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PRIVILEGE OF PARLIAMENT

John Hatsell, *A Collection of Cases of Privilege of Parliament: From the Earliest Records to the Year 1628* (London: Printed by H. Hughs, for J. Dodsley, in Pall-Mall, M.DCC.LXXVI. [1776]).

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A
COLLECTION OF CASES
OF
PRIVILEGE OF PARLIAMENT,
FROM
THE EARLIEST RECORDS
TO
THE YEAR 1628

LONDON:
PRINTED BY H. HUGHS,
FOR J. DODSLEY, IN PALL-MALL.
M.DCC.LXXVI.

TO
THE RIGHT HONORABLE
JEREMIAH DYSON,
COFFERER TO HIS MAJESTY'S HOUSEHOLD,
AND
ONE OF HIS MAJESTY'S
MOST HONORABLE PRIVY COUNCIL
THE FOLLOWING COLLECTION OF CASES
OF PRIVILEGE OF PARLIAMENT,
IS,
WITH THE MOST SINCERE RESPECT,
AND GRATITUDE
INSCRIBED,
BY HIS FAITHFUL,
FRIEND AND SERVANT,
JOHN HATSELL.

PREFACE.

The following Cases are part of a larger Collection, extracted from the Journals of the House of Commons, and other Parliamentary Records. The Compiler of these has always been of opinion, that the easiest method of conveying to the Public the very useful information contained in these voluminous Collections, is, to select particular heads or titles; and, having brought together every thing that has any reference to any of these heads, to digest the whole in a chronological order, and to publish it in a separate volume. He has, upon this principle, ventured to send forth this work, relating to the Privilege of Members of the House of Commons, only by way of specimen, and as an example for those who may adopt this idea, and who may have more leisure to pursue so laborious an undertaking.

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The Reader will not suppose, that the Observations upon the several Cases are made with a view of declaring what the Law of Privilege is, in the instances to which these Observations refer: they are designed merely to draw the attention of the Reader to particular points, and, in some degree, to assist him in forming his own opinion upon that question.

This Work will be therefore considered only in the light of an Index, or a Chronological Abridgment of the Cases to be found upon this subject. The Publisher cannot but suppose, that, notwithstanding his most accurate search, many instances must have escaped his observation; he has however endeavoured, with great diligence, to examine every Work, which he thought might contain any thing relating to this matter; and pretends to no other merit, than the having faithfully extracted, and published, what appeared to him essential for the information of the Reader.

Perhaps some apology is necessary, for his having presumed, without leave or any previous notice, to inscribe this Collection to a Person, whose universal knowledge upon all subjects, which relate to the History of Parliament, will render this, and every work of this {vii} sort, to him unnecessary: But the Publisher could not prevail upon himself to omit such an opportunity of expressing to that Gentleman, and to the World, the very grateful sense he entertains of that kindness and generosity, which first placed him, even without any application on his part, in a situation, that has made it his duty to apply himself more particularly to the examination of the Journals of the House of Commons, and to studies of a similar nature.

The public character of that Gentleman, his comprehensive knowledge, his acuteness of understanding, and inflexible integrity, are sufficiently known and acknowledged by all the world: but it is only within the circle of a small acquaintance, that he is admired as a man of polite learning and erudition, a most excellent father, and a most valuable friend; they only who have the pleasure and advantage to know him intimately, know, that the warmth and benevolence of his heart, are equal to the clearness and sagacity of his head.

A very ill state of health has, at present, unfortunately withdrawn this Gentleman from the service of the Public; but all who remember his abilities in {viii} Parliament, will lament the loss of that information, which his knowledge of the History, and of the Laws and Constitution of this Country, enabled him to give, and which he was at all times so ready, in private as well as public, to communicate.

Cotton-Garden,

April 5, 1776.

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CHAP. I.
FROM THE EARLIEST RECORDS
TO THE END OF THE REIGN OF HENRY VIII.

As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be intitled to certain Privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in this kingdom, that the Members, who compose it, should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so {2} immediately necessary for the great services of the nation: it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not intrusted with this most valuable franchise, are by law obliged to pay obedience.

What is the extent of these Privileges, and how long their duration, has been always uncertain, and frequently matter of dispute; nor are these points settled even at present, except in those particular instances where Acts of Parliament, or the Resolutions of either House of Parliament, have ascertained and defined them. The only method therefore, of knowing what are the Privileges of Members of the House of Commons, is to consult the Records of that House, and to search into the History of Parliament for those Cases, in which a Claim of Privilege has been made, and to examine whether it has been admitted or refused. For this purpose, as the Journals of the House of Commons are preserved no further back than from the first year of the reign of Edward VI, and are indeed but concise and imperfect till the time of James I, I have found it necessary to look into the Rolls of Parliament, and into other Records; and having extracted every Case that has occurred to me in this search, I have here stated them at length, with such observations as have suggested themselves to me on the circumstances of the particular Case.

1. The first is that cited by Sir Edward Coke in the Fourth Institute, page 24, under the title "Privilege of Parliament;" The Case of the Matter of the Temple in {3} the eighteenth year of Edward I, and is entered in the Roll of Petitions in Parliament, 18 Edward I. //3-1//

‘Mag’r Militie Templi petit ...’

\\See Table 1\\

“Whereby,” says Sir Edward Coke, “it appeareth that a Member of the Parliament shall have Privilege of Parliament, not only for his

servants, as is aforesaid, but for his horses, &c. or other goods distrainable.”

2. The next Case is also cited in the Fourth Institute from 18 Edward I, fol. 1. It is quoted at length in Prynne's Fourth Register, p. 820, and in Ryley's Placita Parliamentaria, p. 6, and is as follows: //3-2//

Proceedings against Bogo of Clare and the prior of Holy Trinity, London for citing Edmund, earl of Cornwall, to appear in court christian at a session of parliament

The suit of the earl of Cornwall against Bogo of Clare, and the prior of Holy Trinity, London. The prior of the church of Holy Trinity, London, and Bogo of Clare were attached to answer to the lord king, Peter de Chavent, the lord king's steward, Walter de Fanecurt, {4} the lord king's marshal, Edmund earl of Cornwall, and the abbot of Westminster on this matter: that, whereas the same earl, at the king's command, had come to this his parliament in London, and was crossing the middle of the Great [Col. b] Hall of Westminster to the lord king's council, where anyone of the realm and within the peace of the lord king is entitled to come lawfully and peacefully, and pursue his business, without receiving any citations or summons there, the aforesaid prior, at the instigation of the same Bogo, on the Friday before the feast of the Purification of the Blessed Mary, this year, cited the aforesaid earl in the aforesaid Hall to appear on a certain day in a certain place before the archbishop of Canterbury to answer whatever might be alleged against him, in manifest contempt of the lord king, and to his dishonour, to the sum of £10,000, and to the injury of the liberty of the church of the aforesaid abbot, granted by the Roman Curia, since the aforesaid place ought to be completely exempt from the jurisdiction of any archbishop or bishop, under the liberties granted to him and to his church of Westminster, and to the damage of the said abbot, to the sum of £1000, and to the manifest prejudice of, and no little damage to, the office of the aforesaid steward and marshal, since it pertains to their office and to no one else to make summonses and attachments within the palace of the lord king; and also to the damage of the aforesaid earl, to the sum of £5000; and they produce suit in support of this, etc. aforesaid earl, as has been said above; and like wise the aforesaid Bogo fully acknowledges that he caused the aforesaid earl to be cited, as has been said above, but he was exempt, and that he did not mean any contempt to the lord king, or any prejudice to his officials, through

having that citation made; and he puts himself {5} entirely and utterly at the king's grace, mercy and will.

And because the aforesaid prior and Bogo acknowledge that the aforesaid citation was made by them on the aforesaid day in contempt of the lord king, it is decided that the aforesaid prior and Bogo should be sent to the Tower of London, and kept there at the lord king's pleasure, etc. And with regard to the aforesaid earl and abbot, they are adjourned to the Friday on the morrow of the Purification of the Blessed Mary, etc. Afterwards the aforesaid Bogo found the guarantors named below, to satisfy the lord king concerning the aforesaid trespass before his departure from Westminster from the present parliament; and if not, they will return him in person to the Tower of London when the lord king leaves: namely John d'Eyville, Henry Hose, Robert le Vel, Ralph Bluet, Roland of Earley, Robert of Radington, William de Rye, William of Narford, and William d'Evereux, who stood surety for him in the aforesaid form.

And the aforesaid prior found the guarantors named below, namely, Robert of Melkley, Robert of Graveley, William de Melkeshop, and William of Sutton, who stood surety for the same prior in the same manner that the aforesaid John d'Eyville and the others named above had stood surety for the aforesaid Bogo. Afterwards the aforesaid Bogo came, and agreed a fine with the lord king for the aforesaid trespass to the sum of two thousand marks, which was accepted with the same guarantors, etc.

And, with regard to the aforesaid earl, the aforesaid Bogo afterwards appeared, and gave surety for £1000 to the same earl for the trespass perpetrated against him; and the same earl, at the request of the bishop of Durham, the bishop of Ely and others of the council of the same lord king, remitted to the same Bogo the aforesaid £1000, except for the sum of £100, etc.

And be it known that the guarantors of the aforesaid fine are admitted before the treasurer at the exchequer, by the command of the lord king; and the aforesaid prior is sent there to do what the treasurer will tell him on behalf of the lord king, etc. \\This text is drawn from *The Parliament Rolls of Medieval England* I:174-176; the explanatory note appears at the bottom of Table 1\\

{6}

This Record does not appear to me to warrant the conclusion Sir Edward Coke draws from it, viz. “That the same Privilege holdeth in case of Subpoenae, or other process out of any Court of Equity.” The contempt in this Case seems to have been not so much in breach of the Privilege of Parliament, as that the citation was served in the King’s palace, and in a privileged place belonging to the Abbot of Westminster, contrary to the rights of the King’s servants, the Lord Steward and Lord Marshal, and of the aid Abbot. And Prynne’s observations upon it in the Fourth Register, p. 822, are in my opinion sensible and well founded.

//6-1//

3. The third precedent cited by Sir Edward Coke, is that of Writs of Supersedeas issued to the Justices of Assize in favour of Members of Parliament. The writs are at length in the Fourth Register, p. 834, and in the Appendix to Ryley’s *Placita Parliamentaria*, p. 551, and are as follows: //6-2//

‘Claus. 8 Ed. II. Memb. 22. Dorso.

‘Rex dilectis & fidelibus suis Henrico ...’

\\See Table 1\\

{7} {8}

It is very remarkable what Mr. Prynne observes, that these two precedents of “General” Writs of Supersedeas are singular, there being none of this kind extant on record before or since this 8th year of Edward II. — And they are the more extraordinary, as it is 150 years before the House of Commons appears to have claimed the Privilege, that their Members should not be impleaded during the sitting of Parliament. //8-1//

These writs were certainly issued upon those very rational principles, to which I have before alluded, “That the attendance on Parliament ought not to be interrupted by the process of any inferior Court in matters of Civil Jurisdiction;” a maxim that must have been coeval with the existence of Parliaments, and which must by some method or other have been always adhered to and enforced.

{9}

4. The next and last Case produced by Sir Edward Coke, is thus cited from the Patent Rolls in the Tower, of 10 Edward III. Mem. 23, in the Fourth Register, p. 829.

‘Rex omnibus Ballivis et Fidelibus suis ad quos &c. ...’ {10}

To which there is this additional memorandum subjoined in the Patent Roll:

‘Et Mem^{dum} quod Radulphus de Upton ...’

\\See Table 1\\

It will certainly be very difficult for the most attentive reader of this Case to guess in what manner it is the least applicable to the Privileges of either House of Parliament: The only crime of Henry de Harewedon, and the others, seems to have been serving Ecclesiastical Process in the Court of Chancery, in breach of the known liberties and exemptions of the King's Courts. Sir Edward Coke however, in order to bring it within the subject of which he is treating, {11} subjoins a note in the margin, //11-1// "That this Thoresby was then Clerk of the Parliament," but does not refer to any History or record to prove the truth of this anecdote. Prynne, in the Fourth Register, p. 830, positively denies it; but even admitting that he was so, the punishment inflicted upon the offenders does not seem to have been for any breach of the Privilege of Parliament, which is not so much as hinted at, but for their open contempt and violation of the franchises of the Court of Chancery.

These are all the Cases which Sir Edward Coke produces under the title of "Privilege of Parliament." What authority they will have, or how far they are applicable, to prove the existence of any Privilege now claimed by Members of the House of Commons, must be left to the judgment of the reader. It would be very unbecoming in me to pretend to offer my opinion against that of this great Oracle of the Law; I can therefore only refer to Prynne's Animadversions on the Fourth Institute, and to the Fourth Part of the Register of Writs, where there will be found a very laboured collection of arguments on the other side of the question.

5. There is a Record cited in Prynne's Animadversions, p. 20, relative to this subject, and prior in point of time to the last Case of Sir Edward Coke; it is an original Writ of the ninth Year of Edward II. found in the White Tower chapel; and is as follows:

{12}

'Edwardus Dei gratia Rex Angliae &c. ...'

\\See Table 1\\

Mr. Prynne adds, that he never was able to find what Judgment was given for the King or Prior upon this Writ.

{13}

6. In the Parliament of the fifth year of Henry IV. there was a petition from the Commons to the King translated by Elsynge, //13-1// but thus entered at large on the Parliament Roll; //13-2//

'Item priort les Communes, q come ...'

\\See Table 1\\

What this sufficient remedy was does not appear; Elsynge arguing from the Case of the Earl of Cornwall mentioned {14} before, N^o, 2, supposes that as the law then stood, "the party contemning the Privilege of Parliament was to be committed to prison, to make fine and ransom to the King, to render to the party grieved such damages as the

Lords of the Parliament shall award; and to answer the King's Steward and Marshal, if the contempt be within the Verge, for the wrong done to them; which (says he) is a greater punishment than the Commons required; and happily they knew it not; but this being an antient custom, and due by prescription, the Lords thought it more honourable to retain it than to enact a new law," p. 187.

This interpretation of the answer appears to me extraordinary, and not so probable as what Prynne supposes in the Fourth Register, p. 725, "That the King refused to grant this their petition or pass it into a future standing law, because he reputed the penalties in it against such as arrested any Members or their Servants by legal process, though knowing them to be such 'by fine and ransom to himself, and treble damages to the party,' to be overharsh and penal, against such who had just cause of action against them, and a means to obstruct the free course of "the common law and Justice; their prevention of arrests or enlargement by a Writ of Privilege or Habeas Corpus, "which the law allowed them in such cases, (if not in execution) being a sufficient remedy, whereby the prosecutor lost the benefit of his arrest, and was put to the charge of new process without any arrest, during the session."

I do not however agree with Mr. Prynne in supposing that this petition was grounded on a violent assault which was made, during the fitting of this Parliament on one Richard {15} Chedder, a menial servant attending upon Sir Thomas Brooke, one of the Knights for the county of Somerset; the subject matter of it is totally different, and complains only of Arrests or Imprisonment by virtue of legal process in Actions of Debt, Account, Trespass, or other Contract; besides Chedder's Case there was a particular petition of the Commons in his behalf, which states a very different offence, and prays a very different remedy.

7. It is as follows:

'Rot. Parl. 5. Hen. IV. N^o. 78. //15-1//

' Item priunt les Communes, q come ... '

\\See Table 1\\ {16}

The conclusion of this answer with respect to "similar Cases in time to come" certainly made this a general law, and so it is considered by all the writers who have mentioned this Case, and is accordingly entered on the Statute Roll, 5 Hen. IV. ch. 6, and continues a subsisting law at this day. No notice is taken in the answer, of the very rigorous punishments prayed for by the Commons against such as make the assault, or maim, &c. it being thought perhaps, as in the former Case, that the present remedy was sufficient, and therefore no new punishment is created by this law for these offences; it only gives a remedy to compel the person {17} complained of to appear then to be dealt with according to the law

as it then stood. The title therefore of this act, as it is in the Statute Book, "The Penalty of making, an assault upon any Servant of any Knight in Parliament," is by no means just; as the statute is only in the nature of a proclamation to compel the offender to appear, and declares what shall be the penalty in case of non-appearance. This construction of the statute is confirmed not only by this opinion of Elsynge, p. 191, who says, "this law was made to provide for him that could not be apprehended after the fact is done" but by its being found necessary, within a very few years after, to make another Act of Parliament "for the punishment of those that make assault upon any that came to the Parliament," 11th Henry VI. chap 11; an act, which comprehends both these points, and which, after reciting, word for word, the penalties inflicted by the statute of 5th Henry IV. chap, 6, upon such offenders as should not appear, goes on and declares, "That if he do come and be found guilty by Inquest, by Examination, or otherwise, of such Affray or Assault, then he shall pay to the party so grieved his double damages found by the Inquest, or to be taxed by the discretion of the said Justices, and make fine and ransom at the King's will." Mr. Elsynge says, "Constat that the said John Sallage did yield himself according to the proclamation" but I don't find that it is any where recorded what punishment he underwent, and indeed by the act of 11th Henry VI. following so soon after, it looks very much as if, at this period, no particular penalties were ascertained by the law for this and similar offences.

8. The next Case in point of time is that of Larke, in the eighth year of Henry VI. which is thus entered on the Roll:

{18}

'Rot. Parl. 8 Hen. VI. N^o. 57. //18-1//

'Priount les Communes

\\See Table 1 \\

{19} {20} //20-1// //20-2// {21}

9. In the tenth year of Henry VI. the following Record is entered on the Roll, N^o. 39. //22-1//

'Priount les Communes,'

\\See Table 1\\

{23} {24}

10. However, the next year, the same mischief continuing and it being found necessary, from the frequent assaults made on Members attending their duty in Parliament, to apply some more speedy and effectual remedy than what the common law allowed, the House of Commons again are obliged to petition the King for redress which they do in the following manner:

'Rot. Parl. 11 Hen. VI. N^o. 60' //24-1//

\\See Table 1\\
{25} {26} {27} //27-1//

11. Notwithstanding these repeated Acts of Parliament to secure the Members of both Houses from any insults on their persons, such was the licentiousness of the times, or rather, so slow and ineffectual were the remedies given by these laws, that in a very few years the Commons again apply to the King for farther provisions to suppress this very dangerous practice.

‘Rot. 23 Hen. VI. N^o. 41 //27-2//

‘Prayen the Communes in this present Parlement assembled ...’

\\See Table 1\\

{28} \

//28-1//

12. The next in point of time is the famous Case of Thomas Thorpe, who was Speaker of the House of Commons and being arrested at the suit of the Duke of York, and therein {29} prison, the Commons make the following application to the King for his release:

‘Rot. Parl. 31 & 32 Hen. VI. N^o. 25, 26, 27, 28, 29 //29-1//

‘25. Fait a remembrer’

\\See Table 1\\

{29} {30} {31} {32} {33} {34} {35} //35-1//

13. In the 39th year of Henry VI. the Commons petition the King in favour of Walter Clerke, a Member then in prison:

‘Rot. Parl. 39. Hen. VI. N^o 9. //35-2//

‘Item, quedam alia Petitio’

\\See Table 1\\

{36} {37} {38} {39} {40} {41} //41-1// //41-2//

The next two Cases which occur, are not taken from the Rolls of Parliament, but are copied by Prynne, in the Fourth Register, p. 752, from the Records in the Court of Exchequer.

14. The first is that of Donne and Walsh, twelfth year Edward IV. Rot. 20.

‘Bartho. Donne brings his Bill against John Walsh, a servant of Henry Earl of Essex’

‘Edwardus Dei gratia Rex Angliae’ {42}

\\See Table 1\\

{43}

15. The next Case is that of Ryver and Cosins, taken from the Plea Roll of the Exchequer, Hil. Term, 12^o Edw. 4th. Rot. 7. Here the defendant pleads the King's Writ, in which the custom is set forth as follows:

‘Edwardus Dei gratia Rex &c. Thef.’

\\See Table 1\\

{44}

16. Within two years after this opinion formally delivered from all the Judges of England, that persons entitled to Privilege, *capi aut arrestari non debeant ratione alicuius transgressionis &c.* occurred the Case of a Member of the House of Commons arrested, sitting the Parliament, and detained in Newgate for debt.

The Record, as entered in the Parliament Roll, fourteenth Edward IV. N^o. 55, //44-1// is as follows:

‘Prayen the Commens in this present Parlement’

\\See Table 1\\ {45} {46} {47}

//47-1//

{48}

17. Three years after this, happened the Case of John Atwyll, Burgess for Exeter, which is thus entered on the Parliament Roll. //48-1//

‘Rot. Parl. 17 Edw. IV. N^o. 35.

‘To the Kyng oure Sovereigne Lord’

\\See Table 1\\

{49} {50}

There are several matters worthy of observation in this Record. (1.) This is the first instance I have met with, in which the Commons themselves have claimed the Privilege of not being impleaded in any personal action, during the time of Privilege; it is also remarkable, that though they entirely supersede these Writs of Execution, as having been obtained contrary to their Privileges, yet they pray no redress for this so extraordinary a violation of them. (2.) There is another claim made by the Commons in this Petition, of which kind nothing has occurred since the Case of the Prior of Malton, N^o. 5, in the ninth year of Edward II. above one hundred and sixty years before, viz. “that of not being attached in their horses or necessary goods and cattales;” the King's answer, however, being general, “Le Roy le voet,” confirms this to have been the Law of Parliament and as Prynne observes, in the Fourth Register, p. 775, “This was the judgment of the King, Lords, Judges, and Commons too in that age, that the Members Privilege extended to protect their persons, horses, and necessary goods, which they carry with them, from arrests and executions during the Parliament, and {51} and in coming to, and returning home from it.” (3.) //51-1// They here certainly declare, that it is contrary to the Privilege of Parliament, that the body of any Member should be put in execution, sitting the Parliament and yet we have seen, in several foregoing instances, that, when this Privilege was broken, and the body of a Member was put in execution, fitting the Parliament, it was found necessary to make a special Act of Parliament for his release; which seems to imply that the common law had not in this instance provided any remedy for this right.

(4.) They consider the prosecuting and obtaining these Writs of Execution, sitting the Parliament, so totally irregular, and against their Privileges, that they Supersede the operation of them even in favor of Mr. Atwyll's heirs and executors. And yet, (5.) They think themselves obliged, at the same time, to save to this creditor his right to sue these Judgments and Executions after the expiration of the Parliament.

18. Notwithstanding this formal claim by the House of Commons, of their Privilege of not being impleaded in any Personal Action, and that this claim was admitted by the Lords, and confirmed by the King, the next Case, which occurred within a very few years, and in which the defendant sets forth what he conceives to be the custom and law of Privilege of Parliament, omits this privilege of not being impleaded in Personal Actions. Indeed we have seen in the two former Cases, N^o. 14 and 15, that when this was attempted to be introduced as law, the Barons of the Exchequer, supported by the opinion of the rest of the Judges, had disallowed it.

The Record is as follows: //51-2//

‘Hil. I. Hen. VII. Rot. 104.— Roo v. Sadcliffe.

‘Et prædictus H. venit,’ {52}

\\See Table 1\\

It may, indeed, be said that it was not necessary to state in this writ any more of the custom than was absolutely sufficient for the particular situation of the defendant: Sadcliffe was arrested and imprisoned under Mesne Process; he only wanted to be released; it was, therefore, not incumbent upon him to set forth in the writ any thing of the custom of not being liable by the Privilege of Parliament to be impleaded; {53} and that therefore the authority of this Case, as to no such custom existing, is of no weight.

Hitherto we have seen that when a Member, or his servant has been imprisoned the House of Commons have never proceeded to deliver such person out of custody by virtue of their own authority; but, if the Member has been in execution, have applied for an Act of Parliament to enable the Chancellor to issue his writ for his release, or if the party was confined only on Mesne Process, he has been delivered by his Writ of Privilege, which he was entitled to at common law. The next Case which occurs is therefore remarkable as it introduces a new mode of proceeding in this particular;

‘19. In the Lent season, whilst the Parliament yet continued, one George Ferrers, Gentleman, servant to the King’

\\See Table 1\\

{54}{55}{56}{57}

Such is the History of this transaction, as related by Hollinghead, to have passed in the thirty-fourth year of the Reign of Henry VIII. It is

certainly very extraordinary, that every {58} Privilege, which has been in later times claimed by the House of Commons on the arrest of any of their Members, should be here insisted on and exercised to as great an extent in this first instance, as it has ever been since admitted by law to exist. (1.) First, the Member arrested was delivered, not by virtue of an Act of Parliament, though in execution, nor by any Writ of Privilege, but by the Serjeant, without any other warrant than the mace, even though the Lord Chancellor offered such a writ. (2.) The parties, who opposed his delivery were imprisoned, by the House of Commons, some in the Tower, some in Newgate. (3.) The creditor himself, who procured the arrest, was also committed for his contempt of the Privilege of Parliament. And these powers so exercised, though I have not found the least trace of any one of them in the foregoing instances, were admitted by all the Judges in England to be legal. It is laid, indeed, in Moore's Reports, //58-1// that afterwards in the sixth year of Queen Elizabeth, Dyer, when Chief Justice said, "That if a man is condemned in debt or trespass, and is elected a Member of Parliament, and then is taken in execution, he cannot have the Privilege of Parliament;" and so it was held by the sages of the law, in the Case of Ferrer's, in the time of Henry VIII. Et coment que le Priviledge a ceo temps fuit a luy allow, ceo fuit minus just." — But Dyer himself citing this Case of Ferrers, in his Reports, //58-2// mentions it without blame.

