to consider of the observations from the Commissioners of Accounts;

Lords Committees were appointed to consider of the observations in the book of accounts, delivered into this House the 15th day of January last, and this day; whose Lordships having considered thereof, and heard such persons concerning the same as they shall think fit, are afterwards to report their opinion thereupon to this House.

Dom. Godolphin, Thesaurar. Archiep. Cant.

Co. Pembroke, Præses. Archiep. Ebor.

March Normanby C. P. S.

Dux Devonshire, Senescal, &c.

Co. Lindsey, Mag. Camerar.

Co. Carlisle, Marescal.

Co. Kent,

Co. Huntingdon,

Vic. Say & Seal, &c.

Dom. Bergevenny,

Dom. Lawarr.

Dom. Sommers,

Dom. Halifax.

Their Lordships, or any five of them, are to meet to-morrow, at ten o'clock in the forenoon, in the Prince's Lodgings, near the House of Peers; and to adjourn as they please.

“It is ordered by the Lords spiritual and temporal, in Parliament assembled, That the Queen's Remembrancer do bring to the Lords Committees, appointed to consider of the observations delivered by the Commissioners of Accounts, to-morrow at ten o'clock, the imprest rolls transmitted to him since the 20th of April, 1697.

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It is ordered by the Lords spiritual and temporal, in Parliament assembled, That the Commissioners for Public Accounts have notice, that this House hath appointed a Committee to consider of the observations delivered into this House, to-morrow, at ten o'clock in the forenoon, in the Prince's Lodgings, near the House of Peers.

*Die Mercurii, 3<sup>o</sup> Februarii, 1702.*

“This day Mr. Barker, deputy to her Majesty's Remembrancer, brought the other imprest rolls, as ordered yesterday; which were delivered to the Committee.

The Duke of Somerset reported from the Lords Committees, appointed to consider of the observations from the Commissioners of Accounts, that they had taken the first

observation into consideration, in relation to the Auditor of the Exchequer; and that the Commissioners of Accounts had notice of the Committee's sitting, yet none of them attended; and therefore the Committee is of opinion, that a message be sent to the House of Commons, that they may have leave to attend: to which the House agreed.

Then a message was sent to the House of Commons, by Sir John Francklyn and Sir Richard Holford, to acquaint them that this House hath appointed a Committee, to consider of the observations in the book of accounts, laid before this House by the Commissioners of Accounts the 15th of January last, and also those delivered yesterday from the said Commissioners: that the Committee had met yesterday in the morning, and had proceeded upon the first observation, and the additional observation, relating to the Auditor of the Receipt of the Exchequer: and those Commissioners being Members of the House of Commons, the Lords do desire, that the House would give leave that those Commissioners, or some of them, should attend the said Committee on Friday next, at ten o'clock in the forenoon.

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*Die Jovis, 4<sup>o</sup> Februarii, 1702.*

The messengers sent to the House of Commons yesterday return answer, That the Commons will send an answer by messengers of their own.

*Die Veneris, 5<sup>o</sup> Februarii, 1702.*

“His Grace the Duke of Somerset reported from the Lords Committees, appointed to consider of the observations delivered into this House from the Commissioners of Accounts, that the said Commissioners had not attended the Committee; but, upon consideration of the whole matter, the Committee had ordered him to report as followeth:

The Committee appointed to consider of the observations in the book of accounts, delivered into this House the 15th day of January last, and the 2d of this instant February, have made some progress in considering the said observations; and do humbly take leave to acquaint the House, that they have examined into the first of those observations; and also the further observation, delivered into this House the 2d instant, relating to the transmitting the ordinary imprest rolls to the Queen's Remembrancer. They have inspected several of the original imprest rolls, delivered into the House by Mr. Barker, deputy to her Majesty's Remembrancer; they also examined divers officers of the Exchequer, and others, upon oath; and do find that, by the ancient and uninterrupted course of the Exchequer, two imprest Rolls are to be made out for each year; the one comprehending all sums imprest from the end of Trinity term to the end of Hilary term, the other containing all such sums from that time to the end of Trinity term; which rolls are commonly called half yearly rolls, though improperly. They find that, by the ancient course of the Exchequer, these imprest rolls being made out by the Auditor of the Receipt, are to be delivered by {467} him to the Clerk of the Pells, whose duty it is to examine and sign them; and this being done, the Clerk of the Pells delivers them to the Remembrancer.

“This usage was by degrees discontinued in the reign of King Charles the Second; and the Remembrancer, or his agent, used to come to the office of the Auditor of the Receipt, and take away the imprest rolls from thence immediately. But in the time when the Earl of Rochester was Treasurer, the ancient usage was restored; and he did

order that the imprest rolls should be carefully examined and signed by the Clerk of the Pells, before they should be transmitted to the Remembrancer: and accordingly, since that time, the ancient custom has been observed, as well before as since the Act of Parliament made in the 8th and 9th year of his late Majesty, for the better observation of the course anciently used in the Receipt of the Exchequer; that is to say, the said half yearly rolls, when made out and signed by the Auditor, have been by him transmitted to the Clerk of the Pells; and when the Clerk of the Pells has examined and signed them, he or his deputy has delivered them to the Remembrancer; and this appears by the Remembrancer's indorsements upon the rolls.

“The Committee finds, that Charles Lord Halifax has been Auditor of the Receipt from the end of November, 1699; since which time six imprest rolls have been transmitted to the Remembrancer: and there is a seventh roll now under examination of the Office of Pells; and no other roll can be prepared till after the twelfth of this instant February.

“Upon the whole matter, the Committee are humbly of opinion, ‘That Charles Lord Halifax, Auditor of the Receipt of the Exchequer, hath performed the duty of his office, in transmitting the ordinary imprest rolls to the Queen's Remembrancer, according to the ancient custom of the Exchequer and the direction of the Act 8th and 9th Gulielmi 3<sup>tii</sup> Regis, intituled, “An Act for the better {468} Observation of the Course anciently used in the Receipt of the Exchequer:” and that he hath not been guilty of any neglect or breach of trust upon that account.’

“Which report being read, as also the examinations taken upon oath by the Committee, as also the dates and indorsements of the several imprest rolls delivered by Mr. Barker, deputy to the Queen's Remembrancer; it was proposed to agree with the opinion of the Committee in this report.

“Then the question was put, Whether this House will agree to the opinion of the Committee in this report.

It was resolved in the affirmative.

“It is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, ‘That Charles Lord Halifax, Auditor of the Receipt of the Exchequer, hath performed the duty of his office, in transmitting the ordinary imprest rolls to the Queen's Remembrancer, according to the ancient custom of the Exchequer, and the directions of the Act 8th and 9th Gulielmi 3<sup>tii</sup> Regis , intituled, “An Act for the better Observation of the Course anciently used in the Receipt of the Exchequer:” and that he hath not been guilty of any neglect or breach of trust upon that account.’

“It is ordered by the Lords spiritual and temporal in Parliament assembled, That the proceedings of the House, and of the Committee appointed to consider of the observations in the book of accounts, delivered into this House the 15th of January last, and the 2d day of this instant February, and the resolution of this House thereupon, shall be forthwith printed and published.

“It is ordered by the Lords spiritual and temporal, in Parliament assembled, That it shall be, and is hereby referred to the same Committee, who are appointed to consider of the observations of the Commissioners of Accounts, to draw up and give direction what shall be printed and published.”



The Committee has also inspected the Journals of this House; and what they conceive to be most material, is in the Journal beginning the 22d October, 1691, and in the Journal beginning the 3d December, 1697; to which they humbly refer themselves, and desire those passages may be read: which were read accordingly, and are as follow, viz.

[See these proceedings in 1691, before in this Appendix under N<sup>o</sup> 11. The Extract from the Journal of 10 Gul. III. having no reference to the question of Supply, is here omitted.]

Ordered, That the said Committee do draw up what is proper to be offered to the Lords at a conference, upon the subject-matter of the message from the Lords, the 4th instant, relating to the Commissioners of Accounts, and the Lords' proceedings in relation to the observations of the said Commissioners.

16th Feb. 1702.—Colonel Granville reported from the Committee, to whom it was referred to draw up what is proper to be offered to the Lords at a conference, upon the subject-matter of the message from the Lords, the 4th instant, relating to the Commissioners of Accounts, and the Lords' proceedings in relation to the observations of the said Commissioners; that the Committee had drawn up the same accordingly; which they had directed him to report to the House; which he read in his place, and afterwards delivered in at the Clerk's table; where the same was twice read, and, upon the question put thereupon, agreed unto by the House; and is as followeth, viz.

The Commons cannot comply with your Lordships' desires, contained in your message of the 4th instant,

Because the Commons are still of the same opinion as was delivered to your Lordships in February, 1691, at a free conference, upon the subject-matter of the amendments made by the Lords to the additional Bill for the appointing and enabling Commissioners {470} to examine, take, and state the public accounts of the kingdom, when they desired to know the end your Lordships would propose to yourselves by an enquiry into the public accounts: for, should any misapplication of money, or default of distribution, appear in the accounts, your Lordships cannot take cognizance thereof originally, nor otherwise, even in your judicial capacity, than at the complaint of the Commons; and should a failure or want of money appear, it is not in your Lordships power to redress it; for the grant of all Aids is in the Commons only; or, if there be any surplusage, the Commons only can apply it to the charge of the ensuing year.

But should the Commons give leave to the Commissioners to attend your Lordships, no information they can give against any person whatsoever, can entitle your Lordships either to acquit or condemn. Yet, since this message, the Commons find in your Lordships Journals the following resolution, viz. 'That it is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, That Charles Lord Halifax, Auditor of the Receipt of the Exchequer, hath performed the duty of his office, in transmitting the ordinary imprest rolls to the Queen's Remembrancer, according to the ancient custom of the Exchequer, and the direction of the Acts 8 and 9 Guliol. 3<sup>th</sup> Regis, intituled, "An Act for the better Observation of the Course anciently used in the Receipt of the Exchequer:" and that he hath not been guilty of any neglect or breach of trust, upon that account.'

Which looks to the Commons, as if your Lordships pretended to give a judgment of acquittal, without any accusation brought before your Lordships, and consequently without any trial; and that (which makes your Lordships proceedings yet more irregular) it tends to prejudging a cause, which might regularly have come before you, either originally by impeachment, or by writ of error {471} from the courts below: and therefore the Commons can see no use of this resolution, unless it be either to intimidate the judges, or prepossess a jury.

But if your Lordships could have judged in this matter, it does not appear by your Lordships' Journals, that you have had under examination the respective times of transmitting the several imprest rolls to the Queen's Remembrancer; without which it is impossible to know whether the Auditor of the Receipt had done his duty, according to the Act of Parliament.

Ordered, That a conference be desired with the Lords, upon the subject-matter of the message from the Lords, the 4th instant, relating to the Commissioners for taking, examining, and stating the public accounts of the kingdom, and the Lords' proceeding in relation to the observations of the said Commissioners.

Ordered, That Mr. Boyle do go to the Lords, and desire the said conference. Mr. Boyle reported, that he having, according to order, been at the Lords, to desire a conference with their Lordships, they do say, That they will return an answer by messengers of their own.

17th February.—A message from the Lords, by Sir Robert Legard and Sir Richard Holford:

Mr. Speaker,

The Lords do agree to a conference, as yesterday desired by this House; and do appoint it presently in the Painted Chamber.

And then the messengers withdrew.

Ordered, That the Committee, who drew up what was to be offered at the conference, do manage the conference.

And the managers went to the conference:

And being returned;

Colonel Granville reported, that they had been at the conference with the Lords, and delivered to the Lords what the House had directed.

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22d Feb.—A message from the Lords, by Sir Robert Legard and Doctor Edisbury:

Mr. Speaker,

The Lords desire a present conference with this House, in the Painted Chamber, upon the subject-matter of the last conference.

And then the messengers withdrew.

Resolved, That the House do agree to a conference with the Lords, as the Lords do desire.

And the messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the managers who managed the last conference, do manage the said conference; and that Mr. Walpole be added to them.

And the managers went to the conference.

And being returned;

Colonel Granville reported, that they had met the Lords at the conference: and that it was managed, on the part of the Lords, by the Lord Steward; who acquainted them That the Lords had desired this conference for preserving a good correspondence between the two Houses, which was necessary at all times; and that the Lords had directed them to acquaint this House, that the Lords had come to the resolutions following, viz.

*Die Jovis, 18<sup>o</sup> Februarii, 1702.*

“It is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, That the Lords have an undoubted right, which they can never suffer to be contested, to take cognizance originally of all public accounts, and to enquire into any misapplication or default in the distribution of public monies, or into any other mismanagements whatsoever.”

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It is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, That the Lords, in their enquiry into the examination of the observations of the Commissioners of Accounts, in relation to Charles Lord Halifax, and in their resolution thereupon, have proceeded according to the rules of justice, and the evidence that was before them.

It is resolved and declared by the Lords spiritual and temporal, in Parliament assembled, That the Commons, in their reasons delivered at the last conference, have used several expressions and arguments, highly reflecting and altogether unparliamentary, tending to destroy all good correspondence between the two Houses, and to the subversion of the Constitution.

Resolved, That this House will take the said report into consideration to-morrow morning.

23d February.—The House, according to order, proceeded to take into consideration the report of the conference yesterday with the Lords: and what was offered to the Lords, at the first conference, was read; and also the report of the conference yesterday.

Ordered, That a free conference be desired with the Lords, upon the subject-matter of the last conferences.

Ordered, That the managers who managed the last conference, do manage the said free conference; and that Sir Thomas Meres, Sir Richard Onslow, &c. &c. be added to them.

Ordered, That the managers do meet together, and consider of what heads are fit to be gone upon at the said free conference, and report the same to the House.

25th February.—Colonel Granville reported from the Committee, who were appointed to prepare heads for a free conference with the Lords, upon the subject-matter of the last conferences, that they had prepared the same accordingly; which they had directed him to report to the House; which he read in his place, {474} and afterwards delivered in at the Clerk's table: where the same were once read throughout; and then a second time, one by one; and, with an amendment to one of them, agreed unto by the House; and are as follow, viz.

That no cognizance the Lords can take of the public accounts, can enable them to supply any deficiency, or to apply any surplusage of the public money.

That the Lords can neither acquit or condemn any person whatsoever, upon any enquiry, arising originally in their own House.

That the attempt the Lords have made to acquit Charles Lord Halifax, Auditor of the Receipt of Exchequer, is not only unparliamentary, and not warranted by any precedent, but the resolution thereupon is plainly contrary to what appears on the records themselves.

That the conference desired by the Commons, was in order to preserve a good correspondence between both Houses, by offering reasons to prevent the Lords from proceeding in a case, which they had no precedent to warrant; and the Commons expressing the consequences they apprehended might follow from that resolution, was neither reflecting nor unparliamentary, nor tending to destroy the good correspondence between the two Houses, and much less to the subversion of the Constitution.

That the Lords delivering at a conference their resolutions, instead of reasons, in answer to the reasons of the Commons, is not agreeable to the ancient rules and methods of Parliament, observed in conferences between the two Houses.

Ordered, That Sir Thomas Hanmer do go to the Lords, and desire the said free conference.

Sir Thomas Hanmer reported, that he having, according to order, been at the Lords to desire a free conference, the Lords do agree to a free conference, and appoint the same presently in the Painted Chamber.

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And the managers went to the conference.

And being returned;

Mr. Finch reported, that the managers had attended the conference; and that, on the part of the Lords, it was managed by the Lord Ferrers, the Lord Halifax, the Lord Steward, the Lord Herbert, and Earl of Carlisle.

Ordered, That the managers do draw up a report of the said free conference, and present the same to the House.

27th Feb.—Colonel Granville reported, that the managers of the free conference with the Lords, on Thursday last, had, according to order, drawn up a report of the same; which they had directed him to report to the House; which he read in his place, and afterwards delivered in at the Clerk's table.

Ordered, That the said report be entered upon the Journal.

And the same is as followeth, viz.

That the managers acquainted their Lordships, that the Commons had desired this free conference, in order to maintain a good correspondence between the two Houses; and that, upon consideration of the reasons offered by the Commons at the first conference, and their Lordships answer delivered at the last, they took the points in difference to be, First, That no cognizance the Lords could take of the public accounts, could enable them to supply any deficiency, or apply any surplusage of the public money, in case any should be found. And then your managers went on to open the rest of the particulars, which they had in direction from the House to insist on;

which they did in the same manner as they appear by your Journal: but added, when they acquainted their Lordships that the expressing the consequences which they apprehended might follow from their resolution, that it was not a charge upon their Lordships that they intended that consequence; but they would have been very glad their Lordships would have been pleased to have let them know what use was to be made of {476} it, or what they intended by it; and concluded that if their Lordships did controvert any of those points, your managers were ready to maintain them.

That the Lords made no answer to any of those particulars, save to the matter of their resolution relating to the Lord Halifax, upon which their Lordships did acknowledge that they were no court of enquiry, to form any accusation; that their proceedings in relation to that Lord was no trial, nor was their resolution any judgment or acquittal; but that he might still be prosecuted as before: but that which gave occasion to that proceeding, was the resolution of the House of Commons, which they found in the printed Votes, reflecting upon a Member of their House; and thereupon they thought fit to give their opinion, which they did in their legislative capacity.

To which the managers replied, That their Lordships having in their resolutions declared, that they had proceeded according to the rules of justice, and the evidence that was before them, the Commons could put no other interpretation upon it, than that it was intended as a judgment; and no judgment could be made, where there was no accusation: and if it was not a judgment, they could not imagine what it did tend to.

As to their Lordships delivering their opinion, the managers observed, It was against the rule of any court, that any judge whatsoever should deliver an opinion in a cause that might come before him; and this matter might hereafter come judicially before their Lordships.

And the managers observed the great difference between the resolution of the Commons and that of the Lords. The vote of the House of Commons was but in order to a prosecution, which they can never vote without declaring the crime: and they can never come to be judges of it. The House of Commons is the grand inquest of the nation; and every grand jury, that finds *Billa vera* upon an indictment, does by that declare the man guilty. But the Lords have {477} a judicial capacity; and their resolution, before an accusation brought, is prejudging the cause that may come regularly before them. And some of the managers, in speaking to these points, were frequently interrupted by their Lordships,

As to the observation the Commons made, That the Lords had not examined the respective times of transmitting the imprest rolls to the Queen's Remembrancer, your managers said, That, as their Lordships resolution was no judgment, so this conference was no trial. But to shew the mistake of their Lordships' resolution, they observed the dates upon the several imprest rolls that had been transmitted to the Remembrancer; that they apprehended there were still two wanting; that the three last that were transmitted came not to the Remembrancer till January last, the two first on the 23d, the last on the 27th. The first of these three imprest rolls was money imprest to the 21st of February, 1700, and said to be in the first year of the reign of Queen Anne; which shewed that that roll was so far from being examined or transmitted in time, that it was not made up till since her Majesty came to the Crown,

That, as the custom formerly had been to set down the time of the examination of those rolls, since Mr. Chr. Montagu came in to be Auditor, he set down the month, but not the day; and since the Lord Halifax was Auditor, he has set down neither month nor day: and by his example, on the three last imprest rolls, the Clerks of the Pells had put down no time at all.

To which a noble Lord in his own defence replied. That the Lords resolution was well founded, since they had the rolls themselves before them, and proof upon oath: that by the words of the Act, the Auditor was to transmit the imprest rolls to the Remembrancer half yearly, according to the usual course of the Exchequer, which is eight months, and four months ; that it was not his duty to transmit them immediately to the Remembrancer, because he was to send them to the Clerk of the Pells, who is to examine and sign them: and it cannot be imagined the Auditor {478} should be tied to a certain time to transmit the rolls to the Remembrancer, because they must first go through another hand: and he never took it there was any occasion to put down the time he examined them, for that would appear from the time of the delivery, and date of the roll.

That there was one examined by the Clerk of the Pells the 4th of July, and not delivered till the 23d of January; which he did not take to be the Auditor's fault, but took it to be the duty of the Clerk of the Pells to deliver them: that every body knew the great trouble that had been given in his, as well as other offices, by the Commissioners of Accounts: that no public loss had happened by not transmitting these rolls, no process having been issued forth for many years upon them.

To this your managers answered, That though half yearly should be taken for eight months and four months, yet by that they must be transmitted twice a year; and that he had failed in his duty in that respect.

To construe the ancient course of the Exchequer, in the Act of Parliament, to be meant, That the Clerk of the Pells should transmit the rolls, is a direct contradiction to the Act, that says the Auditor shall do it: and the ancient course of the Exchequer not having been observed, was the occasion of making that law; and that they thought laws were made to be observed.—That indeed no process could issue till the rolls were transmitted; and possibly that might be the ground the accounts have been so long unpassed, to the prejudice of the public: that his Lordship's apprehension there was no loss to the public by not transmitting the rolls, might probably be the reason of his Lordship's neglecting his duty.

Ordered, That the report of the conferences and free conference, relating to the message from the Lords, the 4th instant, touching the Commissioners of Accounts, and the proceedings relating thereunto, be printed.

APPENDIX, N<sup>o</sup> 14. (p. 121.)  
*Extracts from the Journals.* (Vol. xiv. p. 387.)  
*Bill for Stating Public Accounts.*

24th March, 1703. MR. Manley reported from the Committee appointed to draw up reasons to be offered to the Lords at a conference, for disagreeing with their Lordships in their amendments to the Bill, intituled, "An Act for the taking, examining, and stating the Public Accounts of the Kingdom," that the Committee had drawn up reasons accordingly; which they had directed him to report to the House; which he read in his place, and afterwards delivered in at the Clerk's table; where the same were once read throughout.

Then the first reason was read a second time, and, upon the question put thereupon, agreed unto by the House.

And the second reason being read a second time, was, with an amendment made thereto, agreed unto by the House.

And the third reason being read a second time, was, with an amendment made thereto, agreed unto by the House.

And the other paragraphs being severally read a second time, were, with several amendments made thereunto, upon the question put thereupon, agreed unto by the House; and are as follow:

The Commons disagree to the amendments made by your Lordships to the Bill, intituled, "An Act for the taking, examining, and stating the Public Accounts of the Kingdom."

As to your Lordships first amendment, by leaving out "Robert Byerly, Esquire," and inserting the names of "Sir John Hubland, Sir William Scawen, Mr. Francis Eyles," the Commons {480} disagree for these reasons, which were delivered to your Lordships in February, 1691, upon the amendments then made \ so in original; should read 'made' \ by your Lordships to the additional Bill for appointing and enabling Commissioners to examine, take, and state the public accounts of the kingdom:

"1st. Because in all Acts that have been passed for taking accounts of public money, the Commissioners have been always named by the Commons only; and in particular in an Act passed the 19th Car. II. intituled, "An Act for taking the Accounts of the several Sums of Money therein mentioned;" which Act impowers the Commissioners therein named to take account, not only of money granted by the Commons, but also of other sums of the public revenue: and although that Act requires an account to be given to the King's Majesty, and to both Houses of Parliament, yet all the Commissioners thereby constituted were named solely by the Commons.

"2dly. The Commons, by this Bill, appoint those whom they name Commissioners, to do that out of Parliament, which, during the session of Parliament, is the proper work of the House of Commons; in whom, by the laws and customs of the kingdom, the power of granting supplies to the Crown is vested, as an essential part of their constitution; and the taking and examining the accounts thereof is of right in them also; and they being the representatives of all the Commons, no Commoner can be named but by them.