There are, however, so many new and extraordinary circumstances attending this Case of Ferrers, that I own I am apt to suspect that the measures which were adopted, and the doctrine which was now first laid down with respect to the extent of the Privileges of the House of Commons, were more owing, {59} to Ferrers's being a servant of the King's, than that he was a Member of the House of Commons. The King, in his argument in favour of Parliamentary Privilege, relies much upon this; and it is difficult to explain, why, if Ferrers had been considered only in the light of a Member, the Commons, in the Bill which they passed to restore to the creditor his debt against the principal, did not also revive it against the surety, agreeable to the principles both of Law and Equity, upon which they had acted in every former instance.

//59-1// Prynne, in the Fourth Register, //59-2// very justly observes, that there were aggravating circumstances attending the manner of the arrest, which might provoke this extraordinary interposition of the House of Commons. — (1.) Ferrers was only security for the debt. (2.) He was arrested as he was actually going to the Parliament House. (3.) White, who procured the arrest, knew him to be a Member, and a servant of the King's. — The mode of interposition was however certainly new, and perhaps Lord Herbert judges right, when he supposes it gained the King's approbation, "that He, whose master-piece

it was to make use of his Parliaments, might not only let foreign Princes see the good intelligence between him and his subjects, but might also keep them all at his devotion."

20. Within two or three years after this very memorable Case, occurs that of Trewynnard, in the 36th and 37th Henry VII. of which the Record is as follows: //59-3//

{60}

'Hil. 36 Hen. VIII. Rot. 39. in Ban. Regis.'

'Laurence Courtney and Richard Tomyewe, executors'

\\See Table 1\\

{61} {62} //62-1// //62-2// //62-3// {63} {64}

We must remember, in reading this Report, that Dyer was not at this time pronouncing the law as a Judge, but arguing in support of his client; and therefore, as it was his duty to lay down the extent of Privilege of Parliament, as large as possible, it may fairly be concluded, that the law of Privilege was at this time confined within the limits that he has here described. This consideration may excuse me for presuming to differ from so great an authority with respect to his opinion on the second point, viz. "That the party was discharged from the Execution only for a certain time." All the preceding Cases, confirmed by the subsequent statute of James I. shew the law was otherwise, and that the Writ of Execution, when executed, could not be revived but by Act of Parliament.

It should seem, from the concluding words of the Report, that this Writ of Privilege was directed to be issued by an Order of the House of Commons; and though nothing appears in the Record to justify this supposition (nor has any thing of this sort yet occurred in any of the former instances) we shall see that, within a very few years, this idea was adopted by the House of Commons; and it was established, that no person should apply for a Writ of Privilege without a warrant for that purpose first obtained from the Speaker. — It appears, from the dates of the proceedings in this business, that this Sessions of Parliament began on the 14th of January; that Trewynnard had surrendered himself on the 12th of November preceding; that the Writ of Privilege was issued on the 22d of February; and that he was not delivered out of prison till the 20th of March. Why then did the House of Commons, who had so lately been alarmed, and proceeded in so extraordinary a manner on the imprisonment of Ferrers, suffer this Member to {65} continue in custody above two months after their meeting? Perhaps his being in custody at the commencement of the Sessions, on a judgment issued during a very long prorogation, might, in their opinion, distinguish this case from that of a Member arrested as he was coming to the Parliament House; or perhaps, as I have suggested before, they would not have acted as they

did in the case of Ferrers, if he had not been a servant of the King, and if, for that reason, the affront had not been considered by the King's Privy-Counsellors, and those of his Privy Chamber, of whom there were not a few, as offered to the King himself.

These twenty Cases, though perhaps there may be many more, are all that I have met with, prior to the Reign of Edward VI.

And here it may not be disagreeable to the Reader to stop for an instant, and to endeavour to collect from these instances; what was the more ancient doctrine of the extent of Privilege of Parliament, as claimed by Members of the House of Commons.

And first, It has hitherto been confined expressly to the Members themselves, and to their servants, "familiares," waiting on them during their attendance in Parliament.

Secondly, It has not been extended, in point of duration, beyond the time of their coming to Parliament, their residing there, or returning to their homes; except in the Writ of Privilege sued out in the last Case of Trewynnard, which was to persons "venientes seu venire intendentes."

Thirdly, No Case has occurred where the suit or prosecution, against the person claiming Privilege, has been for any {66} other than a civil cause, "transgressionis, debiti, computi, conventionis, aut alterius contractus cuiuscunque." Indeed, in Lark's Case, in the year 1430, the Commons state their Privilege "to be free from all arrests, except for treason, felony, or surety of the peace," and in Thorpe's Case, in 1456, the Judges declare, "that if any Member of Parliament be arrested in such Cases as be not for treason, or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests, and make an attorney, so that they may have their freedom, and liberty freely to intend upon the Parliament." But in neither of these Cases, nor in any other that we have yet met with, is there any proceeding, to explain the precise meaning of these words "Surety of the Peace," or to shew how far they were then understood to extend to indemnify persons, entitled to Privilege of Parliament, from any species of criminal prosecution.

Fourthly, Though the claim of personal Privilege, or of being free from arrests in civil suits, is general, I cannot, as I said before, but suspect, as well from the expressions used by the Chief Justice, in delivering the opinion of the Judges in Thorpe's Case, "condemnation had before the Parliament" as from other circumstances, that originally it was understood to extend only to persons arrested on mesne process, and not to those taken in execution; and I am supported in this opinion, by the argument, which arises from the remedy provided by the Common Law for the delivery of persons arrested on mesne process, viz. "a Writ of Privilege;" whereas in the other case, we have seen that it was

thought necessary to apply for a special Act of the Legislature, not only to enable the Chancellor to issue his writ for the release of the Member so taken in execution, but even to indemnify him for the issuing {67} that writ, and the Sheriffs and other Ministerial officers for obeying it. And, when the Judges say, in Thorpe's Case, "that the person arrested is to be released and to make his attorney," this seems to imply that he is to be released only on some process prior to the final judgment; for to a judgment I apprehend the party could not answer by his attorney, but, if he does not satisfy the debt and costs, must suffer in his proper person.

Fifthly, The only Cases I have hitherto met with, which seem to imply a Privilege, that the goods of a Member shall not be taken in execution, are (1) That of the Master of the Temple, N^o 1. (2) The Case of the Prior of Malton, N^o 5. (3) Atwyll's Case, N^o 17. And this last is the only one that relates to Members of the House of Commons; and in the two latter of these Cases, the claim is expressly confined to such goods and chattels, as it was necessary the Member should have with him during his attendance in Parliament, or in returning to his home.

There is an expression in Dyer's Argument in Trewynnard's Case, from which one may collect that it was his opinion, "that the lands or even goods of a Member were liable to execution, even during the sitting of Parliament;" for he says, "Et le Case icy est melior, entant que Execution fuit sue durant le Parliament, en quel case le Plif. fuit al Election de suer Execution, de son corps, ou de ses terres et biens."

Sixthly, The last species of Privilege which may be collected from any of the foregoing Cases, is, that of not being impleaded during the attendance in Parliament. I have {68} observed before, that, except the Case of Bogo de Clare, N^o 2. and the Writs of Supersedeas, N^o 3. cited by Sir Edward Coke, nothing appears in favour of this claim till the two Cases in the Exchequer, N^o 14. and 15. in the year 1474: in which the Barons, assisted by the rest of the Judges, declare that no such custom did then exist. In Atwyll's Case, 17 Edward IV. where the Commons, for the first time, insist on the Privilege; of not being impleaded in any personal action, though they complain that the judgments obtained against Atwyll were on feigned informations, he being then attending in Parliament, and not having knowledge of the said condemnations, yet notwithstanding this irregularity, so subversive of their Privileges, and indeed contrary to the principles of natural Justice, they think themselves bound to save to the creditor his right to a judgment, and new executions, to be sued after the conclusion of the Parliament.

Seventhly, We have seen in these several instances the different modes, by which persons, who have been arrested or imprisoned, have been released from their confinement. In the Cases of Lark N^o 8. of Clerk N^o 13, and of Hyde N^o 16. which were of persons taken in execution after

judgment, no Writ of Privilege appears to have been applied for, but the Commons went by petition to the King and obtained a special Act of Parliament for their release. In Sadcliffe's Case N^o. 18 where the Defendant was arrested on mesne process a Writ of Privilege issued, under which he was set at liberty by order of the Court. It does not appear that any judgment was ever given in the Case of Trewynnard N^o 20. from whence one might have collected, how far the Sheriff was justified, by law, in obeying that Writ of Privilege, which issued to release a Member then, a prisoner in execution. The only instance {69} in which we have seen the House of Commons interpose by their own authority, and deliver their Member without the assistance of a Writ of Privilege, or of an Act of Parliament is that of Ferrers; and of this, and the several circumstances attending it, having before given my opinion I shall leave it to the judgment of the Reader.

CHAP. II.
FROM THE REIGN OF HENRY VIII. TO THE END OF
THE REIGN OF QUEEN ELIZABETH.

We are now come to a period from which the original Journals of the House of Commons are extant; though, during the reigns of Edward VI. Queen Mary, and Queen Elizabeth, the entries are short and imperfect, and for some years, at the end of the reign of the latter of these monarchs, the Journals themselves are missing. I do not mean to infer, in the future progress of this work, every instance that is to be found of Privilege claimed or allowed, especially where there are, as in the more common complaints of breach of Privilege, several entries of the same sort: I shall confine myself to those Cases which appear to me the most interesting, and these I shall dispose in the order of time in which they happened.

21. On the 14th of January 1548, the Privilege of the House is granted to John Keysar, servant to Sir Ralph Vane. //70-1// On the 7th of February 1548, it is ordered. That J. S. servant to Sir A. Wyngfylde, shall have a Writ of Privilege. //70-2// — And there are several other similar instances in the reigns of Edward VI. and Queen Mary, of Privilege allowed to the servants of Members.

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22. On the 22d of February 1552, it is ordered, “That if any Burgess require Privilege for himself, or his servant, (he) shall, upon declaration, have a warrant signed by Mr. Speaker to obtain the Writ.” — And, “For that William Ward, Burgess of Lancaster, obtained a Writ of Privilege out of the Chancery, without a warrant from this House; it is committed to Mr. Mason, and others, to examine the matter, and certify.’ We have seen before, in Dyer’s Argument in Trewynnard’s Case, some allusion to a practice of this kind, viz. “the obtaining the previous consent of the House to an application for a Writ of Privilege.” Upon what grounds the House of Commons took this power into their hands, I will not pretend to decide; it is certain that the Speaker’s Warrant could not be, in all Cases, necessary, as the duration of Privilege, and consequently the legal right of the party entitled to a Writ of Privilege, extended even beyond the existence of the Parliament itself.

23. On the 18th of March 1552, it is ordered, ‘That Hugh Fludde, servant to Sir A. Wyngfylde, shall have Privilege.’ On the 26th a Supplication is exhibited by John Gurdon, Frenchman, to undo the Privilege granted to Hugh Fludde, ut supra: On the 28th it is ordered, ‘That a Procedendo shall be directed to set Hugh Fludde without the

Privilege of this House, as he was before, and the Serjeant to deliver him prisoner to the Sheriffs of London.' On the next day, 'where the Serjeant delivered H. Fludde to a Serjeant of London, he made an assault upon that Serjeant, and escaped out of his ward; whereof by credible report made to this House, it is ordered, that the Serjeant shall require Mr. Comptroller to send to this House, to-morrow by eight o'clock, H. Fludde, and - - - - Creketoste, to know the further {72} pleasure of the House. On the 30th, Mr. Comptroller did send Fludde and Cryketoste to the House whereupon was declared by the Sheriffs Serjeant, the misdemeanour and escape of Fludde, by the means of Cryketoste; whereupon it is ordered that Fludde and Cryketoste shall be sent prisoners to the GateHouse till to-morrow. — On the morrow, the 31st of March, it is ordered, that H. Fludde shall be remitted to the Counter of London in such case as he was before the Privilege granted by this House unto him, and if Fludde shall agree with Gurdon, that notwithstanding, to abide the order of this House, if it be sitting; and if not, then to abide

the order of the King's Majesty's Council, for the punishment of this demeanor, when it shall be ordered. For Cryketoste, it is ordered that he should remain in ward, where he was, and to bring him hither to-morrow at 10 o'clock; and it is ordered, that two Members shall make report to Mr. Comptroller of the misdemeanour of Fludde and Cryketoste: On the next day, it is ordered, that Cryketoste shall be sent prisoner to the Tower, by the Serjeant of this House: On the 5th of April he is ordered to be discharged of the imprisonment, paying his fees. On

the 15th of April, the day of the dissolution of the Parliament, it is ordered, that Hugh Fludde, prisoner in the Counter, shall so remain until he have satisfied or agreed with John Gurdon, and that then the said Fludde shall be delivered to the Serjeant of this House, and discharged of his imprisonment there, Notwithstanding any other action brought against him in London, sithence his first arrest for this matter.' — Mr. Prynne, in the Fourth Register, p. 1202, says, that "this is obscurely entered, but that it clearly implies, that Fludde was arrested and imprisoned in the {73} Counter at the suit of Gordon, either upon an execution, or for some high breach of the peace, and misdemeanour against him, of which when the House understood the truth, though they had granted him his Privilege, they recommitted him prisoner to the Counter in the same state as before, till he had satisfied Gordon." — I have entered the Proceedings in the Journal at length, in order that the Reader may be able to collect, as clearly as Mr. Prynne, for what cause Fludde was originally arrested, and why the Privilege allowed him was withdrawn. It may not be here improper to take notice of the punishments which the House inflicted on Creketoste (for his contempt

and breach of their Privileges in assisting Fludde to make his escape from the Sheriffs, to whom they had remanded him) by first: committing him to the Gatehouse and then to the Tower; because it is the first instance that has occurred, except in the Case of Ferrers, in which the House of Commons have taken occasion themselves to punish a violation of their own privileges.

24. On the 17th of April, 1554, 'Mr. Rede and Mr. Ermstead brought from the Lords a Subpœna, that Mr. Beamond, of this House, and his wife caused to be served upon the Earl of Huntingdon, in this Parliament time and prayen the order of this House, for that offence:— It is ordered, that eight of this House shall declare to the Lords, that they take this Writ to be no breach of Privilege.' Neither Mr. Prynne, nor the compilers of the Parliamentary History, who both cite this Case, attempt to give any account of the transaction, either out of what Court the Subpoena issued, for what purpose it was served, or of what nature the suit was in which this process was used.

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25. On the 23d of April, 1554, 'William Johnson, one of the Burgesses, complained upon Monyngton, who had beaten him, and put him in fear of his life: Whereupon Monyngton came to this House, and not knowing Johnson to be a Burgess, confessed he had stricken him, for that he took away a net out of Mr. Bray's House in Bedfordshire, and Johnson said it was Lord Mordaunt's net, and as UnderSheriff he took it; whereupon it was ordered, that Monyngton was sent prisoner to the Tower. — On the next day, it is ordered, that the Serjeant shall fetch Monyngton from the Tower to this House; whereupon Johnson required that he might go safe in body, and that was committed to Mr. Higham and Mr. Pollard; and thereupon Monyngton discharged.'

26. On the 20th of November, 1555, it is ordered, 'that Tussard, who caused Mr. Mynne to be arrested, shall pay the Serjeant's fees and withdraw his Action.'

27. On the 6th of December, 1555, ordered, that 'Mr. Comptroller, with other of the House, shall declare that the Lords, that their opinion is, that their Privilege is broken, for that Gabriel Pledall, a Member of this House, was bound in a recognizance in the Star Chamber to appear before the Council, within twelve days after the end of this Parliament: — Whereupon Mr. Comptroller, from the Lords, said, that they would send answer thereof to the House: — Mr. Marten and Mr. Lewis, from the Lords, said, they required six of the House to confer with the Lords, for that cause; and Mr. Comptroller, Mr. S. Petre, with four others, went up: and they reported, that the Chief Justices, Master of the Rolls, and Serjeants, do clearly affirm that the {75} recognizance is no breach of the Privilege.' It does not appear upon what grounds the Judges formed this

opinion; whether upon the nature of the suit in which the Member was bound to appear, or upon the length of time after the deliberation of the Parliament; nor do I understand for what reason the Commons made any application to the Lords in this instance. — This conference was on Friday, and on Monday the Parliament was dissolved, so that we have no opportunity of knowing how far the Commons acquiesced in this doctrine.

28. On the 29th of January, 1557, Thomas Eyms, Burgess for Thuske, complained, that a Subpoena was delivered to him to appear in the Chancery, wherefore he required the Privilege of this House: whereupon Sir Clement Higham and Mr. Recorder were sent to the Chancellour, to require that the process might be revoked. This demand it is probable the Chancellour complied with, as the Sessions continued till the 7th of March, and no further entry appears upon the subject.

29. On the 5th of February, 1557, 'A Committee is assigned to examine a matter against Walter Rawley, a Burgess complained of out of the Admiral Court by Dr. Cooke's Letter:' — And on the 8th of February, 'Walter Rawley, one of the Burgesses for the Borough of Wareham, attached in the Admiral Court, hath a Warrant to obtain a Writ of Privilege.'

We are now come to the Reign of Queen Elizabeth; and it appears from the Journals of the House of Commons, that Sir Thomas Gargrave, who was elected Speaker in Her first Parliament, did, on his being presented to the Queen, make certain {76} certain petitions for the ancient Liberties of the Commons, which were granted by Her Majesty to be used reverently and decently; but it is not there stated what these Liberties were. Sir Simonds Dewes, in the speech he has given us of Sir Thomas Gargrave expresses them as follows: //76-1// "(1.) Liberty of Access for the House to Her Majesty. (2.) Pardon for himself, if he should mistake or misreport any matter that he was ordered to declare. (3.) That they might have Liberty and Freedom of Speech. And, (4.) That all the Members of the House, with their servants and necessary attendants might be exempted from all manner of Arrests and Suits during the continuance of the Parliament, and the usual space both before the beginning, and after the ending there as in former times hath always been accustomed." — As I did not recollect to have hitherto met with any instance of Members' servants claiming an Exemption from Suits, I own. This petition of Sir Thomas Gargrave appeared to me rather extraordinary, till I found an explanation of it in the words of Sir Simonds Dewes himself, who says, p. 43, "This Exemption from Suits at Law I have caused to be inserted into the preceding Abstract of Sir T. Gargrave's Speech, because he either did petition for Freedom from Suits, as well as for Freedom, from Arrests, or he ought to have done it:"

and then refers, for his authority, to the two aforementioned General Writs of Supersedeas, in the eighth year of Edward II. N^o 3.

I trust it will not be thought an improper digression from, my subject to remark here, that it is said by Elsynge, p. 176, and by Sir Simonds Dewes, p. 42, and is also mentioned in {77} the List of Speakers Names, published by Hakewill, p. 212, That the request for Access unto his Majesty is first recorded, in the twenty-eighth year of Henry VIII to be made by Richard Riche, Speaker, but that the Speaker's petition for Freedom of Speech is not recorded before the thirty-fourth Henry VIII. when it was made by Thomas Moyle; Speaker Hakewill, in page 213, says, "The petition for Privilege from Arrests is of latter days; but it appears, in the first Henry IV. that Sir J. Cheney, then Speaker, made a general request that the Commons might enjoy their antient Privileges and Liberties, not naming any Liberty in particular; and he is noted to be the first that made this request." Elsynge, p. 184, says, "This petition for Freedom from Arrests was never made until of late years, yet this Privilege did ever belong to the Lords and Commons, and to their servants also, coming to the Parliament, staying there, and returning home." //77-1// In a debate upon this subject, on the 17th of December, 1621, Mr. Hakewill says, "The prayer for these Privileges, in the beginning of Parliaments is a matter of good manners, never used till of late years: Antiently, protestations were made by the Speaker in this point: The first prayer was in the first year of Henry IV." //77-2/ This debate had arisen on a letter sent by {78} James I. //78-1// to be communicated to the House of Commons, in which, speaking of their Privileges, he says, "We could not allow of the style, calling it *their antient and undoubted Right and Inheritance* but could rather have wished that they had said, their Privileges were derived from the grace and permission of our ancestors and us; (for most of them grow from precedents, which sheweth rather a toleration than inheritance;) the plain truth is, we cannot with patience endure our subjects to use such anti-monarchical words to us concerning their Liberties, except that they had subjoined, that they were granted to them by the grace and favour of our predecessors." This very monarchical message immediately produced a violent spirit in the House, and a Committee of the whole House was appointed to meet the next morning, "to consider all things incident to, or concerning the Privileges of the House." Accordingly, the next morning, the 18th of December, the Committee met, and having, by the assistance of Sir Edward Coke, Mr. Noy, and Mr. Glanville, prepared the following Protestation, it was reported to the House, and, having been read several times, was, upon the question, allowed, and ordered to be presently entered of Record in the Journal of the House: It was expressed in these terms;

‘The Commons, now assembled in Parliament, being Justly occasioned thereto concerning sundry Liberties, Franchises, {79} and Privileges of Parliament, amongst others not herein mentioned, do make this Protestation following; That the Liberties, Franchises, Privileges, and Jurisdictions of Parliament, are the antient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, State, and the Defence of the Realm, and of the Church of England, and the Making and Maintenance of Laws, and Redress of Mischiefs and Grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament: And that, in the handling and proceeding of those business, every Member of the House hath, and' of right ought to have. Freedom of Speech to propound, treat, reason, and bring to conclusion the same: And that the Commons in Parliament have like Liberty and Freedom to treat of those matters in such order, as in their judgments shall seem fitted: And that every such Member of the said House hath like Freedom from all Impeachment, Imprisonment, or Molestation (other than by censure of the House itself) or concerning any Bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament, or Parliament business: And that, if any of the said Members be complained of, or questioned for any thing done or said in Parliament, the same is to be shewed to the King, by the advice and assent of all the Commons assembled in Parliament, before the King give credence to any private information.” — This Protestation accorded so ill with the King's ideas of the Liberties of the Commons, that he soon after sent for the Journal Book and, in Council, with his own hand rent it out; and by a memorial of the 30th of December, which he ordered to be entered in the Council Book, “His Majesty did, in full assembly of his Council and in the presence of his Judges, {80} declare the said Protestation to be invalid, annull’d, void, and of no effect:” and not long after dissolved the Parliament. — But notwithstanding all the pains taken by this simple King to obliterate this glorious monument of the spirit and wisdom of those great men who directed the councils of that memorable Parliament of 1621, this Protestation is still happily preserved, and remains a proof of the temper and moderation of that wise House of Commons, who had been so frequently provoked by attempts on their Liberties by an injudicious and conceited Monarch. //80-1//

Perhaps I ought to make an apology to the Reader for having inserted this Protestation, and the Proceedings relating to it, out of the order of time in which they happened but I was led to do it from the reference which they bore to the subject of Sir Thomas Gargrave's speech. — To return however to the precedents:

30. On the 24th of February, 1558, 'John Smyth, returned Burgess for Camelford, upon a declaration by Mr. Marsh, that he had come to this House, being outlawed, and also had deceived divers Merchants in London, taking wares of them to the sum of three hundred pounds, minding to defraud them of the same, under the colour of Privilege of this House; the examination whereof, committed to Sir Jo. Mason, and other of this House, was found and reported to be true; and that a Writ of Cap. Utlag. against him, was directed to the Sheriffs of London, returnable 15^o Paschæ {81} next, at the suit of William Pinchebek and his wife, in a Plea of Detinue: — Upon which matters and consultation had in the House the question was asked by Mr. Speaker, If he should have Privilege of this House or not? And by the more number of voices, it seemed that he should not have Privilege: But, upon the division of the House, the number that would have him not to have Privilege, was 107, and the number that would he should be privileged was 112; and therefore ordered. That he shall still continue a Member of this House.' It should seem, from the words of the order, that the doubt was, not whether he should have a Warrant for a Writ of Privilege against the execution of the Writ of Capias Utlagatum, (which, as Prynne observes in the Fourth Register, p. 1209, was returnable on a day then to come;) but whether a man, who appeared to the House to have been guilty of so gross a cheat, ought any longer to continue a Member: And, as Prynne says, "How honourable this vote was for the House, in the case of such a cheating Member, carried, only by five voices, is not fit for me to determine."

31. On the 5th of February, 1562, 'Sir H. Jones complains all his servants to be imprisoned, and prays Privilege: but, after long arguments for the Privilege, commission was given to Mr. Sackvill, and other, to examine and certify of the matter.— On the 8th, Mr. Sydney declared, upon examination, the fray to seem to be begun in by Sir H. Jones's servants: — On the 12th of February, a Bill is brought in against Sir H. Jones's servants for the fray and riot; and the same day the Committees do certify to the House that Mr. Jones's men may be committed to the Serjeant and that he attend Mr. Recorder and Mr. Gargrave with the {82} prisoners, before the Lord Chief Justice, to enter with sureties in bond of five hundred pounds to appear, personally; in the Queens Bench, in Trinity Term next, to answer to such things as shall then be objected to them on the Queen's behalf, and so set at liberty.' I do not find that this Bill went further than the first reading; but it is remarkable that, in the interval of these proceedings about Sir H. Jones's servants for a fray and riot, it was ordered, on the 10th of February, 'That several Persons, servants to Sir H. Jones, attached in London in three actions of Trans' damage three thousand Marks, shall have a Writ of Privilege;' It is

probable that these were the same persons, and that the fray arose on their being attached in these actions; and though a Writ of Privilege was granted them for these, the House took care that they should not be set at liberty on the riot till they had entered into a very large security to appear in the Queen's Bench, to answer to what should be objected against them on account of this Breach of the Peace.

32. On the 16th of February, 1562, R. P., servant to Sir William Woodhouse, attached in London at the suit of 'T. R. Baker, in Trans', hath a Warrant for Privilege, Notwithstanding judgment given against him for four Marks.'

33. On the 8th of October, 1566 Gardiner, a Burgess, prisoner in the Fleet, desireth to be restored: — Whereupon the Master of the Rolls, and Matter of Requests were sent by the House to know the cause of the Lord Keeper;' and the next day the Master of the Rolls declared, 'from the Lord Keeper that Gardiner might be restored to this House, {83} with condition, upon prorogation or dissolution, to be estsoons prisoner.'" This is the whole of the entry, in the Journal and it does not appear to me to warrant what Prynne collects from it, //83-1// "That Gardiner was kept prisoner for a contempt of a decree in Chancery, as the Journal imports." Nor do I find any notice taken by the House of the conditions proposed by the Lord Keeper.

34. In the fourth volume of the Parliamentary History; p. 153 it is reported: "That Mr. Strickland, having in one of his speeches earnestly pressed the reformation of the Book of Common Prayer, was the next day called before the Queen's Council, and commanded by them to forbear going, to the House till their pleasure was further known: this occasioned great clamour within doors; and divers speeches and motions were made relating to Breach of Privilege, by restraint of one of their Members from attending although he was neither imprisoned nor confined. But the Speaker got up, and desired the House to forbear any further debate on that matter; and the next day Mr. Strickland came again to the House by the Council's allowance, to the no small joy of his brethren." It appears from Dewes, //83-2// that Mr. Strickland had, on Saturday the 14th of April, 1571, brought in a Bill for reformation of the Book of Common Prayer, which, among other matters forbade the kneeling at receiving the Communion. The House adjourned from this day to Thursday the 19th; and though Mr. Strickland was then under the restraint of not coming to the House, no notice is taken of it on that day: On Friday Mr. Carlton, "with a very good zeal and orderly shew of obedience, made {84} signification, that a Member of the House was detained from them; by whose commandment, or for what cause, he knew not: but forasmuch as he was not now a private man, but to supply the room, person and place of a multitude specially chosen, he thought

that, neither in regard of the country, which was not to be wronged, nor for liberty of the House, which was not to be infringed we should permit him to be detained from us, but, whatsoever the intendment of this offence might be, that he should be sent for to the Bar of this House, there to be heard and there to answer." To this Mr. Treasurer advised the House to be wary in their proceedings, and not to think worse than there was cause; "for the man, quoth he, that is meant, is neither detained, nor misused, but, on considerations, is desired to expect the Queen's pleasure, upon certain special points. — He further said, that he was in no sort stayed for any word or speech by him in that place offered, but for the exhibiting a Bill into the House against the Prerogative of the Queen, which was not to be tolerated." This doctrine being supported by another Privy Counsellor, Mr. Comptroller; they were answered by Mr. Yelverton. "First, he said, the precedent was perilous; and though, in this happy time of lenity, among so good and honourable personages, under so gracious a Prince, nothing of extremity or injury was to be feared, yet the times might be altered, and what now is permitted, hereafter might be construed as of duty, and enforced even on this ground of the present permission. He further said, that all matters not treason, or too much to the derogation of the Imperial Crown, were tolerable there, where all things come to be considered of; and where there was such fullness of power as even the right of the crown was to {85} be determined. — Besides that the speech uttered in that place and the offer made of the Bill, was not to be condemned as evil." The spirit and manly sense of this speech had its immediate effect; for the Privy Counsellors whispering together, the Speaker moved, "that the House should make stay of any further consultation thereupon;" and the next morning, almost as soon as the House met, Mr. Strickland coming in, whilst the Bill "for coming to church and receiving the Communion" was referring to a Committee, "the House did, in witness of their joy, presently nominate him one of the said Committees" and his name accordingly appears in the Journal, in which there is scarce any notice taken of all this proceeding. The great warmth with which this matter was taken up in the House and the immediate submission of the Council, shews, with what little foundation the following remark, among many others equally unfounded, is made by the Compilers of the Parliamentary History, "That, when, at any time, this Parliament touched upon the Queen's Prerogative, either in religious or civil matters, a haughty message or two brought them tamely to submit, and calmly bear the burthen." //85-1// The speech of Mr. Yelverton which is reported at length in Dewes, and from which I have given the foregoing extracts, breathes a spirit of freedom and contains a knowledge of the constitutional powers of the House of Commons not to

be exceeded even by that Parliament which established and confirmed the Revolution.

As this of Mr. Strickland is the first Case, in which we have met with any attempt to restrain the Freedom of Speech {86} in the House of Commons, it may not be improper here to observe, how jealous that House has always been of this most valuable and most essential Privilege. So long ago as in the fourth year of Henry VIII. Mr. Strode, a Member, having proposed a Bill in Parliament for the regulation of the Tinnors in Cornwall, was prosecuted in the Stannary Courts for that offence, and there being condemned in a large sum of money, was imprisoned in Lidford Castle till he was delivered by a Writ of Privilege; but not till he had given security to save harmless the Warden's Deputy in whose custody he was. This very extraordinary proceeding being represented by him; in a petition to the House of Commons, //86-1// an Act of Parliament was immediately passed, //86-2// to annul and make void these several judgments and executions; “and it was further enacted, that all Suits, Condemnations, Executions, Fines, Amerciaments, Punishments, Corrections, Grants, Charges; and Impositions, put or had, or hereafter to be put or had; upon the said Ricard, and to every other of the person or persons afore specified, that now be of this present Parliament, or that of any Parliament thereafter shall be, for any Bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed and treated of, be utterly void and of none effect.” These general words have operated to make this a general subsisting law, not only in the opinion of Sir Edward Coke, Mr. Prynne, and other great lawyers but it is now so declared By the formal Resolutions of both Houses of Parliament: “And that it extends to indemnify all and every the members of {87} Houses of Parliament, in all Parliaments, for and touching all Bills, speaking, reasoning, or declaring of any Matter or Matters in and concerning the Parliament, to be communed and treated of, and is only a declaratory law of the antient and necessary Rights and Privileges of Parliament.” //87-1//

35. The next Case I shall cite is not strictly within the line which I have laid down, being that of a Lord of Parliament, but it is curious, as it shews the ideas which the House of Lords at that time entertained, even of the Privilege of Person. — It is thus reported in the Fourth Register, p. 790: //87-2//

‘On the 30th June, 14 Elizabeth, 1572, in the Parliament « Chamber, where the Lords Spiritual and Temporal assembled;’

‘Whereas, upon complaint and declaration made to the said Lords Spiritual and Temporal, by Henry Lord Cromwell, a Lord of the Parliament, that in a Case between one James Taverner, against the said Lord Cromwell, for not obeying to an injunction given in the Court of

Chancery, in the absence of the Lord Keeper of the Great Seal, at the suit of the said Taverner, the person of the said Lord Cromwell was, by the Sheriff of the County of Norfolk, attached, by virtue of a Writ of Attachment proceeding out of the said Court of Chancery, contrary to the antient Privileges and Immunities, time out of mind, unto the Lords of Parliament, and Peers of this realm, in such cases used and allowed; as, on the behalf of the said Lord Cromwell, was {88} declared and affirmed, wherein said Lord Cromwell as a Lord of Parliament prayed remedy. Forasmuch as, upon deliberate examination of this cause in the Parliament Chamber, in the presence of the Judges, and others of the Queen's Majesty's learned Counsel, there attendant in Parliament, and upon declaration of the opinions of the said Judges and

learned Counsel, there hath been no matter directly produced nor declared, whereby it did appear or seem to the said Lords of Parliament there assembled, that by the common law or custom of the realm, or by any statute law, or by the precedents of the said Court of Chancery, it is warranted, that the person of any Lord having place or voice in Parliament, in the like case in the said Court of Chancery, before this time hath been attached; so as the awarding of the said attachment, at the suit of the said Taverner, against the said Lord Cromwell, for any thing as yet declared to the said Lords, appeareth to be derogatory and prejudicial to the antient Privilege claimed to belong to the said Lords of this realm: therefore it is this day and year aforesaid ordered, by the consent of all the said Lords in Parliament there assembled. "That the person of the said Lord Cromwell be from, henceforth discharged of and from the said attachment." Provided, nevertheless, and so is the minds of the said Lords in Parliament, plainly by them with one assent declared; That if at any time during this Parliament, or hereafter in any other Parliament, there shall be shewed sufficient matter, that, by the Queen's Prerogative, or by the common law or custom. of this realm, or by any statute law, or sufficient precedents, the persons of any of the Lords of Parliament in such case as this Case of the Lord Cromwell is, ought to be attached or attachable then, and from thenceforth, it is by this order intended, that to take place which shall be so shewed {89} us, warranted as is aforesaid; this order, anything to the contrary, notwithstanding.'

Dyer, who was at this time Chief Justice of the Common Pleas, reports the judgment of the House of Lords in this Case //89-1// almost in the same words; but does not explain on what cause this injunction was issued: it appears, however, that the Lords, even where the person of a Peer was concerned, were extremely cautious that their determination should not supersede the authority of the Common Law. Prynne, in a note on that part of the Case which says, 'that if it can be shewn, by sufficient

precedents, that the persons of Peers are attachable,' observes, "that the chief authorities against it are only in cases of Breach of the Peace and Contempts with Force, where fines are imposed, and a *capias pro fine* awarded, if not paid, for the King, not party, but not for Breach of an Injunction, for which there is no fine to the King by law." //89-2/

36. On the 16th of February, 1575, it appears from the Commons Journals, 'that a Committee was appointed to examine the matter touching the arrest of Mr. Hall's servant.' On the 20th it is ordered, upon Debate and a Division, 'That he should have Privilege.' On the 21st a Committee is appointed to consider touching the manner of his delivery. And on the 22d, Mr. Attorney of the Duchy reported, 'that the Committee found no precedent for setting at large by the Mace any person in arrest, but only by Writ; and that, by divers precedents of Record, it appeareth, that every Knight, Citizen, and Burgess of this House, who requireth Privilege, hath used in that case to take a Corporal Oath before the Lord Chancellor, or Lord Keeper of the Great Seal, that the party, for whom such Writ is prayed, came up {90} with him, and was his servant at the time of the arrest made.' And thereupon Mr. Hall was moved by the House, that he should repair to the Lord Keeper and make Oath in form aforesaid, and then proceed to the taking of a Warrant for a Writ of Privilege for his said servant, according to the said report of the said former precedents. — Whether Mr. Hall did apply to the Lord Keeper, in consequence of this motion does not appear, but it is certain his servant did not obtain his release; for on the 27th of February, after sundry reasons, arguments, and disputations, it is resolved That Edward Smalley, servant unto Arthur Hall, Esquire, shall be brought hither tomorrow by the Serjeant, and so set at liberty, by Warrant of the Mace, and not by Writ.' And on the 28th, being brought to the Bar by the Serjeant, accompanied with two Serjeants of London, he was presently delivered from his Imprisonment and Execution, according to the former Judgment of the House; and the said Serjeants of London were discharged of their prisoner and sent out of the House: The House afterwards finding that Smalley had fraudulently procured this arrest, in order to be discharged of the debt and execution, commit him to the Tower for a month, and until he should pay to William Hewet the sum of one hundred pounds, which was probably the amount of the debt for which he had been arrested. //90-1//

The report from the Committee, that they could find no precedent for setting at large by the Mace any person in arrest, but only by Writ, //90-2// shews that they did not make a very diligent search, or proves that they did not consider Ferrers's Case merely in the light of an arrest for debt, but as an {91} insult on the King and House. — Indeed it did not suit Prynne's argument so to do; but that Elsynge, who inclines to

the enlargement of the Privileges of the House of Commons, should omit taking notice of the very circumstantial manner of the delivery of Smalley by the Mace, (a proceeding so much in favour of his doctrine, and which, as well from its novelty, as from its being adopted in direst contradiction to the opinion of a Committee appointed to examine into precedents, could not have escaped his observation) appears rather extraordinary. There is another very peculiar circumstance attending this Case of Smalley, which is, that he is committed not only for a month, which was a punishment for his insult on the House, but till he has paid the sum of one hundred pounds, or given security for the payment of it, 'which is to be certified by the Recorder of London, to the Lieutenant of the Tower, before any delivery or setting at liberty of the said Edward Smalley to be in any wife had or made, at any time after the expiration of the said month; and that he shall not be delivered out of prison before such notice certified, whether the same be before the first day of the next Term, or after.' The effect of this Judgment, so awarded, might have detained him even beyond the term of the existence of the Court which pronounced. //91-1// Or, if it is supposed {92} that he was set at liberty when the Parliament was prorogued, he thereby obtained the end he had in view, and defrauded his creditor; no Act having been passed, as in the former instances, to save the right of a new execution.

37. On the 29th of February, 1575, Mr. Bainebrigg complains that one Williams had assaulted and threatened him; upon which the Serjeant is ordered to go directly for the said Williams, that he may answer to the House of such matters, as shall be objected against him: And the same day, Williams being brought to the Bar, and confessing that he did strike Mr. Bainebrigg, it is ordered, 'That he do remain in the Serjeant's ward, till the order of the House be further known to-morrow.' But I do not find any entry of any further proceeding, — In this Case, the House of Commons (without applying to the Queen) followed the precedent they had established in Mr. Johnson's Case in 1554. See N^o 25.

38. The same mode of proceeding was adopted in a similar Case, when, on the 1st of February, 1580, Mr. Norton complains 'that two porters had much misused him in his attendance on the service of the House.' The Serjeant is ordered immediately to fetch them; when they being at the Bar, and charged with their misbehaviour, and rather 'excusing than submitting themselves,' and the matter being proved by evidence, they are both committed to the Serjeant's ward till further order; but that the Speaker may, in the mean time, set one of them, who was only servant to the other, at liberty, upon his submission, if he thinks fit. On the 5^d of February, the porter of Serjeant's Inn, (the Master) prisoner at the Bar, is, upon his humble submission and acknowledging his fault, remitted and set at liberty, paying his fees.

39. On the 4th of February, 1580, Mr. Norton complains of a Book 'not only as reproaching some particular good Members of the House, but also very much slanderous and derogatory to the general authority, power and state of this House, and prejudicial to the validity of its proceedings, in making and establishing of laws.' And it appearing to the House, that Mr. Hall, a Member, was the procurer that the said Book was printed and published, he is ordered immediately to be apprehended by the Serjeant at Arms, assisted by Sir Thomas Scott and Sir Thomas Browne: and a Committee is appointed to send for the Printer and examine him. — On the 6th of February, this Committee make a report, and Mr. Hall and the Printer being brought to the Bar, and further examination had, Mr. Hall is committed to the custody of the Serjeant, and other Committees are added to the former Committee to enquire further into this matter. On the 14th of February, Mr. Vice-Chamberlain reports what had appeared to the Committee; when Mr. Hall being again brought to the Bar, he submitted himself to the House and asked pardon: And being withdrawn, 'sundry motions, and arguments were had, touching the quality and nature of his faults, and of some proportionable forms of punishment for the same, as, Imprisonment, Fine, Banishment from the fellowship of this House, and utter Condemnation and Retracting of the Book.' But at last it was resolved, without one negative voice, 'that he should be committed to prison;' and, upon another question, 'that he should be committed to the prison of the

Tower, as the prison proper to the House:' And it was further resolved, that he should remain in the said prison for six months, and until he should make retraction of the Book, to the satisfaction of the House: that he should pay a fine to the Queen of five hundred marks; and that {94} he should be presently severed and cut off from being a Member of this House any more during the continuance of this present Parliament:' And a new Writ is ordered, in the room of Mr. Hall, 'so as before disabled to be any longer a Member of this House.' — And Mr. Hall being brought to the Bar, Mr. Speaker pronounces this Judgment against him. — After which, the course and form of these proceedings and judgment of the House are ordered to be digested and set down in due form, and entered by the Clerk, as other orders and proceedings are; which was done accordingly. //94-1// — The offences, which drew upon Mr. Hall this very extraordinary punishment, are recited at large in the Journal, and were certainly a very high and dangerous contempt of the authority of the House; he had been before charged before the Privy Council for the same crime, and it appears from the names of the Committees, that the most considerable Members of the House, lawyers and others, were appointed to examine into and conduct this matter; and

yet I should suspect from the number of punishments which were heaped upon him, “Expulsion, Fine, and Imprisonment,” that there was some private history in this affair; some particular offence against the Queen, with which we are not acquainted; for neither Prynne, nor the compilers of the Parliamentary History, do, as I can find, mention a single syllable of this very new and extraordinary proceeding. — On the 18th of March, being the last day of the Sessions, Mr. Hall having not then made any revocation or retractation of the errors, slanders, and untruths contained in his Book, the House appoint several Members of the House, the most considerable in rank, to receive such revocation, when he shall please to make it, to be by them reported {95} to the House in the next Session; but the House does not shorten the time of his commitment, or remit any part of the Judgment pronounced against him. This Parliament being afterwards dissolved, we find nothing more of this matter in the Journal. But some years after, on the 21st of November, 1586, Mr. Markham, Member for Grantham, acquaints the House, on the part of the inhabitants of that Borough, ‘that Mr. Arthur Hall, having been in some former Parliaments returned a Burgess for the said Borough and in some of those Parliaments disabled for ever afterwards to be any Member of the House at all, hath of late brought a Writ for his wages, (amongst other times) for his attendance at the late Session of Parliament, holden at Westminster, //95-1// in the 27th year of the Queen during which time he did not serve in the House, but was, for some causes disabled to be a Member.’ This matter was referred to a Committee, who, on the 21st of March, report at large a state of the facts; ‘that Mr. Hall had commenced suits for his wages, as one of the Burgesses of the Parliament in the 13th, 14th, 18th, and 23d years of the Queen (not in the 27th,) but that the Committee having desired him to remit the said wages which he had demanded of the said Borough, Mr. Hall had very freely and frankly remitted the same.’ //95-2//

The Original Journals of the House of Commons being missing, from the conclusion of the Parliament of the 23d of {96} Queen Elizabeth, to the end of her reign, we are obliged to consult the collection made by Sir Simonds Dewes for the proceedings of the House during this period, through six successive Parliaments. Sir S. Dewes informs us, in his preface, from what materials he compiled this Work; and as it is a very laborious, so it has been in general considered as an impartial collection, and is now become very valuable from the loss of those originals from whence it was extracted.

40. On the 10th of February, 1584, a motion was made touching the opinion of the House for Privilege in Case of a Subpoena out of the Chancery, served upon Richard Cook, Esquire, a Member; and it was ordered, ‘That Mr. Recorder of London, Mr. Sands, and Mr. Cromwell,

attended on by the Serjeant of the House, shall presently repair, in the name of the whole House, into the body of the Court of Chancery, and there to signify to the Lord Chancellor and the Master of the Rolls, that, by the ancient liberties of this House, the Members of the same are privileged from being served with Subpoenas; and to require withal not only the discharge of the said Mr. Cook's appearance before them on the said Subpoena, but also to desire that from henceforth, upon like Cases, the said Lord Chancellor and Master of the Rolls, will allow the like Privileges for other Members of this House, to be signified to them in writing under Mr. Speaker's hand.' The next day, the 11th of February, Mr. Recorder, Mr. Cromwell, and Mr. Sands being returned from the Chancery, declare unto the House, 'that they have been in Chancery within the Court, and there were very gently and courteously heard in the delivery of the message and charge of the House committed to them; and were answered by the Lord Chancellor, that he thought {97} this House had no such liberty of Privilege for Subpoenas, as they pretended, neither would he allow of any precedents of this House committed unto them formerly used in that behalf, unless this House could also prove the same to have been likewise thereupon allowed and ratified also by the precedents in the said Court of Chancery; and after some speeches and arguments, the said Mr. Sands and Mr. Cromwell were further appointed to search the precedents of this House against the morrow, that thereupon this House may enter into further consideration of the state of the Liberties and Privileges of this House accordingly.' //97-1// I do not find that these Gentlemen, or either of them, ever made any report of the precedents they found on this subject nor indeed has any thing of this sort yet occurred, except in the two before recited Cases, of Mr. Beaumont N^o 24, and Mr. Eyms N^o 28, neither of which would have been of much service to them in support of the doctrine advanced by the House to the Lord Chancellor.

41. In the next Case which occurred, and which was of a similar kind, the House finding that they might meet with difficulties in applying to the Courts, took the remedy into their own hands, and adopted from this time a mode of proceeding, which proved more effectual to correct the evil.

On the 10th of February, 1584, Mr. Anthony Kirle is ordered to attend the next day, to answer to such matters as shall be objected against him on the behalf of Mr. Stepneth, Member for Haverford-West: Being the next day brought to the Bar, 'he is charged by Mr. Speaker, in the name of the whole House, with a contempt to the House for that he had {98} had served Mr. Stepneth, a Member, with a Subpoena out of the Star Chamber in Parliament time, and within the palace of Westminster, as the said Mr. Stepneth was coming to the House to give

his attendance there and had further procured an attachment out of the said court against him, to the great hindrance and impediment of Mr. Stepneth's service and attendance in the House, and also to his great cost and charge. To this charge Mr. Kirle was heard in his excuse; and then it was resolved, 'That the said Mr. Kirle had committed a great contempt to the

whole House, and the Liberties and Privileges of the same, both in serving the said Subpoena upon the said Mr. Stepneth, and also in procuring the said attachment against him and in all the residue of the parts of the said suit from the time of serving the said Subpoena hitherto.' And thereupon it was ordered and adjudged by the House, That the said Anthony Kirle shall, for his said contempt, be committed prisoner to the Serjeant's ward and custody, there to remain during the pleasure of the House; and shall also satisfy and pay unto the said Mr. Stepneth, as well all such his costs, charges, and expences by him expended in and about the same suit, as shall be set down and agreed upon by Mr. Morrice and Mr. Sands, (who were for this purpose appointed by the House to confer with the said Mr. Stepneth, and to examine those charges), as also all other charges and expences which the said Mr. Stepneth hath been at, or defrayed unto the said Serjeant, in or about the arresting which should have been executed upon him by virtue of the foresaid attachment out of the Star Chamber, at the suit of the said Mr. Kirle,' after which the said Mr. Anthony Kirle was brought again to the Bar, and then kneeling upon his knees, Mr. Speaker pronounced, unto him the said Judgment in form aforesaid, in the name of the whole {99} House. — And, on the 16th of February, a motion was made for Mr. Kirle's releasement from his Imprisonment; and thereupon he was brought to the House, and kneeling upon his knees, making very humble submission to the House, and acknowledging his fault, alledging it also to have proceeded of ignorance, and not of wilfulness; and likewise having paid to the Serjeant, to Mr. Stepneth's use, the money set down by Mr. Morrice and Mr. Sands, according to the former order of the House,' he was discharged, paying his fees, after he had first taken the Oath of Supremacy. //99-1//

42. On the 27th of February, 1586, the House was informed, that one William White had arrested Mr. Martin, a Member of the House; therefore it was ordered, 'That the Serjeant should warn White to be here to-morrow, sitting the Court.' On the 6th of March, William White was brought into the House, to answer his contempt for arresting Mr. Martin; who answered, 'that he caused him to be arrested the 22d day of January, which was above fourteen days before the beginning of Parliament.' The House, upon this appoint a committee to search precedents, who on the 11th of March make report, 'of the Privilege of

Mr. Martin, arrested upon mesne process by White above twenty days before the beginning of this Parliament, holden by prorogation (mistaken for adjournment), and in respect that the House was divided in opinion, Mr. Speaker, with the consent of the House, moved these questions to the House:

‘(1.) Whether they would limit a time certain, or a reasonable time, to any Member of the House for his Privilege ?

{100}

‘The House answered, A convenient time.

‘(2.) Whether Mr. Martin was arrested within this reasonable time?

‘The House answered. Yea.

‘(3.) If White should be punished for arresting Martin ?

The House answered. No; because the arrest was twenty days before the beginning of the Parliament, and unknown to him that would be taken for reasonable time. But the principal cause why Martin had his Privilege, was, for that White the last Sessions (mistaken for Meeting) of Parliament arrested Mr. Martin, and then knowing him to be returned a Burgess for this House, discharged his arrest and then afterwards Mr. Martin again returning to London to serve in the House, Mr. White did again arrest him; and therefore the House took in evil part against him his second arrest, and thereupon judged, that Martin should be discharged of his second arrest out of the Fleet, by the said Mr. White.’

//100-1//

This Parliament met on the 29th of October, 1586: On the 2d of December, they were adjourned, by Commissioners from the Queen, to the 15th of February following; so that this arrest was not either before the beginning of the Parliament, or during a prorogation, but on the 22d of January, during an adjournment, and consequently clearly within Privilege. — But we learn from this Case, how very cautious the House of Commons were in ascertaining the time and duration of Privilege, beyond the actual fitting of Parliament, not choosing to limit a time certain, but to reserve, within their own judgment, the definition of what should be thought reasonable or convenient. {101} This too being an arrest only upon mesne process, there was no difficulty as to the propriety of discharging Mr. Martin, or doubt about the mode of delivery, as he was liable to be again arrested immediately after the expiration of the time of Privilege.