“3dly. The disposition as well as granting money by Act of Parliament, hath ever been in the House of Commons; and these amendments, relating to the disposing of money to the Commissioners added by your Lordships, do intrench upon that right.

“And your Lordships having since agreed to several Bills wherein the Commissioners for Public Accounts were solely named by the Commons, they are surprised to find your Lordships make such an amendment to this Bill.”

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But, besides these reasons, the Commons having maturely considered the report and observations laid before them this session by the Commissioners of Accounts, of whom Robert Byerly, Esquire, was one, have thereupon come to this resolution:

“That the Commissioners for taking, examining, and stating the public accounts of the kingdom, have faithfully discharged the trust reposed in them, to the satisfaction of this House, and the general good of the whole nation.”

And therefore could this House admit, which they never can, that your Lordships might leave out any Commissioners appointed by this House and appoint others—yet they cannot consent to the leaving out Robert Byerly, Esquire, of whose abilities and integrity in the discharge of this trust they have had so much experience, and who was named by this House in two Bills of Accounts, passed by your Lordships, without any exception made by your Lordships to him.

The Commons observe further, That, though your Lordships have increased the number of Commissioners, and from seven made them nine, you have not thought fit to alter the quorum, which continues to be four; whereby great absurdities and inconveniences may happen from contrary inconsistent actings in the same Commission.

As to the clause marked A, being your Lordships second amendment, the Commons disagree:

Because, had the Commons no other objection to it, there is a provision made in the Bill, intituled, “An Act for punishing Mutiny and Desertion and false Musters, and for better paying of the Army and Quarters, and for satisfying divers Arrears; and for a further Continuance of the Powers of the Five Commissioners, for examining and determining the Accounts of the Army;” for the examining and determining the accounts of Major General Windham's regiment of horse, by the Commissioners appointed to take, examine, and determine the debts due to the {482} army, and for transport service; and also an account of the prizes taken during the late war.

The Commons are sensible that this Bill is absolutely necessary at this time, as is evident from the detections already made by the Commissioners of Accounts, of many great frauds, abuses, and irregularities, to the prejudice of the public; and they are very apprehensive of the ill consequences that may attend the loss of this Bill. Yet nothing being of greater importance to the public, than the maintaining the just rights and privileges which do belong to each House of Parliament, according to our constitution; and it being the sole, undoubted, and inherent right of the Commons to give money and grant aids, which are to be raised by such methods and with such provisions, and the disposition thereof to be made in such manner, as the Commons only think proper—upon which right the amendments made by your Lordships do plainly intrench—the Commons therefore cannot agree to your Lordships' amendments to this Bill.



Ordered, That the said reasons be offered to the Lords at a conference.

Ordered, That Mr. Cæsar do go to the Lords, and desire a conference with their Lordships upon the subject-matter of the amendments made by their Lordships to the said Bill.

27th March, 1704.—Mr. Cæsar reported, that he having been at the Lords, to desire a conference upon the subject-matter of their Lordships' amendments to the Bill, intituled, "An Act for the taking, examining, and stating the Public Accounts of the Kingdom," the Lords do agree to a conference, and appoint the same immediately in the Painted Chamber.

Ordered, That the Committee who drew up the reasons to be offered at the said conference, do manage the conference.

And the managers went to the conference.

And being returned;

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Mr. Manley reported, that they had attended the conference, and given the Lords the reasons for disagreeing to the said amendments; and left the Bill and the amendments with the Lords.

3d April, 1704.—A message from the Lords, by Sir Richard Holford and Mr. Pitt:

Mr. Speaker,

The Lords do desire a present conference with this House, in the Painted Chamber, upon the subject-matter of the last conference.

And then the messenger withdrew.

Resolved, That the House doth agree to meet the Lords at a conference, as their Lordships do desire.

And the messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Members who managed the last conference, do manage this conference.

And the managers went to the conference.

And being returned;

The Earl of Dysert reported the conference; and that it was managed by the Duke of Bolton, who acquainted them, That the Lords do insist upon their first amendment to the Bill, intituled, "An Act for the taking, examining, and stating the Public Accounts of the Kingdom;" but that their Lordships do not insist upon clause A, for which they gave their reasons: which he read in his place, and afterwards delivered in at the Clerk's table.

APPENDIX, N<sup>o</sup> 15. (p. 179.)  
*Clause of Appropriation.* (9th Dec. 1689.)  
*Bill of Aid, 2s.*

“AND to the intent that the sum of four hundred thousand pounds, part of the monies to be raised by virtue of this Act, may be certainly applied to the speedy payment of seamen in their Majesties navy royal; and to the paying for and supplying of necessary stores, provisions, and visuals for their Majesties navy royal: Be it enacted, That out of the first monies which shall be levied and paid, by virtue of this Act, into the Receipt of the Exchequer, as well upon loan as otherwise (except the allowances herein made to the respective Collectors, Clerks, Receivers General, and Officers of the Exchequer; and what shall be issued thence for the repayment of loans made between the eleventh day of November, One thousand six hundred eighty and nine, and the twenty-first day of December, One thousand six hundred eighty and nine, upon the credit of an Act made in the late session of this present Parliament, intituled, “An Act for a Grant to their Majesties of an Aid of Twelve Pence in the Pound for one Year, for the necessary Defence of their Realms;” and which shall be transferred to the register appointed to be kept by this present Act, in such manner as is hereinbefore appointed), the sum of four hundred thousand pounds shall be applied and appropriated, and is hereby appropriated, to and for the speedy payment of seamen in their Majesties navy royal; and to and for the paying for and supplying of necessary stores, provisions, and victuals for their Majesties navy royal: that is to say, two hundred thousand pounds, part thereof for the speedy \\ so in original; should read ‘speedy’ \\ payment of seamen; one hundred thousand pounds, part thereof for the paying and supplying victuals for {485} the said navy; and one hundred thousand pounds, the residue thereof, for and towards the paying for and supplying other necessary provisions and stores for the said navy royal, and for the wages of the yards. And for the more effectual doing thereof, and that the said sum of four hundred thousand pounds, hereby appropriated to the uses aforesaid, may not be diverted or applied to any other purpose; and also to the intent that all the monies given by this Act may be duly paid into their Majesties Exchequer, Be it farther enacted, That if any Collector of any parish or place shall keep in his hands any part of the money, by him collected, for any longer time than is by this Act directed (other than the allowance made unto him by this Act), or shall pay any part thereof to any person or persons other than the Head Collector or Receiver General of such county or place, or his respective deputy, that every such Collector shall forfeit for every such offence, the sum of five pounds. And in case any Head Collector shall keep in his hands any part of the money paid to him by any Collector by virtue of this Act, for any longer time than is by this Act directed (other than the allowance made to him by this Act), or shall pay any part thereof to any person or persons other than the Receiver General of such county or place, or his deputy, every such Head Collector shall forfeit, for every such offence, the sum of twenty pounds. And in case any Receiver General, or his deputy shall pay any part of the monies paid to him or them, by any Collector or Head Collector, by virtue of this Act, to any person, or persons whatsoever (other than the Receipt of their Majesties Exchequer, and that at or within the

respective times limited by this act) or in case such Receiver General, or his deputy, shall pay any part of the said monies, by any warrant of the Commissioners of the Treasury, or the Lord Treasurer, Under Treasurer, or Commissioners of the Treasury for the time being, or upon any tally of pro, or tally of anticipation, or other way or device whatsoever, whereby to divert or hinder the actual payment thereof into the Receipt {486} of the Exchequer as aforesaid, that such Receiver General shall, for every such offence of himself or his deputy, forfeit the sum of five hundred pounds to him or them that shall sue for the same, in any Court of Record, by bill, plaint, or other information; wherein no essoign, protection, or wager of law is to be allowed. And it is hereby farther enacted, That the Commissioners of the Treasury, or the Lord Treasurer, Under Treasurer, or Commissioners of the Treasury for the time being, or any of them, do not direct any warrant to any of the said Collectors, Head Collectors, or Receivers General, or their deputies, for the payment of any part of the monies, hereby given to any person or persons, other than into the Receipt of the Exchequer as aforesaid; nor shall they, or any of them, direct any warrant to the Officers of the Exchequer, for the striking of any tally of pro, or tally of anticipation, nor do any other matter or thing, whereby to divert the actual payment of the said monies into the Receipt of the Exchequer; nor shall the Officers of the Exchequer strike or direct, or record the striking of, any tally of pro, or tally of anticipation, upon any of the said monies, upon any account or warrant whatsoever; nor shall any Teller throw down any bill, whereby to charge himself with any of the said monies, until he shall have actually received the same. And it is hereby further enacted, That the Officers of the Receipt of their Majesties Exchequer shall keep the said sum of four hundred thousand pounds hereby appropriated, and the account thereof, distinct from all other monies and accounts whatsoever; and that the Commissioners of the Treasury, or the Lord Treasurer, Under Treasurer, or Commissioners of the Treasury for the time being, do not sign any warrant or order, or do any other matter or thing, for the issuing of any part of the said sum of four hundred thousand pounds, hereby appropriated as aforesaid, to any person or persons other than the Treasurer of the Navy, or his deputy, for the time being, and expressing therein that the same is for the payment of seamen, and for the paying for {487} and supplying the victuals, provisions, and stores for the Navy respectively, as aforesaid; nor shall the Auditor of the Receipt draw any order for the issuing any part of the said sum of four hundred thousand pounds, hereby appropriated, to any person or persons other than the Treasurer of the Navy, or his deputy, as aforesaid; nor shall he direct, or the Clerk of the Pells record, or any Teller make payment of any of the said monies, by virtue of any warrant, or upon any order or other way or device whatsoever, other than to the persons and for the uses aforesaid, and to be so mentioned and expressed in such warrant or order. And it is hereby farther enacted, That the Treasurer of the Navy for the time being shall keep the said sum of four hundred thousand pounds appropriated as aforesaid by virtue of this Act, as the same shall be paid in to him, distinct and apart from all other monies; and shall issue and pay the same by warrant of the principal officers and Commissioners of the Navy, or any three or more of them, and mentioning and expressing that the same is for the respective uses for which the same is appropriated as aforesaid and for no other use, intent, or purpose whatsoever. And it is hereby farther enacted, That the principal officers and

Commissioners of the Navy, or any of them, shall not sign any warrant or Navy Bill, or do any other act or thing, for the issuing and paying any part of the said sum of four hundred thousand pounds, so appropriated by this Act, to any use, intent, or purpose whatsoever, other than for the respective uses for which the same is appropriated as aforesaid, and to be so mentioned and expressed in such warrant or Navy Bill. And it is farther enacted, That if any of the Officers which are appointed by this Act to receive the said sum of four hundred thousand pounds, hereby appropriated, or any part thereof, shall, after the receipt of the said money, divert or misapply the same, or any part thereof, by virtue of any warrant from the Commissioners of the Treasury, or from the Lord Treasurer, or other superior officers, for the time being, contrary to the true intent of this Act, that then such officer or officers, so {488} diverting or misapplying the said money, shall forfeit the like sum so diverted or misapplied; which said forfeiture shall be recovered by action of debt, bill, plaint, or information, in any of their Majesties Courts of Records at Westminster, wherein no essoign, protection, or wager of law shall be allowed: the one moiety of which forfeiture, so to be recovered, shall be to the informer, or him who shall sue for the same; the other moiety thereof to be distributed to the poor of the parish where such offence shall be committed. And be it farther enacted, That if any officer or officers mentioned in this Act, or in anywise belonging to the Exchequer or Navy, shall willingly and wilfully offend against this law, or any clause thereof, by diverting or misapplying any part of the said sum of four hundred thousand pounds, appropriated as aforesaid, contrary to the true intent of this Act; that for any and every such offence, such officer and officers so offending shall forfeit his office and place, and is and are hereby disabled and made incapable to hold or execute the said office, or any other office whatsoever, for the future. Provided also, and be it enabled, That no stay of prosecution, upon any command, warrant, motion, order, or direction, by *non vult ulterius prosequi*, shall be had, made, admitted, received, or allowed, by any Court whatsoever, in any suit or proceeding by action of debt, bill, plaint, or information, or otherwise, for the recovery of all or any the pains, penalties, or forfeitures, upon any person or persons by this Act inflicted, or therein mentioned, or for or in order to the conviction or disability of any person offending against this Act.”

See also the clause in the Stat. 6 and 7 W. III. cap. 7, whereby “Officers of the Exchequer, diverting or misapplying any of the monies paid into the Exchequer by virtue of that Act, to any other uses or purposes than is thereby directed, forfeit their office, are rendered incapable of any office or place of trust, and made liable to pay double the value of the sums so diverted or misapplied.”

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INDEX. \\Omitted\\

# FOOTNOTES TO 1796\_HATSELL\_3 LORDS/SUPPLY

//1-1// See in the second volume of this Work, p. 138, the title, "Peers, and Persons of Rank, admitted into the House of Commons."

//2-1// It was on this occasion, that afterwards, in the Cardinal's gallery at Whitehall, he said to Sir Thomas More, "I would to God you had been at *Rome*, Sir Thomas, when I made you Speaker." "Your Grace not offended, so would I too, my Lord," replied Sir Thomas, "for then I should have been the place I have long desired to visit."

//2-2// One the 27<sup>th</sup> of February, when this Bill for the attainder of the Lord Seymour of Sudely was passed by the Lords, there is the following entry in the Lords' Journal of that day; "It was thought good, together with the Bill, to send down certain Ministers of the Upper House, to declare unto the Commons of the Nether House, the manner after which the Lords had proceeded in this matter; and to declare unto them, that in case they minded to proceed in like sort, certain Noblemen who had given evidence against the said Admiral, should be sent unto them to declare, by mouth and presence, such matter, as by their writing should, in the mean time appear to them."

//3-1// Lord Cork was not a Peer of England but of Ireland. This civility however has not since been usually observed towards Irish Peers, as appears from note \* in page 142 of the 2d volume. See also what is said upon the subject of "*Foreign Nobility*" in note † to page 3 of that volume.

//3-2// The account of this ceremony is also to be found in the 4th volume of Rushworth's Collections, p. 124, who, after giving the speech made by the Lord Keeper upon this occasion, adds, "Many were exceedingly taken with his eloquence and carriage; and it was a sad sight to see a person of his greatness, parts, and favour, to appear in such a posture, before such an assembly to plead for his life and fortunes."

//4-1// In the 4th volume of Rushworth's Collections, p. 398, there is a more particular account, than in the Journal, of the forms used, and of what passed at this time. See also Lord Clarendon's account. *Hist. of the Rebel, Vol. I. p. 237. Book 4.*

//4-2// See the proceedings in this matter on the 13th, 16th, 20th and 27th of June 1663.

//6-1// See the 19th and 28th of April, 1779, a similar proceeding respecting the Earl of Harrington.

//6-2// See page 142 of the second volume.

//7-1// There are later instances, by which the Commons might have satisfied the doubts of the Lords, upon the regularity of their proceedings; as that in March, 1625, which is inserted in this volume under the title, "Proceedings between Lords and Commons, where the Rights and Privileges of either House are concerned," N<sup>o</sup> 11.— And on the 31st of October, 1667, where the Earl of Anglesey acquaints the Lords, "That he was desired by a Committee of the House of Commons to give them information, concerning tickets given to seamen;" it is referred to the Committee of Privileges, to consider of Precedents in what hath been formerly done "concerning Peers giving information to the House of Commons, at the desire of the said House, upon any matters depending in that House." On the 12th of November the Committee report, "That upon reading the precedent of the Duke of Bucks, the 4th of March, 1625, they find that his Grace was left to do, what he thought fit; and the Committee are of opinion, That the Earl of Anglesey be likewise left to do, what his Lordship shall think fit herein;" in which opinion the House concur. On the 30th of March, 1668, there was a similar proceeding with regard to the Lord Privy Seal, who was desired by a Committee of the House of Commons to certify somewhat concerning one Turner, that he had a business before them. Neither of these Lords asked leave to attend, but acquainted the House, that they had been desired by a Committee of the House of Commons to give their information.

//9-1// This last instance was in the case of the enquiry, which the Lords were making into the conduct of Lord Chancellor Bacon; who had been accused by the Commons, at a conference, of malversation in his office.

//17-1// Vol. I. p. 177-201.

//18-1// It is remarkable that, so lately as upon the 9th of December, 1692, it was moved in the House of Lords, "That some way might be found, whereby a Member of the House of Commons might be spoke with by this House:" and a Committee was appointed to search precedents to this point. They report, on the next day, the instance of the 13th of November, 1689.

//19-1// It appears from the note in p. 6 of this volume, that a similar proceeding has been adopted by the House of Lords, when the testimony of a Peer is wanted in the House of Commons, or before a Committee of that House.

//20-1// This will not be understood to extend to cases where the Lords, sitting on the trial of a Peer, upon an indictment, as a court of criminal judicature, require the attendance of Members of the House of Commons, to give their evidence in such trials.—See the 4th of April, 1765, where Frederick Montagu, and John Hewet, Esqrs. then both Members of the House of Commons, are *ordered* to attend the House of Lords, to be examined as witnesses on Lord Byron's trial.—But if such trial is upon an

impeachment, there it appears, from the instances of the 20th of March, 1620; the 22d of January, 1666; the 15th of March, 1715; and the 16th of March, 1746, that *leave* is asked to examine the Members as witnesses.—The reason of this difference may be, that, in impeachments, the House of Commons, in which every individual Member is included, are parties in the prosecution.

//23-1// The Lords having, at a conference, delivered some papers to the Commons, the Commons consider these papers, and, at the next conference, acquaint the Lords, “That they had read and well considered them; and finding Mr. Russell, a Member of their House, mentioned in them, that they had come to a resolution upon his conduct:” which resolution they communicated to the Lords. The Lords conceiving this proceeding to be irregular, appoint a Committee to inspect the Journals, in relation to Free Conferences; and they report, That what was done by the Commons, at the last conference, was not according to the usual proceedings in Parliament: and, upon this, the House of Lords resolve, “That the House of Commons communicating to this House, at a conference, a vote of theirs, upon matter of fact only, without giving any reasons for the said vote, is not according to the usual proceedings in Parliament.” This is communicated to the Commons at a free conference,—See the Lords’ Journals, the 21st and 22d of December; the 30th of December; and the 4th of January, 1692.

//24-1// This shews how very attentive the House of Commons ought to be, in not letting pass over, without observation, the smallest irregularity in matters of form, between the two Houses. The Lords here justify their proceeding, by the precedent of an informal message of their own some years before; without adverting, that upon that occasion the Commons had objected, and were only prevented by a prorogation, from signifying those objections to the Lords.

//24-2// On the 19th of May, 1690, the Lords appoint a Committee to search precedents, what hath been the form, manner, and method of passing Bills for the King’s pardon: the Committee report upon the 20th.—See the Royal assent given on the 23d of May.—See also what is said upon the manner of giving the Royal assent to bills of pardon, in a note in this volume, under title, “Proceedings between Lords and Commons, where the Rights and Privileges of either House are concerned.”

//25-1// See the instances referred to in this report.

//27-1// Vol. VIII. p. 305.

//27-2// Bishop Burnet gives the following character of him: “Jenkins, now made Secretary of State, was the chief manager for the Court, against the Bill of exclusion: he was a man of an exemplary life, and considerably learned; but he was dull and slow: he was suspected of leaning to popery, though very unjustly; but he was set on every punctilio of the Church of England to superstition; and was a great assertor of the divine right of monarchy, and was for carrying the prerogative high: he neither spoke

nor wrote well.” History of his Own Times, Vol. I. p. 481.—In Bulstrode’s Memoirs, p. 372, there is a letter from Sir Leoline Jenkins, dated the 31st of March, 1685, in which is the following account of himself. “His Majesty hath, upon my most humble and even importunate suit, given me leave in regard of my health, to resign my post of secretary, and hath bestowed it upon Mr. Godolphin. My great concern is, that this being a pure effect of my most humble supplication, and even intolerable importunity, with his Majesty and the Duke, it may not be imputed to any surprize upon me at Court, *much less to my disliking of the present measures there*: This I say, because I know the fanaticks will put the most malicious constructions they can invent, upon an incident at Court.” Whoever will recollect the proceedings, that were going on at this period, with respect to the surrender of charters throughout the kingdom, the criminal prosecutions at the Old Bailey, with other instances of the determination of the King and Duke of York to establish absolute power in this country, will know how to appreciate the character of the statesman, who was fearful he should be suspected of retiring from office, *from disliking the present measures of the Court*.

//27-3// On the 29th of December, 1640, the Lords send a message by the Master of the Rolls and one of the Judges.

//28-1// On the 27th of March, 1673, a message with a Bill is brought to the Commons by one Messenger, Mr. Barker, Clerk of the Crown. It appears from the Lords’ Journal of that day, that the message was ordered to be delivered by Sir William Lowe and the Clerk of the Crown. No notice is ever taken in the House of Commons either of the Bill or of the irregularity of this proceeding.

//28-2// On the 6th of February, 1693, the Lords direct their Clerks to search the books, what precedents there are, of messages to, or received from, the House of Commons, for putting each other in mind of any thing delivered at a conference or otherwise, except Bills. The Clerks make their report on the 7th of February; and the Commons are to be put in mind, at a conference, of what the Lords had communicated to them on the 16th of January preceding.

//29-1// It would be for the mutual convenience of both Houses, if this proceeding was adopted, and the Messengers from either House to the other were admitted at all times: it is a civility due to each other, and would be no interruption to public business.

//29-2// In the 2d volume of Grey’s Debates, p. 253, the Speaker, Seymour, reminds the House, “That it is against order, that members should salute Messengers from the Lords’ House, as if this House was the school of compliments. The Speaker only ought to do respect for the whole House.”

//30-1// There is a very remarkable instance on the 27th of May, 1742, where, upon a report of what appeared on the Journal of the Lords being made to the Commons, a motion is made, “that the refusal of the Lords to concur with the Commons in a indemnification necessary to the effectual carrying on the enquiry, now depending in



Parliament, is an obstruction to justice, and may prove fatal to the liberties of the nation.” The question being put, it passed in the negative.

//31-1// On the 31st of December, 1691, there is a question put in the House of Lords, and carried in the affirmative, “That the printed vote of the House of Commons is sufficient ground for the Lords to take notice of that vote to the House of Commons:” and a conference with the Commons is desired upon that ground.—See the Lords’ reasons for desiring this conference, on the 2d of January.—See also, in the Lords’ Journals, of the 21st and 23d of June, 1701, a complaint of certain printed votes of the Commons, and the proceedings upon it.

//31-2// This “inconveniency” probably was, that the Lords, a few weeks before, on the 19th of November, 1702, had taken notice of the votes of the House of Commons, in relation to the Bishop of Worcester, and addressed the Queen not to remove him from the place of Lord Almoner, which the Commons by address had desired the Queen to do;—but the Lords came too late, as the Queen’s answer to the Commons on the 20th of November was, “That she will remove him.”

//33-1// See printed Debates, Session 1620-1, Vol. II. p. 7.

//33-2// The several debates that occurred throughout this business, wherein there is much parliamentary learning, respecting the right of judicature, and the authority of the House of Commons, are very well worth reading in the copious and accurate account of the Proceedings of that Parliament, published in the year 1766, at Oxford, by my most excellent predecessor, Mr. Tyrwhitt, in two volumes.