43. On the 27th of February, 1586, Mr. Cope ‘first using some speeches touching the necessity of a learned Ministry, and amendment of things amiss in the Ecclesiastical State,” offered to the House a Bill, and a Book written; the Bill, containing a petition, that it might be enabled, ‘that all laws now in force touching Ecclesiastical Government should be void; and that the Book of Common Prayer now offered, and

none other, might be received into the Church to be used.' The Book contained the Form of Prayer, with the Rites and Ceremonies to be used, — A debate arose whether this Book should be read, the Speaker and one Mr. Dalton objecting, ' that her Majesty, before this time, had commanded the House not to meddle with this matter, and that this might bring her Majesty's indignation against the House, thus to enterprize the dealing with those things, which her Majesty had taken into her own charge and direction.' Mr. Lewknor, Mr. Hurlston, and Mr. Bainbrigg spoke on the other side; 'and so, the time being pass, the House rose without either the Petition or Book being read.' On this the Queen sent to the Speaker for the Petition and Book and the next day, the 28th of February the House did not sit, the Speaker being with the Queen; but on the 2d of March, Mr. Cope, the proposer of the Bill, and Mr. Lewknor, Mr. Hurlston, and Mr. Bainbrigg, the supporters of it, were sent for to the Lord Chancellor, by divers of the Privy Council, and from thence were sent to the Tower. The day before, viz. the 1st of March, Mr. Wentworth had suffered the same fate, probably for a Speech which he made touching {102} the Liberties of the House of Commons and some questions which he proposed to Mr. Speaker upon that subject; which questions Mr. Serjeant Puckering (then Speaker) pocketed up and shewed to Sir Thomas Heneage, who so handled the matter, that Mr. Wentworth went to the Tower, and the questions not at all moved.

//102-1// The House, not warmed with that spirit of freedom which their predecessors had so properly exerted, in the similar Case of Mr. Strickland, in the year 1571, sat, without taking any notice of this gross violation of their Privileges, till the 4th of March; when Sir John Higham made a motion, 'for that divers good and necessary Members thereof were taken from them, that it would please the House to be humble petitioners to Her Majesty, for the restitution of them again to the House.' To which Mr. Vice-Chamberlain (Sir Christopher Hatton) answered, 'that if the Gentlemen were committed for matter within the compass of the Privilege of this House, then there might be a Petition; but if not, then we should give occasion of her Majesty's further displeasure; and therefore advised to stay until they heard more, which could not be long;' and further, he said, touching the Book and the Petition, 'her Majesty had for divers good causes, best known to herself, thought fit to suppress the same, without any further examination thereof; and yet conceived it very unfit for her Majesty to give any account of her doings.' With this evasive answer of Mr. Vice-Chamberlain, the House waited patiently till the 13th, when Mr. Cromwell moved 'to have some conference with the Privy Council of this House, and some others, concerning those Gentlemen, Members of this House, lately committed to the Tower.' Whereupon a Committee was

appointed; but they made no report; nor do I find that any thing further was done in {103} this matter during the remainder of the Sessions, which closed on the 23d. of March.

44. On the 12th of February, 1588, Mr. Puleston, Member for the County of Flint, complains, 'that William Aylmer, Esquire, did, since the beginning of the Sessions, cause a Subpoena to be served on him out of the Star Chamber, to the prejudice of the Liberties and Privileges of this House, to answer there to a Bill,' and prays the order of the House; and offers the precedent of Mr. Stepneth, under the hand of the Clerk; which precedent being read (Vide N^o 41.), Mr. Aylmer is brought to the Bar, where Mr. Speaker, in the name of the House, charges him with the contempt, and requires his answer; 'who, thereupon, in all reverent and humble fort, shewed that the said Bill, whereupon the said Subpoena was awarded, did concern a wrong, not only to her Majesty, but also unto this honourable House, in an indirect course of proceeding in the election of the Knights for the County of Denbigh, into this present Parliament, procured by the said Mr. Puleston;' and so intimating, that the said Bill and serving of the said Subpoena did tend to the maintenance of the Liberties and Privileges of this House. //103-1// Mr. Aylmer being withdrawn, it is resolved, after some debate, 'that this matter should be considered of by a Committee; and that Mr. Aylmer (partly, for that he had been oftentimes heretofore a Member, and was an honest and grave Gentleman) should be left at liberty, but should be charged by Mr. Speaker, in the name of this whole House, to surcease his suit against Mr. Puleston in the mean time.' A Committee is accordingly appointed, and Mr. Aylmer being again brought to the Bar, Mr. Speaker signified to him the order of the {104} House, discharged him from the custody of the Serjeant, and required him to attend the Committee from time to time, and to forbear, in the mean time, to proceed against Mr. Puleston; to which he readily assented. — On the 19th of February, Mr. Vice-Chamberlain reports from the Committee, their opinion upon all the circumstances of the Case, 'that Mr. Aylmer had committed a contempt unto this House, in prejudice of its Liberties and Privileges.' He however recommended mercy to the House, not only on account of Mr. Aylmer's humble and dutiful behaviour before the Committee, but from other favourable circumstances attending his Case, and therefore proposed, that he might (acknowledging his fault, and 'upon his humble submission to be made to the House, and craving pardon for his said contempt) be set at liberty and discharged, paying the Serjeant's fees:' after sundry speeches and arguments, wherein it appeared, 'that Mr. Puleston had already voluntarily, without the privity of the House, and hence his complaint, put in his answer to the Bill, and that so the matter was actually at issue, the House ordered, That Mr. Aylmer should not

only be at liberty to proceed in his suit, without offence to the House, but should also, upon his humble submission to be made to the House, be discharged of his said contempt, paying his fees to the Serjeant of the House' which order and judgment of the House (Mr. Aylmer being again brought in by the Serjeant) Mr. Speaker pronounced unto him, and then, yielding unto the House his most humble thanks, he departed and went his way. //104-1//

45. On the 21st of February, 1588, upon a motion made by Mr. Harris, that divers Members of this House, having Writs of Nisi Prius brought against them to be tried at the {105} Assizes, in sundry places of the realm, to be holden and kept in the Circuits of this present vacation, and that Writs of Supersedeas might be awarded in those Cases, in respect of the Privilege of this House, due and appertaining to the Members of the same. It is agreed, 'that those of this House, which shall have occasion to require such benefit of Privilege in that behalf, may repair unto Mr. Speaker to declare unto him the state of their Cases, and that he upon his discretion (if the Case shall so require) may direct the Warrant of this House to the Lord Chancellor of England, for the awarding of such Writs of Supersedeas accordingly.' It is remarkable, that this proposal of Mr. Harris, made almost as a motion of course, should be immediately and without debate adopted by the House, when nothing similar to this proceeding has occurred since the Writs in the eighth year of Edward II. cited by Sir Edward Coke (N^o 3.). — The House of Commons continued sitting till the 29th of March; and, as we hear of no further Complaint upon this subject, it must be taken for granted, that the Lord Chancellor (then Sir Christopher Hatton) obeyed the Speaker's Warrant. //105-1//

46. On the 24th of February, 1592, Mr. Peter Wentworth and Sir Henry Bromley delivered a petition unto the Lord Keeper, 'therein desiring the Lords of the upper House, to be suppliants with them of the lower House, unto her Majesty, for entailing the succession of the Crown, whereof a Bill was ready drawn by them.' The Queen, always extremely jealous upon this subject, as well as upon every thing which affected her prerogative in matters of Religion, was so much offended, that she charged the Council 'to call the parties before them.' They were accordingly summoned the {106} next day, Sunday, before the Lord Treasurer, the Lord Buckhurst, and Sir Thomas Heneage, and were told 'that Her Majesty was so highly offended, that they must needs commit them:' Mr. Wentworth was accordingly sent prisoner to the Tower, and Sir Henry Bromley, and one Mr. Richard Stevens, to whom Sir Henry Bromley had imparted the matter, and Mr. Welsh, the other Member for Worcestershire, to the Fleet. Though this was not literally a commitment for their Speeches or behaviour in Parliament, yet it had so near a

relation to it, that one is surprised to find no notice taken of it for several days; however, on the 10th of March, the House being engaged on the subject of granting subsidies, Mr. Wroth made a motion, 'That in respect that some Counties might complain of the tax of these many subsidies, their Knights and Burgesses never confirming unto them nor being present at the grant; and because an instrument, taking away some of its strings, cannot give its pleasant sound; he therefore desired that we might be humble and earned suitors to her Majesty, that she would be pleased to set at liberty those Members of the House that were restrained. To this it was answered by all the Privy Counsellors, 'That her Majesty had committed them for causes best known to herself; and for us to press her Majesty with this suit, we should but hinder them whose good we seek; and it is not to be doubted but her Majesty of her gracious disposition, will shortly of herself yield to them that which we would ask for them, and it will like her better to have it left unto herself than sought by us.' With these assurances the House acquiesced and though they continued sitting above a month, it does not appear from any circumstances, that these Gentlemen were ever released, or that any farther motions were made about them. //106-1//

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47. On the 1st of March, 1592, Mr. Serjeant Yelverton, from the Committee of Privileges and Elections, reported the following Case. 'Thomas Fitzherbert of Staffordshire, being outlawed upon a Capias Utlagatum after judgment, is elected Burgess of this Parliament: two hours after his election, before the indenture returned, the Sheriff arrested him upon this Capias Utlagatum: the party is in execution: now he sendeth his supplication to this House, to have a Writ from the same to be enlarged to have the Privilege in this Case to be grantable.' Several questions arose out of this Case: (1.) 'Whether Mr. Fitzherbert, being outlawed, was eligible?' (2.) 'If he were eligible; yet whether, under the circumstances of his Case, he was entitled to Privilege?' (3.) and lastly, 'If entitled to Privilege, in what manner he ought to be delivered?' Very long and almost daily debates surfaced upon these Questions, until the 5th of April; for which I shall refer the Reader to Dewes's Journal, where they are entered at length, and from which much Parliamentary learning is to be collected. On the 5th of April, the House came to the following resolution, 'That Thomas Fitzherbert was, by his election, a Member thereof; yet that he ought not to have Privilege, in three respects: (1.) because he was taken in execution, before the return of the indenture of his election; (2.) because he had been outlawed at the Queen's suit, and was now taken in execution for her Majesty's debt; (3.) and lastly, in regard that he was so taken by the Sheriff, neither sedente Parlamento, nor eundo, nor redeundo.' — I cannot help observing, that there was

something very particular in this determination, it being the first instance in which the House had permitted their Member to be detained from his service, by any process whatever, in a Civil Suit; as to the third reason, which Prynne, in the fourth Register, p. 648, calls “the grand reason” viz. “that he was taken neither {108} sedente Parlamento, nor eundo nor redeundo;” the House must have forgot the doctrine laid down but a very few years before, in Mr. Martin's Case (N^o 42.), about “what was the reasonable time of Privilege;” when, in the present instance, Mr. Fitzherbert was arrested on the 3d of February, and the Parliament met on the 19th of the same month. Sir Edward Coke, at that time Speaker and her Majesty's Solicitor General, took a very extraordinary part in the arguments upon these questions, as may be seen in Dewes, p. 482. and 515; proposing that, before a Writ of Privilege should be granted, it would best suit the gravity of the House to grant a Habeas Corpus cum causa, returnable in Chancery, the Sheriff to appear, and the whole matter being transmitted out of the Chancery, the House then to judge upon the whole Record; by which means it would be no escape in the Sheriff, nor would the party lose his action of debt, though Fitzherbert should be delivered;’ the House (it is said) well liked and adopted this novel and very strange mode of proceeding; forgetting that, in former Cases, these difficulties, now started by Mr. Speaker, had been easily obviated by a special Act of Parliament. — But, to their great surprize, on the 7th of March, Sir Edward Hobby reports, ‘that, having moved the Lord Keeper touching the said Writ of Habeas Corpus, his Lordship thinketh best, in regard of the ancient Liberties and Privileges, of this House, that a Serjeant at Arms be sent by order of this House for the said Mr. Fitzherbert, by which he may be brought hither without peril of being further arrested by the way, and the state of the matter then considered of and examined into.’ And this advice of the Lord Keeper Puckering, was ‘well liked and allowed by the House;’ as more consonant to their own dignity, and more agreeable to former precedents, than the advice of Mr. Speaker Coke. On the 12th of {109} of March, Mr. Serjeant Moore, being heard at the Bar as Counsel for the Sheriff, not only mistakes the fact of the time of the arrest, ‘as being three hours before the election, instead of two hours after,’ but gives that as the reason why the House did not allow him Privilege, because he was arrested before he was elected a Burgess. //109-1// However, after a long hearing of the parties by their Counsel, the House returned again to the Writ of Habeas Corpus; and, on the 17th of March, it was resolved by the House, ‘That this House, being a Court of Record, would take no notice of any matter of fact at all in the said Case, but only of matter of record; and that Mr. Speaker should move the Lord Keeper for a return, to be made by the Sheriff into the Chancery, of the Writ of Habeas Corpus,

awarded by his Lordship upon motion from this House.' On the 3d of April, the Lord Keeper sent the Record of Fitzherbert's execution to the House; and 'the Chancery men who brought it, were called into the House to the Bar, and were appointed to read it, ut Clerici;' and the House ordered the Writ sent out of Chancery, to be annexed to the Record: A very learned debate then arose, as to what power the House could exercise, in consequence of this. Writ and the Sheriff's return; which ended, on Friday the 5th of April, in the final resolution and determination of the House, as set down before, 'that Mr. Fitzherbert ought not to have Privilege.' — There would have arisen a very great difficulty, if the House had come to a different determination and had thereupon proceeded to deliver Fitzherbert out of custody, viz. "that the right of taking him in execution for this debt would have been gone, the Capias being satisfied." {110} This difficulty did not occur (in the only instances in which the House hitherto had adopted this mode of proceeding) in Ferrers's and Smalley's Case; for in first (N^o 19.) Ferrers was only a Security, and the debt was still recoverable against the Principal; in the latter (N^o 36.), the House made it part of the condition of Smalley's release, "that the debt should be first satisfied." Elfyng indeed //110-1// is of opinion, "that an arrest upon an execution for debt, trespass, or contract, is merely void, and that it can be no prejudice to the Plaintiff; but he may have a new execution after the end of the Parliament." This however was not a doctrine established at the time of Fitzherbert's Case; and the proceedings of the House, in the subsequent Case of Sir Thomas Shirley, in the first year of James I. and the Act of Parliament of that year, Ch. 13. certainly prove this opinion of Elsyng to be ill-founded in point of law; the debt therefore to the Queen, and others, for which Fitzherbert was taken in execution, and the right to arrest him again, could only have been saved by a special Act of Parliament, as in the Cases of Lark, Clerk, Hyde, and Atwyll. //110-2//

48. On the 5th of April, 1593, Mr. Neale, Burgess for Grantham, complains, ' That he had been arrested, the Sunday before, upon an execution that he had paid the money due upon the execution, but that, out of regard to the Liberties and Privileges of the House, he thought it his duty to acquaint them with it.' The next day, the 6th of April, Weblen, the person at whose suit the execution was had, and the officer who executed it, were, for their contempt, committed prisoners to the Tower, there to remain during pleasure and, {111} on the 9th of April, they were reprimanded and discharged. In this Case, the debt was discharged, and the Member set at liberty, and yet the House of Commons punished these men for this contempt, almost in same breath that they determined that Fitzherbert, though actually under confinement, ought not to have Privilege. It is curious to compare the deep and ample charge of the

Speaker, Solicitor General Coke, against these poor offenders, with the opinion given by him in the foregoing Case of Fitzherbert, and his observations on the two Cases of Thorpe and Trewynnard. //111-1//

49. On the 22d of November, 1597, Sir Edward Hobby moved the House for Privilege for Sir J. Tracy, a Member, 'now presently at the Common Pleas, to be put on a Jury:' Whereupon the Serjeant was presently sent with the Mace to call the said Sir J. Tracy to his attendance in the House which was thereupon so done accordingly, and the said Sir John then returned to the House. //111-2// — This is the first instance that I have met with of a complaint of this nature: It is to be observed, that this Member is summoned to be upon the Jury, during actual sitting of Parliament, and that he is thereby withdrawn from his attendance on the House of Commons.

50. On the 28th of November, 1597, Mr. Bowyer complains, 'that he was this day served with a Subpoena, to appear in the Chancery, by one Biddel; that he told Biddel he was a Member, and willed him to forbear the process as being against the Liberties of the House;' who answered, 'that he would do it, notwithstanding any such liberties or {112} Privileges of this House whatsoever.' — At the same time, two other Members complain, that they were this day served with a Subpoena ad testificandum, and so in like manner moved for Privilege. The Serjeant is thereupon ordered to bring in the parties so offending, to answer the contempt. — The principle, upon which this proceeding was had, must have been, as in the last Case, That no summons to any other Court ought to be admitted to interfere with the Member's attendance on his more essential duty in the High Court of Parliament. //112-1//

51. On the 6th of February, 1597, the House proceeded upon the same grounds, and in the same manner, against one Thomas Bashfield, for a contempt against the Privilege of the House, in disturbing, 'by way of an appearance,' Robert Sherry, a Member of the House. //112-2//

52. On the 7th of November, 1601, a servant of Mr. Coke, a Member, being arrested on a Bill of Middlesex, the Serjeant was sent to Newgate to bring the prisoner immediately to the House and on his being brought to the Bar, with his Keeper attending him, he is by order of the House discharged from his said Keeper, and from his said Imprisonment; and Robinson, the party at whose suit he was arrested, was brought by the Serjeant to the Bar, and being reprimanded, was discharged, paying his fees. //112-3//

53. I cannot avoid inserting here a very curious Entry in Dewes's Journal, p. 603, of a Case, in which the House of Lords interfered, on the arrest of one of the Queen's servants. On the 12th of November, 1601, a Report being made {113} by the Lord Zouch, that William Hogan, an ordinary servant to the Queen, was arrested and imprisoned upon an

execution by one Tolkerne, since the beginning of the Parliament; his Lordship desired the Judgment of the House, (1.) 'Whether an ordinary servant of her Majesty (though he be none of the Parliament) be not privileged from arrest during the time of Parliament in like sort as the servants of the Lords of the Parliament are privileged? and, (2.) 'Whether being arrested in execution, he may in this Case, by order of the House, be discharged?' Upon this information, the Lords ordered Tolkerne to be sent for, and directed that such precedents as the Clerk of the Parliament could shew, should be looked out and made known to the House. — On the 14th, the Clerk acquaints the House, that, out of all the Journal Books in his custody, there were to be found only these four here under mentioned, and no more; viz.

(1.) Anno, 27 Eliz. 1st of December, the Case of James Diggs, servant to my Lord's Grace of Canterbury.

(2.) Anno, 27 Eliz. 7th of December, of Robert Fiennes, servant to the Lord Binden.

(3.) Anno, 39 Eliz. 26th of November, of Edward Barton, servant to the Lord Chandois; and, 8th of December, of John Yorke, the Lord Archbishop's servant.

(4.) Anno, 14 Eliz. 30th of June, it appeareth that Lord Cromwell complains to the Parliament of an attachment served upon his person out of the Court of Chancery; and that his Lordship was, by order of the Parliament, discharged of the attachment but whether {114} this attachment was served in the time of the Parliament, it doth not certainly appear.

Before I proceed with the principal Case; it may be worthwhile to consider a little these four Cases, produced by the Clerk; observing, that none of them relate to servants of the King or Queen, and are therefore only applicable to the second point proposed by the Lord Zouch that is, as to the mode of discharge.

(1.) The first in point of time is that of Lord Cromwell, which I have inserted before at length, N^o 35. //114-1//

(2.) The next is the Case of Diggs, servant to the Archbishop of Canterbury, who, since the beginning of the Parliament, was committed to the Fleet, upon a Reddit-se in the Exchequer: — The Lords having heard the Lord Chief Baron, and other the Barons of the Exchequer, order, 'That the said Diggs, by virtue of the Privilege of this Court, should be set at liberty, and that the Warden of the Fleet should be discharged of the prisoner, and of any action that might be brought against him for the same;' it was further ordered 'That the appearance of the said Diggs should be a sufficient discharge of his Sureties and their Bonds, and that the Bonds should be re-delivered: Provided, that as the said Diggs was not arrested in execution at the suit of Howe, but committed upon a

Reddit-se in discharge of his Sureties, it is further ordered, that touching the sum of money recovered by Howe, against the said Diggs, Howe and Diggs shall stand to such order as the Barons of the Exchequer {115} shall let down for the same.' — Here, though the Lords order the immediate discharge of the prisoner, they take care, as the Commons had done in Smalley's Case, in 1574 (N^o 36.)f that the creditor should be satisfied as to the original debt. //115-1//

There is another precedent which the Clerk might have found in his Journal Book, of the 6th of March, 1585, of one Clerk //115-2// servant to the Earl of Leicester, but which is indeed only a repetition of the proceedings in the Case of Diggs.

(3.) The Case of Fiennes seems a very extraordinary one to be produced on the present question, because the Lords, after hearing of the cause, resolve, 'That he shall not enjoy the Privilege of the House, as well because he did not claim this Privilege when he was first arrested, nor in the Counter when he was charged in execution; as also, that he was not a menial servant, nor yet ordinarily attendant upon the said Viscount Bindon. Nothing very material can be therefore collected from this precedent. //115-3//

(4.) The Cases of Barston and Yorke appear to have been arrests on mesne process, and not in execution as there is no provision for securing the debt. //115-4//

To return to the Case of Hogan, — The Lords having heard these precedents read, together with certain observations (out of a Book, written by Richard Crompton, Esquire,) concern {116} concerning the proceedings of the House in the like Case of George Ferrers, an ordinary servant of King Henry VIII. //116-1// order, that Tolkerne should be sent for; and a motion being made 'That Hogan should be sent for out of prison, and brought before the Lords to be examined, and to make relation of his Case,' it was debated by what course the said Hogan should be brought, being then in execution, whether by Warrant from the Lords to the Lord Keeper, to grant forth a Writ in her Majesty's name for the bringing of the said Hogan, or by immediate direction and order of the House (to the Gentleman Usher, or Serjeant at Arms,) without any such Writ; which being put to the question, it was resolved and ordered by general consent, 'That it should be done by immediate direction and order from the House, without any such Writ.' Accordingly, Hogan being brought upon the 19th, and having made relation of his arrest, and that the Under Sheriff knew he was her Majesty's ordinary servant, but that Tolkerne was not privy to his arrest; and Hogan offering and petitioning to pay the principal debt of fifty pounds; it was resolved and ordered, 'that the said Hogan should enter into sufficient Bond, to abide by the order and judgment of the Earl of Cumberland, the Bishop of

London, and Lord Zouch, for the satisfaction of the debt of fifty pounds, with costs and charges, and thereupon be discharged out of prison, and out of execution; and that the Warden of the Fleet should be free from any trouble, damage, or molestation, for the said discharge.’ — The Under Sheriff being afterwards ordered to attend, was, on the 23d of November, for his offence in arresting Hogan, her Majesty's servant committed to the prison of the Fleet, from {117} whence he was set at liberty on the 26th, upon his humble petition. //117-1//

54. But a similar Case to this, which happened on the 1st of December following, was proceeded in very differently: — ‘Vaughan, servant to the Earl of Shrewsbury, being arrested in execution, and in Newgate, and the Keeper of Newgate refusing to obey an order of the House of Lords, for the bringing up the said Vaughan; the Lords committed the Keeper to the prison of the Fleet, for his refusal and contempt;’ but, order being likewise given that such precedents as could be found touching the proceeding of the Court, in like case of arrest in execution, should be produced at the next sitting, the Lords (upon view and consideration of divers precedents and remembrances produced this day, and differing from the manner of proceeding now followed,) ordered, ‘That the Lord Keeper shall forthwith make out a Writ of Privilege of Parliament to the Sheriffs of London and Middlesex, to have the body, of the said Vaughan, with the cause of his imprisonment, before the said High Court the next day.’ The Lord Keeper accordingly made out the Writ; and the same, together with the prisoner Vaughan, and the cause of his imprisonment, being returned, and brought into Court by the Under Sheriff, the Lords, on the 4th of December, on hearing all parties, proceeded as in the former Case of Hogan: They discharged Vaughan from his imprisonment and execution, on his giving security for the debt, and ordered the immediate release of the Keeper of Newgate from the Fleet.

It appears from this Case, that the Lords, {118} upon view and consideration of precedents, were of opinion, that the regular and legal mode of bringing before them any prisoner in execution, was not, as they had decided upon question in Hogan's Case, by their Warrant sent by a Serjeant at Arms, but by an order to the Lord Keeper for a Writ of Privilege of Parliament. //118-1//

55. On the 14th of November, 1601, Complaint is made of several Members having been served with Subpoenas, some ad respondend^m, others ad testific^m. And after a debate, which may be seen in Dewes //118-2// and in which an ancient Member of the House shewed divers precedents, ‘how that the minds of the Members of this House ought to be freed, as well as their bodies,’ the House resolved, ‘That the serving these Subpoenas of testific^m, without leave or information given

to the House, was a breach of Privilege whereupon two Members were sent to require the Lord Keeper to reverse the Subpoenas, and the persons who had procured them were ordered into the custody of the Serjeant. //118-3//

56. On the 19th and 20th of November, 1601, Two servants of Members being arrested, were, by order of the Houle, discharged, and the persons procuring the arrest; and the officers, were ordered into the custody of the Serjeant. //118-4//

57. On the 27th of November, 1601. On a complaint against one Holland, and Laurence Brook, for abusing and beating Mr. Fleetwood, a Member, and his servant; they were brought to the Bar, and committed to the Serjeant for the {119} space of five days, and then to be discharged, paying their fees. //119-1//

58. On the 3d of December, 1601, Complaint is made to the House, of an information exhibited by the Earl of Huntingdon, in the Star Chamber, against Mr. Belgrave, a Member (as it should seem, for some offence, committed by Mr. Belgrave, at the election for the town of Leicester). This matter being referred to the Committee of Privileges, they report on the 7th of December, 'That Mr. Belgrave admitted the substance of the suggestion to be true, but denied the circumstance. — Some of the Committees censured it to be an enormous fault to invest himself (for so the words of the information are) in a blue coat, but others were of a contrary opinion; but as the information was put in sedente Curii, and, at the suit of the Attorney General, in order that he should be debarred of his remedy against the party, the Committee thought it a disgrace:' And on the 8th of December, it is resolved, to demand a conference with the Lords upon this point; at which conference the Commons inform the Lords, that there were two exceptions to be taken to this information: (1.) 'That Mr. Belgrave, being a Member of the House of Commons, was thereby vexed and molested during his service in the time of Parliament, contrary to the honour and Privilege of the House; saying, that no Member of that House ought, by any such means, in time of his service to be distracted either in body or mind' and, (2.) 'That in the said Bill preferred by the Attorney General, certain words and clauses were inserted which were taken to be prejudicial and derogatory {120} to the honour of the House.' The Lords, without entering into any consideration of these points, objected that the Bill so brought by the Commons was not testified by the hand of the Clerk of the Star Chamber, and therefore sent it back to the Commons as informal; and afterwards on the 14th of December, when it was returned properly signed, it does not appear that they had any further proceeding upon this matter: Upon this the Commons, on the 17th of December, having first referred the whole to a Committee, resolve, upon their

report, 'That the said Mr. Belgrave is free from any abuse offered to this House, and that he is not to be molested for any such imputation and that this shall be entered as an Act of the House. //120-1//

These are all the precedents, or at least the most material ones, relating to the Privileges of Members of the House of Commons, that I have found from the earliest History of Parliament, to the end of the Reign of Queen Elizabeth.— And it appears, from some of the later Cases, that the House had, at this period, laid it down as the established law of Privilege, 'That no Subpoena or Summons, for the attendance of a Member in any other Court, ought to be served without leave obtained, or information given to the House; and that the persons, who procured and served such process, were guilty of a breach of Privilege, and were punishable by commitment or otherwise by the order of the House.' The refusal of the Lord Keeper, in 1584, in the Case of Mr. Cook (N^o 40.) to revoke this process, seems to have given the first rise to this method of proceeding; and upon the same principle, viz. that the {121} minds of the Members ought to be free, as well as their bodies' the exemption from being compelled to serve upon juries, (N^o 49,) or to any other attendance (N^o 51.) which might interfere with their first and principal duty, viz. 'their attendance in Parliament,' were insisted on by the House of Commons. — In earlier times, when a Sessions of Parliament was short, these avocations could not so often occur, so that such Summonses were no interruption to the attendance of the Members, and consequently did not call for the interposition of the authority of the House; but, during the latter part of the Reign of Queen Elizabeth, this interposition became absolutely necessary; and it was essential to the public business, that, during the sitting of Parliament, the Members should not be liable to be compelled, by the Summons of any inferior Court, to absent themselves from their attendance in the High Court of Parliament.

Another exertion of the authority of the House of Commons, which seems to have grown into constant practice, during the latter part of this Reign, is, the sending for persons entitled to Privilege, (when under arrest,) by the Serjeant at Arms; and the committing the bailiffs, and persons procuring the arrest, for their contempt to the House. The first instance in which the House appear to have exercised this power, in Smalley's Case, in 1575, (N^o 36.) and this after great deliberation, and long debate and consultation: I call it the first instance, because, as I have observed before, I am convinced that the proceedings of the House in the Case of Ferrers, (N^o 19.) were grounded more on the very particular circumstances of insult and aggravation which attended that arrest, than on the arrest itself, and not a little on his being a servant of the King and we see that, from {122} that time to Smalley's Case, for above thirty years, the House, instead of adopting this mode of delivery

by the Mace, order Writs of Privilege to be issued in almost every instance. //122-1// Between the year 1575 and the end of Queen Elizabeth's Reign, there are one or two other Instances of their exercising this more summary method of proceeding. //122-2// It appears from Hogan's Case (N^o 53.) that it was still later before the House of Lords exerted this Privilege.— Where the person so delivered was a prisoner in execution, a very great inconvenience attended this mode of proceeding, viz. “that the creditor lost his right of arrest;” this inconvenience had, as we have seen, in all the earlier instances, been obviated by a special Act of Parliament, and, in a few years, compelled the Legislature to pass the General Law of the 1st Jac. I. Ch. 13.

I do not find any instance, during the Reign of Queen Elizabeth, of a complaint of breach of Privilege for the prosecution of suits against Members, sitting the Parliament, except in the Entry of the 21st of February, 1588, (N^o 45.) and there the House are satisfied with ordering the Lord Chancellor to issue Writs of Supersedeas, but they do not proceed against the persons prosecuting such suits. This is the more remarkable, as we have seen several attempts made so long ago as in the Reign of Edward IV. (N^o 14 and 15.) to establish Privilege by Law; and in Atwyll's Case, (N^o 17.) the House of Commons themselves claim it as the right of every Member “not to be impleaded in any action personal,” and this right is allowed them: Now, it is difficult to conceive, that from Atwyll's Case, which happened in the seventeenth year of Edward IV. to the end of the Reign of Queen Elizabeth {123} a space of above one hundred and twenty years, no action or suit should be prosecuted in any of the Courts of Westminster Hall, or at the Assizes, against a Member of the House of Commons, sitting the Parliament; or, if such a prosecution had existed, that the House of Commons should acquiesce in it, after the very clear decision of this Privilege in their favour, in Atwyll's Case, both by the King and House of Lords; and yet, on the examination I have been able to make into the several precedents relating to Privilege during this period, I do not find one, except that of (N^o 45). It should seem therefore, that the principal object of the House of Commons, in the preservation of their Privileges at this time, was, the securing the persons of the Members, and of their menial servants, from arrests and the not permitting the attendance of the Members to be interrupted by the Summons of any inferior Court; but as to the inconvenience which might arise to Members, from suits being carried on against them during the time of Privilege, they do not seem to have adopted this idea in so large an extent, as was entertained after the accession of James I.— There are, indeed two Cases (N^o 44 and 58.) in the Star Chamber, where the prosecution of the suit may perhaps be considered as the object of complaint: though in the first, Mr. Puleston complains only of the service

of the Subpoena, and, in the course of this matter, it appearing that Mr. Puleston had put in his answer, and that the matter was actually at issue the House give leave to Mr. Alymer to proceed in his suit, without offence to the House: and in the latter Case of Mr. Belgrave, the information seems to have been filed for offences committed by him, at an Election of Members of Parliament; and the House, having determined that therein he is safe from any abuse to the House,"

{124} declare, that he is not to be molested for any such imputation. But both these instances, being in the Court of Star Chamber, and in their forms partaking of the nature of criminal prosecution and for offences in matters of Election, which were not cognizable but by the House of Commons, can hardly be produced as precedents, in favour of the doctrine laid down in Atwyll's Case, "that no Member is to be impleaded in any personal action, during the time of Privilege." — There is another Case, which is cited on the 2d of May, 1604, in the Commons Journal, as of the 16th of December, and forty-fourth year of Queen Elizabeth; 'where one Curwen, a servant of the Knight of the Shire of Cumberland, being arrested and in execution, sues out his Writ of Supersedeas;' the words of which, stating the Privilege of Parliament, are, 'that Lords, Members, and their servants, *ratione alicujus debiti, computi, &c. arrestari minimi debeant, implacitari, aut imprisonari;*' and therefore, '*quibus libet placitis, querelis, actionibus feu demandis versus ipsum Anthonium Curwen, supersedeatis omnino et ipsum Antonium deliberari faciatis.*' No proceeding was had upon this Writ, because, as appears from a note annexed to it, 'the officers of the Sheriff, although they made doubt of this Warrant, for his enlargement, yet, because the matter was but small, delivered Curwen out of custody, rather than so honourable a Court of the Parliament should be farther troubled therein.' And indeed it appears from the report of this Case in Dewes, //124-1// that the principal offence was the arresting Curwen, and not the impleading him and the House only resolve that the said Anthony Curwen should have Privilege without any censure on the persons concerned in {125} prosecution of the suit. This resolution was on the 15th of December, and the Writ bears date the next day.

The power exercised by the Ministers of the Crown, in committing Members; (as in N^o 34, 43, 46.) for a supposed breach of the Prerogative, by their speeches in the House of Commons, was indeed a very dangerous power, and most alarming to the essential Privileges of the House. If, in the two last instances, the House had taken up the question with the same spirit, as they had done in the Case of Mr. Strickland, in 1571 I have no doubt but that the consequences would have been the same: for although Queen Elizabeth carried her ideas of sovereignty very high, and, from the accidental circumstances of the

times, had perhaps more power, and in some instances exercised a greater authority than the legal constitution of this country, even at that time, admitted; yet such was the wisdom of her Counsellors, and such her own good sense, that, in points in which she saw the House of Commons were resolute and determined, she was not ashamed to give way, even where the Prerogative of the Crown was really and essentially concerned; and this was never more apparent, than in her submitting to destroy the patents for monopolies, on the representations of the House of Commons upon this subject. //125-1//

This Privilege of liberty of speech, though from the thirty-third year of Henry VIII. it had always made one of the articles of the Speaker a petition to the Throne, was frequently cavilled at by the courtiers, in the Reigns of Queen Mary and Queen Elizabeth, when they thought it intrenched upon the Royal Prerogative; and, in general, the {126} House acquiesced too much in this doctrine. It was reserved for a more enlightened age, and for times when the true spirit of liberty should be better understood, to ascertain and establish this Privilege in its utmost extent, consistently with the language of good-breeding, and the behaviour of men of liberal education. Indeed this Privilege is so essential to the very existence of a Free Council, that it always made a part of the Liberties of the House of Commons; and we see that, in the Case of Mr. Strode, so early as in the fourth year of Henry VIII. in the Act of Parliament which passed upon that occasion, this doctrine is clearly and explicitly declaimed, and all proceedings on condemnations for such speaking are held to be void. //126-1//

We have seen in Chedder's Case, (N^o 7.) in the fifth year of Henry IV. that, on an assault made on the person of a Member's servant, the House apply by petition to the King, and desire several punishments to be inflicted on the persons making the assault, according to the degree of their offence: This, however, the King declined at this time to grant, and only directed such process to issue, as should compel Salvage the offender to appear, then leaving him to the course of the law. — In Prynne's animadversions on the fourth Institute, p. 331, there is a record of a special commission, from Richard II. to several Gentlemen of the North, to enquire into a riot and assault made on the lands and servants of John de Derwentwater, then Knight of the Shire for the County of Cumberland, during his attendance in Parliament; and we have seen (N^o 9, 10, and 11.) several other instances, where the Commons apply to the King for redress on assaults made {127} upon the persons of Members, or their servants and that these applications produced the Acts of the fifth of Henry IV. Ch. 6. and of the eleventh of Henry VI. Ch. II. by the latter of which a punishment is enabled on those that make assault on Members coming to the Parliament: But in later times, even these laws

being found ineffectual, it appears from the Cases (N^o 25, 37, and 57.) that the House of Commons very properly took the enquiry into these offences, and the punishment of the offenders, into their own hands.

The Case of Mr. Arthur Hall, in 1580, (N^o 39.) is the only instance that I have hitherto met with, or that, I believe, occurs upon the Journals before the Long Parliament of 1640, in which the House of Commons proceed upon a complaint against any person, for printing or publishing matters derogatory from the Honour or Privileges of the House. //127-1// It appears from the report of the Committee appointed to examine Mr. Hall's book, that it contained a variety of {128} offensive matter, and that he had been guilty of a Contempt of the House, in going out of town after having been enjoined to appear. The articles selected by the Committee out of the Book, and with which he was charged, were, first, the publishing the conferences of the House abroad in print, and that in a libel, with a counterfeit name of the Author, and no name of the Printer,— and containing matter of infamy of sundry good particular Members of the House, and of the whole state of the House in general, and also of the power and authority of the House; affirming, that

he knew of his own knowledge, that this House had de facto judged and proceeded untruly: He was further charged, 'that he had injuriously impeached the memory of the late Speaker, deceased; and had impugned the authority of the House, in appointing Committees without his consent; and that, in defacing the credit of the Body and Members of the House, he practised to deface the authority of the laws, and proceedings in the Parliament; and so to impair the ancient orders touching the government of the Realm, and Rights of the House, and the form of making laws, whereby the subjects of the Realm are governed. Upon this complicated charge, increased by his wilful contempt, testified by an unseemly letter addressed by him to the House,' he was sentenced, as we have seen before to be imprisoned, fined, and expelled: And it was also ordered, "that the said Book or Libel should be taken and adjudged to be condemned." — Whoever will give themselves the trouble to read the Entry of this proceeding in the Journal of the 14th of February, 1580, from whence I have given the foregoing Extracts, will find it difficult, from the variety of offences of different natures charged against Mr. Hall, to deduce any precise idea of the Law of {129} Privilege, as understood by that House of Commons, 'with respect to the printing or publishing the debates or proceedings of the House;' provided that such publication was not made 'in a false and infamous Libel, injuriously reflecting on the characters of Members, or impeaching the Rights and Authority of Parliament.'

CHAP. III.
FROM THE ACCESSION OF JAMES I. TO THE END OF THE
PARLIAMENT OF 1628.

As from this period of the accession of James I complaints of breaches of Privilege will become exceedingly frequent, I shall not think it necessary to insert in this Work every Entry that occurs upon the Journals of those which are the most common, unless the debate turns upon a new point, or that the proceeding of the House upon it appears to be in any wise extraordinary: And for the more easily understanding these Cases, I shall separate them under the following heads;

(1.) First, The commitment of Members or their servants by the Privy Council, or by any court of justice or other magistrate.

(2.) Secondly, The arrest and imprisonment of Members, or their servants, in civil suits.

(3.) Thirdly, The summoning of Members, or their servants, to attend inferior courts, as witnesses, jurymen, &c.

(4.) Fourthly, The prosecuting of suits at law, against Members, or their servants, during the time of Privilege.

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(5.) Fifthly, The taking the goods or effects of a Member in execution, or otherwise.

(6.) Sixthly, The assaulting or insulting a Member, or his servant, or traducing his character.

I think that all the Cases, relating to the Privilege of Members of the House of Commons, which occur between the accession of James I. and the dissolution of the third Parliament of Charles I. in 1628, to which period I shall now confine myself, will fall under one or other of these six heads.

And first therefore, I shall give the instances which are to be found of Members, or their servants, being committed or restrained by order of the Privy Council, by the courts of justice, or any inferior magistrate.

1. On the 3d of February, 1605, Mr. Brereton, Member for Flint, being committed by the Judges of the King's Bench for a contempt, during a prorogation, this matter is referred to a Committee; on the 13th, a Writ of Habeas Corpus is ordered for Mr. Brereton, which is returned and read in the House on the 15th, and Mr. Brereton is received. I do not find any report from the Committee, or any other entry of this matter.

2. On the 18th of February, 1605, Complaint is made of Sir Edwyn Sandys's servants being committed to Newgate, by a Justice of

Peace, for being engaged in a riot, and that he refused to bail them; a Habeas Corpus is ordered for the servants. And the complaint is referred to the Committee of {132} Privileges; on the 19th they report, and the Justice is committed to the custody of the Serjeant. On the 21st and 22d, he is heard by his Counsel, and, on his submission and acknowledging his fault, is discharged. The entry of this Case in the Journal is so very confused, that it is difficult to know the exact state of it; the principal charge upon the Justice seems to have been, his refusing bail when it was offered, unless the parties would pay ten shillings.

3. On the 10th of March, 1609, and 12th, 14th, 15th, and 16th, is a very obscure entry of a breach of Privilege, committed by a constable on the son and servant of a Member.

4. On the 14th of June, 1610, Dr. Steward's servant is taken up for getting a woman with child; the Warrant was signed by four Justices before the Parliament, but executed now; it is referred to the Committee of Privileges, who report, on the 16th, and it is determined he should have Privilege; there is some debate on the 20th, about paying the charges.

5. On the 9th of April, 1614, the House are informed that Sir William Bampfylde is committed by the Lord Chancellor, since the summons to Parliament, but before his election; this matter is referred to the Committee of Privileges, who report on the 14th, that he was committed before the election for a contempt 'for not accepting Sir J. Wentworth's offer;' it is however ordered, 'that he shall have his Privilege, by Writ of Habeas Corpus.' Accordingly on the 16th, he is brought up by the Warden of the Fleet, by virtue of this Writ; and being brought in by the Serjeant with his Mace, to the Bar, the Speaker opens the matter; and {133} desires to know the pleasure of the House thereupon.—Here the entry in the Journal stops, and I find nothing farther relating to this matter, or that the House ever came to any determination about it.

6. It appears from the notes of speeches which are entered in the Journal of the beginning of the Session of 1620-1, (and from the debates which are published more at length in two volumes, from an original manuscript in Queen's College, Oxford) that, at the end of the last Session of Parliament in 1614, //133-1// some Members had been committed for speeches they had uttered in Parliament. This matter being now taken up, though at so great a distance of time, and being discussed for several days, but without heat or passion, many motions and propositions were made, in what manner the House might best assert this Privilege of freedom of speech, whether by bill, as in Strode's Case, or by petition to the King; after long consideration, it was determined on the 15th of February, to proceed by message to the King,

and not by petition in writing, 'to desire, that if any of the House should speak in any undutiful manner, they may be censured here, and not be punished in or after the Parliament.' But during the debate upon this question, a message to the House was brought from the King, by Mr. Secretary Calvert, to say, 'that his Majesty did grant liberty and freedom of speech in as ample manner as any of his predecessors ever did; and if any should speak undutifully, (as he hoped none would) he doubted not but we ourselves would be more forward to punish it, than he to require it, and he willed us to rest {134} satisfied with this, rather than to trouble him with any petition or message, and so cast ourselves upon one of these rocks; that, if we asked for too little, we should wrong ourselves; if too much or more than right, he should be forced to deny us, which he should be very loath to do.' This message from the King put an end, for the present, to any farther proceeding upon this matter. //134-1// It is remarkable, that, notwithstanding the impartiality professed by the writers of the Parliamentary History, //134-2// I do not find that they take any notice of these debates, (although they appear upon the Journal, to which they pretend strictly to adhere) or of the proceedings of the House of Commons in appointing a Committee, and Sub-Committee, "for free speech," of which Sir Edward Coke and Mr. Glanville were chairmen; nay, which is more extraordinary //134-3//, they censure the biographer Wilson, and other Historians, for saying, "that after the dissolution of the last Parliament, several Members were committed for their behaviour in Parliament," whereas the truth of this assertion appears from the debates, //134-4// and that these Members were imprisoned, "for speaking freely their consciences in the House of Commons, and for which being before questioned, they had been cleared by the House that they had spoken nothing but what was lawful and fitting, and for which they gave good reason and satisfaction to the House." But this is only one of the many very glaring misrepresentations and omissions by the compilers of the Parliamentary History, which they will be found, upon examination, to have made in favour of James I. and Charles I.

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Notwithstanding the fine words of his Majesty's message, in favour of liberty and freedom of speech, soon after the adjournment of the Parliament, in the month of June, 1621, Sir Edwyn Sandys was committed, //135-1// probably for something he had said on the 29th of May, on the report of the conference with the Lords, touching the breaking up of the Parliament: //135-2// I say it was probably for this, because on the 2d of June, Sir Edwyn Sandys informs the House, "that he had heard that some words of his had been misconstrued, and that out of the House;" he then explains what he said at that time, "not to

have meant any slander against his Majesty's government;" and the House resolve upon question, *nemine contradicente*, "That Sir Edwyn Sandys is free from any just cause of offence to his Majesty, or any other, by the particular words now related by him, or by any other words he hath spoken in this House." This shews that exception had been taken to Sir Edwyn Sandys's speeches, "for slander to his Majesty's government." On the 4th of June, the House of Commons adjourn to the 14th of November, and from thence to the 20th of November.—On the meeting of the House of Commons, on the 20th of November, Sir Edwyn Sandys being still in custody, or restrained by the King's order from attending, Mr. Mallory moved to know, "what was become of him." This question was renewed on the 23d, when it appears that Sir Edwyn Sandys had in the interim written a letter to the Speaker, in which he informed the House, "that he had been confined," but does not make {136} any complaint to the House "of the cause of his confinement." However, many members expressing their apprehensions, that this commitment could be for no other cause than for Parliamentary business, Mr. Secretary Calvert assures the House, "that he was not committed for any thing said or done in Parliament;" but, it is said in the debates //136-1//, "that the House will scarce believe Mr. Secretary, but thinketh he equivocateth;" and accordingly desire that his protestation may be entered in the Clerk's book, which was done: Sir Edwyn Sandys however not appearing, the matter is again taken up on the 1st of December, when, notwithstanding several attempts of the Privy Counsellors to stop any farther proceeding, it is ordered, "That Sir Edwyn Sandys shall be presently sent for to come and attend the service of the House, if he be able to come, and, if he be not able to come, then to set down a declaration in writing, whether he were examined or committed for any Parliamentary business,' and that Sir Peter Hayman and Mr. Mallory shall go to Sir Edwyn Sandys, and bring his answer.—The House having in the mean time resolved to send a Petition and Remonstrance to the King, setting forth the grievances under which the Kingdom then suffered; the King, then at Newmarket, hearing of their intentions, immediately dispatched a letter to the Speaker, in which, after severely reprimanding "those fiery and popular spirits of some of the House of Commons, who had presumed to argue and debate publicly of matters far above their reach and capacity, tending to our high dishonour, and breach of Prerogative Royal;" he adds, "And whereas we hear, they have sent a message to Sir Edwyn Sandys, to know the reasons of his late restraint, you {137} shall in our name resolve them, that it was not for any misdemeanor of his in Parliament;—but to put them out of doubt of any question of that nature, that may arise among them hereafter, you shall resolve them in our name, that we think ourselves very free and

able to punish any man's misdemeanors in Parliament, as well during their sitting as after, which we mean not to spare hereafter, upon any occasion of any man's insolent behaviour there, that shall be ministered unto us." This rash and ill advised message brought on several debates touching the Liberty of Speech, in which no man expressed himself with more honest warmth than Mr. Crewe, and with some strokes of eloquence, that would do honour to the most admired speakers; "I would not, says he, have spoken about our Privileges, if the thing questioned were only matter of form, and not of matter; but this is of that importance to us, that if we should yield our Liberties to be but of grace, these walls, that have known the holding of them these many years, would blush; and therefore we cannot, in duty to our country, but stand upon it, that our Liberties and Privileges are our undoubted Birthright and Inheritance." The Commons, having sent down another petition in answer to this letter of the King's, were told again, "That although we cannot allow of your stile, calling it your ancient and undoubted right and inheritance, but could rather have wished that ye had said, that your Privileges were derived from the grace and permission of our ancestors and us; yet we are pleased to give you our royal assurance, that, as long as you contain yourselves within the limits of your duty, we will be as careful to maintain and preserve your lawful Rights and Privileges, as ever any of our predecessors were, nay, as to preserve our own Royal Prerogative." This open declaration {138} of the King's, touching the foundation of the Privileges of the House of Commons, brought the matter to a crisis, and produced that famous protestation in vindication of their Rights and Privileges, which brought on the immediate dissolution of the Parliament, and which (though the King, "by sending for the Journal Book, and striking out the Entry with his own hand," was in hopes to have obliterated all traces of it,) is still preserved, and will for ever remain a memorial of the true spirit of the Great Leaders of that House of Commons, who stood firm in opposition to the attempts of an arbitrary Monarch, wishing to trample upon the Rights and Liberties of his people. //138-1//

This protestation, made and recorded in the Journal of the 18th of December, differed so widely from the King's principles upon this question, that his Majesty thought fit to send for the Book, and, "in full assembly of his Council, and in the presence of the Judges, did declare the said protestation to be invalid, annulled, void, and of no effect; and did further, manu sua propria, take the said protestation out of the Journal Book of the Clerk of the Commons House of Parliament, and commanded an Act of Council to be made thereupon, and this Act to be entered in the Register of Council causes:" Intending, as it is expressed in the Entry in the Council Books, "that hereby this protestation should

be erased out of all memorials, and utterly annihilated.” Immediately on the dissolution of the Parliament, “those ill tempered spirits,” Sir Edward Coke, Sir Robert Philips, Mr. Pymm, Mr. Selden, and Mr. Mallory, who had been the most forward in asserting the Privileges of the House of Commons, were committed to the Tower and other prisons; the {139}

Locks and doors of Sir Edward Coke’s chambers in London, and in the Temple, were sealed up, and his papers seized; Sir Dudley Diggs, Sir Thomas Crewe, Sir Nathaniel Rich, and Sir James Perrot, as a lighter punishment, were sent, under pretence of enquiring into matters concerning his Majesty’s service, into Ireland, and Sir Peter Hayman into the Palatinate.

And thus ended this very important question between the King and the House of Commons, which the Reader will find his pains amply rewarded in studying more at large, in the Journals, from the 1st of December to the end of the Session; in the second volume of the debates, from p. 179 to the end, and the Appendix; and in the fifth volume of the Parliamentary History.

7. On the 8th of February, 1620, several pages, servants to Members, having been guilty of a riot and assault, in the face of the Judges of the King’s Bench, were committed by that Court, but afterwards sent by them to the House of Commons, to be punished there.

8. The next Case I shall produce, is that of Lord Arundel, which, though it is not strictly within the line I originally proposed to myself, yet, as the proceedings upon it contain much curious learning, touching the Privilege of Parliament, I trust it will not be thought entirely foreign to the present Work. As these proceedings are to be found, collected together from the Journals of the House of Lords, both in the seventh volume of the Parliamentary History, p. 168, and in Elsynge, p. 192, I shall not insert them at length, but shall only give such extracts as may be sufficient for {140} understanding the principles upon which the Lords proceeded in this matter.