//34-1// There is one instance prior to this of a joint Committee of both Houses appointed on the 15th and 17th of January, 1614, to consider in what manner the privileges of Parliament might be vindicated, which had been broken, by the Attorney General exhibiting in the House of Lords articles of impeachment against the Lord Kimbolton and five Members of the House of Commons; but as this proceeding happened subsequent to the 4th of January, 1641, it is here omitted for the reasons given at the conclusion of the first volume of this work.

//34-2// This report, as entered in the Lords’ Journals, is very short; but in Toland’s Life of Harrington, as cited in the Biogr. Britann. Vol. IV. P. 2537, in a note, (L) there is the following account, which Lord Chancellor Clarendon is said to have given, at the joint Committee of Lords and Commons, “That one and twenty persons were the chief managers of this plot; that they met in Bow-street, Covent Garden, in St. Martin’s le Grand, at the Mill-Bank, and in other places; and they were of seven different parties of interests; as, three for the Commonwealth, three for the Long Parliament, three for the City, three for the Purchasers, three for the disbanded Army, three for the Independents, and three for the Fifth Monarchy men. That their first consideration was, how to agree on the choice of Parliament-men against the ensuing session; and that a special care ought to be had about Members for the city of London, as a

precedent for the rest of the kingdom to follow; whereupon they nominated the four Members after chosen, and then sitting in Parliament. Their next care was, to frame a petition to the Parliament for a preaching ministry and liberty of conscience. Then they were to divide and subdivide themselves into several councils and committees, for the better carrying on their business by themselves, or their agents and accomplices, all over the kingdom. In those meetings, Harrington was said to be often in the chair; that they had taken an oath of secrecy, and concerted measures for levying men and money." To which the Chancellor added, "That though he had certain information of the times and places of their meetings, and particularly those of Harrington and Wildman, they were nevertheless so fixed in their nefarious design, that none of those they had taken would confess any thing, not so much as that they had seen or spoken to one another at those times and places.

//35-1// Mr. Waller reports, That the Committee of twenty-four appointed by this House had met with the Committee of twelve appointed by the Lords, and that the Members of this House, when they met with those appointed by the Lords, sat down with them and put on their hats, without any exception taken by the Lords; and then Mr. Waller goes on to report the proceedings of the Committee.

//36-1// See in the Journals of the Lords and Commons, from the 18th of November, 1640, to the 3d of December, the proceedings on a message sent from the Commons to the Lords, to desire, "That some Members of the House of Commons might be present at the Committee of the Lords, appointed to take depositions and examine witnesses against the Earl of Strafford." To which message, after some objections, the Lords give their assent.

//36-2// This proceeding originated at the desire of the Commons, by message on the 25th of November.

//37-1// The Committee appointed upon this occasion, were the same which had been appointed a day or two before by each House, to execute the powers given them by an act passed "for indemnifying Sir Thomas Cook from actions which he might be liable to, for making a discovery to whom he had paid several sums of money," The Lords had on the 22d of April appointed twelve to be of the Committee. The Commons on the 23d appoint twenty-four Members.

//37-2// These proceedings, in substance, though not in form, constitute a join Committee; as, from this time, the information received by each Committee, and the opinions formed by them, were mutually communicated; and this, without the apprehension of those inconveniences, which the Lords have, at some times, supposed might arise, from the number of the Commons being double to the number of the Lords.

//39-1// It is said in the 1st vol. of Lords' Debates, p. 40, that a rumour had been spread, that the appointing of this Committee was only a plot to govern by an army.

//40-1// See what is said before in the 2d vol. of this work, p. 150, under the title “Whether the House of Commons have power to administer an oath.”

//40-2// On the 9th of November, 1666, the Commons desire the Lords to name a Committee of their House to join with a Committee of the Commons, to the end, that the public accounts may be taken and examined upon oath. On the 28th of November, the Lords at a conference acquaint the Commons, that they are ready and will to agree with them in appointing a joint Committee, but that they do not find it is warranted by the course of parliament, “That any Committee of Lords and Commons, upon any occasion, have had power given to examine upon oath.” The Commons acquiesced, and on the 10th of December proposed to insert a clause in the Poll Bill for this purpose. This clause was, on the 11th of December, converted into a distinct Bill, which was passed by the Commons on the 13th.

//43-1// See upon this subject of Bills for restitution in blood, the second volume of this work, p. 337.

//44-1// See this case more at length in the first volume, p. 196.

//46-1// There is a story told of this prelate, which shews what his principles were upon this subject of impositions by the Crown.—Mr. Waller going to court, to see James the First at dinner, overheard the King talking to Andrews, Bishop of Winchester, and Neile, then Bishop of Durham. “My Lords,” said the King, “cannot I take my subjects’ money when I want it, without all this formality in Parliament?”—The Bishop of Durham readily answered, “God forbid, Sir, but you should; you are the breath of our nostrils.” Whereupon the King turned, and said to the Bishop of Winchester, “Well, my Lord, what say you?” “Sir,” replied the Bishop, “I have no skill to judge of Parliamentary cases.” The King answered, “No put-offs, my Lord; answer me presently.” “Then, Sir,” said he, “I think it lawful for you to take my brother Neile’s money, for he offers it.”

//46-2// See this judgment in the Common’s Journal of the 4th of May.

//47-1// The King’s message and the record of the 1st of Henry the IVth, cited by him as a precedent, are inserted more at large in the next volume under title, “Impeachment, what are sufficient grounds,” ch. 2d. N<sup>o</sup> 1.

//47-2// There were several conferences held, the substance of which, and the debates of the Commons preparatory to them, are to be found in the Journals of the Lords and Commons, and in the Parliamentary Proceedings of 1620-1, Vol. II. p. 26, et subs. particularly the Report of the Conferences on the 5th and 8th of May, p. 29 and 45.

//47-3// See the first volume of the Commons’ Journals, page 745.

//48-1// The Bill afterwards passed in the third year of Charles the First. See in the Observations upon this Title, a very curious anecdote upon the subject of this Bill.

//49-1// They were attended by the Serjeant with his Mace—and Mr. Speaker demandeth of them the questions.

//49-2// See this case of Lord Suffolk more at length in the first volume of this work, p. 192.

//51-1// On the 14th of February, 1641, Lord Peterborough complains, in the House of Lords, of a report, occasioned by some words spoken by Mr. Tate, in the House of Commons of his Lordship, which he conceived was much to the defaming of his honour, and a scandal to him; he therefore desired the Lords to take the same into their consideration, and to make him what reparation they should think fit. Then Lord Peterborough withdrew.—And the House considering that Mr. Tate was a Member of the House of Commons, and the words said in that House, their Lordships were of opinion, That this House could not take any cognizance of what is spoken or done in the House of Commons, unless it be by themselves in a Parliamentary way made known to this House; neither that Mr. Tate be called to give reparation, without breach of the privileges of Parliament, unless the House of Commons consent to it. But this House think it fit, that the Lord Keeper should, by directions of the House, let the Lord Peterborough know, “That this Lordship stands right in the good opinion of this House, as a person of great honour and worth, notwithstanding that report of his Lordship.” Which was done accordingly, and the Earl of Peterborough gave their Lordships thanks for the same.

//52-1// See the 21st of May; see also on the 22d of May, and in the Lords' Journal of that day, where what it alleged by the Commons at the conference is stated more at large.

//53-1// See on the 29th of December, 1666, in the Lords' Journal, the commission issued by the King in pursuance of their address.

//54-1// It appears, that the House sat on the 10th of November, which was *Sunday*, to enquire into the Popish Plot, and the death of Sir Edmundbury Godfrey.

//55-1// On the 31st of December the Lords had resolved, “That the printed vote of the Commons now read, is sufficient ground for this House to take notice of it to the House of Commons.”

//55-2// The Lords do not appear, notwithstanding that they had agreed upon what was to be offered to the Commons upon this subject, ever to send to demand the conference.

//55-3// Mr. Duncombe is ordered to be taken into the custody of the Serjeant; and on the 31st of March, 1698, is the following entry in the Journal: “Charles Duncombe, Esquire, having been committed by order of this House to the Tower of London; and afterwards discharged by the order of the House of Lords, without the consent of this House:

“*Resolved*, That the said Charles Duncombe, now in the custody of the Serjeant at Arms attending this House, to be remanded to the Tower of London. And that Mr. Speaker do issue his warrant accordingly.”

//56-1// See this answer in the Lords’ Journals of the 19th June, 1701.

//56-2// This complaint was for interfering in the election in Sir J. Packington, as Knight of the Shire for the county of Worcester. The evidence given at the Bar of the House of Commons upon this complaint, is printed in the State Trials, Vol. VIII. P. 82.

//56-3// On the 19th of November the Lords address the Queen, “That, it being the undoubted right of every Lord of Parliament, and of every other subject of England, to have an opportunity of making his defence, before he suffer any sort of punishment; they do desire, that she would be pleased not to remove the Bishop of Worcester from being Almmoner, nor to shew any mark of her displeasure towards him, till he be found guilty of some crime by due course of law.” See the Queen’s answer, on the 20th of November, in the Lords’ Journals, and compare it with the Queen’s answer in the Commons’ Journal of the same day.

//56-4// See in the Lords’ Journal of the 20th of November the further proceedings upon this question, when the Lords resolve, “That no Lord of this House ought to suffer any sort of punishment, by any proceedings of the House of Commons, otherwise than according to the known and ancient rules and methods of Parliament.”

//57-1// See the debates upon this question collected and printed in one volume in 1705. Several conferences were held upon this subject, which, with the state of the case, as drawn up by order of the Lords, and their representation to the Queen, are to be found in the Lords’ Journal of the 27th of March, and the 13th of March, 1704, and in the Journal of the Commons of the 28th of February, the 5th and the 13th of March, 1704. As the two first and the last of these entries contain a great variety of Parliamentary learning, and comprehend almost every thing that can be urged on either side of this question, they are inserted in the Appendix to this volume, N. 1.

//58-1// The Bishop of Carlisle, though only a Lord of Parliament, is received with the same ceremony as a Peer of the realm.

//58-2// See the Act itself, 1st Geo. I. Stat. 2d. Ch. 31st.

//60-1// See the protest upon this question in the Lords' Journal.—The Bishop, however, did not avail himself of this permission; for he neither appeared by himself, or his counsel, to make his defence against the Bill in the House of Commons.

//60-2// On looking into this Bill, which is kept in the Parliament office, it appears, that the unparliamentary proceeding on the part of the Commons, of which the Lords complain, was the form of the preamble to the Bill, which states, "That whereas the Right honourable Lord William Powlett had represented "to the Commons," that his cash-room had been broke open, and robbed; and whereas "your Majesty's faithful Commons" have enquired into the truth of the said allegations, and are satisfied that the same are true, and that it is highly reasonable, that the said Lord William should be relieved in this case; May it please your Majesty that it may be enacted, &c. &c."

//61-1// This resolution is communicated by message and not at a conference; and as it respected only the conduct of the Members of the House of Commons, the concurrence of their Lordships is not desired. When further regulations are adopted, on the 24th of February, 1795, no message is sent to the Lords, but a Bill is ordered in on the resolutions come to by the Commons. The reason for this was, that the right of franking no longer depending on the Privilege of Parliament, as it had done in 1764, but on the regulations of an Act of Parliament, there was no occasion for observing this delicacy towards the Lords.

//62-1// See the proceedings in Shirley and Fagg, in 1675; and in Mr. Duncombe's case, in 1697; and in the case of Ashby and White

//62-2// See the note \*, p. 337, in the second Volume, upon this subject.—See also Commons' Journals, Vol. I. p. 755, 758, 837, of the proceedings in Mr. Carew Raleigh's Bill, on the 6th and 8th of April, 1624, and 17th of March, 1625.—A Bill to this effect, for the restitution in blood of Mr. Carew Raleigh, afterwards, in 1628, the 3d year of Charles the First, originated with the Lords and passed both Houses.—On which subject the following anecdote is related in Dr. Birch's Life of Sir Walter Raleigh, "Mr. Carew Raleigh mentions, That on his addressing himself to the Parliament to be restored in blood, King Charles the First sent to him, and told him plainly that on the obligation of 10,000 *l.* he had promised the Earl of Bristol to secure his title to Sherborne Castle, and the estate belonging to it, against the heirs of Sir Walter Raleigh; that now, being King, he was bound to make good his promise; and therefore, unless Mr. Raleigh would quit all his right and title to Sherborne, he neither would nor could pass his Bill of restoration.—Whereupon he, Mr. Raleigh, being then not twenty years of age, left friendless and fortuneless, was prevailed on, by the promise of a subsistence, to submit to the King's will." The truth of this story is confirmed by the title of the Bill.—"An Act for Restitution in Blood of Carew Raleigh, son of Sir Walter Raleigh, late attainted of High Treason; and for confirmation of certain Letters of Patent made by our late Sovereign Lord King James to John Earl of Bristol, by the name of John Digby Knight."

//62-3// It appears from the case of Lord Bolingbroke, 20th of April, 1725, and from several other instances in the Common's Journals, particularly in the years 1732 and 1733; and in the case of the Earl Marischall, on the 28th of March, 1760, and in Mr. Ogilvy's case, 4th of February, 1783, that "Bills for removing disabilities and incapacities arising from attainders," are not considered by the Lords as comprehended within their Resolution of the 6th and 7th of May, 1702.—On the 1st of February, 1695, a Bill passed the House of Commons "for reversing the judgment given against Sir William Williams, for what he did as Speaker of the House of Commons and for asserting the rights and freedom of Parliament." As soon as it is read a first time in the House of Lords on the 14th of February, the Lords appoint a Committee to examine what hath been done, upon Bills for reversing judgments which have begun in the House of Commons." On the 21st of February the Committee report several instances, and the Bill is immediately read a second time.

//63-1// See the resolution of the 3d of July, 1678.

//63-2// The Septennial Act, in 1716, began in the House of Lords.—The Bill for regulating Trials for Treasons, in 1696, began in the House of Commons.—The Act, in 1735, for regulating the quartering of soldiers during elections, began in the House of Lords.

//63-3// The Act for the precedency of Lord Lindsay, in 1715, began in the House of Lords; so did the Bill for settling the Peerage of Great Britain, in 1719.—So, in 1742, the Bill, for restoring the Duke of Buccleugh to the dignity and title of Earl of Doncaster.—The several laws which have passed for regulating Elections, and for the exclusion of certain persons from being eligible to be Members, have had their commencement in the House of Commons.

//63-4// On the 13 of March, 1710, Queen Anne being attended with the Address of both Houses, upon the occasion of the attempt made by Guiscard on Mr. Harley, then Secretary of State, in her answer to the Address, recommends it to them to make a law, to punish with death such attempts on the lives of magistrates in the execution of their duty. As soon as this answer is reported to the House of Commons on the 14th of March, they order in a "Bill to make an attempt on the life of a Privy Counsellor, in the execution of his office, felony without benefit of Clergy." See this Statute, the 9th of Queen Anne, Ch. 16 .

//64-1// In a Bill of pardon, which was sent from the Lords on the 23d of July, 1610, a very extraordinary proceeding took place. The Commons, wishing that an exception should be made of Sir Stephen Proctor, desire a conference with the Lords for this purpose. The Lords agree to the conference, and upon the representation of the Commons they order the Attorney General, with the pardon, to attend his Majesty; and that, by his Highness's commandment and in his Majesty's presence, a clause may be inserted for excepting the said Sir Stephen.—This was done accordingly. The clause was

then read, and sent down to the Commons, where it was agreed to, and the Bill so amended returned to the Lords.

//64-2// This is the later practice; but it appears from D'Ewes's Journal, p. 274, that it was anciently otherwise. He says, that at the close of the session, on the 18th of March, 1580, "The Clerk of the Parliament having read the Queen's acceptance and thanks for the subsidy, did then, upon reading of the pardon, pronounce, in these French words following, the thanks of the Lords and Commons for the same—*Les Prelats, Seigneurs, & Communes, en ce present Parlement assemblez, au nom de tous vos autres subjects, remercient tres humblement votre Majestie; & prient a Dieu que il vous donne sante bonne, vie & longue.*"—Nothing of this appears in the Lords' Journals.—See in the Lords' Journals the 19th, 20th, and 23d of May, 1690; and the 30th of April and 3d of May, 1695; and in the Commons' Journal, of the 2d of May, 1695; 15th of July, 1717; and the 17th of June, 1747.—See also in the Lords' Journals of the 20th of April, 1709, and the 15th of July, 1717, a memorandum respecting a mistake in the form of passing a Bill of pardon there.—In The House of Lords, the Lords sit uncovered during the reading of the Bill, and at the putting the question; and when they stand up to give their votes, they continue standing, so uncovered, till all the Lords have done voting. In the House of Commons, whilst the Bill is reading, the same being signed by the King, the House sits uncovered, during all the time of reading.

//65-1// See the instances of the 7th of March, 1697; the 28th of January, 1715; the 12th of July, 1721; 26th of April, 1729; 15th of March, 1731; 3d and 15th of May, 1732; 16th of May, 1737; and 14th of May, 1746.—See also, in the Lords' Journals, the 14th reason for the protest of certain Lords upon the question for passing the Bill for regulating the proceedings of the General Courts of the East India Company, the 26th of June, 1767, in which it said, "That whenever a Bill, judicial in its nature, as affecting legal rights and private property, has come up from the Commons, stating no facts as a ground for that Bill, or stating facts, the evidence of which does not appear in the preamble, the invariable practice of this House has been, to desire a conference with the other, to be informed, either of the facts, or the evidence to support such facts (if alleged) on which the Bill was originally framed; and the Commons have on like occasions done the same by this House." There are then references to several of those cases.—See the Lords' message of the 23d of May, 1786, for information relating to the Bill for reducing the National Debt, and the answer sent to this message by the Commons on the next day.

//65-2// See the 1st of February, 1661, and 22d of May, 1690, and 15th of July, 1717.

//65-3// See the proceedings upon Lord Danby's name being mentioned in the House of Commons, as having given some information of great public concern, on the 16th and 17th of November, 1691.

//66-1// See on the 2d of February, 1780, the report and resolutions of the House of Commons on a complaint against the Duke of Chandos, for interfering in the election of a Knight of the Shire for the county of Southampton.



//66-2// To prove this, see the proceedings and resolution come to by the Lords, upon the subject of the Bishop of Worcester, on the 20th of November, 1702.

//66-3// I do not mean to justify the doctrine of the Lords. The resolution of the House of Commons, which is renewed every session, appears to me to be founded in the true principles of the constitution: and though it is every day abused by a contrary practice, and that abuse is overlooked by all parties, yet when a flagrant instance occurs, it is becoming the dignity of the House of Commons to vindicate their independence in this particular: and if the private situation of the Lord complained of will not admit of their proceeding farther, they ought to reprehend this conduct in the Peer, and to assert their own rights by a strong and spirited resolution.

//67-1// See the note in p. 254 of the second volume.

//68-1// See the second volume of this work, p. 220.

//68-2// Cicero, in the first oration he delivered in the senate against Antony, lays down this rule to be observed by a public speaker: “Non in vitam alicujus, aut in mores, contumeliose; at de republicâ quæ sentiat, libere.”—1 Philipp. cap. 11.

//68-3// See many of these instances under N<sup>o</sup>36.

//69-1// It is said, in the fourth volume of the Parliamentary History, p. 235, “That in March, 1580, causes of appeal between party and party came now to be tried at the Bar of the House of Lords, and entered in their Journal.” See the Lords’ Journal, the 7th of March, 1580.

//69-2// It appears from Grey's Debates, Vol. I. p. 90, that this business of Fitton's came before the Lords, not by writ of error, but upon an original complaint.—See also the Lords’ Journals.—See also Grey's Debates, p. 101.

//70-1// The proceedings upon this business, being erased at the King's recommendation from the Journal, are inserted in the Appendix to this volume, N<sup>o</sup> 2.

//70-2// Grey's Debates, Vol. I. p. 155.

//70-3// There is much curious learning, in the several debates upon this subject, preserved by Grey, and printed in the first volume, p. 204. & *seq.* And in p. 455. is Serjeant Maynard's argument, used by him at one of the conferences, which, by an order of the House of Commons of the 15th of April, 1671, was entered upon the Journals.

//71-1// See these proceedings collected, and published in the State Trials, Vol. VII. p. 453.

//71-2// In a book written by Arthur Lord Anglesea, and published in 1702, intituled, “The Rights of the House of Lords asserted, with Remarks on the two late Conferences in 1671,” it is said in p. 120, “The next assertion of the Commons, that it is an unsafe thing, in any settled government, to argue the reasons of fundamental constitutions, is a very great truth; but, as true as it is, it cannot be of weight enough to induce the Lords to forbear the justification of their rights: and when the Commons come to shew in what manner they apprehend the arguing of the reasons of fundamental constitutions may be judicial to the Lords, they take occasion to question the Lords’ rights in judicature.”—It was at one of these conferences, that the Lords having demanded, “Where is that record or contract in Parliament to be found, where the Lords appropriate the right of granting supplies to the Commons, in exclusion of themselves?” The Commons reply, “To this rhetorical question, the Commons answer by another question, Where is that record or contract, by which the Commons submitted, that judicature should be appropriated to the Lords, in exclusion of themselves? Wherever your Lordships find the last record, the Commons will shew the first indorsed on the same roll. The truth is, Precedents there are, where both sides do exercise those several rights; but none how either side came by them.”—Upon this subject, consult a work lately published by Mr. Hargrave, intituled, “Jurisdiction of the Lords’ House of Parliament, according to the antient Records, by Lord Chief Justice Hale.”

//73-1// The debates upon these questions are very well related in the third volume of Grey, p. 139. to 289; in the course of which the Speaker, by the direction of the House, gave their thanks to Sir John Robinson, then a Member for the City of London, and Lieutenant of the Tower, “for having, like a worthy person and trusty Commoner, done his duty, in obeying the orders of this House, not to release, or pay obedience to any writ of *Habeas Corpus* for the release from the Tower of Serjeant Pemberton, and the other lawyers committed by the House of Commons, The Lords, upon the 4th of June 1675, addressed the King to remove Sir John Robinson for this act; but the King declined it, and gave for answer on the next day, “That he had considered the circumstances of the matter, and was not satisfied how, with justice, he could remove him.”—See in Grey’s Debates, Vol. III. p. 282, Sir John Robinson’s speech upon this occasion on the 8th of June, 1675. On the Friday preceding, the 4th of June, the House had voted their thanks to the Speaker, for having caused Mr. Serjeant Pemberton to be taken into custody, as he passed through Westminster Hall. Mr. Onslow, on this subject, relates the following anecdote; “Seymour was the Speaker and he seized Serjeant Pemberton with his own hand at the wicket of the Court of Commons Pleas, saying to him, “Serjeant Pemberton, you are the prisoner of the House of Commons,” and with his own hand also drew him along quite up Westminster Hall, in the face of the Courts, and then delivered him to one of the Messengers.”—Mr. O.

//73-1// See the proceedings of the Lords, in their Journal, with regard to this resolution of the House of Commons.

//74-1// See a very full state of this case, as drawn up by the Lords, the 27th of March, 1704; and the Commons' report of a Free Conference on this subject the 13th of March, 1704, in the Appendix to this volume, N<sup>o</sup> 1.

//74-2// On the 9th of March, 1767, a complaint was made to the House, That several actions of trespass on the case had been brought against the sheriff of Pembrokeshire, for refusing the votes of persons at the last election. A motion was made, That the matter of this complaint be heard at the Bar; but a debate arising, this debate was adjourned to the 16th of March, when it is ordered to be heard at the Bar on the 6th of April; and the several parties, bringing the actions, are ordered to attend on that day. On the 3rd of April, a Member informing the House that he was authorized, by the parties prosecuting the actions, to undertake to the House, that they "should be discontinued," the House put off the hearing of the complaint to the 9th. On the 9th of April the same Member acquainting the House, that the actions "were discontinued." The House resolve, "That they will not proceed to hear the matter of complaint, of the said actions having been brought."

//75-1// See particularly the Commons' address of the 18th of February, 1703.

//75-2// Burnet says, "These addresses were drawn by the Lord Somers; and were read over, and considered, and corrected very critically, by a few Lords, among whom I had the honour to be called for one."—Vol. II. p. 378.\

//75-3// This was certainly the case in the jurisdiction exercised by the Commons against Floydd, N<sup>o</sup> 7. Having inadvertently got into this difficulty, it is curious to see how they labour, by false arguments, and precedents which do not apply, to support what they had done.

//75-4// See Sir Matthew Hale's "Jurisdiction of the House of Lords according to antient Records," chapters 20 and 31, published by Mr. Hargrave.

//75-5// That this was not always the case, appears from a speech made by Lord Shaftsbury, in 1675, upon the dispute between the two Houses, in the case of Shirley and Fagg. Lord Shaftsbury, arguing in favour of the Lords judicature, says, "I have heard of twenty foolish models and expedients to secure the justice of the nation, and yet to take this right from your Lordships. I must deal freely with your Lordships: these thoughts could never have arisen in man's minds, but that there has been some kind of provocation, that has given the first rise to it. *Pray, my Lords, forgive me, if, on this occasion, I put you in mind of Committee dinners, and the scandal of it; those droves of ladies that attended all causes: it was come to that pass, that men even hired, or borrowed of their friends, handsome sisters or daughters to deliver their petitions.*" Lords' Debates, Vol. I. p. 165.

//76-1// But see, N<sup>o</sup> 35, the case of Lord Wharton and Mr. Bathurst, on the 20th and 28th of January, 1703, with the resolutions of the House of Commons thereupon.

//77-1// This Archbishop was George Abbot, who had been advanced to that see in April, 1611. Not long after this transaction relating to Mountague's book, on the 24th of August, 1628, he consecrated this very Richard Mountague to the see of Chichester.

//78-1// See on the 24th of March, 1678, the report from the Committee, that had attended the Lord Chancellor, in order to know the circumstances of granting Lord Danby's pardon.

//79-1// See what is said upon this subject in page 6 of this volume, in the observations upon title "Lords admitted into the House of Commons."

//81-1// See the words of this message in the Lords' Journals of the 17th of June.

//81-2// See Lord Clarendon's observations on a similar proposition made by Sir G. Downing some time before. "The Solicitor General brought in the Bill for Supply, according to course, in that form as those Bills for money ought and used to be; and after it had been read a second time, when it was committed, Downing offered his proviso; the end of which was, "to make all the money that was to be raised by this bill to be applied only to those ends to which it was given, which was the carrying on the war, and to no other purpose whatever, by what authority soever," with many other clauses in it so monstrous, that the Solicitor, and many others who were most watchful for the King's service, declared against it as introductive to a commonwealth, and not fit for monarchy."—Lord Clarendon's Contin. p. 315.—See further, p. 316, 317, & seq. the arguments that were used for and against this proviso, at the Committee of Council, which met in Lord Clarendon's bedchamber, he being ill in bed; "the King present."

//82-1// See the debate, which passed upon this motion, in Grey's Debates, Vol. III, p. 446, particularly Mr. Sacheverel's speech, with his reference to former precedents of a similar proceeding.

//82-2// A similar resolution is passed the same day, respecting persons accepting or buying tallies of anticipation.

//83-1// See the observations upon this resolution under title "Incidental Proceedings relating to the grant of Supply."

//84-1// See in the Appendix N<sup>o</sup> 3, a very curious record, taken from Rymer's *Fœdera*, Vol. X. p. 113. as translated by Anderson in his *History of Commerce*, Vol. I. p. 248, which exhibits the annual revenue of the Crown in the year 1421, with its application.

//84-2// Upon this subject I should particularly recommend to the reader to peruse the sixth and seventh chapters of Lord Molesworth's *Account of Denmark*, published in 1694; together with his Lordship's translation of Hottoman's *Franco-Gallia*, printed in 1711. chaps. 10th, 11th, 15th, and 18th.—There is a very curious anecdote related in a

tract published by John Hampden, Esquire, in 1692, and cited in the note to Kennet's History of Charles II. p. 397, where Mr. Hampden says, "That discoursing about ten years before, at Paris, with the famous historian Mezeray, about the difference of the government of France and England, Mezeray broke out into these expressions with transport: "*O fortunates nimiam, sua si bona nôriat, Angligenæ!* We had once in France the same happiness, and the same privileges, which you have—*our laws were made by representatives of our own chusing—our money was not taken from us but by our own consent—our Kings were subject to the rules of law and reason.*—But now, alas! we are miserable, and all is lost!—Think nothing too dear to maintain these precious advantages; and if ever there be occasion, venture your life, your estate, and all you have, rather than submit to the miserable condition to which you see us reduced."—The following anecdote told by the Duke de St. Simon, and which he said he had from M. de Marechal, surgeon to Louis the XIVth, confirms the truth of Mezeray's observations: "In the year 1710, when large sums were wanting for carrying on the war, and the people of France were extremely oppressed by the burthens they already laboured under, the ministers proposed a new tax, under the name of *A. Royal Tenth*, and presented the plan for raising it to the King. Accustomed as Louis was to the imposition of the most enormous taxes, he could not help being shocked at this; his uneasiness even appeared in his countenance. His domestics observed it, and Marechal, from whom I had this anecdote, ventured to mention to the King, "That he had observed a degree of melancholy hang about him for these several days, and that he had fears for his Majesty's health." Louis acknowledged to him, that he was in great uneasiness, and expressed himself in a general way, on the present posture of affairs. Having within eight or ten days recovered his ordinary tranquillity, he sent for Marechal, and taking him by himself said, "Now that I feel myself at ease, I must tell you the cause of my anxiety, and by what means I have got rid of it." He then informed Marechal, that the urgent necessity of his affairs having compelled him to impose new taxes, his compassion for his subjects, and his unwillingness to make free with every person's property, had greatly distressed him on the occasion. At last, added the King, I opened my mind to Father Le Tellier, (who was at this time the Confessor) Le Tellier desired some days to think of the matter. He has now brought me a consultation of the subtlest doctors of the Sorbonne, who all agree, "*That the whole property of my subjects is mine personally; and that when I take it from them, I take nothing but what is my own.*" This decision has restored the ease of mind I had lost."—Since the former publication of this volume, a great alteration has place in the French constitution, particularly upon the subject of granting supplies and imposing taxes.

//85-1// "Y a t'il Roy, ou Seigneur sur terre, qui ait pouvoir, outre son domaine, de mettre un denier sur ses sujets, sans octroy et consentement de ceuz qui le doivent payer, si non par tyrannise ou violence?"—Memoires de Comines, liv. v. ch. 9.—"Le Roi Charles VII. fut le premier, lequel gaigna & commença ce point, que d'imposer tailles en son pays & à son plaisir, sans le consentement des etats de son royaume."—Memoires de Comines, liv. vi. Ch. 7.—See the History of the Wars of the Commons of Castile, in the beginning of the reign of Charles V. written by Geddes; in which there are very many striking similarities between those disputes, and the differences which

arose in the next century between Charles I. and the Commons of England. Unfortunately for Spain, the event of their struggle was not so successful as that of this country was.—Geddes's Tracts, Vol. I. p. 221.—See also in the same vol. p. 356. a very curious account of two assemblies of the Cortes of Castile, which met in 1390 and 1406, with a copy of the King's writ of summons, and the names of the Members returned, and the places for which they were elected.—Montesquieu speaking of the English constitution, says, "On verra, que c'est des Germains que les Anglois ont tire l'idée de leur gouvernement politique. Ce beau Système a été trouvé dans les Bois."  
*De l'Esprit des Loix, liv. xi. ch. 6.*

//86-1// Now near 600 years ago.—The duration of the republic of Rome, from the expulsion of the Tarquins, in the year 245 U. C. to the Battle of Pharsalia, in 706 U. C. was only 461 years.

//86-2// I have given this extract at length, from the Great Charter granted by King John, on the 15th of June, in the year 1215, and which is preserved in M. Paris's History, p. 215, because (which is very remarkable) some of these very important clauses are totally omitted in the charter of the 9th Henry III. in 1225, printed in the Statutes at Large, as the first Statute now in being, under the title of *Magna Charta*: notwithstanding that the same historian says, "Quod chartæ utrorumque regum in nullo inveniuntur dissimiles." Matt. Paris's History, p. 272.—See Sir William Blackstone's Introductory Discourse to the Great Charter, with the account given there of these and other variations.—A very ingenious writer, observing upon the words of the summons, "*to the Archbishops, Bishops, Abbots, Earls, and Greater Barons, singillatim per literas,*"—and, "*præterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite,*"—remarks, "That this is a passage which seems, beyond all controversy, to point out the constituent Members of the Great Council of the kingdom in those days."—Reeves's History of English Law, Vol. I. p. 164.—Another thing remarkable in this extract is, that *forty days at the least* is the period *then* fixed, at which the persons so summoned are to meet.

//87-1// The compilers of the Parliamentary History, Vol. I. p. 108, with their usual partiality, and without adverting to the words before cited from the Great Charter, and declared near a century before, call this statute De Tallagio non concedendo, "*A step into the prerogative, much bolder and wider than what was made by the gaining of the Great Charter, or that of the Forests;* and that it may be truly said to be the foundation of our present parliamentary grants to the Crown." See in Blackstone's Introductory Discourse, containing the History of the Great Charter, his doubts, whether this Statute is a separate Act of Parliament, or only a contemporary Latin abstract of two French charters granted before. *Law Tracts, p. 343.*

//87-2// I do not mean, in this place, to give a history of the modes in which taxes have from time to time been imposed. Those who desire to be informed upon this important part of the History of this Constitution, may consult the arguments of Mr. Hakewill and

others, which are published in the 11th volume of the State Trials, from p. 29 to 65; and the accounts in Rushworth, and the writers of those times, of the differences between Charles I. and his Parliament, in which there is much learning, upon this subject.

//87-3// The following extract from Madox's *Baronia Anglica*, book 1st, ch. 6th, may throw some light upon this subject: "There were several devices practised both by the clergy and laity, to wrong the King of his services and dues. Amongst others, one was, when the summons *ad habendum servitium* had been issued, several of the barons and knights would appear before the constable and marshall, and would proffer one-half, one-third, or may be a smaller part of their due service. The constable and marshall, for want of better information, oftentimes admitted these unfair proffers; and the admittance of these fallacious proffers being repeated, they served to make precedents against the King. By these means, in process of time, it became very doubtful, for what number of knights fees each baron and tenant in chivalry was answerable. Where the King's officers charged 20 knights fees, perhaps the baron so charged admitted of no more than four. In like manner, in relation to aids and escuages. If the King's officers demanded escuage for 40 knights fees, the baron, of whom it was demanded, pretended to pay for no more than ten. When things were brought to this state, the Kings of England lost a great part of the service of the shield, due from the barons and knights. This proved to be a matter of no light consequence.—For then, the Kings being no longer able to assess and levy their aids and escuages in the old seignieurlial way, as had been used in the reigns of Henry the IId. Richard the Ist. and King John, from thenceforth could do nothing of this nature effectually, but by *common counsel* and *consent*. They found it therefore necessary to call together their barons, prelates, tenants in capite, and others, to a *treaty* or *parley*, in order to settle and adjust all payments by common accord. And this consent was so necessary, that in the first year of Edward the IId. Walter de Stapeldon, Bishop of Exeter, one of the executors of Thomas Bitton, the late Bishop, complained to the King in his council, That whereas the said Thomas died before the time when the earls, barons, and commonalties of counties in England had granted to the King for his subsidy *a twentieth* of their moveable goods, and the tenants of the antient demesnes of the Crown a *fifteenth* of their moveable goods, and that the said Thomas, deceased, was never in his life-time requested to grant to the King the said subsidy, *nor gave his consent to the grant thereof*; that nevertheless the taxers and collectors of the said twentieth and fifteenth, in the county of Devon, had taxed the goods and chattels which the said Thomas had on the day of his death, in the said county, to the said twentieth and fifteenth, and were about to levy the same *unjustly*. The King being willing to have justice done, ordered a writ to issue out of his exchequer, commanding the said taxers and collectors to forbear to levy the said subsidy on those goods and chattels, whereof the said Thomas was possessed on the day of his death, until the fortnight after Easter next. That then either in Parliament, or where else the King should appoint, it might be finally discussed, what was rightfully to be done in this case. The writ is, Hil. Term, Brevia 1st Edward IId. Rol. 97 a. Several others used the like allegation, *Quia non assesit*, and were thereupon discharged by the Court of Exchequer of the sums demanded of them." See the proceedings in these other cases at length in the same book, p. 118, 119, and 120.

//89-1// See the Rol. Parl. Vol. VI. P. 4. N° 8 and 9.

//89-2// See Anderson's History of Commerce, Vol. I. p. 146.

//89-3// It is said in the second volume of Parliamentary History, p. 450, that a *tenth* or *fifteenth* was a tax of money laid upon a city, borough, or other town, throughout the realm; and so called, because it amounted to a //n. to 89-3// tenth or fifteenth part of that, which the city or town had *of old* been valued at; and therefore every town knew what the amount of these were: whereas a subsidy was raised upon every particular man's goods or lands, and therefore was uncertain.—In the first volume of Anderson's History of Commerce, p. 133, it is said, "It is now become impracticable to ascertain the manner of the laying the said tax of *tenths* and *fifteenths*, though imposed the last time so lately as in the former part of James the First's reign. For many, it seems, in old times compounded with the King's collectors for a round sum; and many others had exemptions. Yet, after all, it seems not a little strange, that none of the records or books of accounts, remaining in the King's Exchequer, should clear up this seemingly plain point, which has hitherto puzzled so many understanding persons to ascertain."—But see in M. Paris's Hist. Angl. p. 320, a letter sent by Henry the III<sup>d</sup> to the collectors in the several counties and districts, describing the mode in which *a fortieth*, that had been granted, as an aid to the King, in 1232, should be assessed and collected. Amongst other things, the letter directs, "Quod de qualibet villa integra, eligantur quatuor de melioribus et legalioribus hominibus, una cum præpositis singularum villarum, per quorum sacramentum, quadragesima pars omnium mobilium taxetur et assideatur, super singulos." It then proceeds to give directions for assessing the assessors; and in what manner the roll shall be made up, and the money paid and secured, till it should be transmitted *ad Novem Templum Londinense*.

//n. to 89-3// See Lord Coke's Speech, Parl. Hist. Vol. IV. p. 323.

//89-4// Parl. Hist. Vol. II. p. 120, Rot. Parl. Vol. II. p. 648. N° 10.

//90-1// Parl. Hist. Vol. II. p. 349.

//90-2// See Stat. 1 Rich. III. ch. 2. and also the 13 Charles II. Stat. 1. Ch. 4.

//90-3// Parl. Hist. Vol. II. p. 434.

//90-4// Lord Bacon, in his account of this transaction in the History of Henry VII. adds, "There is a tradition of a dilemma that Bishop Morton, the Chancellor, used, to raise up the Benevolence to higher rates; and some called it his fork, and some his crutch. For he had couched an article in the instructions to the commissioners who were to levy the Benevolence,—"That if they met with any that were sparing, they should tell them that they must needs have, because they laid up; and if they were



spenders, they must needs have, because it was seen in their port and manner of living.”—So neither kind came amiss.”—Bacon’s Works, Vol. II. p. 303.

//90-5// Hall’s observation upon this transaction, Parl. Hist. Vol. II. p. 436, is a very wise one: “By this, says he, a man may perceive that what is once practised for the utility of a Prince, and brought to a precedent by matter of record, may be turned to the great prejudice of the people; if rulers in authority will so adjudge and determine it.”

//91-1// There is a curious paper in Parl. Hist. Vol. III. p. 201, extracted from Strype, giving an account of the sums paid by each county upon this commission; amounting in the whole to 70,723 l. 18s. 10d.

//91-2// It appears from a letter of Lord Bacon’s to James I. that, upon the hearing of this cause, Sir Edward Coke, at that time Chief Justice, delivered the law for the Benevolence strongly: “I would,” he adds, “he had done it timely.” What Lord Bacon himself spoke upon this occasion, he says, he set down as soon as he came home; “though,” he adds, “I persuade myself I spoke it with more life.” The charge given by Sir Francis Bacon, as Attorney General, against Mr. St. John, is printed in Vol. II. of his Works, p. 205.—See also in State Trials, Vol. XI. p. 110, Mr. Oliver St. John’s letter to the Mayor of Marlborough, for which the prosecution was commenced.

//91-3// See in Rushworth’s Collections, Vol. I. p. 60, orders issued from the Privy Council, in the year 1621, and directed to the Judges of Westminster Hall, to encourage and join in a contribution for raising money for the defence of the Palatinate, and to certify the names of such persons as shall refuse: in the same volume of Rushworth, p. 192, letters from Charles I. in the year 1625, to Lieutenants of Counties; and privy seals which were issued by order of Council, requiring particular sums; together with an account of the sums demanded from the gentlemen of the Well-Riding of Yorkshire.

//91-4// See, in the 1st vol. of Rushworth, the petition from Sir John Eliot, prisoner in the Gate House, for refusing to pay the loan.—See also that part of the Lord Keeper Finch’s Speech, in the House of Commons, upon the 21st of December, 1640, which relates to the part he took in advising the tax of Ship-money.—Parl. Hist. Vol. IX. p. 129.

//92-1// See the preamble to this petition in the printed Statute of 3 Charles I. ch. 1. with the history of the debates in the House of Commons, and at the conferences held with the Lords upon this subject, in Rushworth’s Collections, Vol. I. and in the Parl. Hist. Vols. VII. and VIII.

//92-2// See Stat. 2. of the 1st year of William and Mary, ch. 2.

//92-3// It has sometimes been made a doubt, whether *voluntary contributions* to the public, either in the form of subscriptions by money, building ships, or raising men with bounties, are strictly legal. Without presuming to decide upon this question, it

may be matter of curiosity to know what was the opinion of the Lord Chancellor Hardwicke upon the subject. He says, in pronouncing judgment upon the Lords Cromarty, Kilmarnock, and Balmerino, “Men of property, of all ranks and orders, crowded in with liberal subscriptions, of their own motions, beyond the examples of former times, and uncompelled by any laws; and yet in the most legal and warrantable manner, notwithstanding what has been ignorantly and presumptuously suggested to the contrary.” Lords’ Journals, August 1, 1746.—On the 2d of April, 1778, in consequence of private subscriptions, that were going forward for raising men to serve the King in the land and sea service (soon after the delivery of the French rescript about America) a motion was made in the House of Commons for “leave for a Bill more effectually to prevent the dangerous and unconstitutional practice of giving or granting money to the Crown, as a private aid, loan, benevolence, or subscription, for public purposes, without the consent of Parliament;” but passed in the negative.—See upon this subject the Act of the 13th Charles II. ch. iv. sect. 5. —See also the King’s Speech on the 5th of December, 1782. This question of the legality of voluntary subscriptions, for public purposes, was again brought into discussion in the year 1794; and was very ably and fully debated, in both Houses of Parliament, on the same day, the 28th of March.

//93-1// Rot. Parl. Vol. II. p. 114. N° 22; and p. 128, N° 12.—Parl. Hist. Vol. I. p. 236.

//93-2// See also in the seventh volume of Rymer’s *Fœdera*, p. 250, a commission from King Richard II. issued in the year 1380, at the prayer of the Commons expressed to him in Parliament, to several persons, giving them a power “*examinandi et supervidendi quascunque summas et modum expensarum, ac statum bospitti nostri.*” The whole of this record is curious, and worth perusing.—See also Rot. Parl. Vol. III. p. 35 and 36. N° 18 to 26.

//93-3// Parl. Hist. Vol. II. p. 95.—See Rot. Of Parl. Vol. III. p. 546, 577, 578, 586, 627, 635. And in the fifth year of Richard II. the Commons, after their grant, desire that certain persons may be appointed treasurers or guardians, “*au tiel effect, que celles deniers fousent tout entierment appliez a les depenses de la guerre, & nemye autre part par aucune voie.*”—Rot. Parl. Vol. III. p. 7. See also the statute of the 5th of Richard the Second, ch 3. intituled “A Subsidy granted to the King, so that the money that cometh thereby may be wholly employed upon the keeping of the sea;”—and Mr. Sacheverel’s speech upon this subject of appropriating the supply to the service for which it was granted, in Grey’s Debates, Vol. III. p. 447.

//94-1// Doubts however of this kind, of a much later date, were expressed in the House of Commons; and at a time when the revenue of the civil list arose out of the grants of Parliament. It was therefore thought proper to declare, by a resolution, on the 6th of April, 1780, “That it is competent to this House to examine into, and to correct abuses in, the expenditure of the civil list revenues, as well as in every other branch of the public revenue, whenever it shall appear expedient to the wisdom of this House so to do.”—See the Proceedings upon the 5th of May, 1701, where the House of Commons proceeded much beyond what is expressed in this resolution; and, without any previous

message or consent from the Crown, applied £. 100,000 a year, part of the sum of £. 700,000 granted for the service of his Majesty's household, towards the payment of the public debts,—and on the 23d of May applied £3,700 per week, out of the £700,000 civil list revenue, that had been granted to King William for life, to the public service. The Duke of Gloucester died some time before this; and therefore, as the resolution of the 5th of May expresses, “the occasion for which the sum of £100,000 was given, was now ceased.” It is remarkable that scarce any notice is taken of this extraordinary proceeding by Burnet, or any of the historians of that time. See the statute of the 12th and 13th of William the Third, ch. 12.

//95-1// The antiquity of this practice of appropriating the grants of Parliament, shews the little foundation there was for Lord Clarendon's observation, “That Sir. G. Downing's proviso, “to make all the money that was to be raised applicable *only* to those ends for which it was given, and to no other purpose whatever,” was introductive of a commonwealth, and not fit for a monarchy.” See before, page 81, note †. Fortunately this idea of Sir G. Downing's was adopted at the Revolution, and has from that time been strictly adhered to.—It is, however, but doing justice to Lord Clarendon (at the same time that he is stated as being averse from the appropriation of the public revenue to the services voted by the House of Commons) to repeat the following anecdote, which is to be found in Welwood's Memoirs, p. 121.: “It looks as if Heaven took a more than ordinary care of England, that we did not throw up all our liberties at once, upon the Restoration of King Charles II.: for though some were for bringing him back upon terms, yet, after he was once come he possessed so entirely the hearts of his people, that they thought nothing was too much for them to grant, or for him to receive. Among other designs to please him, there was one formed at Court, to settle such a revenue upon him by Parliament, during life, as should place him beyond the necessity of asking more, except in the case of a war, or some such extraordinary occasion. The Earl of Southampton, Lord High Treasurer, came heartily into it, out of a mere principle of honour and affection to the King; but Lord Chancellor Clarendon secretly opposed it. It happened that they two had a private conference about the matter: and the Chancellor being earnest to bring the Treasurer to his opinion, took the freedom to tell him, “That he was better acquainted with the King's temper and inclination than Southampton could reasonably expect to be, having had long and intimate acquaintance with his Majesty abroad; and that he knew him so well, *that if such a revenue was once settled upon him for life, neither of them two would be of any further use; and they were not in probability to see many more sessions of Parliament during that reign.*” Southampton was brought over: but this passage could not be kept so secret, but that it came to King Charles's ears; which, together with other things wherein Clarendon was misrepresented to him, proved the true reason why he abandoned him to his enemies.”—This is confirmed by Bishop Burnet; who, in the first volume of his History, p. 251, says, “Many Members of the House of Commons, such as Clifford, Osborn, Ker, Littleton, and Seymour, were brought to the King; who all assured him that, upon his restoration, they intended both to have raised his authority and to have increased his revenue, but that the Earl of Clarendon had discouraged it:

and that all his creatures had possessed the House with such jealousies of the King, that they thought it was not fit to trust him too much, nor too far.”