On the 14th of March, 1625-6, Charles I. had committed the Earl of Arundel to the Tower, but the cause of his commitment was not expressed; it was supposed to be on account of the marriage of his eldest son with the sister of the Duke of Lenox, a relation of the King’s. The Lords highly discontented that he was committed, sitting the Parliament, resolved to take the matter into consideration; and so to proceed, “as to give no just offence to his Majesty, and yet preserve the Privilege of Parliament.” Upon this the Lord Keeper acquainted the House, that he was commanded by his Majesty to deliver this message to their Lordships, viz. “That the Earl of Arundel was restrained for a misdemeanor, which was personal to his Majesty, and lay in the proper knowledge of his Majesty, and had no relation to matters of Parliament.”

The Lords, however, immediately resolved themselves into a Committee, and the House being resumed, the Lords Sub-Committees for Privileges were appointed to search for precedents, concerning the commitment of a Peer of this Realm, during the time of Parliament; and several of the Judges were ordered to attend their Lordships.—The next day, the 15th of March, the Lord Treasurer Ley, brought another message to the Lords, to say, “That the King avowed the message delivered yesterday to their Lordships, by the Lord Keeper, to have been done punctually according to his Majesty’s own discretion; and he knoweth that he hath therein done justly, and not diminished the Privilege of the House.” But, the Lords Committees not yet having reported the precedents, the Lords do not proceed any further at present: On the 18th of April, the Lord President {141} reported the proceedings of the Sub-Committees: ‘First, that the King’s Counsel had searched and acquainted the Lords with all that they had found in records, chronicles, or stories touching this matter, unto which the Lords Committees had given a full answer; and also shewed such precedents as did maintain their own right.’ //141-1// This report being read, it was agreed upon the question by the whole House, nomine contradicente, ‘That the Privilege of this House is, that no Lord of Parliament, fitting the Parliament, or within the usual times of Privilege of Parliament, is to be imprisoned or restrained, without sentence or order of the House, unless it be for Treason, or Felony,

or for refusing to be Surety for the Peace.’ — And a Committee was appointed to consider of a Remonstrance of the Privileges of the Peers of Parliament, and of an humble Petition to be made unto his Majesty, to enjoy the same. The next day, the Lord President reported this Remonstrance and Petition, which was agreed to, and ordered to be presented by the whole House; to which the King made answer, ‘That

it being a matter of some consequence, he would advise of it, and give full answer in convenient time.’ This was on the 19th of April. — On the 24th, the House was called over; and the Earl of Arundel being called, the Lord Keeper signified to the House, ‘That his Majesty having taken into consideration the Petition of their Lordships, touching the Earl of Arundel, will return answer thereto with all expedition.’ — On the 2d of May, the Lords, finding that notwithstanding the King’s promises, the Earl of Arundel was still restrained from coming to the House, and that no notice was {142} taken of their Petition, order the Lord Keeper again to move his Majesty, for a speedy and gracious answer: ‘On the 4th of May, the Lord Keeper acquainted the House, That in pursuance of their order he had moved his Majesty, on behalf of the Earl of Arundel; and that his Majesty gave for answer, ‘That it is a cause in which his Majesty is willing to give satisfaction to your Lordships, and hath it in consideration how to do it; but, having been interrupted by other

business, will, with all conveniency, give your Lordships satisfaction, and return you an answer.' The Lords waited patiently till the 9th of May, when, finding it was with no effect, they again petition the King, 'for a gracious and present answer.' The King, highly offended at this expression, and wondering at their impatience, since he had promised them an answer in convenient time;' tells them, 'That when he receives a message fit to come from them to their Sovereign, they shall receive an answer. Upon this signification of the King's displeasure, the Lords strike out the word 'present,' and direct the Petition so altered to be again presented to the King; to which the King again answers, for the fourth time, that they shall have answer, as soon as conveniently he can. This was on the 13th of May, and the first Petition, with the King's promise to give an answer 'in convenient time,' was on the 19th of April. — On the 17th of May, the Lords renewed their Petition upon this subject, to which, on the 19th, the King answers, 'That they have no reason to mistrust the sincerity of his promises; that the Lord Arundel was committed for a fault directly against the King himself, having no relation, to the Parliament; that, on the word of a King, he does not speak out of a desire to delay them, but, as soon as it is possible, that they shall know the cause.' Upon {143} this evasive answer, the Lords immediately direct the Committee of Privileges to consider, how farther to proceed with dutiful respect to his Majesty: and yet, so as may be for preservation of the Privileges of the Peers of this land, and the Liberties of the House of Parliament. On the 24th of May, the Lord President reports another Petition to the same purport, and this is again presented by the whole House to which the King again replies, 'That he will use all possible speed to give them satisfaction, and at farthest before the end of the Sessions.' The Lords seeing that, notwithstanding the most solemn promises so frequently repeated, the King intended to delay giving them satisfaction till the end of the Sessions, and by that pitiful evasion persist in the violation of their Privileges, immediately resolve, 'That all other business shall cease, and that consideration be had how their Privileges may be preserved to posterity;' and then adjourn to the next day. On the 26th, the King, finding the matter grow serious, sends a message by the Lord Keeper to acquaint the Lords, 'That he doth much marvel that his meaning in his last answer should be mistaken; and for the better clearing his intentions, to assure their Lords, that their last petition was so acceptable to his Majesty, that his intent was then, and he is still resolved, to satisfy their Lordships fully in what they then desired.' The Lords, determined to be no longer insulted with this farce of words, immediately resolve (without taking notice of the message) to adjourn to that day sevensnight; and though the Duke of Buckingham wished only to signify to their Lordships, 'that he would decline his desire of having

the King's Counsel to plead for him,' the Lords would not hear him, because they would entertain no business. On that day sevensnight, the 2d of June, the Lord Keeper {144} delivered another message from the King, That his Majesty hath thought of the business, and hath resolved that by Wednesday sevensnight at farthest, he will either declare the cause, or admit Lord Arundel to the House; and addeth further, upon the word of a King, that if it shall be sooner ripe, he will declare it sooner, and that he doth not mean to put so speedy an end to the Sessions, but that there shall be an ample space for the dispatch of public affairs.' Upon this, the Lords again resolve, 'That all other business shall

cease, but this of the Earl of Arundel's, concerning the Privileges of the House and that this matter be considered in a Committee of the whole House the next day.' On the next day, the 3d of June, the King, finding it was to no purpose any longer to contend with the Lords, upon a point which they were determined to maintain, and which, by their resolution to proceed upon no other business, must be brought to an issue sooner or later, sends another message by the Lord Keeper, 'That, in the matter concerning the Earl of Arundel, his Majesty hath been very careful and desirous to avoid all jealousy of violating the Privileges of this House;

that he continueth still of the same mind, and doth much desire to find out some expedient, which might satisfy their Lordships in point of Privilege, and yet not hinder his Majesty's service in that particular: But, because this will require some time, his Majesty is content that their Lordships shall adjourn till Thursday next; and, in the mean time, his Majesty will take this particular business into farther consideration.' Upon which the House immediately adjourns itself to Thursday, and all business to cease until that day. Upon Thursday the 8th of June, the Lord Keeper delivered this message from his Majesty, 'That in pursuance of his message of Saturday last, to take away all dispute, {145} and, that the Privileges of the Lords may be in the same estate as they were when this Parliament began, his Majesty had taken off his restraint of the Earl of Arundel, whereby he hath liberty to come to the House:' And the Earl of Arundel, being present, did render his most humble thanks to his Majesty for this his gracious favour to him; and gave their Lordships also most hearty thanks, for their often intercessions for him to the King, and protested his loyalty and faithful service unto his Majesty.

What a faithful picture of the character of Charles I. doth this short History exhibit! Arbitrary, imperious, obstinate, and deceitful ! Secretly wishing to trample upon the Privileges of Parliament, yet, not daring to avow his intentions, he endeavours by false intimations and untrue assertions to protract the time, til it should be no longer in the power of the Lords to contend with him; and, when at last their cool but manly

perseverance compels him to submit, he is not ashamed to give the Earl of Arundel his liberty, without suggesting even a hint of that 'most Just cause,' for which he so often pretended to detain him. Whoever is acquainted with the History of this unfortunate Monarch, will see in these outlines the sketch of that character, which was afterwards more fully portrayed in the affair of Lord Stafford, and of the Bishops, and (which the repeated violations of his royal word rendering all confidence impossible) necessarily brought on that scene of confusion, that ended in his own destruction, and in the overthrow of all order and government.

9. On the 8th, 9th, and 10th of May, 1626, at a conference with the Lords, on the charge against the Duke of {146} Buckingham, Sir John Eliot and Sir Dudley Digges, having used expressions that were thought to reflect upon the King and upon the Duke, were both committed to the Tower. The House of Commons, inflamed with this most flagrant violation of their Privileges, resolve upon the 12th of May, 'That this House will not proceed in any other business, till we are righted in our Liberties' and therein set that example, which, we have seen in the foregoing Case, was followed by the Lords with so much success about a fortnight after. The accusation against Sir Dudley Digges was, 'that in speaking of the late King's death, he had uttered words touching upon the King's honor:' But the House having appointed a Committee to enquire into this breach of their Privileges, that Committee resolve, 'That a solemn protestation should be taken by every Member of the House, against their giving their consent to the speaking any such

words, and denying that they had affirmed to any that Sir Dudley Digges did speak such words, or any to that effect.' And this protestation each Member solemnly made, as his name was called over from the book: And on the 15th of May, upon this matter being moved in the House of Lords, thirty Peers and six Bishops made this voluntary protestation, upon their honour, 'That Sir Dudley Digges did not speak' any thing at the said conference, which did or might trench upon the King's honour.' Upon these assurances the King was satisfied, and Sir Dudley Digges was set at liberty, and on the 16th, in his place in the House of Commons, maketh his protestation fully, 'That, as the words charged against him were far from the words he used, so they never came into his thoughts.' — One of the charges against Sir John Eliot was of a very ridiculous nature; 'That in summing up the whole against the Duke of Buckingham, {147} had insolently called him "the man," saying, "you see the man," which, as was observed by that grave but supple courtier, Sir Dudley Carlton, were extraordinary terms to use of so high a personage, such as he never heard the like in Parliament before.' Though this free language of Sir John Eliot's at the conference was the true reason of his commitment, it was a cause too ridiculous to be avowed;

and therefore the King ordered the Chancellor of the Exchequer to inform the House, 'That the charge against Sir John Eliot was with things extrajudicial to this House;' and on the House desiring an explanation of this word "extrajudicial," Mr. Chancellor said, 'It was his Majesty's word, and therefore he could not explain it without his Majesty's leave;' Mr. Chancellor little considering what a charge of untruth and insincerity he hereby brought upon his Majesty. But the King, being probably advised to insist no longer upon a point which he could not maintain, on the 19th of May signed with his own hand a warrant for Sir John Eliot's release and on the 20th he was sent for to come into the House: As soon as he had taken his place, Mr. Vice-Chamberlain repeated the charge against him, 'in order (it is said) to give him an occasion to discharge himself of whatever might be objected against him;' to which Sir John Eliot, instead of denying any thing he had said at the conference, or meanly endeavouring to explain away the harshness of the terms he had made use of, warmed with a spirit that did him honour, and which, with the whole of his behaviour during those times, will render his memory always dear to every lover of Liberty, avowed and supported every name he had given to this over-grown favourite; to the particular objection of the words, "the man," he said, 'he thought it not fit at all times to reiterate his titles and yet he thinketh him not to be a God.' The {148} House, catching the spirit of this great patriot, immediately resolved without one negative, and even refusing to order him to withdraw, 'that Sir John Eliot had not exceeded the commission given him by the House, in any thing which passed from him in the late conference with the Lords.' And the like resolution passed for Sir Dudley Digges.

Thus ended this impotent attack of that rash Monarch on the Liberties of the House of Commons, to the disgrace both of himself and his favourite. — The Compilers of the Parliamentary History cannot let this assertion of the Privileges of the House of Commons pass, without observing, //148-1// "That imprisonment of Commoners, however unjustifiable in itself, was no unprecedented stretch of the Royal Prerogative." How much then are we obliged to those great men Sir John Eliot, Sir Dudley Digges, Sir Edward Coke, Mr. Selden, Mr. Pymm, Mr. Mallory, and many others, for putting a stop to these precedents; and when this argument, drawn from Precedents, was urged against them by the base and fawning flatterers of those days, they sensibly replied, "As to the question, whether these liberties are old or new, whether by the king's grant or by prescription, it is immaterial; if I am sure of my title, it is indifferent to me, whether I claim by descent or by purchase." — Or, as the same thought is expressed by a noble Writer of the present age, "If liberty were but a year old, the English would have just as good a right to

claim and to preserve it, as if it had been handed down to them from many ages.” //148-2//

10. The last Case I shall mention under this head, is that of Sir Henry Stanhope, who was committed by the Council {149} Table for a Challenge, and to prevent further danger: It appears from the Journal of the 3d, 5th, and 8th of May, 1628, and from Prynne, //149-1// that a Warrant had issued for apprehending him without expressing the cause of commitment, but that in the second Warrant it was declared to be for the breach of the peace, and refusing to give security for the peace.” The House sent for Sir Henry Stanhope by their Serjeant with the Mace, but on examination remanded him to the prison of the Marshalsea; and on the 8th of May, he, having given security for the peace, was set at liberty by order of the House. — Prynne has given a particular account of the debate upon this subject, for which he only cites the Journal. Now there is not a word of the debate entered there, nor in Rushworth, and therefore his authority upon this occasion is to be suspected, especially as he is totally mistaken in the manner of its being concluded; for he says //149-2// “the quarrel was taken up, and so the Lords discharged him, not the House.” — The alteration, which the Lords of the Council made in their second Warrant of the 4th of May, after the matter had been moved in the House of Commons, is very remarkable; as it is expressed in the very words used by the House of Lords, in their resolution on Lord Arundel's Case, and was certainly meant to meet the interposition of the House.

I do not observe that, among these complaints of breaches of Privilege, by the Imprisonment of the Members, or their servants, there is any one of a person committed by any process of a Court of Law, on any proceeding by Indictment or Information, in order to bring him to trial, or on any Capias to receive Judgment; and yet in a course of five and twenty years {150} years, it is but reasonable to suppose such an event must have happened.— The first, fifth, and seventh Cases are commitments by Courts of Justice, for a contempt to the Court: In these instances, the House claim their right to the personal attendance of their Member; and, in the seventh Case, where the servants deserved punishment, they are sent by the Judges of the King's Bench to the House of Commons, to be punished there though they had been guilty of so high an insult on that Court, that it was observed, ‘many for lesser offences had lost their hands.’

The second, third, and tenth Cases are in matters of the peace: If the Justice of the Peace in the second Case had taken the bail, or the security of the peace, which was offered, it does not appear that the Privilege of the House would have been broken; but being a trading Justice, (a character very much complained of about this time) he

insisted on the payment of ten shillings and in this he undoubtedly exceeded any powers given him by law, and by that rendered himself a very proper object of the jurisdiction of the House. In Sir Henry Stanhope's Case, the House on finding it a matter of the peace, remand him, till he procures his liberty by giving security of the peace,— These instances, with that of Lord Arundel, (N^o 8.) may, I think, be very properly considered as a Parliamentary explanation of the expression in Thorpe's Case, of "Surety of the Peace," and of what Sir Edward Coke says in the fourth Institute, p. 25, "That the Privilege of Parliament does hold unless it be in three Cases Treason, Felony, and the Peace."

As to the Case of Dr. Steward's servant, (N^o 4.) I believe the law with respect to bastards, stood at that time on the {151} eighteenth of Queen Elizabeth, Ch. 3, by which 'the Justices are empowered to punish the reputed father, and to make provision for the care of the child, and to charge such father with a weekly payment of a sum of money, which if he refuses to pay, then to commit him to the common gaol.' It does not appear from the Journal, on what ground this commitment was made; whether only as being an offence contra bonos mores, or, upon the Act of Parliament, on his refusal to pay the money; it was however in neither Case clearly a 'matter of the peace,' and therefore the House consistently with that doctrine determined he should have Privilege.

The sixth, eighth, and ninth Cases are commitments by the King or Council, for offences against the Court, by speaking; too freely of the Prerogative, or by some act by which the King thought himself personally injured. In these instances, both Houses, with equal spirit, assert their indubitable and essential right of freedom of speech, and of the personal freedom of their Members, and refuse to proceed in any business, till their Members are restored to them. — If this claim, set up by James I. and Charles I. to imprison the Members of either House of Parliament, at any time, and under any pretence, could have been established and carried into execution, it would have made no inconsiderable part of that system of Prerogative Government, which these ill-advised Princes were so desirous of erecting: The terrors of hard imprisonment, and Star-Chamber punishments, would undoubtedly have prevented many Members from voting or speaking against the measures of the Court while the more firm and resolute, the Wentworths, Eliots, and other manly spirits, whom no terrors {152} could affright, would, by this power, have been withdrawn from the House; and the Court might easily have prevailed with the timid herd, which were left behind, to have given the countenance of Parliamentary authority to those measures that they were aiming against the constitution; and would thereby have established the power of the Monarch on a foundation, perhaps never afterwards to be shaken. — In these commitments, which we have

hitherto met with, made either by the Council Table, or by the order of the King, there is generally that modesty in the ministers to wish, that it may be supposed that such commitments were not for any liberties taken in speeches, or for particular votes or behaviour in either House of Parliament, but for offences of another sort committed out of Parliament; well knowing, that if the Parliament could be deluded by these pretences, their end would be equally answered, and they should avoid contesting those liberties which they could not deny to exist, and which they were aware the Parliament could never resign, — Yet in the instance of Sir Edwyn Sandys, (N^o 6.) that weak Prince, James I. induc'd by his fondness for big words, and angry menaces, cannot help in his message to the House of Commons, openly avowing his right to punish any man's misdemeanors in Parliament; though, in the same breath, he is pusillanimous enough to tell a manifest untruth that, in this particular Case, Sir Edwyn Sandys was not committed for any such behaviour. This transaction is a true picture of the character of that unwire Monarch 3 loud, obstinate, boasting, threatening in words, but, when matters were brought to a crisis, mean, cowardly, trifling, and supple: It is however providential for this country that he existed such as he was; if, on the one hand, he had made fewer claims in favour of the Prerogative, he would not have excited those active {153} and determined Patriots, who, in opposition to his arbitrary measures, examined into the History of the Constitution of this Government, and brought forth those rules and principles, which were afterwards so Justly applied in resisting the power of the Crown, and reducing it within its legal limits: Sir Edward Coke., Sir Dudley Digges, Sir Robert Philips, Mr. Crewe, and many others, might have passed unobserved through life, and this country might never have reaped the advantages of those studies and that knowledge, to which the patriots in the succeeding Reign, and those who brought about the Revolution, were so much indebted. If, on the contrary, he had had more true spirit, and wisdom, and resolution to have abided by and supported those claims, on the foundation of the precedents made by his predecessors of the House of Tudor; it is impossible to say, what might have been the event: I trust the great men of those days would not have been found an easy conquest; they would, I make no doubt, have continued the same opposition, though they had been obliged to purchase their liberty with their lives: Happily however for us, they were not put to so severe a trial; the weakness of their competitor always gave the victory on their side.

(2.) The second general head, is the arrest, or imprisonment of Members, or their servants, in civil suits.

1. And the first Case which occurs, is that of Sir Thomas Shirley,

on a complaint made on the 22d of March, 1603, of his being arrested at the suit of a creditor, and imprisoned four days before the fitting of Parliament. The proceedings of the House upon this complaint., and the Bills which were brought in in consequence of it, take up a considerable part of {154} the Journal of this Session; //154-1// I shall here therefore only insert a summary account of the Case, copied from the fifth volume of the Parliamentary History. //154-2//

Sir Thomas Shirley, Member for Steyning, had been committed prisoner to the Fleet, soon after his return, and before the Parliament met, on an execution. The House sent their Serjeant at Arms to demand the prisoner, which was refused by the Warden; on this he was himself sent for to the House, where he, still persisting in refusing to release the prisoner, was committed to the Tower for the contempt. On the 9th of May, a debate arose in the House, in what manner they could release their Member; some arguing that the House could not, by law, secure the Warden from an escape of his prisoner: But the Recorder of London said ‘That this was not a time to treat about matters of law, but how to deliver Sir Thomas Shirley. — He moved therefore that six of the House might be selected and sent to the Fleets with the Serjeant and his Mace to attend them there to require the delivery of Sir Thomas Shirley; and, if it was denied, to press to his chamber, and, providing for the safety of the prison and prisoners, to free him by force, and bring him away with them to the House.’ — This motion of Mr. Recorder of London was put to the question, and carried by one hundred and seventy-six, against one hundred and fifty-three, on which it was resolved to send, with direction and authority as before: But the Speaker, putting the House in mind that all those, so sent to enter the prison in that manner, were, by law, subject to an action upon the Case, it was thought meet to stop the proceeding. — Many {155} projects were formed in the House, for several days together, for the delivery of the prisoner, but to no purpose; when the Warden was again ordered to be brought before them, and though told of the greatness of his contempt, and terrified with further punishment, if he would not yield, he still refused to deliver his prisoner to them. On this another debate arose, and having come to a resolution, the Warden was again called in, when he, still persisting in his obstinacy, was told by the Speaker, ‘That as he did increase his contempt, so the House thought fit to increase his punishment, and that their judgment was, now, that he should be committed to the prison called Little Ease, in the Tower.’ The next day, the Lieutenant of the Tower sent a letter to the Speaker, importing, that he had talked with the Warden his prisoner, and that he now seemed to have some feeling of his error and obstinacy; and that if the House would send two of their Members, which he named, to satisfy him in the point of his security, he would deliver up his

prisoner to their Serjeant, when they would please to send for him. But the House would not consent to this; and the day after, they came to a resolution, to send another Warrant of Habeas Corpus to release their Member; and that the Warden should be brought from the Tower to the door of the Fleet, and there to have it served upon him by the Serjeant, and then to be returned to his dungeon of Little Ease again. The form of all these Warrants are in the Journal; but there is a memorandum added to this last, 'That Mr. Vice-Chamberlain was privately instructed to go to the King, and humbly desire, that he would be pleased to command the Warden, on his allegiance, to deliver up Sir Thomas; not as petitioned for by the House, but as if himself thought it fit, out of his own gracious judgment.' – It is likely that this {156} last method prevailed, for we find that Sir Thomas was delivered up, by a petition sent to the House from the Warden in his durance, and praying to be released from it. The House however thought fit to continue him, in the same dismal hole, some time longer, when at last, being ordered to be brought to the Bar, on his knees, he confessed his error and presumption, and professed that he was unfeignedly sorry that he had so offended that honourable House. On which, the Speaker, by direction of the House, pronounced his pardon and discharged him, paying the ordinary fees.

It appears that the principal difficulty attending the release of Sir Thomas Shirley, was the same that had occurred in the former Cases of this nature, viz. 'That the Warden would have been liable to an action of escape, and the creditor would have loft his right to an execution. Nor was it in the power of the House of Commons alone to give any security upon either of these points; it therefore became necessary in this Case, as in the instances of Lark, Atwyll, &c. to make a particular law to secure the debt of the creditor, and to save harmless the Warden of the Fleet.' And in order to avoid this difficulty for the future, it was thought expedient to pass the general law of the first of James I. Ch. 13. for new executions to be sued against any which shall hereafter be delivered out of execution by Privilege of Parliament, and for discharge of them out of whose custody such persons shall be delivered.' – It appears however, from the words of this Act, (and from the proviso at the end of it, ' That nothing therein contained shall extend to the diminishing of any punishment, to be hereafter, by censure in Parliament, inflicted upon any person which hereafter shall make, or procure to be made any such {157} arrest as is aforesaid,') that the opinion of both Houses of Parliament at that time was, that, during the Privilege of Parliament, it was not lawful to arrest, even in execution, any Member of either House of Parliament; and yet it is clear from the former instances, and from the variety of expedients proposed by the House of Commons in this Case of Sir Thomas Shirley, in every one of which they failed, that hitherto

neither the law of Parliament, nor any statute had pointed out a mode, by which the Members should be delivered, or had taken care to secure the Gaoler from an action for an escape, or to censure to the creditor his right to a new Writ of Execution. //157-1//

2. On the 13th of February, 1605, Complaint is made that Mr. Brook, a Member, had been arrested, by virtue of a bill of Middlesex, by one Mallorie, three days after the last Sessions; the next day, Mallorie, is brought to the Bar, in custody of the Serjeant, but on his protesting ignorance of Mr. Brook's being a Member, and being commanded to withdraw his action, he is pardoned and discharged.

3. On the 10th of February, 1606, Thomas Finch, servant to Sir Michael Sandys, had been arrested in an action of debt, at the suit of Thomas Knight, a Fishmonger; and being prisoner in the Counter, an execution was laid against him for forty pounds: A Habeas Corpus was ordered to be awarded, for the bringing the body of Finch to the House on the Friday following (a copy of which is inserted in the Journal of the 13th of February; with the Speaker's Warrant, and the return of the Sheriffs to the Writ) by virtue of this Writ, Finch was brought up, and the other parties attending {158} were heard in their defence, and were excused; but Finch was privileged, and ordered to be delivered, according to former precedents.'

4. On the same day, the 10th of February, 1606, Complaint was made that Mr. James, a Burgess, had been arrested on an execution: The Attorney who procured the arrest, and the officer who arrested Mr. James, were the next day brought to the Bar, and for their contempt were committed to the custody of the Serjeant for a month; which judgment was pronounced against them, kneeling at the Bar, by Mr. Speaker. On the 19th of February, Sir Noel de Caron, Minister from the States General, intercedes for Bateman the Attorney by a letter to the Speaker; and on the 20th, Bateman petitioning, he, and the officer who arrested Mr. James, are both brought to the Bar, and discharged. — I do not recollect any instance, prior to this, of persons being committed to the custody of the Serjeant by way of punishment.