//96-1// Parl. Hist. Vol. II. p. 270.—Rot. Parl. Vol. V. p. 236. N° 20.

//96-2// Parl. Hist. Vol. II. p. 322.—Tot. Parl. Vol. V. p. 498. N° 9.

//96-3// It appears from the Roll of Parliament, printed in the first volume of the Lords' Journals, p. ccli. that, in the year 1553, the Queen's assent to the Bill for a subsidy of tonnage and poundage was given in the form of words now used: “La Reine remerciant ses loyaulz subjectz, accepte leure benevolence, & ainsi le veult.”

//96-4// Though Mr. Hume, in his History of England, almost universally leans to that side of the question, which most favours the power of the Crown, and lessens the liberty of the people, he now and then finds himself compelled to state the principles of this constitution with more truth, and more agreeably to that information, which he might have collected from the records, and the antient chronicles, to which however he refers. When Edward the Ist. in the year 1297, is compelled to grant a confirmation of the Great Charter, and of the Charter of the Forest (see the stat. 25 Edward I. ch. 1st. ) Mr. Hume makes the following observation: “Thus, after the contests of near a whole century, the Great Charter was finally established; and the English nation have the honour of extorting, by their perseverance, this concession from the ablest, the most warlike, and the most ambitious of all their Princes. It is computed, that above thirty confirmations of it were, at different times, required of several Kings, and granted by them in full Parliament; a precaution, which, while it discovers some ignorance of the true nature of law and government, proves a very laudable jealousy of national privileges in the people, and an extreme anxiety, lest contrary precedents should ever be pleaded as an authority for infringing them. Accordingly we find, that, though arbitrary practices often prevailed, and were even able to establish themselves into settled customs, the validity of the Great Charter was never afterward formally disputed; and that grant was still regarded as the basis of the English government, and the sure rule, by which the authority of every custom was to be tried and canvassed. The jurisdiction of the Star Chamber, martial law, imprisonment by warrants from the Privy Council, and other practices of a like nature, though established for several centuries, were scarce ever allowed by the English to be part of their constitution. The affection of the nation for liberty still prevailed over all precedent, and even all political reasoning. The exercise of these powers, after being long the source of secret murmurs among the people, was, in fulness of time, solemnly abolished, as illegal, at least as oppressive, by the whole legislative authority.” Hist. of England, chap. 13. Reign of Edward I.—Again, in the conclusion of the reign of Richard the III. chap. 23. “The constitution of the English government, ever since the invasion of the island by the Saxons, may boast of this pre-eminence, That in no age the will of the monarch was ever entirely absolute and uncontrouled. The antient Saxons seem to have admitted a considerable mixture of democracy into their form of government, and to have been one of the freest nations, of which there remains any account in the records of history.”

//97-1// In some of the debates in Parliament, which passed in the year 1782, respecting the Bill for taking away the votes of persons employed in the collection of the public revenues, this doctrine was maintained by great and dangerous authority in the House of Lords. (See Earl Mansfield's speech on the 3d of June, 1782, in the 8th volume of Debrett's Parliamentary Register, p. 334). The ancient constitution of this country was, in that debate, expressly represented to be as absolute as those of France and Spain now are: and the limitations upon the power and authority of the Crown, as restrained at the Revolution, were said to be, not, as the Bill of Rights asserts, "a declaration of the true and antient rights and liberties of the people of this kingdom," but innovations in the constitution; as points gained on the part of the people, in derogation of the Prerogative of the Crown. "That the people had then no share in the government, the King had no controul, the power rested solely with him"—To those who know nothing more of the history of this country than what they learn from Mr. Hume, these opinions may appear to have some foundation: but whoever has traced this subject into those antient records, from whence alone true information is to be obtained, will soon learn, that such propositions are nothing but false and miserable deceptions upon the people, let them come from what quarter they may.—See Sir William Blackstone's Introductory Discourse, containing "the History of Magna Charta," and read upon this subject, the 5th Dialogue, written by Dr. Hurd, the present Bishop of Worcester, as having passed between Sir J. Maynard, Mr. Somers, and Bishop Burnet; particularly Mr. Somers's Speech, in p. 234, which, if it had been repeated by that respectable Prelate, in the course of the debate just alluded to, would have appeared to be a complete answer to the doctrines advanced at that time in the House of Lords.

//98-1// Mr. Pymm, in his speech to the Lords upon delivering the charge against Dr. Mainwaring, and which is in the first volume of Rushworth, p. 596, says, "That law of England, whereby the subject was exempted from taxes and loans not granted by common consent of Parliament, was not introduced by any statute, or by any charter or sanction of princes, but was the ancient and fundamental law, issuing from the first frame and constitution of the kingdom.—This is manifest: there are plain footsteps of those laws in the government of the Saxons: they were of that force and vigour as to out-live the Conquest, nay to give bounds and limits to the Conqueror; whose victory gave him first hope,—but the assurance and possession of the Crown he obtained by composition; in which he bound himself to observe these and the other ancient laws and liberties of the kingdom,—which afterwards he likewise confirmed by oath at his coronation:—from him the said obligation descended to his successors. It is true, they have been often broken; they have been often confirmed by Charters of Kings, by Acts of Parliament: but the petitions of the subjects, upon which those Charters and Acts were founded, were ever petitions of right,—demanding their ancient and due liberties, not suing for any new." So, Sir Henry Spelman, in his Glossary, under Title, *Tallagium*, speaking of the Statute "De Tallagio non concedendo," says, "Hoc quidem *antiquæ*. Legis promulgatio est, non *novæ*.—Sic enim in Emendationibus, ceu Chartâ Libertatum *Willielmi Conquæstoris*. "*Volumus et hoc firmiter concedimus, ut Omnes Liberi*

*homines totius Regni nostri prædicti, habeant et teneant terras suas, et possessiones suas, bene et in pace; liberas ab omni exactoine injusta, et ab omni Tallagio—ita quod nihil ab eis exiqatur vel capiatur, nisi servitium suum liberum, quod de jure nobis facere debeant, et facere tenentur; et prout statutum est eis, et illis de nobis datum et concessum, jure bæreditario, in perpetuum, per commune consilium totius Regni nostri prædicti.”*

//99-1// Whoever wishes to have a more accurate knowledge of the history of this subject, will find it discussed, with great clearness and ability, in some tracts upon Civil Liberty, written by Ellis Bishop of St. David’s. See the second volume, Tract II. sect. 1. and 2.—See also the arguments of Mr. Justice Hutton and Sir George Crooke, in delivering their opinions upon the famous question of Ship-money, in the case of Mr. Hampden. Rushworth’s Collections, Vol. III. Appendix, p. 159 to 212.

//100-1// The only time the Bill appears under the *first* title is in the Lords’ Journals, on the 5th of March, 1551. Whenever else it is mentioned, viz. on the 16th of March,—2d, 4th, and 5th of April, when it passed the Lords,—it is only called, “A Bill for the Provision and Relief of the Poor:” and it has never any other title in the Commons’ Journals, (where it appears on the 5th, 7th, 8th, and 9th of April, 1552,) than “A Bill for the Relief of the Poor.” I am at a loss therefore to know where the compilers of the Parliamentary History found this anecdote.

//100-2// There is no entry in the Commons’ Journals which authorises the assertion in Parl. Hist. Vol. III. p. 267, That the Commons *rejected* this Bill.—No account appears how it was dropt.

//101-1// See what is said upon the subject of this proceeding in the note †, pag. 312, in the second volume.

//101-2// See the case of Cardinal Wolsey, p. 1, and at length in Parl. Hist. Vol. III. p. 29.—There is no Journal preserved of the House of Commons of this session in 1592; but the debates upon this message from the Lords are to be found in Parl. Hist. Vol. IV. p. 383. See Mr. Wroth’s and Mr. Beale’s Speeches, p. 386.—When the question was put “to confer with the Lords or not,” it was carried in the negative, 217 against 128; and this though much pressed by Sir Robert Cecil and the court party.—See Dewes’s Journal, p. 480.

//102-1// The words, as entered in the report are these: “Upon all these considerations, though my Lords would not meddle with matters of subsidies, *which belong properly and naturally to you*—no, not to give you advice therein, but have utterly declined it; yet, being Members of one body, and subjects of the same King, they held it most necessary and fit that the subject of supply should have precedence, before any other matter or consideration whatsoever: and therefore desired a conference with the Commons, to let them know their reasons.”—See, in the Lords Journals of the 29th of April, a report of Mr. Pym’s most excellent Speech, touching the Privileges of the House

of Commons—(which is entered in the Appendix to this volume, N<sup>o</sup> 4)—and the Lords answer on the 1st of May.—See also the first volume of this Work, p. 209, 210.

//103-1// “This conference was no sooner reported in the House of Commons, than there whole temper seemed to be shaken. It was the undoubted fundamental privilege of the Commons in Parliament, that all supplies should have their rise and beginning from them; this had never been infringed or violated, *or so much as questioned in the worst times*; and that now, after so long intermission of Parliaments that all privileges might be forgotten, the House of Peers should begin with an action their ancestors never attempted, administered too much cause of jealousy, of somewhat else that was intended.” *Clarendon’s History of the Rebellion, Vol. I. p. 106, Book the 2d.*

//104-1// See in Rushworth’s Collections, Vol. IV. p. 304, Sir Simon Dewes’s Speech concerning the right of the Commons to assess the Peers in the Poll Bill.

//104-2// In Parl. Hist. Vol. XXIII. p. 56, there is the following very curious anecdote concerning this exemption: “Colonel Titus reported the Bill for the settlement of the Post Office, with the amendments: Sir Walter Earle delivered a proviso for the letters of all Members of Parliament to go free, *during their sitting*. Sir Heneage Finch said, *It was a poor mendicant proviso, and below the honour of the House*. Mr. Prynne spoke also against the proviso—Mr. Bunckley, Mr. Boscawen, Sir George Downing, and Serjeant Charlton for it: the latter saying, “The Council’s letters went free.”—The question being called for, the Speaker, Sir Harbottle Grimstone, was unwilling to put it, saying, *he ws ashamed of it*: nevertheless the proviso was carried, and made part of the Bill, which was ordered to be ingrossed.”—This proviso the Lords disagreed to, and left it out of the Bill; and the Commons agreed to their amendment.

//105-1// I do not find any entry made of this message in the Lords’ Journals: but, on the 26th of July, there are two orders to the Justices of Peace for Westminster, with directions about paving, repairing, and cleansing the streets; which orders probably contained the substance of the Bill which the Commons had laid aside.

//106-1// The two precedents cited by the Lords, are, a Bill for the Relief of the Poor in the 5th Queen Elizabeth, and a Bill concerning the Repair of Dover Haven in the 31st Elizabeth; both which Bills, they say, had their beginning in the Lords’ House.

//107-1// See the protest in the Lords’ Journals of the 19th of May, 1662.

//108-1// See, in the Journal of this day, Lord Anglesea’s report of the conference with the Commons, upon the several amendments made by the Lords.

//110-1// This resolution brought on several conferences between the two Houses, touching the exclusive right of the Commons to impose taxes or grant aids, in which there is displayed much ability and Parliamentary learning; for which reason I have extracted out of both Journals what is material to this point, and given it in the

Appendix, N° 5.—See also the substance of these conferences collected by Arthur Lord Anglesea, and printed in 1702. And the Debates in Gray's 1st vol. p. 435 to 445, 463.

//110-2// In Roger North's *Examen*, p. 460, there is an anecdote upon this subject of amendments made by the Lords to Bills of Supply. "Another Money Bill (he says) had a shrewd rub from a mistake of the Clerk, who had in the ingrossment made the first payment in a year that was passed, as writing 1673 for 1674; and so it was carried up to the House of Lords, where the mistake was found out and observed.—And after that, the court party of the Lords, who swayed the House, were at a very great plunge what course to take for setting this error right. The dilemma lay here—*The Lords House could not mend the least punctilio in a Money Bill, though they might throw the whole out*: and if they had ordered this amendment, the Commons had certainly entered upon a quarrel, and the Bill had been lost. And then to send it down to the Commons was running the gauntlet again: for the country party would have taken the advantage, and, if they could, hindered the Bill's passing upon the question, which must have been put *de novo*.—Here was *dignus vindice nodus*.—The matter hung in debate three or four days; and at length a noble Lord moved, That the Bill might be read, that the nature of the mistake might be understood:—and, O wonderful! The Bill was right as any Bill could be; and their Lordships were, it seems, under a mistake, and not the Bill.—The truth of the matter was, one of the Clerks found good reason to lend his under-helping hand, and so all was well."

//111-1// The proceedings at the several conferences which were held upon this subject, are to be found in the Appendix, N° 6.

//112-1// See in a note to the Observations on this Title, what is said upon these instances, N° 31 and 33.

//112-2// See in the Appendix (N° 7) and also (N° 8) a state of the substance of what was offered at a free conference relating to the Bill for disbanding the army, as reported by Sir Richard Temple from the Committee appointed to prepare it; but which report is not entered in the Journal. So on the 21st of December, 1678, the Lords having made some alterations in the Bill, which granted a supply for disbanding the army, the Commons disagreed to these amendments; and on the 23d of December, Mr. Powle reports the reasons, which are entered in the Journal. See the 28th of December, and the debate upon these amendments in Grey's Debates, Vol. VI. p. 364.

//113-1// Amongst these reasons is the following: "All money, aids, and taxes, to be raised or charged upon the subjects in Parliament, are the gift and grant of the Commons in Parliament; and are, and always have been and ought to be, by the Constitution, and antient course and laws of Parliament, and by the antient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament; and to be laid, raised, collected, paid, levied, and returned for the public service and use of the government as the Commons shall direct, limit, appoint and modify the same. And the Lords are not to alter such gift,



grant, limitation, appointment, or modification of the Commons in any part or circumstance; or otherwise to interpose in such Bills than to pass or reject the same for the whole without any alteration or amendment though in case of the subjects. As the Kings and Queens by the constitutions and laws of Parliament, are to take or leave all, in such gifts, grants, and presents from the Commons, and cannot take part and leave part, so are the Lords to pass all or reject all, without diminution or alteration.”

//114-1// See the Appendix, N° 9.

//114-2// See the reasons on both sides in the Appendix, the 25th and 27th of July, N° 10.

//115-1// Several conferences are held; for an account of which see Appendix, N° 11.

//115-2// The reason to be assigned at the conference is, “That it is the undoubted right of the Commons *only*, to appoint pecuniary mulcts, and the distribution of them.”

//115-3// The reasons are, “That the right of granting supplies to the Crown is in the Commons alone, as an essential part of their constitution: and the limitations of all such grants, as to the matter, manner, measure, and time, is only in them: which is so well known to be fundamentally settled in them, that, to give reasons for it, has been esteemed by our ancestors to be a weakening of that right. And the clause sent down by your Lordships is a manifest invasion thereof.”

//115-4// One of these reasons is, “Because the enlarging the fees, as by the amendment is the laying a charge upon the subject; which is so inherent and fundamental a right of the Commons, as they can no means depart from.”

//117-1// At the commencement of the former session, on the 5th of December 1695, the Lords, at a conference, communicated to the Commons an address, which they had agreed to, to be presented to the King, relating to the state of the coin, and praying, “That no clipt money should pass as the current coin in the kingdom.” The Commons put off the consideration of this address from the Lords from day to day, and on the 14th of December agree to an address of their own to the King, on the same subject, and praying a similar remedy—and they direct this address to be presented to the King, without communicating it to the Lords; and they take no further notice of the Lords’ address, nor of the report from the conference, at which it was communicated to them. On the 16th of December, the Lords present a separate address to the King upon this subject.

//117-2// The Lords, on the 12th of March, say, “That they cannot imagine how the imposing a penalty in a legislative way can well be denied to arise properly in their House; when, according to the law of the land, their Lordships, in a judicial way, are in possession of that undoubted right by themselves alone.” On the 18th of March, the old precedents, of the Bill for the Poor in the 5th of Queen Elizabeth, and the Bill about

Dover Haven in the 31st of Queen Elizabeth, are again brought forward, and with some other instances, not very applicable to the matter in dispute, are reported; and on the 23d the Lords declare, “That they must ever maintain they have an equal right with the Commons to impose penalties upon the subject, having so many undeniable precedents where their Lordships have exercised it, and the Commons have acquiesced in it.”—Lords’ Journals.—The Commons adhere, and insist, “That no amendment, how reasonable soever, could be debated, whereby any penalty was extended farther than in the Bill: That all the several amendments of the Lords had relation to the penalties, and therefore could not be debated.”—Commons Journals the 25th of March, 1697.

//119-1// The reason is, “Because, although there be nothing in the said amendment relating to money, yet the Commons have thought fit to take occasion thereupon to assert “a claim to their sole and entire right, not only of granting all aids in Parliament, but that such aids are to be raised by such methods, and with such provisions, as the Commons only think proper; and that the Lords are not to alter any such gift or grant, or the methods or provisions for collecting, raising, or enforcing the payment thereof.” To this the Lords can by no means agree, for many reasons, which they conceive not necessary to be given upon this occasion; besides, that the practice at this day is known to be contrary to some of the assertions made by the Commons to support the said claim. But if the said assertions were exactly true, without any exception (which their Lordships cannot allow), yet it could not with good reason follow from thence, that if the Commons will insert, into a Bill granting money to the King, a clause wholly foreign to the granting or raising that money, that the Lords may not alter or entirely leave out such a clause.” Lords’ Journal, the 4th of May, 1699.

//119-2// See the proceedings upon this occasion in the Appendix, N<sup>o</sup> 12.

//120-1// See, in the Lords’ Journals of the 8th of January, 1702, a report from a Committee appointed to inspect the records or precedents, where Bills with penalties have begun in the House of Lords; as also where penalties, in Bills begun in the House of Commons, have been increased, lessened, and altered in the House of Peers. This report takes up four-and-twenty pages in the printed Journals.—See also. The 10th of January, 1695, a resolution of the Lords upon this subject.

//121-1// See these proceedings in the Appendix, N<sup>o</sup> 13.

//121-2// The reasons for disagreeing on the 24th of March, and the Lords’ reasons for adhering on the 3d of April, 1704, are inserted in the Appendix, N<sup>o</sup> 14.

//121-3// History of his Own Times, Vol. II. p. 403.

//121-4// This has been a mode of expression which the Commons have frequently used, in instances where they were not inclined to bring into discussion their Privileges relating to matters of supply.—If, however, the Lords do not take this hint, but insist

upon their amendments, then the Commons are obliged to explain their meaning more clearly.

//124-1// But see before, N<sup>o</sup> 45, the instance of the 8th of March, 1692.—On the 7th of July, 1742, a Bill from the Lords was ready, 2<sup>o</sup>, “For preventing persons from assisting prisoners to escape.” The following entry is made in the Clerk’s minute Book of the day.—“The Bill was read 2<sup>o</sup>, but not committed, nor any question moved for commitment; upon an objection made, that the Bill directs a transcript of the conviction of an offender, and of the order of transportation to be made by the clerk of assize or clerk of the peace, *not taking for the same above the sum of 2s. 6d.*—Mr. Speaker informed the House, that (though in the case of the Bill relating to the bankrupts, on the 31st of May, 1732, this House yielded to the Lords, in not insisting on their disagreement to the amendment made by the Lords, by which amendment an office was created *with a fee*) yet that Lord Coke, in one of his Institutes, denies that the King can impose a fee, for this reason, *because it is in the nature of a Talliage*,—Whereupon the order of the day being called for the same was read.”—Sir Edward Coke’s words here referred to by Mr. Onslow are in the Second Institutes, p. 533, in his Comment on the Statute de Tallagio non concedendo.—“Within this Act are all new offices erected with new fees, or old office with new fees, for that is a talliage put upon the subject, which cannot be done, without common assent by Act of Parliament.—And this doth notably appear by a petition in Parliament in the 13th Hen. IV. and by a judgment also given in the King’s Bench at that time; so as this point was both resolved in Parliament, and adjudged by law.” See Rot. Parl. 13 Hen. IV. N<sup>o</sup> 43. Vol. III. p. 664.

//125-1// See, in the ninth volume of Chandler’s Debates, p. 236, what is said by Mr. Onslow, Speaker, upon this matter.

//125-2// So on the 29th of February, 1743, a Bill was sent from the Lords, relating to the vicarage of Fincham, which was read 1<sup>o</sup>; but never taken up again. Mr. Onslow says, “The reason of this was, that there were clauses in it for discharging the living from paying the first fruits and tenths and subjecting the parishioners to a rate for repairing the church. It began the next session of the House of Commons and passed the Lords.” Mr. O.

//126-1// See two subsequent precedents; the first on the 26th of June, 1781, relating to Gloucester Gaol, and the other of 14th of May, 1794, on an amendment made by the Lords to a Bill for erecting a bridge at Bridgewater; where the reasons for agreeing to these amendments are stated in a special entry in the Journal.

//126-2// On examining this Bill, it appears, that part of the lands, intended to be conveyed, were derived, “by a grant from the “Crown,” by letters patent under the Great Seal, in the 4th year of King Henry VII.

//127-1// The purport of this Bill was to vest in the Duke on Bedford certain lands and tenements, that had been settled “for the use of the poor” of Tavistock, and to enable him to settle other lands to the like uses.

//127-2// The objection taken here was, that this Bill would, in its consequences, subject certain persons to a pecuniary forfeiture imposed by the 5th of Queen Anne, ch. 34. and from which they were exempted by the 7th of Queen Anne, ch. 6.

//128-1// The proceeding in this, and the following instance, N° 86 and 89, of *rejecting* a Bill, that had originally passed the Commons, on account of the nature of the amendments made to it by the Lords, was not regular, or conformable to former precedents. Whatever disapprobation the Commons might think proper to express of the amendments, the Bill was their own; and therefore, they ought to have confined the marks of their displeasure to the irregular proceeding of the Lords; by disagreeing to their Lordships amendments, or refusing to discuss them, by putting off the consideration of them during that session.

//129-1// See the note to N° 85.

//130-1// This message from the Lords, besides that it was unparliamentary, was so clearly a breach of the Privileges of the House of Commons, that it was much pressed, that the message should be disregarded, and no answer sent to it. But the Chancellor of the Exchequer, Mr. Pitt, thinking this might induce disputes between the two Houses, declined this measure, but adopted these latter words, to shew the Lords, that the Commons had not neglected this considerations.—See the several former instances where this mode is used, of gently intimating to the Lords the opinion of the Commons upon their proceedings.

//131-1// The precedent, at the time read from the Journal of the 11th of April, 1753, of the proceedings of the House upon Lord Ashburnham’s Bill, was read, only to shew that it was not irregular, under these circumstances, to give leave for the preparing another Bill, although no petition had been presented for this purpose, which would otherwise have been necessary under the standing order of the 24th of November, 1699.

//131-2// See also a similar amendment made by the Lords, and agreed to on the 28th of March, 1792. The principle, on which the Commons agreed to these amendments, was, That the money paid for the lands to be purchased, as soon as it was paid, ceased to be money of the trust, and became private property; which the Lords were competent to secure for the interest of the owner, by any provisions they should think expedient.

//132-1// The effect of this Bill was to enable the judges, to allow, in certain cases, a less sum than 40 *l.* to persons convicting felons, which reward they would be entitled to by the statute of the 5th of Queen Anne, chapter 31st ; and by this Act this sum is to be

allowed to the sheriff, or to be repaid to him by the Lords Commissioners of the Treasury. The Speaker stated the objection to the House, and directed that the proceedings on the 26th of March, 1719, (N<sup>o</sup> 62) might be read.

//133-1// See this Record, at large, in the printed Rolls of Parliament, Vol. III. p. 611.

//133-2// Que le report ensi fait as ditz Communes, ils ent furent grandement distourbez; en disant, et assermant, ce estre en grand prejudice et derogation de lour libertees.

//134-1// This is not the only instance in which this prudent King listened to the voice of his Parliament. "In the 5th year of his reign," says the Parliamentary History, Vol. II. p. 79, "the Commons proceeded in their first design of regulating the King's household, with whom the Lords accorded; and they required that four persons should be removed out of the King's house, viz. the Abbot of Dore, the King's confessor, with Durham and Crosbie, gentlemen of his chamber. On Feb. 9th, 1403-4, the confessor, Durham, and Crosbie came into Parliament before the King and Lords; when his Majesty took occasion to excuse those officers himself, saying, that he knew no cause why they should be removed, *but only because they were hated by the people*: yet he charged them to depart from his house, according to the desire of his Commons; and would have proceeded in the same manner against the Abbot, had he been present,"—The printed Roll, Vol. III. p. 525, concludes this account with these remarkable expressions: "Et dist outre mesme notre Seigneur le Roi, que semblablement il vorroit faire d'aucune autre q'estoit entour sa persone royale, s'il feusse en hayne ou indignation de son peuple."—See a similar proceeding in the year 1451, where Henry VI. at the prayer of the Commons removes several persons (men and women) from his court and presence, against whom there was universal noise and clamour.—See the petition of the Commons, and the King's answer. Rot. Parl. Vol. V. p. 216.

//135-1// Vol. II. p. 109.

//135-2// See in the Lord Keeper Finch's report of heads for a conference with the Commons (to which report the Lords agreed) their exposition of this record. Lords' Journal, the 1st of May, 1640.

//135-3// See the second volume of this work, page 312.

//136-1// It appears from the Lords' Journals of 22d March, 1587, that the Lords did not approve of this proceeding, and unanimously refused even to read this Bill sent from the Commons.

//136-2// See N<sup>o</sup> 18.

//136-3// See N<sup>o</sup> 26.

//136-4// N° 31. Since the former publication of this volume, it has been very properly observed, that it does not clearly appear, from this instance of the 10th of May, 1678, that the objection, taken by the Commons to this amendment made by the Lords, arose from its being a *pecuniary* penalty—but rather (and this observation is confirmed by the reasons alledged by the Commons, N° 33, on the 11th and 12th of July, 1678, at the conference held on this subject in the next session) that they differed from the Lords on the propriety of the distribution, as not so conducive to the end and design of the Bill.

//137-1// See N° 41.

//137-2// See N° 43 and 55.

//137-3// This was the purport of the amendments made by the Lords to the Bill for regulating chimney-sweepers, and to which after consideration, the Commons agreed on the 13th of June, 1788.

//138-1// The first edition of this volume was in 1785.

//138-2// See the instances, N° 46 and 74, and the cases referred to in the note to N° 74. The Commons out to be particularly cautious, that, by agreeing even to such alterations as these, they do not afford an argument to the Lords, which they may avail themselves of in matters of more importance.

//139-1// On the 29th of April, 1727, the Lords make amendments to a Bill for making a river navigable, which are agreed to by the Commons; but these amendments, which are all in the names of the commissioners, are only to correct mistakes, that the Commons had inadvertently made, in describing the titles of the commissioners.— Upon a doubt conceived, whether some amendments made by the Lords to an inclosure Bill fell within this description, the House appointed a Committee to search for precedents of amendments made by the Lords to Bills of inclosure.—See the report upon the 3d of May, 1780, where all the precedents are cited, with the proceedings of the House upon them.

//139-2// See on the 10th of January, 1721, amendments made by the Lords to the mutiny Bill agreed to by the Commons. So on the 26th of February, 1722. See also the amendments made by the Lords on the 14th of May, 1728, to the Evesham road Bill, agreed to by the Commons; and the amendments made by the Lords to a Bill for preserving the navigation of the river Lee, on the 12th of June, 1739.

//139-3// See N° 48, and Mr. Onslow's speech in the ninth of volume Chandler's Debates, p. 236, upon the subject of amendments made by the Lords to a Bill relating to securing the revenues of customs and excise.

//140-1// Although these rules, as here expressed, are applicable only to proceedings upon *Bills*, there are several other instances in which the Commons have very properly

entertained an equal jealousy of the interference of the Lords in matters of supply, where the proceeding has not been by Bill, but of another nature; as in N<sup>o</sup> 5, the 2d of March, 1592; N<sup>o</sup> 9, 27th of April, 1640; N<sup>o</sup> 27, the 11th of February, 1673; N<sup>o</sup> 56, the 4th of February, 1702; and N<sup>o</sup> 90, the 22d of July 1785. The jealousy of the Commons in the last instance, and the immediate acquiescence of the Lords in the proceeding at the time adopted by the Commons, as it is one of the latest, so it is the strongest proof, that has hitherto occurred, of the truth of the proposition, "That in no case whatever, will the Commons admit, that the Lords may interfere in matter of duties, however trifling or remote the effect of that interference may be."

//141-1// See before, p. 133, the King's words, towards the conclusion of "The indempnity of the Lords and Commons," the 9th of Henry IV. now almost 400 years ago, "That the grant should be the grant of the Commons assented to by the Lords, and communicated in manner and form, as has been hitherto accustomed, that is to say, *by the mouth of the Speaker of the House of Commons for the time being.*"

//141-2// It appears from the Journal of the Lords, that this Mr. Bowyer was at this time Clerk of the House of Lords.

//142-1// It appears from the Lords' Journals of this day, the 12th of July, that the message delivered to the Lords was, to desire "That the Bill for tonnage and poundage might be delivered to them, to be presented by the Speaker, with the commission under the Great Seal annexed." The Lords taking this message into consideration, and finding by the tenor of the commission that the Bill of tonnage and poundage could not pass by this commission if they were separated; therefore, to avoid all ambiguities, resolve, To send some Lords to the King, to desire his Majesty would be pleased to come in person presently, and give the Royal assent to the said Bill. The Lords went accordingly: and his Majesty being come, and set in his Chair of Estate, the Commons were sent for; who came, and, by their Speaker, presented the Bill for tonnage and poundage.

//143-1// It appears from the Journal of the Lords, of the 16th of March, that this difficulty was solved by the Speaker's presenting the Bill from the House of Commons, holding *this Bill only* in his hand, and the Clerk of the Parliaments holding the commission and the seal in his hand, because it was annexed to the Bill.—Though this instance does not fall within the period to which I meant to confine myself, for the reasons I gave in the first volume, p. 218, yet I have inserted it here on account of its peculiarity.

//143-2// In all these instances, the Lords sent down the Bills, together with their agreements to them, by the Masters in Chancery.

//144-1// It appears from Grey's Debates, Vol. VII. p. 216, that on the 9th of May 1679, "Exceptions were taken at the Speaker's carrying up the money Bill for disbanding the army, without directions from the House."

//144-2// See, in the Journal, the reasons given by the Commons for considering this as a Bill of Supply.

//145-1// So in speeches from the throne, when the Crown has occasion to demand supplies, or to give thanks for supplies that have been granted, it is "to the House of Commons alone" that this part of the speech is addressed.

//145-2// On the 24th of July, 1540, on the Speaker's presenting to the King the Bill of Supply, the Lords' Journal says, "Quam concessionem Subsidii Regia Majestas benigne nutu acceptans, eodem nutu significavit Thomae de Soulement, Clerico Parliamentarium, ut eandem de manu Prolocutionis reciperet, quod, debita reverentia, fecit." See in that Journal the form of Henry the Eighth's coming to the House of Lords, with the speech of the Speaker, and the King's answer, signified by the Lord Chancellor Audley.

//145-3// See the Speaker's Speeches in the Lords' Journals, on the 1st of May, and the 22d of June, 1689.

//146-1// The Speech made by Mr. Onslow on the 2d of May, 1745, the last day of the session, is, by an order of the 21st of October following, in the next session, desired to be printed; and is entered in the Journal of that date. See in this all the several subjects upon which Mr. Onslow enlarges. See the Commons' Journal of the 6th of October, 1715, a Speech made by Mr. Compton, Speaker, in which he speaks of the "insidious and precarious terms of the treaty of Utrecht, and of the impeachments which the Commons had directed against the advisers and actors in those measures." See also other speeches of Mr. Compton's in the Lords' Journals of the 18th of April, 1719, and of the 11th of June, 1720.

//146-2// We see from N<sup>o</sup> 7 that, in that instance, the House directed the Speaker, when he presented the Bill of Supply, to intimate to his Majesty, the reasons for which it was given, and the purposes to which the Commons meant it should be applied. See in what very quaint terms, Sir Edward Turner, then Speaker, complies with these injunctions.—Lords' Journal, 22d April, 1671.

//148-1// Notwithstanding this order; on the 17th of February, 1669, a motion for a supply, and another motion for the reading of the order, on a debate and division it was determined, *not to read the order*, much less to comply with it; and the question for a supply was resolved upon without any previous Committee.—See the 23d of November and the 11th of December, 1702, where this order is strictly complied with, on messages from the Queen for making provision for the Prince of Denmark and the Duke of Marlborough.

//148-2// See the debate previous to the coming to this question in Grey's Debates, Vol. III. p. 382, *et seq.* where the principle of this order is stated to be "That the charge



may be made as easy upon the people as possible,"—See particularly Mr. Powle's Speech, p. 386.

//149-1// This proceeding was highly irregular, for the House to increase the duty imposed by the Committee.—In Grey's Debates, Vol. III. p. 411, Mr. Mallet says, upon a similar occasion, "When a sum is reported to the House, agreed upon at a grand Committee, it is against order to make any addition to that sum. The question must only be, agree or disagree."—Sir William Coventry: "He may move to disagree or to recommit it; but cannot move for an additional sum."

//150-1// See what is said upon this subject in the remaining part of this volume in the Observations upon the titles, "*Incidental Proceedings*," and "*Petitions on Matters of Supply*."

//150-2// See, on the 14th of March, 1711, an address to the Queen, that she will contribute towards rebuilding the English church at Rotterdam; and to assure her, that this House will enable her to complete the charge of building the same.

//151-1// See this order repeated on the 29th of November, 1710.

//151-2// See a similar proceeding on the 16th, 17th, 19th, and 20th of June, 1721; except that, no Committee of Supply being then subsisting, a special Committee of Supply for that purpose is appointed, after the resolution is agreed to, "That a supply be granted."—So on the 18th of April, 1748, and the following days, this precedent of 1721 is exactly followed, upon the King's message for a supply for payment of compensation to the proprietors of the heretable jurisdictions in Scotland.

//152-1// In these instances, the Committee of Supply was not properly *closed*, but the order for sitting again *drops*, by the neglect of the Chairman, in not asking leave to sit again.

//152-2// The sum of £. 400,000 having been appropriated, in the former session, to this service, there was no occasion, as in the instances in 1721 and 1748, mentioned before, to go into a previous Committee upon the motion, "That a supply be granted."

//152-3// This forbearance, in not voting the sum demanded on the same day the message is received, is in compliance with the order of the 18th of February, 1667, "That the consideration of a motion of supply ought not presently to be entered upon, but adjourned to some further day."—The same rule is observed upon the petition of the African Company, presented on the 19th of February, 1753: it is immediately referred to a Committee of Supply, which sits that day; but no resolution is come to upon it till Wednesday the 14th of March.—So upon the 7th of May, 1790, the King's message for a supply of credit is referred to the Committee of Supply; but, though the Committee of Supply was one of the orders of that day, the subject is not proceeded upon, and the Committee is adjourned till the 10th of May, when a million is voted.

And again on the 18th of May, 1791, the King's message for supply for his civil-list expences is referred to the Committee of Supply immediately. The Committee sits that day, but no proceeding is had upon the message till the 20th, when the Committee sits again.

//153-1// This clause ought to have been referred to a Committee of the whole House, to report how the blanks should be filled up.

//153-2// The reason for this difference of proceeding on the two messages (which was very regular) was, that the first asked for a sum of money to be granted, and which therefore became the proper subject of consideration in the Committee of Supply, and was accordingly voted there, and reported on the 24th of March. The other, viz. for a settlement on the Royal Brothers, was to be paid out of the aggregate fund, that is, out of a fund already created, and was only a disposition of sums already granted; and therefore made no part of the supply of the current year, but came properly to be considered in a Committee of the whole House on the 24th of March, and was reported and agreed to on the 25th.

//154-1// There is a memorandum made in the Minute Book of this day, that the reason for making this amendment was, "That this penalty of £. 5 was inserted in a clause which had been received upon the report, and was therefore an irregular proceeding, as laying a pecuniary penalty in the Chair."

//154-2// The only excuse to be made for this irregularity is, that the penalty for the offence described, as it stood before in the Bill, was, "That the offender should be committed to gaol for the space of twelve months." This punishment was mitigated by leaving out those words, and enacting, "That the person offending should forfeit £. 50; and if he neglected or refused to pay £. 50, then he should be committed for six months, or until the same should be paid." So that, though it was imposing a pecuniary penalty in the Chair, it was at the same time, in fact, lessening the punishment which had been affixed in the Committee. This, however, is not sufficient to excuse the irregularity of the proceeding. The punishment, if too great, might have been lessened, and still confined to a corporal punishment, without infringing upon that rule, which the House ought to be particularly careful to observe.

//154-3// This proceeding was thought necessary; as without the grant of this duty in a Committee of the whole House, it would have been highly irregular to have inserted it in the Bill. Upon the question being negatived, for referring the motion to the consideration of the Committee of Ways and Means, the original motion dropped; the House being of opinion, that this was the only form in which it could properly come under their consideration.—See the proceeding of the House on the 17th of January, 1752, where it was thought expedient, for the purpose of regulating the trade of pawnbrokers, to compel them to take out licences of a certain value. In this instance, the report was upon the principle above alluded to referred to the Committee of Ways and Means; but as the produce of these licences were not to be applicable to the supply

of the year, the proceeding would have been clearer to have referred it to a Committee of the whole House.—On the 27th of June, 1785, a Bill having been presented, for regulating the police of Westminster, and it being found, on looking into the Bill, that it contained clauses for imposing stamp-duties and other taxes, and the Bill having been ordered in upon motion, without any previous petition, or without the consideration of a Committee of the whole House, or of any other Committee, and being therefore irregular in this respect, it was thought advisable the next day to withdraw this Bill, “as not having been properly prepared,” and to ask leave to present a proper Bill instead of it.

//155-1// The reason for withdrawing this clause was an objection in point of form,—that though the object of the clause was only to prevent frauds, the effect of it would be to tax persons, who by the former Act were exempted from this duty.—But, on the 2d of March, the House resolved itself into a Committee of the whole House upon this subject; and there having come to a resolution, “That this exemption should be taken away,” to which resolution the House agreed,—leave was given to offer a clause, pursuant to this resolution, upon the third reading of the Bill. The clause was received, and added by way of rider.

//155-2// There was great doubt under what denomination this sum could be classed, and what the proceeding of the House ought to be upon it. Some said, this was a duty of tax imposed upon the subject, and therefore by the standing order of the 18th of February, 1667, ought to be proposed first in a Committee of the whole House: this idea however was soon abandoned. Others said, it was a pecuniary penalty upon person omitting to do what the law required them to do. Others, that it was only a rent, which it was at the option of the owner of the tobacco not to incur the payment of unless it was for his convenience to continue to keep his tobacco in the King’s warehouse. After much discussion and deliberation, it was thought that it would be most prudent, and most consonant to the practice of the House in similar cases, to refer this clause to a Committee of the whole House; as, whether it was a pecuniary penalty or a rent, or by whatever name it could be called, it certainly was raising a sum of money upon the subject, and therefore ought not to be determined upon by the House whilst the Speaker was in the chair, but ought to undergo the deliberation of a previous Committee.

//156-1// As this was a contingent expence, depending on the event of the Prince of Wales’s death, it was doubted whether it was necessary, under the resolution of the 18th of February 1667, to go into a Committee of the whole House for this purpose; or, whether the House might not have given power to the Committee on the Bill to make this appropriation, without the intervention of a previous Committee of the whole House. But, upon consideration, it was thought, that it was necessary, it point of form, to consider this proposition first in the Committee of the whole House; because though the event was uncertain, when it might take place, or indeed whether the issuing the money at all might ever be necessary, yet if it ever should happen, as this would be an application of the money of the public, and therefore, in its consequences, “a charge

upon the people," it would be as much within the spirit, indeed within the words, of the resolution of the 18th of February, 1667, as if the money had been to be issued immediately.

//157-1// This rule, which the House of Commons first adopted in the year 1667, and applied only to the case of granting supplies, the good sense of Sir Thomas More, who wrote his History of Utopia 150 years before, extended to all matters of importance that were brought before the Senate of that Island. "One rule observed in their Council is, never to debate a thing on the same day in which it is first proposed, for that is always referred to the next meeting; that so men may not rashly, and in the heat of discourse, engage themselves too soon; which might bias them so much, that, instead of consulting the good the public, they might rather study to support their first opinions. To prevent this, they take care that they may rather be deliberate than sudden in their motions."—History of Utopia, in Wraner's Life of Sir Thomas More, p. 97.—The same idea had been suggested in the House of Commons, in the year 1614, by Sir Edwyn Sandys, who on the 11th of April moves, "That, for avoiding precipitation, and prevention and division, in all such motions, as shall not come in by Bill, and shall concern the general, no resolution may be on that day; but that it may be committed and reported; the rather, because here one may speak but once in one day, whereas at the Committee two or three times; whereupon often the Committees, first disagreeing, afterward agree."—But no such order was made till 1667.

//158-1// See the proceedings on the 18th of May, 1738, where the House address the King to contract with the proprietors of the Bahama Islands. This is founded upon a report from the Treasury, and an order of Council, which are laid before the House; and in which the sum, which would probably be necessary, is specified.—See also the proceeding, on the 24th of May, 1728, relating to purchasing the interest of the proprietors of Carolina.—See also the 18th of July, 1715.

//159-1// This objection was very much pressed on the 3d of June, 1766, upon the address on the King's message for a portion to the Queen of Denmark; in which the House pledged themselves to provide such a portion in the next session. See the amendments proposed to that question. The same objection was suggested to the address proposed on the 24th of May, 1787, desiring his Majesty to advance a very considerable sum towards discharging the debts of the Prince of Wales. But, as from particular circumstances, all parties concurred in this measure, no public notice was taken of this irregularity, and the address was agreed to *Nem. Con.* But very early in the next session the whole sum, for which the House of Commons had addressed his Majesty, not having been issued, the House order the account of what remained to be issued to be referred to the Committee of Supply, and it was there voted on the 7th of December, 1787; thereby repairing, as soon as it was in their power, the informal proceeding in the former session.—When it was intended to increase the half pay of the lieutenants of the navy, the proceeding was more regular: there the Committee of Supply came to a resolution, which was agreed to on the 19th of May, 1767, "That the half pay of the lieutenants was unequal to their rank;" and upon that foundation the

house addressed the King to increase their pay, not exceeding a certain sum; and that the House would make good the same.—See also the proceeding, on the 23d of June, 1783, touching the pensions to officers' widows.

//159-2// General addresses of approbation and support of any measure recommended by the Crown, either by a speech from the throne, or by message, do not come within this observation. The House may express their concurrence, and may promise their aid and assistance, without first considering the subject in a Committee of the whole House; as they did on the 8th of April, 1741; 14th of January, 1745; and many other instances before and after, in every part of the Journals. But the specific sum to be voted, or tax to be imposed, must, by the standing order of 1667, first be resolved upon by a Committee of the whole House,

//160-1// On the 27th of January, 1767, on the report of the army resolutions from the Committee of Supply, Mr. Grenville moved to amend the fourth resolution, which was for paying the troops in America, by prefixing words to this effect: "That such troops as shall be kept up in America shall be paid by America." When this amendment was proposed, the Speaker, Sir John Cust, said, he thought himself obliged, in point of duty, to acquaint the House, that he had doubts whether this amendment could be received, confidently with the rules and forms of the House; that, by the resolution of the 18th of February, 1667, no motion for an aid or tax is to be made, but in a Committee of the whole House; and that the uniform practice of the House had, upon this order, established the custom of laying no charge whatever in the Chair. Mr. Grenville replied, that this was an alleviation, and not a tax; but that, even if it was to be considered as laying a charge, it was only following the precedent of the 10th of William III. chap. i. grounded upon the resolution of this House of the 19th of December, 1698, "That such forces as shall be kept in Ireland shall be maintained by the kingdom of Ireland." To this the Speaker answered, that it was true it was an alleviation of the tax in Great Britain, but it was a charge on America; and as to the precedent of Ireland, that appeared to him not as a resolution of the House, charging upon Ireland the 12,000 men to be kept up there; but, considering the circumstances and history of that time, only as a declaration of the House of Commons, (1.) That the Crown should be restrained from keeping up more than 12,000 men in Ireland; and (2.) That whatever number of men should be kept up, England would pay none of them.—The House very generally, and I think with reason, adopted the Speaker's objection, in point of order. But Mr. Grenville still persisted; and urged, that the House often addressed the King to issue money, and promised to make it good, which was a still more compendious mode of proceeding.—To this Mr. Dyson replied, that he believed Mr. Grenville would not wish to push this argument as far as it would go, for that would be entirely to lay aside the Committee of Supply; and at all times, in the first instance, to vote money by address: that this method of proceeding by address had always been adopted by the House with great jealousy, at the end of the session, when the Committee of Supply was closed, and for small sums; as it was entirely contrary to the spirit of the resolution of February, 1667, and the practice founded upon that resolution.—Upon the whole, it was generally agreed that this proposition, professedly meaning to throw the expence of

maintaining the troops in America upon America, would be, if adopted, laying a charge upon that part of the people in the Chair, and was therefore contrary to order: notwithstanding which, Mr. Grenville insisting upon his motion, the Speaker was obliged to put it, however contrary to the order of the House; there being no other way of getting rid of it, nor any method of expressing the sense of the House that it was irregular. Mr. Dyson however observed very properly, that this objection, in point of order, must be an additional motive for voting against the question; though the question could not, merely for its informality, be laid aside; nor could the grounds on which the House proceeded, in giving their negative, be expressed. The question for the amendment was accordingly put, and passed in the negative.