5. On the 20th of February, 1606, Hawkins, servant to Sir Warwick Heale, was arrested in an action of eight thousand pounds: A Habeas Corpus was ordered to be issued to bring up Hawkins, and the other parties were to be summoned to appear; but the affair was, the same day, reported to be stayed and appeased by mediation.

6. On the 30th of June, 1607, a Member's servant was arrested: On the 1st of July, Pasmore, the officer who had arrested him, is brought to the Bar by the Serjeant, and, having been heard in his defence, is committed to the Serjeant during the pleasure of the House, and ordered to discharge the suit, and to pay the expences attending it, and his own

fees {159} to the officers of the House; and on the 4th of July, the House being informed that these conditions had been complied with, he was ordered to be discharged upon his submission.

7. On the 5th of March, 1609, Eustace Parry, servant to Sir James Scudamore, was taken in execution: The House immediately order a Warrant for a Writ of Privilege; on the 15th, this matter is referred to the Committee of Privileges, and, on the 16th, report is made from the Committee, that the party shall have his Privilege, and be delivered; but that the Sheriff be excused, as not knowing him to be a Member's servant: There is much debate, who is to pay the fees, i. e. the expences of the arrest and imprisonment; and it was resolved, that the constable arresting shall not, but the party accused shall; this party was Wayte, at whose suit and by whose direction the arrest was made: On the 28th, Wayte is examined and pardoned, paying his fees.

8. The very memorable Parliament of 1621, being engaged in many very important pursuits for the public service, it was thought advisable, in order not to interrupt their proceedings, that they should not be prorogued, but only adjourned during the summer months: As soon as this was determined, it appears from the Journals, and from the proceedings of that Parliament, that there were great doubts and debates, as to the mode and effect of this so long an adjournment, with respect to privilege.—On the first of June, 1621, the opinions of Sir Dudley Digges, Sir Robert Philips, Sir Edwin Sandys, and many other experienced Members, are delivered upon this occasion; but it appears from the second {160} volume of the Parliamentary proceedings, //160-1// and from the Journal, that the resolution to which the House came, was upon the motion, and in the words of Sir Edward Coke,

‘That in case of any arrest, or any distress of goods, serving any process, summoning the land of a Member, citation or summoning his person, arresting his person, suing him in any court, or breaking any other Privilege of this House; a letter shall issue, under Mr. Speaker's hand, for the party's relief therein, as if the Parliament was sitting; and the party refusing to obey it, to be censured at the next access.’ — It is remarkable that Sir Dudley Digges moves, ‘That in consideration of payment of debts, the lands and goods of any Members, being debtors, may not be privileged during this long recess:’ But this humane and just proposition was overruled. As from the debate, both on this and the day before, it appears to be universally agreed, that the Privileges of the Members continue, during an adjournment, the same as during the sitting of the House, we may consider this resolution, drawn up in the words of Sir Edward Coke, as a recapitulation of all the Privileges, which were at this time claimed by Members of the House of Commons, either for their persons or estates, and as Sir Edward Coke expresses himself

“clear both for Members, and their servants.” — It is curious to compare the part, which Sir Edward Coke took upon this occasion, with the doctrine that he laid down thirty years before in Fitzherbert's Case, //160-2// when Speaker and Solicitor General to the Queen, — We hear nothing now of Writs of Habeas Corpus, Writs of Privilege, Petitions to the King or House of Lords; but, in every Case recited in the resolution, ‘or the breaking any other Privilege of the {161} House,’ a letter is to issue under Mr. Speaker's hand for the party's relief; and disobedience to that letter is to be considered as a contempt of the House, and to be punished at their next meeting: And this is to continue during an adjournment of

above five months. — Though I have a very great esteem for the character which Sir Edward Coke sustained throughout this Parliament; and am of opinion, that this country owes its freedom more to his learning and determined spirit, than perhaps to that of any other man, I could not, consistently with that fairness and impartiality which ought to guide the pen of every, even the most insignificant, writer of History, omit to remark this difference in his sentiments, according to the different situations in which he acted.

9. On the 4th of June, 1621, the House is informed of Johnson, Sir James Whitlock's man, being arrested: The parties are immediately called to the Bar, and heard, on their knees, in their defence; and after a variety of propositions made for several degrees of punishment, it is ordered upon the question, “That they shall both ride upon one horse

bare backed, back to back, from Westminster to the Exchange, with papers on their breasts with this inscription, “For arresting a servant to a Member of the Commons House of Parliament;” and this to be done presently, sedente ‘Curia.’ And this their judgment was pronounced by Mr. Speaker to them, at the Bar, accordingly. This very new and extraordinary punishment was awarded, Notwithstanding it appears from the Journal, and the Parliamentary proceedings, //161-1// that both these parties had acknowledged their fault {162} and craved forgiveness of the House, and of Sir James Whitlock.

10. On the 28th of April, 1624, a Warrant is ordered to issue from the Speaker, for a Writ of Privilege, to bring up a servant of a Member, in execution with the Sheriff of Kent.

11. On the 4th of July, 1625, the Case of Mr. Bassett is referred to the Committee of Privileges, who report on the 8th ‘that he was imprisoned upon mesne process, and afterwards chosen a Burgess.’ There is a debate in the Journal, whether under these circumstances he is eligible, or to be allowed Privilege: Great distinction is made between a person arrested on mesne process, or in execution; and it is at last resolved, upon the question, ‘That Mr. Bassett shall have the Privilege of

the House;’ and a Warrant is ordered to the Marshal to bring him up the next morning, which is done accordingly.

12. On the 9th of February, 1625, a motion was made, that Mr. Giffard, returned a Member of the House, and now in execution, may be sent for. On this matter being examined into, it appears from a report of the Committee of Privileges on the 15th, ‘that one of the Burgesses for Bury was elected on the 6th of January, that Mr. Giffard was elected on the 11th of January, but that the indenture was not dated till the 30th of January; the Town Clerk conceiving it was to bear date the day of the next County court; and that Mr. Giffard was arrested on the 23d of January, after his election but before the return.’ After much debate and consideration of this difficulty, on the 17th of February, the Clerk of the Crown, the {163} Sheriff of Suffolk, and the Town Clerk of Bury, are all called up to the Table, and there, by order of the House, amend the return from the 30th of January, to the 11th; and then it is ordered, that Mr. Giffard shall have Privilege, and be delivered out of execution; and a Warrant is issued to the Clerk of the Crown, for a Habeas Corpus to bring him up the next day: On the 18th, he is accordingly brought in, with the Keeper of the GateHouse, the Bar down; the Writ of Habeas Corpus is handed up to the Clerk, and the Writ and Return are read by him, and then Mr. Speaker discharged Mr. Giffard, and wished him to take the oath, and then his seat in the House.

13. On the 9th of February, 1625, Complaint is made of Sir Thomas Badger's servant being arrested at his master's heels, as he came to the Parliament House. On the next day, when this debate is resumed, it is ordered, ‘that the consideration of the manner of delivery of one in execution, be referred to the Committee of Privileges, for them to report to the House:’ On the 15th, Sir Jo. Finch reports, that the Committee are of opinion, that Sir Thomas Badger's man should be delivered by Habeas Corpus, by Warrant from the House;’ and accordingly the House order a Warrant for that purpose, to issue to the Clerk of the Crown, under Mr. Speaker's hand; but they at the same time declare, ‘that, notwithstanding the said opinion of the Committee, the House hath power, when they see cause, to send the Serjeant immediately to deliver a prisoner.’ On the 17th, he is brought up by the Keeper of the Gatehouse; and the Writ and Return being read by the Clerk, he is ordered by the Speaker to be discharged.

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14. On the 16th of May, 1626, on a complaint made, that one Colley, servant to a Member, had been arrested the day before, and taken in execution and detained; it is ordered that he have Privilege, and that a Warrant for a Habeas Corpus be issued to bring him up: On the 23d, he is brought in obedience to this Writ, and discharged.

Notwithstanding the resolution which the House came to in the Case of Sir Thomas Badger's servant; 'that they have power, when they see cause, to send the Serjeant immediately to deliver a prisoner;' yet, since the end of Queen Elizabeth's reign, we have not actually met with any instance, where a person entitled to Privilege, if in custody in execution,' hath been delivered by any other mode, than by virtue of a Writ of Privilege, or by a Writ of Habeas Corpus, issued in obedience to a Warrant under the Speaker's hand; and indeed it should seem necessary, that there must be some formal process at law, to give the Act of the first of James I. Chap. 13. its full operation. — As the House of Commons had determined, 'that this Writ of Privilege could be issued only by virtue of a Warrant under the Speaker's hand, and that by order from the House;' Members and their servants were still liable to be arrested during an adjournment or prorogation, and were without remedy, except from the apprehensions which the party offending might be under of incurring those censures in the approaching Session, which, by Sir Edward Coke's advice, were threatened in the resolution of the House in 1621. This however not being sufficient, it appears from the Journals of both Houses, that a further remedy was in agitation, viz. 'a Bill for the releasement of such privileged persons as should be arrested after the Parliament ended, but {165} during the Privilege thereof.' //165-1// — On the 27th of May, 1628, a Bill was brought from the Lords, 'for explaining and enlarging the Act of James I. touching delivering persons taken in execution;' and in the next Sessions, on the 31st of January, 1628, the Lords sent down the same Bill again. Whether the purport of either of these Bills was to carry this remedy into effect: I don't know; as it appears that the Commons took so little notice of them, as never to give either of them even a first reading.

(3.) The next general head is, the summoning of Members, or their servants, to attend inferior Courts as witnesses, jurymen, &c. — We have seen that this Privilege, of being exempted from the obligation of attending in an inferior Court, had been claimed and exercised even earlier than the Reign of Queen Elizabeth: From what happened in the year 1584, in the two Cases of (40.) and (41.) //165-2// Commons found themselves obliged to take the punishment of this breach of their Privileges into their own hands, whereas, till that time, the mode of redress had been different.

1. On the 8th of May, 1604, a Subpoena out of Chancery being served on the person of Sir Oliver St. John; the person, at whose suit it was served, was sent for by the Serjeant to answer the contempt.

2. On the 10th of May, 1604, several Subpoenas for different purposes having been served upon Members; the Writs are read, and Warrants ordered for attaching the bodies of the {166} the delinquents

by the Serjeant, and bringing them to the Bar to answer their contempts.
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3. On the 14th of May, 1604, Sir Edward Montagu informs the House, that he was warned to appear upon a trial at Guildhall tomorrow; and prays to know whether he should have Privilege: It is ordered, 'that he shall have Privilege,' and in the order it is expressed, 'because his said appearance must necessarily withdraw his presence and attendance upon the service of this House; and therefore it is thought fit, and so ordered, that he be excused in that behalf, according to ancient custom of Privilege. It is observable that, though Sir Edward Montagu is stated as defendant in this cause, there is no Complaint made of the suit being carried on against him in time of Privilege, but only that he was warned to appear.

4. On the 13th of February, 1605, Mr. Stepney complains, that seven days before this Sessions, he was summoned upon a Subpoena in the Star-Chamber: On the 14th, this matter is examined into, and referred to the Committee of Privileges; on the 15th, it is ordered, 'that Mr. Stepney shall have Privilege, and that Warren, who served the process, be committed to the Serjeant for three days.'

5. On the 12th of May, 1606, Subpoena ad Rejungendum is served on Sir Richard Bulkley: The party at whose suit, and the party who served it, are ordered to be sent for; on the 19th and 20th, Owen ap Rice who served it, and his Matter, Mr. Lloyd, who delivered the process into his hands, are committed to the Serjeant.

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6. On the 31st of March, 1607, is an entry of a letter written by the Speaker, Sir Edward Philips, during an adjournment, for excusing Sir Edmund Ludlow and his son from attending at the execution of a Commission, awarded out of Chancery, for the examination of witnesses, — And this is said to be warranted 'by former general Order.'

7. On the 4th of May, 1607, is a complaint of a Subpoena, to answer to a prosecution in the Exchequer, on the part of the Crown, served on Sir Richard Pawlett: The Writ is read, and then the Serjeant is ordered, by his Mace, to attach the parties delinquent, and to bring them to the Bar, to receive the judgment of the House; and on the next day, the Speaker writes a letter to the Lord Chief Baron, to inform him, 'that such a Subpoena, ad comparandum, has been served upon Sir Richard Pawlett, contrary to ancient and known Privilege; because the personal attendance of the said Sir Richard is here necessarily required, during the time of Parliament: I therefore thought good, as well to make known the privilege and pleasure of the House, as to pray your Lordship, that no farther process issue against him, until he may have time and leisure to follow his own cause.'

8. On the 5th, 7th, and 8th of May, 1607, Subpoenas are served, and the parties are committed to the Serjeant, and to pay fees.

9. On the 6th of May, 1607, two Members inform the House, that they were returned by the Sheriff Jurors in the Court of King's Bench: It was ordered, 'that, by the Privilege of the House, they should be spared from their attendance; {168} and Mr. Serjeant is commanded to go with his Mace, and deliver the pleasure of the House to the Secondary of the King's Bench, the Court then sitting.'

10. On the 8th of May, 1607, a Subpoena ad comparendum was served out of the Star-Chamber upon Sir Edmund Ludlow: The Writ was read, 'and it appeared to be at the suit of Mr. Attorney General,' which made the question disputable; it is therefore referred to the Committee of Privileges, to consider whether he shall have Privilege or no. — I do not find that they made any report.

11. On the 19th of February, 1609, Complaint of a Subpoena out of Chancery served on Sir William Bowyer: On the 27th, the person who served the Subpoena, is brought to the Bar, and because he did it ignorantly, is discharged, paying his fees.

12. On the 21st of March, 1609, a Writ is served on Mr. Pelham, ad audiendum judicium: This is referred to the Committee of Privileges, to consider, as appears from the 5th of May, 1610, 'whether a Plaintiff may have Privilege, on a Subpoena ad audiendum judicium being served upon him.'

13. On the 14th of May, 1621, Sir H. North produces a Subpoena: Sir Edward Coke cites a precedent of the tenth year of Edward III. 'where the Clerk of this House had a ' Subpoena served upon him, and had Privilege, and the party was committed for breaking the Privilege of the House.' — It is not said where Sir Edward Coke found this precedent; but the note which is written in the original Journal, 'that {169} there was no Parliament that year is a mistake,' as appears from the commission, which is in the fourth volume of Rymer's Foedera, p. 701, dated at Newcastle the 20th of June, in the tenth year of the reign of Edward III. //169-1//

14. On the 29th of November, 1621, Subpoena served on Mr. Bruerton: Napper, who served it, is ordered to be sent for by the Serjeant; on the 30th, a Warrant for this purpose is given to the Serjeant, and also against one Minott, who had likewise served a citation on Mr. Bruerton. On the 3d of December, Napper, after debate, is committed to the Serjeant for three ' days, and then to be dismissed, paying his costs to Mr. Bruerton, and his due fees to the Clerk and Serjeant.

15. On the 28th of April, 1628, Sir Simeon Stuart is served with a process, at the suit of the Attorney General, ad audiendum judicium: He desires time to prepare for the hearings being bound in a recognizance of

five hundred pounds not to claim his Privilege; but it is ordered, that, notwithstanding his recognizance, he ought to have the Privilege of Parliament if he desire it. On the 30th, the person serving the Subpoena was sent for to answer the contempt: It was referred to the Committee of Privileges, to consider what was fit to be done about the recognizance; and Sir Simeon Stuart was enjoined by the House, to attend the service of the House, and not to attend the hearing of his cause in the Star-Chamber. On the 10th of May, a petition from the inhabitants of the Isle of Ely is presented, complaining, as appears from Prynne's fourth Register, p. 842, of this delay of trial, and desiring that he might be ordered to waive his Privilege: This {170} petition is referred to a select Committee to examine, but there is no report upon it. Prynne has made some very judicious observations upon this Case, and particularly upon some doctrines laid down, in the debate upon it, by Sir Edward Coke.

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16. On the 15th of May, 1628, Sir William Alford, returned of a jury this day in the Common Pleas, is to have Privilege of Parliament not to serve; and letter is ordered to be written by Mr. Speaker to the Judges, that he be not amerced for his not appearance.

17. On the 29th of January, 1628, a motion is made, that a Member have leave to answer a petition preferred against him in the House of Lords; but it is refused, and the Member is ordered not to answer, upon pain of the displeasure of the House, and expulsion; and the person, who preferred the petition, is sent for to answer his contempt.

18. On the 10th of February, 1628, It is ordered that a servant to Sir William Brereton, a Member of the House, shall have: Privilege of Parliament and the person, who served him with a Subpoena to answer in the Star-Chamber, to be sent for.

19. On the 10th of February, 1628, Mr. Rolle informs, the House, that he had the day before a Subpoena from the Attorney General served upon him, to appear in the Star-Chamber; but that he had in the evening received a letter from the Attorney General, excusing this by the mistake of his messenger, and promising to withdraw the information. {171} The House, without permitting the letter to be read, immediately resolve, 'that Mr. Rolle shall have Privilege, and that the person who served the Subpoena, shall be sent for to answer his contempt.'

These are the principal Cases, which occur during this period, of complaints of Subpoenas, and other processes being served upon Members, by which they might be withdrawn from attending their duty in the House. Whoever will consult the Journals of the House of Commons will find several other instances of a similar kind, which I have purposely omitted, as they are little more than a repetition of some of those I have inserted: Even many of these might perhaps have been more

properly introduced under the next general head, as they are, in substance, rather complaints of being compelled to plead, than of being obliged to make a personal appearance; //171-1// there are, however, among these, sufficient instances to shew, that at this time the House of Commons had established it to be one of their undoubted Privileges, that the Members should be at perfect liberty to attend the service of the House, and that no call of an inferior nature, or obedience to the summons of an inferior Court, should be permitted to interfere with this, their first, their principal and most important duty.

(4.) The next general head, is that of prosecuting of suits at law against Members, or their servants.— I have observed I have observed {172} before, that except in the instance of the 21st of February, 1588, (N^o 45.) I have not hitherto met with any complaint in the Journals of a breach of this Privilege: But from the commencement of the Reign of James I. they became very frequent, upon this principle, ‘That, during the attendance of Members in Parliament, it was impossible for them to go down to the Assizes, or to the other Courts of Law, to defend those suits; besides, that it was inconvenient that their attention, from the more weighty business of the Public for which they were summoned, should be distracted by avocations of a private and less important nature.’ — As the law had provided no remedy for this inconvenience but a Writ of Supersedeas, the House of Commons in many instances order a letter to be issued under the Speaker's hand for stay of trial: what reception these letters met with, and the progress of this claim of Privilege will be seen from the following Cases.

1. On the 19th of March, 1605, Mr. Speaker moveth the House, that Sir Thomas Strickland, having a cause at trial at York Assizes, may be privileged in stay of the said trial. This is assented to by the House, and a letter is ordered to be written by Mr. Speaker to Mr. Baron Savill.

2. On the 2d of February, 1606, in a cause depending in the Court of Wards and Liveries, in which a servant of the Speaker's was interested as Assignee of the Ward, the Speaker writes a letter, and this during an adjournment, to the Surveyor of the Court: ‘that his servant, being his Clerk, and a necessary and daily attendant, should be excused from being, compelled from being joined in commission with the {173} Plaintiff, his Privilege being now as warrantable as in the time of sitting.’
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3. On the 26th, 27th, and 28th of February, 1606, are several letters from the Speaker to the Justices of Assize, for the stay of trials in which Members were interested, ‘as in other the like Cases hath been usual.’ — And, as the Speaker expresses it, ‘fearing lest the cause might receive some prejudice by the absence of the Member, or withdraw his attendance from this great service, which is the principal care of his

Majesty and the House to prevent;’ a general authority is therefore, on the 27th, given to the Speaker to write these letters, for stay of proceeding against any Member that would require it.

4. On the 13th of May, 1607, the House was informed, that a Member of the House stood outlawed at the suit of one Palmer; and that Allen, the Attorney in the suit, did threaten to proceed to trial: The Plaintiff and Attorney are both ordered to be brought to the Bar by the Serjeants.

5. On the 13th of May, 1607, upon information of an attachment being served upon the person of a Member, the Speaker writes to the Plaintiff’s Attorney, directing him to foresee, ‘that no farther process issue against the Member:’ And, on the 6th of June, the person who served the Writ, and the Plaintiff, are sent for by the Serjeant, ‘as is usual in such Cases.’

6. On the 20th of May, 1607, the Speaker writes a letter during an adjournment, to the Lord President and Council {174} at York, for stay of the proceeding of a cause depending before them, in which the tenants of a Member are defendants.

7. On the 10th of June, 1607, a letter is ordered to be written by Mr. Speaker to the Barons of the Exchequer, ‘in form as hath been accustomed in like Cases,’ for stay of a trial, in which a Member was defendant: On the 13th, the Plaintiff complains of the hardship he suffers by this delay, and prays by petition, that there may be no further stay of proceeding; but the petition being read, and understood, the former order of the House was notwithstanding affirmed. — This, and the letter in the Case of Sir Richard Pawlett, on the 4th of May, 1607, are the first instances of letters written to any of the superior Law Courts of Westminster Hall, the former being to Justices of Assize, or to inferior Courts. It appears from a complaint made by Sir Robert Johnson, on the 4th of July, that the Plaintiff, Sir Robert Brett, finding he could get no redress by course of law, had employed force, and had entered upon the House and goods in question, and kept possession by force and violence; but, says the Journal, ‘No order ensued upon this;’ and upon that day the Parliament was prorogued.

8. On the 16th of June, 1607, on complaint of a Writ issued in the Court of Common Pleas, for levying issues against a Member for default of appearance; it is ordered, ‘That if the issues are not discharged before the next night, the parties delinquent, that is, the Attorney, the Solicitor, and the Under Sheriff, shall be brought in by the Serjeant to answer their contempt.’

9. On the 26th of April, 1610, are several orders for stay of trial, and one of them in the Court of King’s Bench. {175}

10. To prevent these repeated and almost daily applications to the House; on the 17th of February, 1620, a general order is made, 'That where any Member hath cause of Privilege, to stay any trial, a letter shall issue under Mr. Speaker's hand, for stay thereof, without further motion in the House.' — On the 1st of March, a motion is made about the form of these letters, and the Committee of Privileges are directed to view precedents, and to consider of the course and manner of writing and entering them: On the 3d of March, Sir George Moore reports from the Committee, that they have found several precedents, in the King's time, of these letters, and that they are recorded in the Journal Book: This course of writing letters to the Justices of Assize is ordered to be continued, and, if required, a Warrant for inhibition to the party. — It should seem by this report from the Committee of Privileges, that the practice of writing letters for the stay of trials took its rise after the accession of James I.

11. This general order related only to letters to Justices of Assize; for in the same Session, on the 1st of June, 1621, a letter is ordered to be written by Mr. Speaker, to the Court of the Duchy, for stay of a suit concerning Sir Francis Popham's inheritance.

12. Although it was intended to adjourn from June to November, instead of a prorogation, in order that some very important Bills, Enquiries, and Prosecutions, in which the Commons were at this time engaged, might not be interrupted; and though, by so long an adjournment, every argument, that had been employed for the establishment of this Privilege of staying suits against Members, or their servants, was taken away; yet we see from the Journal of the 1st of June, {176} 1621, and from the printed debates of this Session, that it was the opinion and advice of Sir Edward Coke, Mr. Noy, Mr. Hakewill, and others, very respectable Members of this House of Commons; 'that during this adjournment, no suits against Members, or their servants, should be proceeded in, in any Court of Law; and if they were, that a letter should issue under the Speaker's hand, for the party's relief therein, as if the Parliament was fitting, and the party refusing to obey it, to be censured at the next access:' And an order was made accordingly, and probably executed, though the adjournment was for above five months, from the 4th of June, to the 14th of November. — I confess that this appears to me to have been a very extraordinary extension of this claim of Privilege. We have seen, that the claim itself began but since the commencement of this Reign, or, at least, that the power of staying suits, by a letter from the Speaker, had never been exercised before the accession of James I. The reasons given in these letters, 'that

the Member might not be withdrawn in his attendance from the service of the House,' did not apply in an adjournment of five months,

and must have been productive of great inconveniences to the suitors of the several Courts. — The order which was made upon this occasion, and which appears to have been dictated by Sir Edward Coke, is worth remarking, from its comprehending every fort of Privilege, to which a Member of the House of Commons was at this time thought to be entitled. //176-1// — As it was intended that this adjournment of the {177} Parliament should be by the King's commission, doubts arose, whether this circumstance made any alteration in the state of Committees and other business, from what the usual adjournment of the House by itself would have done. The King had proposed to the Lords to take the opinion of the Judges upon this point, and several messages and conferences had passed between the two Houses upon this subject: in one of these debates, Mr. Alford says, 'Heretofore the Judges have been very wary, and would not meddle to deliver their opinion of what belongeth to the jurisdiction of a Parliament; I would have them warned of it, for it were dangerous for the state and liberty of the subject, if the Parliament should stand on the opinion of the Judges; it is usual that the Parliament hath judged the actions of the Judges, but never that the Judges have meddled with the state or business of a Parliament: I desire therefore, that they may have a warning, how they censure, or deliver their opinion of the Privileges of Parliament.' When the commission is brought down from the Lords, by the Chief Baron and several of the Judges, the Commons decline to have it read; but at the same time, taking notice of the Commission, and of his Majesty's pleasure, signified to them by the Judges, 'that all Committees, and other Parliamentary business, should rest in the same state, till the next meeting;' the House resolves to adjourn itself accordingly -, and then. Sir Edward Coke standing up, //177-1// with tears in his eyes, recited the Collect for the King and his children, and desired the House to say after him; adding only to it, and defend them from their "cruel enemies:" And then the Speaker adjourned the House, saying, "This House doth adjourn itself till the 14th of November next." //177-2//

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13. I do not find any general order made at the beginning of the Parliament of 1623; but on the 27th of February in the second //178-1// Journal of this Session (which, is, in many instances, more compleat than the first) a motion is made to stay a trial, in the behalf of Sir John Eliot, and a Warrant is ordered to go out. Indeed there are few Cases upon this head in the course of this Session: The House of Commons were engaged in business of too great importance, to attend to matters of an inferior nature; they were pulling down, those enormous grievances to the subject, patents and monopolies; and were employed in attacking the exorbitant increase of power in the King and his favourites, by the

impeachment of Lord Middlesex, Lord High Treasurer; a work, as appears from the sixth volume of the Parliamentary History of considerable length and difficulty.