//161-1// On the 27th of February, 1767, the Administration, in the Committee of Ways and Means, lost the question for a land tax of *four* shillings, and the resolution was carried only for *three* shillings. This was reported on the 2d of March; and, in the interim, some doubt was conceived, whether, if the Ministers should endeavour to recommit this resolution, in order to raise it again to *four* shillings, this could properly be done in point of order. Whence this doubt took its rise, or how, or by what argument it could be supported, or why *this resolution* from the Committee of Ways and Means differs from any other, I could never learn; but the fact was, that this opinion prevailed very generally amongst those who were not conversant in parliamentary proceedings: it was, however, without the smallest foundation. Every person, in the least acquainted with the forms used in the money Committees, knew that, till a resolution is agreed to by the House, nothing that has passed in a Committee can be of any validity. The House may either disagree to the resolution, or recommit it to be better considered by the Committee: the whole question is, in the latter case, brought again before the Committee; and a new resolution must be again moved, as if nothing had passed; and the Committee may either increase or diminish, or report the same sum again to the House. If this doctrine stood in need of precedents to support it, which it does not, the proceedings of the House, in the case of the army to be kept up in Ireland, on the 2d and 4th of January, 1691; and upon the resolution for allowance for contingencies, on the 20th and 22d of December, 1693; and upon the report of the Malt Bill, on the 19th and 21st of May, 1713, where the malt duty in Scotland was raised from 3d. to 6d.—are all precedents in point. In the present instance no alteration or re-commitment was proposed upon the report, but the resolution for three shillings was agreed to.

//162-1// On the 25th of March, 1778, a clause was offered, on the third reading of a Bill, directing that every person depositing a lottery ticket in an office to be established, should pay a sum of money to the office keeper. The clause was read twice, with a blank; and then committed to a Committee of the whole House, where the blank was filled up with the sum to be paid: the clause was then reported immediately, read a third time, and agreed to. Another clause was offered, at the same time, inflicting a penalty on persons selling shares not stamped; which penalty was filled up in the Chair. This was not regular; the same proceeding ought to have been upon this clause as upon the former.—So on the 6th of July and the 15th of July, 1785, where the clauses were offered on the report of Bills, which had blanks, that were proposed to be filled up with

pecuniary penalties, these clauses were referred to a Committee of the whole House. See the proceeding on the 17th of July, 1789, and the note †, p. 155, in this volume. On the 14th of May, 1793, a clause being offered on the third reading of a Bill, which imposed a rate, to be paid by owners of houses in a parish larger than what was imposed by the Bill, this clause was in the same manner referred to a Committee of the whole House.

//163-1// On Thursday the 30th of June, 1785, a motion is made to address the King to advance £. 3,000 to Mr. Webster, upon condition of his removing a tar and turpentine manufactory in Southwark; Mr. Pitt, Chancellor of the Exchequer, objected to £. 3,000 and proposed £. 2,000. The Speaker at first doubted, whether this should be proposed in the form of an amendment, or whether it fell within the meaning of the rule laid down on the 3d of November, 1675. But, upon a very little consideration, he was satisfied that, whether in the House or in a Committee, whether it was proposing a tax, or in a voting a sum of money, which in its consequences must necessarily induce a burthen upon the people, the rule was applicable; and he therefore, without proposing it as an amendment, read and put the question for £. 2,000—See the form of the entry in the Journal of this proceeding.

//164-1// If the proceeding is in the House on a report, there, though the alteration proposed is for the lesser sum, it must be proposed by way of amendment, as on the 13th of December, 1742; the 12th of March, 1749; and the 20th of April, 1765. See the proceeding on the 14th and 15th of May, 1795, in the Committee on the King's message relating to the Prince of Wales's establishment, and on the report of the resolution from that Committee.

//164-1// Vol. III. p. 382. *et subs.*

//166-1// This measure should have been the object of some other Committee, appointed specially to consider of those duties.

//167-1// A Bill being ordered in and depending, for imposing a tax for raising this sum; on the 5th of May, 1726, the corporation of Glasgow present a petition against the application of this tax; which petition is referred to the Committee upon the Bill, with an instruction to hear the petitioners by their Counsel, if they think fit—This proceeding was regular, and no ways contradictory to the rule mentioned hereafter in the Observations to title, "*Petitions on Matters of Supply*," as the tax to be imposed was for a local purpose, and in no art for the general service of the year.

//168-1// I have often heard Mr. Onslow say, that, in the first session he was Speaker, he was led into several mistakes, with regard to the proceedings of the House, by Mr. Stables, who was Clerk at the time (I suppose this was one of them); and that, in consequence of these, he applied himself with more than ordinary diligence to the reading and examination of the Journals.

//168-2// This was upon a petition from the Commissioners, which was referred to a Committee, and they had reported a state of the facts.

//169-1// This was upon petitions from those places; but which had not been referred to, or reported upon by Committees.—See a further petition from Tiverton, upon the same ground, on the 2d of April, 1735; and a like petition from Wellingborough, on the 8th of December, 1740.—See also the 15th of December, 1743; 13th of November, 1745; and 22d of February, 1748.

//169-2// In the protest of the Lords, upon the commitment of this Bill, on the 11th of April, 1734, there are the following very just and unanswerable reasons entered against the proceeding:—1st. “Because the appropriating clause in this Act is in effect an unappropriation of all the money that has been raised this year, and puts it in the power of a Minister to divert any of the supplies to whatever purposes he shall think fit; and this, in consequence only of an unprecedented message from the Crown, specifying neither the dangers apprehended, nor the services proposed: whereas appropriating clauses were introduced to prevent the secret ill use of public money; and every tendency of breaking through them, is an just foundation for Parliamentary jealousy and enquiry.—2dly, Because this new method of unappropriating money raised for particular uses, frustrates and eludes the wisdom and caution of Parliaments in the original grant of those monies, which is always in consequence of estimates laid before the other House, and for services specified; and this too at the beginning of the session, in a full House: whereas this unappropriating clause comes in, not only at the end of the Parliament, in a thin House, after many gentlemen are obliged to go to their respective countries.”—See also the protest upon the King’s message, in the Lords’ Journals of the 29th of March, 1734.

//169-3// And the protest of the Lords on the 19th of April, 1727, in which they properly observe, “That this clause is inconsistent with that part of the Bill, which forbids the supplies to be issued, to any other purposes than those specified, and renders ineffectual that appropriation of the public money, which the wisdom of many Parliaments has thought (and which we are convinced ought to be thought) a necessary security against the misapplication of it.”

//169-4// In the case of the 17th of May, 1728, the sum was “not exceeding a sum to be “limited;” but this was still liable to the objection, made by the Lords in the preceding notes.

//171-1// This resolution was reported from a Committee of the whole House, to whom it was referred to consider of the “Execution of an Act” of this present session, for raising a sum of money by annuities.

//172-1// Vide N<sup>o</sup> 3. and N<sup>o</sup> 7.



//173-1// And therefore, if the money proposed to be voted is not part of the supply for the service of the current year, it is as regular to propose it in any other Committee of the whole House, as in the Committee of Supply. As was done in the instance of Mr. Onslow, the 10th and 17th of March, 1762: and on the 20th of June, 1785, where a resolution was reported from a Committee of the whole House, not the Committee of Supply, for granting £. 1,000 *per annum* to the Clerks in the Secretaries of State's office, in lieu of the perquisites from franking letters which they had lost by a Bill passed the year before. See also the proceedings on the 6th of May, 1785, upon a motion to consider of a proper augmentation of the salaries of the judges in Scotland. On a similar application for increasing the salaries of the judges in England, the sums were first voted in the Committee of Supply, and reported on the 15th of May, 1759, and then provided for in the Committee of Ways and Means; but the proceeding in 1785 was better, because it was more clear, as these sums made no part of the supply for the current year.

//173-2// See, amongst many other, the instances of the 26th of March, 1730, relating to settlements on the coast of Africa; the 14th of May, 1759, upon augmenting the judges' salary; the 2d of March, 1772, on the purchase of Sir W. Hamilton's collection of Etruscan antiquities; the 25th of March, 1772, relating to the encouragement of discoveries to the South Pole.—But it is not understood to apply to petitions or to motions for granting bounties; and therefore, though the King's recommendation has been given, in some instances of this sort, this was unnecessary.

//174-1// See the 1st of May, 1758; and 28th of March, 1759.

//174-2// See the 1st of March, 1764, for supplying London and Westminster with fish, to Mr. Blake; the 16th of May, 1774, to Mr. Hartley, for securing buildings from fire; et passim.

//175-1// Whenever, after a war, measures were proposed for paying off or providing for any part of the unfunded debt of the public, the usual and regular mode of proceeding had been, as in the instances of the 3d and 14th of February, 1763, and in other cases, first in the Committee of Supply, to come to resolutions, that so much money should be granted, or that provision should be made for this purpose; and then in the Committee of Ways and Means, as on the 7th and 17th of February, 1763, to provide the mode of discharging such part of the debt, as had been specified in the Committee of Supply. See also the 31st of January, and the 6th of February, 1764. But in the first session of the Parliament which met in May, 1784, this form of proceeding, from the inexperience of the persons just come into office, was, by mistake, departed from, and though adverted to, yet too late to be rectified. The only measure therefore that could be adopted, which might give the proceeding even the appearance of regularity, was, when the House went into a Committee of Ways and Means on the 30th of June, 1784, to give an instruction to the Committee to consider of a proper provision to be made for discharging the unfunded debt of the public; the House in this instance taking upon themselves to do directly and immediately, what they ought

regularly to have done only through the medium of the Committee of Supply. This irregularity was not taken notice of at the time by any Member of the House, and therefore passed without censure. In the next session of 1785, when a similar measure was proposed, the same proceeding was adopted; but both these instances were certainly irregular, and contrary to the forms and spirit of the institution of these Committees, which do not authorize the Committee of Ways and Means to make provision for any expence, that has not first been voted, or declared that it ought to be provided for, in the Committee of Supply. If therefore it should again happen, that measures of this sort should be necessary, it will be better to recur to the antient form of the first applying to the Committee of supply, and there voting to what extent provision should be made, and then in the Committee of Ways and Means providing the mode, in which the debt shall be discharged.

Since this last paragraph was written, another instance has occurred, of funding part of the navy debt; on which occasion the antient and regular form of proceeding was followed, by voting on the 3d of March, 1794, in the Committee of Supply, "That provision be made," and in the Committee of Ways and Means on the 5th of March, "What that provision should be."

//176-1// There is a very particular proceeding, in the year 1761, relating to this subject. On the 8th of December several resolutions were reported from a Committee of the whole House, for altering the duties imposed by former laws on spirituous liquors, and imposing other duties in their stead. The produce of these duties, so altered, being greater than they had been before, on the 14th of December, in the same session, upon opening the budget, the Committee of Ways and Means are instructed to consider of that surplus; and the resolutions reported and agreed to on the 8th of December are referred to the Committee: and, on the 15th, that surplus, together with the additional duties granted in this session of Parliament, are carried to the sinking fund, to make part of the ways and means for the loan of that session.

//176-2// The instances, in the Journals, of the proceedings in both of these modes are so numerous, that they cannot be here inserted.—Any person who wishes to refer to them, may easily find them by applying to the general index, under title "Supply."

//176-3// See the 9th of May, 1766, relating to Cotton Wool; and many other instances before and since.

//177-1// See, the 22d of March, 1764, a Bill for free importation of provisions from Ireland; and several other instances. This question was discussed on the 10th of February, 1764, upon a motion of Sir Richard Bampfylde's to repeal the Cyder Act of the preceding session; when, the Speaker having inadvertently informed the House that no such motion could be received but in a Committee of the whole House, Mr. Dowdeswell desired that the precedent of the 5th of March, 1688, for leave for a Bill to take away hearth money, might be read; and Mr. Dyson, then a Member, acquainting the House that there were not, in the practice of the House, the least grounds for such an opinion, the motion was received and put in the House, but passed in the negative.

//178-1// See p. 81. and 83 of this volume, and Mr. Sacheverel's speech, upon this subject, in Grey's Debates, Vol. III. p. 447.

//178-2// See the Appendix to Dalrymple's Memoirs of Great Britain and Ireland, Letters between Charles II. the Duke of York, and the French Ministers.

//179-1// One of the articles of impeachment against Sir Edward Seymour, exhibited by Sir Gilbert Gerrard, on the 20th of November, 1680, was, "That he, being Treasurer of the Navy, did, contrary to law, and the duty of his office, lend the sum of £. 90,000 (parcel of the sum raised and appropriated for building of ships) towards the support and continuance of the army; contrary to the directions of the act of Parliament which enacts, "That the sums to be raised should be applied to the building and rigging of ships, and to no other use and purpose whatsoever."

//179-2// As this Act is not printed in the Statutes at Large, I have inserted the clause here alluded to, at length, in the Appendix N<sup>o</sup> 15. It appears from the Journal of the House of Commons, of the 7th and 9th of December, 1689, that this clause was, by the special direction of the House, drawn by Mr. Sacheverel and Mr. Somers, then Solicitor General.—See also, in the Appendix, the provisions of the 6th of William and Mary, ch. 7. upon the same subject.

//180-1// See, among others, the 6th of William and Mary, ch. 3.—10th and 11th of William III. ch. 9.—11th and 12th of William III. ch. 11.

//180-2// The existence of a power in the House of Commons, to judge and determine ultimately upon the propriety of every proposal relating to the military establishments, was illustrated in a very particular manner, by an event, which happened on the 27 of February, 1786.—The Duke of Richmond, as Master General of the Ordnance, had prepared an estimate, which was presented to the House of Commons on the 10th of February, of the expence of fortifying the dock-yards at Portsmouth and Plymouth; together with a report which had been made to his Majesty by a board of land and sea officers, especially appointed by the King, to investigate and report upon that subject.—Previously to referring this estimate to the Committee of Supply, the administration were desirous of receiving the approbation of the House of Commons upon the general measure, and for that purpose, on the 27th of February, 1786, proposed a question, which should express the sense of the House, "that the execution of this plan was an essential object for the security of the state." To this question an amendment was proposed, "That fortifications on so extensive a plan are inexpedient." Upon a division the numbers being equal, 169 to 169, the Speaker, Mr. Cornwall, declared himself for the amendment. So that the plan recommended by the Ministers for the new and more enlarged fortifications, was obliged to be abandoned; and on the 7th of June in that session, a small sum was granted for completing the old works.

//180-3// See the 1st of William and Mary, sess. 2. Ch. 1.—6th of William and Mary, ch. 3.—6th of William and Mary, ch. 7.—10th and 11th of William III. ch. 9.—1st of Q. Anne, ch. 12.

//181-1// See the 11th and 12th of William III. sess. 1. Ch. 2.—12th and 13th of William III. ch. 11.—1st of Queen Anne, sess. 2. ch. 15.—3d and 4th of Q. Anne, ch. 5.

//181-2// See the 6th of William and Mary, ch. 3.—6th of William and Mary, ch. 7.—10th and 11th of William III. ch. 9.—1st of Q. Anne, ch. 12.

//181-3// See the 1st of Q. Anne, sess. 2. ch. 15.—3d and 4th of Q. Anne, chap. 5.—6th of Q. Anne, ch. 19 —and throughout the greater part of that reign.

//182-1// Upon the 15th of May, 1711, after a long investigation into the expences and debts that had been incurred, for which no provision had been made by Parliament, the House of Commons came to the following resolutions:

1. That it appears to this House that the sum of £. 606,806. 7s. 7d. hath been paid, out of the monies issued for the service of the 'navy,' for provisions supplied to the 'land forces.'
2. That such diverting of money, issued to the service of the navy, to the land service, hath lessened the credit of the navy, and was a misapplication of the public money.
3. That the applying any sum of unappropriated money, or surplusages of funds, to uses not voted or addressed for by Parliament, hath been a misapplication of the public money.

//183-1// See p. 83. N<sup>o</sup> 12.

//184-1// The idea of proposing this resolution was suggested by the resolution passed on the 7th of January, 1680, against persons lending money, without the authority of Parliament, upon the credit of what was at the time the King's revenue, arising from the Customs, Excise, and Hearth Money; which see before, p. 82, N<sup>o</sup> 7.

//185-1// If any sum is voted specially for the discharge of the debt of the navy, this is not included in the general appropriation, but is directed specifically to be applied to that purpose.

//185-2// The Exchequer, who issue the money, brought in from the several duties and taxes, to the services voted by the House of Commons, are obliged, in their issue for any particular service, to attend to the credit which that service has with the Exchequer at the time of issuing the money; and to be careful that they are justified by the vote of the House of Commons for the payment upon that head of service. In the commencement of the session, in December, 1782, it being doubtful whether the war would continue, the Ministers did not bring in the army estimates before the recess at Christmas. The navy only was intended to be voted, and the land and malt taxes to supply that service. But it being found that all the money voted in the former session, upon the army

account, had been issued, and that a further sum would be necessary for the pay and subsistence of the land forces before the House of Commons met again in January, it was, upon mature consideration, and consultation with the different Officers of the Treasury and the Exchequer, judged necessary that a sum should be voted upon the army account, in order to give the Paymaster of the Army a credit with the Exchequer; and upon this ground the Secretary at war delivered in a short account of two months extraordinaries, which were afterwards voted, to entitle the Paymaster, during the recess, to receive that sum at the Exchequer, upon the account of the army.

//186-1// Together with the estimate for the ordnance service, which was presented to the House of Commons upon the 14th of February, 1783, there was delivered a report upon the estimate, drawn up and signed by the Duke of Richmond, then Master General; in which the mischiefs which the public had long felt from the exceedings upon this service, beyond what was voted by Parliament, are very ably pointed out; and means proposed for preventing this for the future.

//187-1// The account of the extraordinary expences incurred and not provided for, appears to have been

For the year	£	s.	d.	
1705	152,402	4	2	
1706	299,760	13	2	
1707	135,242	1	8	
1758	466,785	10	5	<i>Memorandum.</i> In each of these years £500,000 was voted upon account, and £1,000,000 supply of credit; which should be added to these sums.
1759	953,302	15	5	
1760	2,161,747	16	10	To which is to be added £1,000,000, voted in each year as a supply of credit.
1780	2,418,805	18	11	
1781	3,343,217	19	8	
1782	3,436,399	6	0	

//187-2//

Voted upon Estimate				Extraordinaries, with the Supply of Credit		
Year	£	s.	d.	£	s.	d.
1780	4,384,693	2	1	3,418,805	18	11
1781	4,377,317	9	0	4,343,217	19	8
1782	4,381,368	1	5	4,436,399	6	0

See further upon this subject, in the Report made from the Committee appointed in 1782 to enquire into and state the sums raised by annuities towards the supply, &c. When this Committee was moved, it was the intention of those who proposed it to follow the precedent of the year 1727; and to have stated to the public, in the form of a representation to the Crown, such facts and conclusions as should have come out upon their examination. The delay of producing the accounts from the offices, was the excuse alleged for protracting this enquiry, till it was too late in the session to carry this intention into execution. The Report, which was made on the 5th of July, 1782, and ordered to be printed, is very well worth reading, as it is an historical account of the management of the finances of this country from January, 1776, to April, 1782.

//188-1// See the 7th printed Report from the Commissioners appointed to examine, take, and state the Public Accounts, pages 11, 12, 13, and 14.

//188-2// See the 7th Geo. II. ch. 12. sect. 12. This had been done before in the year 1727.—See, in the Lords' Journals, the 19th of April, 1727, a very judicious protest against this mode of proceeding; where, amongst other arguments, this clause in the Bill is objected to, "because it is inconsistent with that part of the Bill, which forbids the supplies to be issued to any other purposes than those specified; and renders ineffectual that appropriation of the public money, which the wisdom of many Parliaments has thought, and we are convinced ought to be thought, a necessary security against the misapplication of it."

//189-1// See this debate in the eighth volume of the Commons' Debates, p. 240, *et seq.* The two divisions upon this subject, on the 28th and 29th of March, 1734, against the propositions, were in point of numbers very considerable.

//189-2// On the 14th of May and 14th of February, 1739, the particular sum for the supply of credit was voted. And upon the breaking out of the war in 1756, on the 19th of May, 1757, that mode was adopted, which has been followed ever since, and has been called "a vote of credit," or, as Mr. Onslow always termed it, "a supply of credit."

//189-3// Whoever examines with accuracy the accounts which were delivered in to the House of Commons, during the American war, under the title of "Extraordinary Services incurred and not provided for," will find in them several articles so strange, so unconnected with the account of which they make a considerable part, and in

themselves so unnecessary, that the observations and expressions, which I have used here, will not appear unapplicable.

//190-1// See the 22d of February, 1730; the 19th of March, 1733; and the other instances referred to in the note \*, N<sup>o</sup> 11.

//191-1// On the 11th of August, 1784, an instruction was given by the House to the Committee upon a Bill relating to the post-office, to enable them to receive a clause to make compensation to the Clerks in the Secretary of State's office for some advantages which they had lost by the passing of an Act in the former session, "for establishing regulations in the conveyance of letters between Great Britain and Ireland." In consequence of that instruction, a clause was offered in the Committee, and inserted by them, for making such compensation.—Every part of this proceeding was highly irregular, and contrary to the orders of the House; and was inadvertently admitted, from the great hurry which the number of Bills, that were then passing through the House, at the close of the session, necessarily occasioned. In the first place, some enquiry ought to have been had, or account brought, of the nature and quantum of the loss which the Clerks had sustained upon this occasion. 2dly, Before the House could regularly take any step in considering of this compensation, the King's recommendation should have been signified by the Chancellor of the Exchequer. 3dly, The consideration of the proposition ought to have been in a Committee of the whole House, previous to the House giving any authority to the Committee upon the Bill to make such compensation.

These mistakes were however adverted to before the report of the Bill; so that when the Bill was reported the next day, the clause which had been received in the Committee, and which gave this compensation, was disagreed to by the House.

//192-1// See the instances of the 21st of February, 1710, the 6th of June, 1713, and the 8th and 9th of February, 1764, where the proposal from the Bank is received in, and reported from, the Committee of Ways and Means.—So on the 13th and 14th of June, 1781.

//192-2// In some of the instances, the proposal is brought by the governor or deputy-governor of the Bank; in others, as in 1710, 1713, and on the 6th of February, 1743, a Member, one of the directors, presents the proposal, which is delivered in at the Table without any question.—See the 16th of May, 1791, where the offer of the Bank to advance £. 500,000, part of the unclaimed dividends, was received in the Committee of Ways and Means.

//193-1// This Bill was presented on the 20th of November, but interrupted in its progress by the prorogation of Parliament.—See the debate upon this matter, in Grey's Debates, 3d volume, p.450, and another debate upon a similar question in the 4th volume, p. 180, particularly Sir George Downing's speech, p. 184, when on the 5th of March, 1676, this proposition of tacking together two Bills was rejected upon a division. Sir. G. Downing says, "Whoever takes away liberty from the King, takes away liberty

from the Parliament; and whether this tacking the clause of appropriation does not so, I leave you to judge. One thing in the world this House is always fond of, viz. frequent meetings; but I never found good, by going by an ill way to obtain a good end. The Long Parliament was not to be dissolved without their own consent; which was obtained of the King by a thousand canting words, and that power they obtained tacked to a Money Bill. But what became of this? You were forced to make it treason to name the being of that Parliament. The just prerogative of the Crown is as necessary, as the being of the House of Commons. I take tacking to be of the most mischievous consequence imaginable, and I pray no tacking may be to this Bill.”

//193-2// See this protest at length in the Lords’ Journals.—See also a protest, upon a similar occasion, on the 27th of April, 1699. On the 9th of December, 1702, the Lords, upon motion, (without any apparent pressing reason, unless it was the Bill for settling a revenue on Prince George of Denmark, which was then depending in the House of Commons) come to a resolution, and order it to be added to their roll of standing orders, “That the annexing any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to, and different from, the matter of the said Bill of Aid or Supply, is unparliamentary, and tends to the destruction of the constitution of this government.” See the amendment proposed to be made, but rejected; and the Lords’ protest upon the Prince of Denmark’s Bill, on the 19th of January following.—This standing order of the 9th of December, 1702, is ordered to be again entered upon the Lords’ Journal on the 28th of March, 1707; but I do not know upon what occasion this proceeding was had.—See also the 30th of March, 1709.

//195-1// Sir George Downing, in a debate upon this subject, on the 11th of November, 1675, very properly observes, “When you go in such an untrodden way, you may repent when it is too late. Things of this kind are altering the government. The King’s answer to a Money Bill is in one form of words—to a public Bill the form is different,—What answer shall the King then make to this Bill? the King must make two answers to this one Bill, being of two natures.—The King’s judgment ought to be as free as ours in passing Bills; and it is for the kingdom’s good it should be so.” *Grey’s Debates, Vol. III. p. 450.*

//197-1// Though this objection of its being a tack, was made, in the debate in the House of Lords on the 19th of April, 1787, to the Bill sent from the Commons for consolidating the duties of customs, it could not be supported upon the principle of the standing order, of the 9th of December, 1702—as this was no Bill of Supply, to make provision for the expences of the current year.—To delay the measure of consolidating the customs and other revenues to another session, might have been attended with some inconvenience, but it could never, in the language of the Lords in 1699, be called, “hazarding the public peace and security.” Both measures, as well the French treaty of Commerce, as the consolidation of the revenue, might have been rejected by the Lords, and the public credit not at all endangered. Whatever objection therefore this Bill was liable to, from the joining together two distinct and separate measures in one Bill, the objection made of its being a tack to a Bill of Supply, was clearly not well founded.



//197-2// See the Lords' reasons at length, in the Commons' Journals, the 10th of April, 1700.

//198-1// In mentioning this Bill, I beg to refer the reader to the report of what passed at a free conference upon this subject, between the two Houses. It is printed in the Lords' Journal of the 24th of February, 1702, and I do not know that it is to be found elsewhere. In that report, the principles of toleration and moderation, towards the dissenters from the established church, are largely and most ably discussed and maintained on the part of the Lords. The propositions laid down by the Commons, one of which is, "*That schism is a spiritual sin,*" are curious and worth reading.—See, in the Commons' Journals of the 5th of February, 1702, their own account of this conference. See also the same principles, in favour of toleration, repeated in a protest on the 15th of June, 1714, upon a Bill depending in the House of Lords to prevent the growth of schism; with the names of the Lords who signed that protest, amongst whom there are several Bishops.

//198-2// Burnet's History of his own Times, Vol. II. p. 401.

//198-3// The Lord Chancellor Finch, in his Speech to both Houses on the 23d of May, 1678, expresses himself upon this subject in the following manner: "The late way of tacking together several independent and incoherent matters in one Bill, seems to alter the whole frame and constitution of Parliaments, and consequently of the government itself. It takes away the King's negative voice in a manner, and forces him to take all or none; when sometimes one part of the Bill may be as dangerous for the kingdom, as the other is necessary. It takes away the negative voice of the House of Peers too, by the same consequence, and disinherits the Lords of that honour they were born to—the liberty of debating and judging what is good for the kingdom. It looks like a kind of defamation of the government; and seems to suppose the King and House of Lords to be so ill affected to the public, that a good Bill cannot carry itself through by the strength of its own reason and justice, unless it be helped forward by being tacked to another Bill that will be favoured. It does at last give up the greatest share of legislature to the Commons, and, by consequence, the chief power of judging what laws are best for the kingdom. And yet it is a privilege that may be made use of against the Commons, as well as by them; for, if this method hold, what can hinder the Lords, at one time or other, from taking advantage of a Bill very grateful to the Commons, and much desired by them, to tack a new clause to it of some foreign matter, which shall not be altogether so grateful nor so much desired? and then the Commons must take all or none too. Thus every good Bill shall be dearly bought at last; and one chief end of calling Parliaments, the making of good laws, shall be wholly frustrated, by departing from that method which the wisdom of our ancestors prescribed, on purpose to prevent and exclude such inconveniencies.—These innovations the King resolves to abolish; and hath commanded me to say to you, *State super vias antiquas.*"

//201-1// See the proceeding on Baker's petition, on the 28th of February, 1706, in consequence of this order.

//203-1// The numbers were, 214 to 197.

//203-2// See, in Chandler's Debates, Vol. IX. p. 175, the substance of the debate upon this question.

//204-1// When this petition had been read, the Lord Mayor moved, that the petitioners might have leave to be heard by their counsel against the Bill. The Speaker, upon this, acquainted the House with what had been the established practice of the House for now near a century, viz. not even to receive petitions against Bills imposing taxes, then depending; but that, the petitions from the corporation of London being, by the indulgence of the House, and out of respect for the city, delivered not by a Member, but by the sheriffs, the House, when they had admitted the sheriffs to the Bar, were obliged to receive the petitions, and could not properly be said to know their contents till they had been read. That the city, however, ought not so far to abuse this indulgence as to ask from the House, what had never been granted; indeed, he believed, had never been prayed for before, viz. "The liberty of being heard by their counsel against a Tax Bill;" a favour which, if allowed, the House must see, could not be refused to any other corporation, or any set of men, or any individual, who should think themselves aggrieved by any tax; and it was too apparent what delay and confusion the introduction of such a practice would occasion.—In answer to what the Speaker stated to the House, the Lord Mayor observed, that there had been instances in which this rule had been departed from, and where the city of London had been allowed to be heard by their counsel against Tax Bills; and he mentioned the instance of the 12th of May, 1779, against the House Tax. To this it was answered, that this instance was in the case of a Bill for the better regulation or collection of the taxes; not at the time they were imposing for making good the supply of the year, but in the next, or some subsequent session; and that the rule therefore did not apply to this case. Accordingly that part of the motion, which proposed that the petitioners should be heard by their counsel, was left out; and the petition, as in the former instances, was ordered to lie upon the table.

//205-1// The reasons for adjourning this debate were, to give time to look into the precedents, and to see whether this petition was within the established practice of the House, of refusing to receive petitions against a Bill imposing taxes for the supplies of the year. Mr. Dempster, who offered the petition, urged, that this petition was not either against the quantum of the tax, or against the mode of collecting it; but against a regulation, in the manner of dispersing the news-papers through the country; and that the petitioners were ready to prove, that this regulation, instead of promoting the sale of papers, and consequently increasing the revenue, would in fact tend to discourage and lessen it. It was farther suggested, that should it be thought that this petition was against the additional duty now imposing, and therefore that it was so far within the rule of the House against receiving it, yet that considerable duty subsisted before on

news-papers, and the regulation complained of in this Bill applied as well to the former duty as to the duty now imposing; and that there was no doubt but that by constant usage of the House, the petitioners were at liberty to be heard by counsel against any regulation of a duty imposed in a former session. When the debate was renewed on the 3d of July, Mr. Pitt, the Chancellor of the Exchequer, objected to bringing up the petition, as upon looking into precedents, and after the maturest consideration, he was of opinion, this petition was within the rule of the House against receiving it. He said, not only it was impossible to separate the two duties, that laid before and that now imposing, and to hear counsel only against the former, but that the regulation complained of by the petitions arose out of the present additional duty; as upon a former increase of the duty the practice of lending out the papers to hire had originated, and therefore it was reasonable to suppose a still farther increase of the duty would promote and encourage that practice. It was therefore a regulation necessary for the more effectual collecting of the tax now imposed; and, as such, the rules and uniform practice of the House for above a century would not, even if he wished it, permit him to consent to the bringing up of the petition. The question being put, was negatived without a division.

//206-1// See a debate upon this subject on the 1st of March, 1670, in Grey's Debates, 1st volume, p. 401.

//207-1// See Commons' Debates, Vol. VII. p. 309; particularly Sir John Barnard's Speech, p. 312, where he makes the distinction between petitions against Bills imposing duties for the current service of the year, and Bills for the mere regulation of trade. This debate was on offering a petition against the Bill relating to the trade of the Sugar Colonies.—See also, page 371 in the same volume, the debate on the 10th of April, 1733, on the petition from the city of London; where it was admitted to be the practice to refuse petitions against those Bills which are for raising money for the current service of the year.

//207-2// What Mr. Winnington, afterwards said, in the debate upon the petition against the Bill relating to the trade of the Sugar Colonies, proved true upon this occasion: "If we were to receive all petitions against Bills that are brought in for the laying on of any new duties, there would be such multitudes of them against every such Bill, that the nation might be undone for want of an immediate supply for the public use, whilst we are sitting to hear frivolous petitions against Bills brought in for granting that supply." Commons' Debates, Vol. VII. p. 310.—This reasoning does not apply to the receiving petitions which desire the repeal or alteration of taxes imposed in any former session. No public service is delayed by receiving and considering such petitions; nor can the time of the House be employed more properly than in endeavouring to lighten the burthens, which have been necessarily imposed upon the people, by introducing such regulations, in the manner of collecting the taxes, as experience shall point out; or even by repealing the taxes, in instances where no regulation can make them fit to be continued.

//208-1// See the 20th and 28th of April, and 29th and 30th of June, 1698.

//208-2// See the instances cited on the 10th of April, 1733, by Sir Robert Walpole, and those who opposed the petition of the city of London.

//208-3// See the 24th of November, 1690; 20th and 26th of January, 1721.

//208-4// See the 12th of December, 1690; 26th of January, and 19th of February, 1704.

//209-1// See the 7th of March, 1693.

//209-2// See the 30th of March, 1694.

//209-3// See the 20th of February, 1709; and the 18th of May, 1711.

//209-4// On the 23d of March, 1677, on question being put, That the Lord Russell be heard at the Bar by his counsel, touching the Bill for laying a charge upon new buildings, it passed in the negative.

//209-5// See the instances in N<sup>o</sup> 9, 11, 15, and 19.

//209-6// That this is matter of indulgence only, and not of right, appears upon the 17th of April, 1690, where the Sheriffs of London were, upon a question and division, refused to be admitted. The debate is in Grey's Debates, Vol. X. p. 54. See particularly the Speeches of Sir Edward Seymour and Sir Thomas Clarges. These petitions are to be presented by the Sheriffs of London, unless one of them is unable to attend, or is a Member. Upon the 1st of February, 1724, one of the Sheriffs being a Member of the House, and the other being ill, the petition from the Corporation is presented by two Aldermen and four of the Common Council. So on the 5th of March, and the 8th of May, 1770, both the Sheriffs being Members, the petitions from the Corporation of London are presented by some of the Aldermen and several of the Common Council. A petition from the "Livery of London" is delivered by a Member, like any other petition, and not by the Sheriffs, as on the 6th of May, 1783, and the 2d of April, 1792. In this latter case, the petition was sent up from the Common Hall "by the Sheriffs," but the Speaker, very properly before they were admitted, sent a message to acquaint them of the informality of this proceeding; and the petition was accordingly offered by Sir Watkin Lewes, one of the City Members. The proceeding on the 25th of June, 1689, on receiving a petition from the "Common Hall" delivered by the Sheriffs at the Bar was certainly irregular, both as to the mode of signing and delivering it. This indulgence is only allowed to petitions from "the Corporation of London in Common Council assembled," which are signed by the Town Clerk. A petition from "the Livery of London in Common Hall assembled" must be signed by those individual liverymen, who approve of its contents, and must be offered by a Member, as on the 2d of February, 1795.

//210-1// See the proceedings on the petition, presented from the city of London on the 21st of January, 1664. That there must be a motion made and question put, for reading the petition, when brought to the table, see the 17th of March, 1760, and the 1st of June 1779. But if there is a division on this question, the Noes go forth; because the petition having never been opened to the House, it ought to be read, in order that the House may know its contents, before they can make any order whatever upon it, even, “That it do lie on the table.” See 25th of June, 1689.

//211-1// In the session of 1785, the House adopted a proceeding, which “had the appearance” of contradicting the principle above laid down, by admitting on the 27th of June, petitioners, who had petitioned against parts of a Bill for granting additional duties on hawkers, pedlars, and petty-chapmen, to be heard upon their petition by their Counsel, at the Committee on the Bill. But this proceeding, which would have been so contrary to the established forms and practice of the House, was so however only in appearance, and not in reality. For the House, having given an instruction on the 14th of June to the gentlemen who were appointed to bring in the Bill imposing the duties, to make provision in the same Bill for regulating the trade of hawkers and pedlars, and clauses making this regulation having been by them inserted in the Bill, it seemed difficult to refuse hearing parties, who complained of these regulations, which in themselves had no connection with the mode of imposing or levying the tax. However, great care was taken and attention paid, that the petition before it was received should be so worded as to shew clearly, that it did not object to those provisions of the Bill which imposed the tax, or the means of collecting it, but merely to the other part of the Bill, which was for regulating their trade. And several petitions which had been prepared but to which, on their being shewn to the Speaker, he had objected as not being explicit enough on this point, were never offered to the House.—The petitions which were presented on the 24th and 29th of June, 1785, were upon a very mature consideration thought to apply simply to the regulations proposed, and upon this ground, the House permitted parties petitioning to be heard.—The Speaker was particularly cautious, on the hearing, to confine the counsel and evidence to this point of regulation only, and not a syllable was permitted, which could seem to intrench upon the rule, “not to receive petitions or hear counsel against Bills imposing taxes for the current service of the year.” But after all, it would have been much better to have kept these proceedings separate in two distinct Bills.—The appearance of contradicting the forms of the House would have been avoided; and the Bill would not have been liable to that objection, which was properly made to it in the House of Lords, of its being “a tack,” and therefore contrary to the rules laid down by them, in passing Bills coming from the Commons. This objection was alluded to in the House of Commons, and, though it did not prevail upon the House to separate this Bill into two distinct Bills, which ought to have been done, yet it had so much weight, as to prevent a similar proceeding from being adopted in another Bill then depending, for imposing a tax upon Attornies and Solicitors.—These gentlemen desired, that, as a tax was to be laid upon them, provision might be made in the same Bill for preventing persons, not being solicitors or attornies, and who would not therefore be liable to the tax, from exercising

their occupation. This proposal seemed reasonable; but it was thought advisable not to tack it to this Bill of Supply, and that it was too late in the Session to bring in this provisions in a separate Bill.

//212-1// On the 14th of August, 1689, a petition was presented to the House of Lords, against a Bill then depending for encouraging the woollen manufacture. The petitioners, the bailiffs and wardens of the company of weavers, were called to the Bar, when the Speaker of the Lords gave them this answer: “The Lords have read a petition signed by you—They do not now think fit to give an answer, because they observe, that here is an unusual manner of application of men, who ought to be better directed by you, who are the bailiffs, wardens, and assistants of the company of weavers.—The Lords do first require, that these crowds do go home; when that is done, neither you, nor others of those people of these nations heed to doubt, but that their Lordships will do justice, and hear the objections of parties concerned in this or any other Bill, that shall come before them.” On the same day the Lords address the King, “That he will be pleased to give order, that some of the horse and foot guards may be ordered to be aiding to the civil power, to prevent any unusual concourse of people at Westminster.” And the Governor of the Tower, the Lord Mayor, and the Deputy Lieutenant for Middlesex, are ordered by the Lords, to have the trained bands in readiness to prevent any unusual concourse of people towards, or in or about Westminster.—On the 17th of August it appearing that the crowd had dispersed (who were probably weavers from Spital Fields) the companies of trained bands were discharged from their further attendance, and the Lords proceeded to consider the petition of bailiffs and wardens of the company, presented on the 14th.—See the Commons Journal of the 21st of January and the 20th of March, 1696; and the Lords Journal of the 21st of January, 1696, where, as in the former instance, the Lords address the King for the horse and foot guards to be aiding to the civil power.

//212-2// In the proceedings between the two Houses on Skinner’s business in 1669, which are erased from the Journals; it appears from Grey’s Debates, Vol. I. p. 209, that on the 7th and 8th of December the House of Commons resolved,—(1) “That it is an inherent right of every Commoner of England to prepare and present petitions to the House in case of grievance; and of the House of Commons to receive them.”—(2) “That it is the undoubted right and privilege of the House of Commons to adjudge and determine, touching the nature and matter of such Petitions, how far they are fit and unfit to be received.”

//213-1// This was attempted to be done, in the year 1783, against the Bill imposing a tax upon receipts.—A Committee of tradesmen in London sent expresses to all the principal towns in the kingdom, with printed copies of their objections to the Bill depending. These objections were immediately, and without much examination, adopted in several places, and instructions sent up to their representatives to oppose the Bill. A similar attempt was made in 1795, by the merchants, who offered a petition against the Bill for imposing a duty on wines, including the stock in hand.

//213-2// The House of Lords, upon the same principle, have established the same rule of practice.—See in their Journal, of the 3rd of May, 1736; and 18th of June, 1783; where petitions offered against Bills depending, for imposing taxes for the service of the current year, were rejected.

//214-1// See the Journal of the 21st, 22nd, and 26th of November, the 1st, 3rd, 7th, and 18th of December, and the 14th, 15th, 16th, 17th, 22nd, 23rd, and 24th of January, 1705.

//214-2// See the 23d of January, and 13th of February, 1711; and the 18th of May, and 9th of June, 1713.

//214-3// See what is said before, p. 173.

//260-1// Sic.

//336-1// This Solicitor General, who appears to have taken so great a share in this business of Skinner's, was Sir Heneage Finch, afterwards Lord Chancellor Nottingham.

//351-1// This Bill was carried up to the Lords, but was rejected by them, on the first reading, on the 10th of November. It begins as follows: “The Commons assembled in Parliament do most humbly beseech your Majesty, that it may be declared and enacted, and be it declared and enacted by the King's most excellent Majesty, &c. &c. That no trial or judgment concerning the life, liberty, or any corporal or other punishment of any person or persons, not being a Peer of the realm, nor any trial or judgment touching the right, title, or property of any person in or to their lands, tenements, goods or chattels, nor any taxation of damages to the party grieved for or in respect of any injury supposed to be committed ought to be, or shall, at any time hereafter, be had, made or, given in Parliament, *upon any original complaint* there to be exhibited (other than upon complaint or impeachment of the House of Commons, and other than upon such complain as shall tend to and end in some Act of Parliament thereupon to be passed) or upon breach of Privilege of Parliament committed during any session of Parliament, or within forty days before or forty days after the session. And that all judicial proceedings had, upon any such original complaint, or hereafter to be had to the contrary hereof, shall be holden for none, being contrary to the good old laws and statutes of the realm.”

The Bill then proceeds to declare and enact, “That no person who shall exhibit his petition to the House of Commons shall be molested, prosecuted, or impeached by or before the House of Peers, for or in respect of such petition; nor shall be liable to suffer or incur any fine, penalty, or forfeiture whatsoever, for or by reason thereof, by or before the said House of Peers, unless it be at the prosecution of the said Commons.” It then goes on to enact, “That all judgments, fines, and executions had, made, and imposed, or awarded against Sir Samuel Bernardiston, in the last session, shall be deemed and taken to be utterly void and of none effect. And that all entries and

memorials thereof in any Journal or Roll of Parliament, or in or upon any Records in the Court of Exchequer; and all other judgments and proceedings whatsoever, touching or relating to the matter lately depending in the last session of Parliament between Thomas Skinner and the Governor and Company of the Merchants trading to the East Indies, shall be cancelled and vacated. And that nothing of the nature be hereafter drawn into consequence or example, or put in practice for the time to come”

//353-1// The former Bill (rejected by the Lords) is preserved in the Parliament Office; but I have not been able to find this Bill sent from the Lords, which was negatived by the Commons on the 27th November on the second reading.

//360-1// See in Grey's Debates, Vol. I, pag 445, Serjeant Maynard's argument in this case of Skinner, at a conference with the Lords; which, it is there said, was, by an order of the 15th April 1671, entered into the Journal of the House of Commons. No such order appears on the 15th April; nor does this speech appear to have been entered, and afterwards erased, according to the King's recommendation.

//364-1// It appears from these accounts, that in the year 1421, the receipts at the Exchequer exceeded the payments made there by £. 3,507;—and that in the year 1433, the King's expences exceeded his income by £. 35,000 per annum. To account for this extraordinary difference in this very short period, it should be observed, that the latter account takes in all the articles of expence of the Queen, the King's Wardrobe, Household, Embassadors, Pensions, &c. for which charges in the former account, only the surplus of £. 3,507 is provided. Though Cromwell states the expence to exceed the income by £. 35,000 per annum. I cannot, from the account itself make it so much.—If I rightly understand it, it says, The net annual income was £. 26,946 2s. 10d. and the annual expence was £. 56,878 4s. 10d. Amongst other articles, is an allowance for wages for three lions in the Tower, at sixpence per day each, and sixpence to each of their keepers. The Duke of Orleans, Duke of Bourbon, and Count d'Eu, who had been made prisoners at the battle of Agincourt in 1415, were at this time still here.—The allowance for the Duke of Orleans was £. 243 per annum.—For the Duke of Bourbon, £. 266.—And for the Count d'Eu £. 160 per annum. But all the several articles in this state of the revenue and expenditure in 1433 are curious, and worth looking into. The Duke of Orleans continued here till 1440, when he was ransomed for 54,000 nobles or £. 18,000 sterling.

By the Chronicon Pretiosum of Fleetwood, p. 52, it appears, that at this period, (the beginning of the fifteenth century) £. 100 would make about double that sum of our present money, and, by the cheapness of provisions, would be equivalent to £. 600.

//380-1// The meaning of this word *Nones* is a contractor, or rather a corruption of the old French word, that is used in this grant, *neofisme*: i. e. *Neuviesme*, a ninth. In the Rolls of Parliament here referred to, in the 14th Ed. III. Part the First, N<sup>o</sup> 6 and in the second Part of the same year, N<sup>o</sup> 5.—The *neuviesme garbe*, the *neuviesme toison*,



and the neuviesme aignel, i. e. a ninth of their corn, wool, and lambs, is granted, and directed to be sold. See Rolls of Parliament, Vol. II. p. 112, and 117.

//382-1// Maltôte—Exaction indûe—Le public appelle ainsi par abus toute forte de nouvelles impositions. *Diction. de L'Academie.*

//392-1// This certainly alludes to Annesly Earl of Anglesey, who took the lead in the present dispute, on the part of the House of Lords; and to the Lord Ashly, afterwards Earl of Shaftsbury, who was also one of the Lords appointed to manage this conference.

//393-1// This Attorney General was Sir Heneage Finch, afterwards Lord Chancellor, and created Earl of Nottingham.—He had been appointed Attorney General on the 10th May 1670; and was made Lord Keeper on the 9th November, 1673, on the removal of Lord Shaftsbury.—He was ancestor of the present Earls of Winchelsea and Aylesford.

//409-1// This Report is not entered in the Journal; nor do I know, that it has ever been printed. The original is preserved, amongst other papers of the same period, in the office of the House of Commons.