14. On the 5th of July, 1625, Mr. Speaker is ordered to write a letter for stay of a suit in the Star-Chamber; and the contempt is referred to the Committee of Privileges.— Sir Edward Coke says, ‘that in the seventeenth year of Edward IV. informations by the Attorney General, in the King's own name, were stayed by order here.’ The only Case that happened, in that Parliament, to which Sir Edward Coke could allude, is Atwyll's Case, (N^o 17.) where the proceedings were not stayed by an order of the House of Commons, but reversed by Act of Parliament.

15. On the 17th of February, 1625, Sir Robert Howard, during Privilege of Parliament, was excommunicated for not taking the oath ex officio: This matter is referred to the examination of a select Committee and on the 21st of March, Mr. Selden reports the proceedings of the High Commission {179} Court, from whence the process issued; the only doubt was whether, on account of the adjournment, this process had issued in the time of Privilege: It is resolved, nem. con. ‘that he ought to have had Privilege;’ //179-1// and on the 10th of June, Sir George Moore informs the House, ‘that he was present at an High Commission Court, where seven Bishops were present, and knoweth, that all the proceedings against Sir Robert Howard, from the 1st of February, in the twenty-second year of Jac. I, were frustrated and made void;’ and Sir Harry Martin affirmed, ‘that the order of the House was there read and allowed, and all ordered to be there done accordingly.’ — In the debate upon this question, Mr. Selden says, ‘It is clear that breach of Privilege in one Parliament, may be punished in another succeeding.’ — The Case of *Bogo de Clare*, (N^o 2.) and the Writs of *Supersedeas*, (N^o 3.) are cited by Mr. Noy, in his argument for the Privilege of Sir Robert Howard. Mr. Selden mentions the Case of the Countess of Warren, which I have referred to before, //179-2//with Mr. Pryn's very judicious observations upon it.

16. On the 25th of February, 1625, Sir Harry Martin hath privilege in a suit between him and the Bishop of Oxford: A letter is ordered to issue under the Speaker's hand, to the Lord Keeper, to stay the hearing and proceeding; and a select Committee is appointed to consider of the contempt, and what course is to be taken.

17. In the fourth Register, p. 810, Pryn reports the Case of *Hodges and Moore*, in the first year of Charles I as follows: ‘*Moore*, having the Privilege of Parliament, procures the {180} Speaker Sir H. Finch, to write his letter, in the name of the Parliament, to the Court of King's Bench, to stay judgment: The Court was greatly offended at this, and would have returned a sharp answer to the Parliament, if it had not been dissolved,

because it is against the oaths of the Judges to stay judgment, nec per Grand Seal, nec per Petit Seal per le statute; but the way in such case is to procure a Supersedeas, which is a special Writ appointed in these cases: and this is to be allowed, being the legal course: But the letter is not to be regarded,' — And in another report of this case, the effect of this letter was disallowed by the whole Court, and the Court said, 'the defendant ought to have brought a Writ of Privilege; and when Thorpe, who was Speaker, had a Supersedeas for all actions, this was bad; for he ought to have had a particular Supersedeas for each action: And the Parliament hath privilege for the person, but not for the proceedings by any letter.' Lord Chief Justice Crewe (who had been himself Speaker) said, "Que il voet estoyer sur le Justice del Court; Et si, come ils estoyent sur lour Priviledges, issint nous voylomis, en ascun Cases poent ils restreyn le Counsel del party, ou le party luy mesmes, mes nemy le Court, que n'est lye de prender notice sans special breve, mes les partyes queux prosecute sont en danger." This Case is reported in Latch, //180-1// and in Noy there is a very short note of it. //180-2// It appears upon the Journals of the 20th of May, 1626; and it is referred to the select Committee, to whom Sir Robert Howard's Case had been referred. This Committee make no report, and the Pai'liament is dissolved upon the 15th of June. If the Judges had continued of the same mind, which the reporter, Latch, says they were, "to {181} have written a sharp answer to the Parliament;" it is probable that that House of Commons, which had compelled the High Commission Court "to vacate and annihilate" all their proceedings against Sir Robert Howard, when in breach of their Privilege, (proceedings subscribed by the Lord Archbishop of Canterbury, Lord Keeper, Lord President, Lord Lincoln, and several others,) would not have quietly acquiesced in this disobedience of the Court of King's Bench to an order, which from the beginning of the century, had been sent to all the Courts of Westminster Hall, and, as far as appears, had been always attended to.

18. The Case of Sir Thomas Hubbeck, cited in the fourth Register, p. 845, can be no other than that in the Journal of Sir J. Hotham, of the 13th of June, 1628, This Parliament sat on, with a prorogation intervening, till the March following, and there is no complaint of the Speaker's letter being disobeyed.

19. On the 29th of January, 1628, Mr., Speaker is ordered to write a letter to the Court of Chancery, for the suppressing of depositions taken in a cause between Sir Henry Bagot and Sir Edward Littelton, by virtue of a Commission executed the first day of the Session.

I need not repeat what I said at the conclusion of the former head, that these are the principal, but a very small part in number, of the Cases which are to be found in the Journals upon this subject: It is observable

that, during this period, there is not a single instance of a Writ of Supersedeas being applied for, or issued by Warrant from the Speaker, though this would have been absolutely necessary, if the Courts of Law had always {182} held the language of Sir Randolph Crewe, in the Case of Hodges and Moore, The House of Commons were satisfied with having introduced a more summary method of staying the proceedings, by the terrors of their own authority, and having thereby shaken off all dependance upon the Courts of Law for their issuing or obeying the Writ of Supersedeas.

(5.) The next general head, is the taking the goods or effects of a Member, in execution, or otherwise.

I have already stated at large the Case of the Master of the Temple, (N^o 1.) that of the Prior of Malton, (N^o 5.) and Atwyll's Case, (N^o 17.) in the latter of which, the claim of the Commons 'not to be attached in their goods' seems by the King's answer to be admitted. From this time, viz. from the year 1477, to the Reign of James I. I find no claim of this sort made, nor any complaint in the Journals, or elsewhere, of this Privilege being infringed. — This is the more remarkable, as that claim of securing their necessary goods and chattels seems to be a very reasonable one, and was probably never laid aside; and yet it is difficult to suppose, that no Case occurred in a period of one hundred and thirty years, in which this Privilege could be brought in question: I would therefore by no means be understood to assert, that no such instance exists, but only that, in the opportunities I have had of consulting the Journals, and other Parliamentary Records, I do not find any, but the three Cases I have mentioned, prior to the Reign of James I.

1. On the 24th of March, 1603, a cloak is taken from a Member's servant, and left at a Tavern in lieu of payment; the Vintner and his servant, who kept the cloak by force from the {183} owner, are committed to the Serjeant and on the 5th of April are discharged.

2. On the 26th of February, 1606, the Speaker writes a letter to the Sheriff of Hampshire, on his having caused a seizure to be made of the goods of Sir William Kingswell, a Member; these goods, being seized in the country, could not be brought within the words of the claim, in Atwyll's Case, 'of goods and chattels necessary to be had with him;' and therefore the Speaker in this letter lays down the rule more at large, 'That the Privilege of Parliament, during the time of service there (haply not so well known to yourself) reacheth as well to the goods, as person of every Member attendant for the time; I am therefore to advise and require you, that you forthwith procure the restitution of the said goods, according to the said Privilege, lest that question and danger grow upon it, which I would be loth you should undergo.' By the expression, 'haply not so well known to yourself,' it should seem, that this claim had not

been frequently made, or to this extent, or it is difficult to imagine that the Sheriff of a neighbouring County, making a distress or taking goods in execution, would have been ignorant of it; it is probable the Sheriff Sir William Oglander, took the Speaker's advice, as the Session continued till July, and we hear no more of this matter.

3. On the 12th of March, 1606, a Member's horse being taken away for the use of the post; the post-Master, and the servant who took the horse, are ordered to be brought to the Bar by the Serjeant the next day: They are brought accordingly, and the servant is, for his contempt, committed to the Serjeant, during pleasure. On the 23d of March he is set at liberty though at this time the Speaker was detained by sickness {184} for several days, from attending the service of the House. //184-1//

4. On the 14th of May, 1628, a servant of a Member has Privilege for his goods, distrained by Sir Nicholas Row, and a Warrant for those which distrained them.

5. On the 22d of January, 1628, Mr. Rolle complains of his goods being seized by an officer of the customs for dues; and this complaint is immediately referred to the consideration of a select Committee.

//184-2// — The substance of this Case was, that these goods were seized by the customers, or those who had a lease of the customs, to a considerable amount, and belonging to Mr. Rolle, for refusing to pay the duties of tonnage and poundage, which the Commons had not yet granted to the King; but which the King, as appears from his Warrant, in the eighth volume of the Parliamentary History, p. 311, had directed to be levied by his own authority. — The Commons seem to have wished not to have brought the King's authority into dispute, but to suppose the customers to have made this seizure, by virtue of their lease, without any Warrant from the Crown; and that the resentment of the House should have been directed only against those officers, for this violation of their Privileges: But the King, with his usual imprudence, sends a message on the 23d of February, by Mr. Secretary Cook, in {185} which he avows, 'that what had been done was in obedience to his special order in council; and that it concerned his Majesty, in high degree of Justice and honour, that truth be not concealed, and therefore he would not have the act of the customers divided from his Act.' Notwithstanding this message, the House of Commons, upon the report from the grand Committee upon this violation of their Privileges, resolve, (1.) That every Member of this House is, during the time of Privilege of Parliament, to have Privilege for his goods and estate; (2.) That the 30th of October last was within the Privilege of Parliament; //185-1// and (3.) That Mr. Rolle ought to have Privilege for his goods seized the 30th of October last, the 5th of January last, or at any time since. — It was in this Session, though

not upon this question, but upon matters of religion, that Oliver Cromwell first appears to have taken part in the debates. //185-2//

(6.) The sixth and last general head of Cases of Privilege, {186} within this period, is the assaulting or insulting a Member or his servant, or traducing his character.

I have taken notice before of such instances as occurred prior to the Reign of James I. of this breach of Privilege, and of the measures taken by the House of Commons to punish them.

1. On the 19th of March, 1603, Complaint is made of Bryan Tash, a Yeoman of his Majesty's guard, who, on the House of Commons going into the House of Lords, stop Sir Herbert Croft, and shut the door upon him, saying, Goodman Burgess, you come not here:' Some debate arose how the House ought to proceed; but on the 22d, he is committed to the Serjeant, and on the 23d, he is brought in custody to the Bar, and on his submission and confession of his default, is discharged with a warning from the Speaker, paying his fees.

2. On the 26th of April, 1604, Mr. James, of Bristol, complains of some contemptuous expressions used of himself by Sir Richard Browne: The next day, he produces a witness at the Bar, in support of this complaint; 'but the words were construed to be of small weight and therefore pardoned by the House.'

3. On the 16th of June, 1604, Complaint is made of one Rogers, for abusing Sir John Savill in slanderous and unseemly terms, upon his proceeding as a Committee, in the Bill touching tanners and curriers: Rogers is ordered to be brought by the Serjeant to the Bar on Monday next, but probably was not to be found, as I find no further entry in the Journal, during this Session.

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4. On the 12th of February, 1620, Mr. Lovell complains, that one Dayrell had threatened his person: He is ordered to be sent for by the Serjeant; the same day he is brought to the Bar, but denying that he spake the words charged upon him, he is ordered to attend again the next day with his witnesses; he accordingly attends on the 13th, but one of his witnesses being a woman, Mr. Crewe and Sir Edward Coke oppose her being called in, very gravely objecting, on the authority of St. Bernard, 'That a woman ought not to speak in the congregation.' A Committee is therefore appointed to go out, and examine her at the door; and Sir Edward Gyles reports the examination, and Dayrell is ordered to be committed to the Serjeant, and then to come and acknowledge his fault, which if he does not do, then to be committed to the Tower.

5. On the 15th of March, 1620, Complaint is made that one Bryers, a Register, had affronted and threatened Sir Richard Gifford: He is ordered immediately to be sent for by the Serjeant.

6. On the 28th of April, 1626, Mr. Croke complains, that Sir Thomas Horwood reviled him, saying, 'That he came to be a Member of this House by bribery and corruption. Sir Thomas Horwood is ordered to be sent for to answer the said words.

7. On the 14th of April, 1628, information is given, that a Lord, viz. the Earl of Suffolk, had said, 'That a gentleman of this House (innuendo Mr. Selden) deserved to be hanged for rasing a record,' with some other speeches to the like purpose. Sir John Strangways acquainted the House, that he was present when Lord Suffolk used these expressions; {188} on which Sir Robert Philips is ordered to go up with a message to the Lords 'to desire Justice from the Lords against the Earl of Suffolk, for the wrong done to the House of Commons in general, and to a Member thereof, Mr. Selden, in particular, employed in their service.' The message, as delivered by Sir Robert Philips, is in the Lords Journals of this day; and the messengers being withdrawn, 'the Earl of Suffolk protests upon his honour, and upon his soul, that he never spake those words to Sir John Strangways.' Upon this denial, the House of Commons appoint a select Committee to consider of the words, and to make further enquiry into the proofs: On the 15th, Sir John Strangways publicly avows the words, and that the Earl of Suffolk spake them positively; Sir William Owen also informs the House, that Sir Christopher Nevill yesterday told him, that he also heard Lord Suffolk speak the words charged upon him.' — On the 17th, Sir John Eliot reports from the Committee the evidence that had come out before them, and their resolutions, to which the House agree; 'That the Earl of Suffolk, notwithstanding his denial, has laid a most unjust and scandalous imputation upon the House; that they are fully satisfied, that Sir John Strangways hath affirmed nothing but what is most certain and true; and that these particulars shall be again presented to the Lords, and the Lords be desired to proceed in Justice against the Earl of Suffolk, and to inflict such punishment upon him, as so high an offence against the House of Commons doth deserve.' It appears from the Lords Journals, that when Sir John Eliot delivered this message, he referred to several Lords who were present at the conversation, 'and who, the Commons had cause to believe, could justify the same.' The House of Lords promise to take this message into consideration, and {189} to return an answer, in due time, by messengers of their own but I do not find that any thing further was ever done upon this matter.

I have now gone through the several heads, under which I had classed the Cases of Privilege, from the accession of James I. to the end of the Parliament of 1628; but there are still to be found, in the Journals of the House of Commons, some other instances as well in this as in the former periods, which having omitted to insert in their proper place in

the course of this Work, I shall now give to the Reader observing only the order of time in which they occurred. //189-1//

CHAP. IV.
 ADDITIONAL CASES BETWEEN THE YEAR 1549 AND
 THE YEAR 1628.

1. On the 5th of November, 1549, it is ordered, that Mr. O'Hare, and several other Members, shall excuse the appearance of Mr. Palmer, Burgess, before the Justices of the Common Pleas, returned in attaint.

2. On the 18th of February, 1557, Mr. Marsh, one of the Burgesses of London, complained that Mr. Wylde, Burgess of Worcester, had slandered him to the drapers of London: This matter is referred to a Committee, for them to examine and report.

3. On the 15th of April, 1559, Trower, a servant to the Master of the Rolls, is ordered to attend, to answer to certain evil words, spoken by him against the House: He attends on the 17th, and is charged with saying, against the state of the House, "That if a Bill were brought in for women's wyers in their pastes, they would dispute it, and go to the question; for which offence, though he denied the words, he is committed to the Serjeant's keeping.

4. On the 10th of April, 1606, Motion for Privilege, for one Sayre, servant to the Clerk: On the 3d of May, it is ordered, ' That Sayre, servant and bag-bearer to the Clerk, being arrested the 20th of November last, upon an execution, be, by order and judgment of the House, discharged. //191-1//

5. On the 31st of March, 1610, Mr. Craford, coming into the House, and standing awhile, not being a Member, is, after much debate, admonished by Mr. Speaker for his contempt, kneeling on his knees at the Bar; and then the House, in favour, was content to remit him." //191-2// — And on the 5th of March, 1557, Mr. Perne, affirming that he is returned a Burgess for Plympton, but having brought no Warrant thereof to the House, nor being returned hither by the Clerk of the Crown by Book or Warrant, is awarded to be in the custody of the Serjeant, till the House have further considered. //191-3//

6. On the 17th of May, 1614, Mr. Martin, Counsel for the Virginia Company, having, in his speech at the Bar, offended the House by taxing the last Parliament, is ordered to be brought to the Bar, and reprimanded by the Speaker; but, 'though the practice of the House required that he should receive this judgment upon his knees,' yet from a regard to his former services in the House, when a Member, this order is dispensed with, and Mr. Speaker is to charge him, standing; and the next day, the 18th, the Speaker accordingly reprimands him standing at the Bar, and he makes a very humble submission.

7. On the 25th of May, 1614, there is a complaint of some words, reflecting on the honour of the House, that had been used by the Bishop of Lincoln: Different methods were proposed of proceeding to have satisfaction for this affront; but at last it is agreed to appoint a select Committee, to consider of the words, 'the ground thereof, and the fittest course to take by search of precedents, or otherwise.' On the next day, Mr. Hakewill reports the matter, and the words; and, after much debate upon what had been the practice of the House in similar Cases, the House resolve to send a message to the Lords, and to forbear proceeding in all other business, save this, till they have an answer from the Lords: This message, which is carried by Sir Edward Hobby, is in the Journal of the House of Lords of the 28th of May, to which the Lords return for answer, 'That they will take the message into consideration, as the weight thereof requireth; and will have respect both to their own honour, and the honour of the House of Commons, and will send an answer, as soon as conveniently they may, by messengers of their own.' On the 30th of May, the Lords send another message to the Commons relative to this matter; to which, on the 31st, the Commons reply, repeating their former complaint, and concluding, 'That now the Knights, Citizens, and Burgesses, of the Commons House, do desire the Lords, if the words were not spoken, so to signify to that House; otherwise, if they were used, then they hope their Lordships will do as they promised; lastly, 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.' Upon this message, the Bishop of Lincoln entreated the Lords, that he might be heard to expound himself; which being granted to him, 'he did make solemn protestation, upon his salvation, that he did not speak any thing with evil intention to that House; expressing, with many tears, his sorrow that his words were so misconceived and strained further than he ever meant:' Upon which submission and ingenuous behaviour, the Lords are satisfied, that however the words might sound, the Bishop's intention was not as it hath been taken;' and they accordingly 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 forthwith have proceeded to the censuring and punishing thereof with all severity. Nevertheless, their Lordships think fit to signify, that although they have been careful at this time to give them contentment, for the better expediting his Majesty's business; yet their Lordships are of opinion, that hereafter no Member of their House ought to be called in question, when there is no other ground thereof but public and common

same only.' Upon this message the Commons were satisfied, and returned to business. //193-1//

8. On the 27th of April, 1621, Sir Edward Coke reports the Lady Coppin's petition that Sir William Cope consented she might sue him at law: Upon which, it is resolved that she may proceed; and Sir William Cope, by his own consent, to have no Privilege of the Parliament.' On the 21st of June, 1625, another petition from the same Lady is {194} tendered against Sir William Cope; and on the 22d, a petition from Sir William Cope is read, and, by a general voice, rejected.

9. On the 21st of November, 1621, one was taken at the rising of the House, with a pistol charged with three bullets, who had abused a Member, and called him Knave; and said, he would kill one of the House before he had done: He is, by Sir Edward Coke's advice, committed close prisoner at the Gatehouse, and a Committee is appointed to examine him.

10. On the 14th of April, 1624, one Arnold, matter of the Felt-makers, that came to prefer a Bill to the House, is taken by a Serjeant, and committed to the Fleet: On the 12th of May, he petitions the House, and it is ordered, 'That the Felt-makers, now imprisoned in the Fleet, shall be enlarged, and have the Privilege of the House, eundo, redeundo, et morando, for the prosecution of their Bill;' and the Committee of Privileges are to examine, whether the former arresting of these men was an impeachment to the Privileges of the House. On the 28th of May, Mr. Glanville reports, that the Committee had no time to examine this petition; and it is therefore resolved to let it rest in statu quo, till next Sessions.

11. On the 11th of April, 1628, 'a Book in print, concerning some proceedings in Parliament:' It is referred to Sir Edward Coke, and several other Members, to consider whether this Book is fit to be read in the House and if it is, then then they are to send for any to inform them, who printed it, and by what allowance. — I do not find that this Committee made any report. {195}

12. On the 22d of April, 1628, one Pemberton, a Brewer, ordered to attend: On the 25th, the Speaker informs the House, that he said, he would not come; upon question, to be presently sent for by the Serjeant; but on the 30th, he is discharged, the words being denied, and not proved.

13. On the 1st of May, 1628, Privilege is granted to Henry Billingsley, to go abroad with his Keeper, to instruct his Counsel, and prosecute his petition. //195-1//

14. On the 8th of May, 1628, Sir Edward Coke moveth, that Pecke, being ordered by the Committee of Grievances to bring in his patent, hath contemned it: The Serjeant is ordered to go for Pecke, to bring in

his patent, and to answer his contempt; on the 12th, he petitions, and is discharged, bringing in the patent, &c.

15. On the 21st of February, 1628, one Burgess, who had called some of the Parliament men, 'Hell hounds and Puritans,' is ordered to be presently sent for by the Serjeant; and a Warrant likewise to go for the parties that are witnesses against him.

CHAP. V.
CONCLUSION.

I have thus given at large the several Cases, relative to the Privileges of the Members of the House of Commons, and their servants, from the earliest times to the end of the Parliament of 1628, and have made such observations as have occurred to me upon them, we have seen in what manner the Commons were, at different periods, obliged to claim new Privileges, and exert new modes of maintaining and defending those Privileges, in proportion as the lengthening the duration of the Sessions made other avocations inconvenient and incompatible with their first duty, and as the increase of their consequence in the state, and their influence in the management of public affairs, rendered them more an object of the attention of the Ministers of the Crown. The principal view, which the House of Commons seem always to have had in the several declarations of their Privileges, was this, 'of securing to themselves, (1.) their right of attendance in Parliament, unmolested by threats or insults of private persons; (2.) their thoughts and attention undisturbed by any concern for their goods or estate; (3.) their personal presence in the House, not to be withdrawn, either by the summons of inferior Courts, by the arrest of their bodies in civil {197} causes, or, what was of more importance, by commitment by Orders from the Crown, for any supposed offences.' Beyond this, they seem never to have attempted; there is not a single instance of a Member's claiming the Privilege of Parliament, to withdraw himself from the criminal law of the land; offences against the public peace they always thought themselves amenable for to the Laws of their country; they were contented with being substantially secured from any violence from the Crown, or its Ministers; but readily submitted themselves to the judicature of the King's Bench, the legal Court of criminal jurisdiction; well knowing that Privilege, which is allowed in case of public service for the Commonwealth, must not be used for the danger of the 'Commonwealth; //197-1// 'or, as it is expressed in Mr. Glynn's Report of the 6th of January; 1641, //197-2// ' They were far from any endeavour to protect any of their Members, who should be, in due manner, prosecuted according to the Laws of the {198} Realm, and, the Rights and Privileges of Parliament, for Treason, or any other Misdemeanour; being sensible, that it equally imported them, as well to see justice done against them that are criminous, as to defend the just Rights and Liberties of the Subjects, and Parliament of England.'

It may be proper to make some pause at this period of the dissolution of the Parliament of 1628, because the conduct of Charles I.

during the next twelve years, opens a very different scene. Finding that it was impossible to prevail on any House of Commons (of which he had tried three in three years) to comply with his exorbitant ideas of Royal Prerogative or to give countenance to the arbitrary measures of his Ministers, he resolved to get rid of all restraint, and accordingly introduced such a system of tyranny into every part of the Government, that the Constitution was entirely destroyed, and lost in the power of the Crown. Notwithstanding that he had so lately given the most solemn assent to the Petition of Right, he now as publicly violated it in every instance: (1.) He by his circular letters to the Lords Lieutenants of Counties, exacted loans and benevolences without pretence of law; and Gentlemen of fortune and rank in the country were imprisoned for refusing to contribute: Tonnage and poundage were taken without the consent of Parliament, and such as would not submit to pay, had their goods seized, their persons imprisoned, and heavy fines imposed upon them. (2.) The rigorous powers of the Star-Chamber were executed with unlimited severity, and the most trifling offences were punished without mercy. (3.) Soldiers were billeted on the Houses of private persons; (4) and Martial Law executed, attended with the most provoking outrages committed by the {199} soldiers; Add to these, the grievous imposition of ship-money; the cruelties exercised by the High Commission Court; the rigorous execution of the forest laws, and the severe administration of ecclesiastical affairs; together with the tyrannical oppressions in the government of Scotland, and of Ireland under that able arch-traytor the Earl of Strafford; and we shall have such a regular and comprehensive plan of arbitrary government, as was not to be exceeded in the most despotic states of Europe. //199-1// — But what rendered all this most odious and terrible was, that this government was so administered under the pretence of law; and the Courts of Justice were filled with wretches, ready to declare the will of the Prince to be the law of the land. — Hitherto the people might have submitted; but, as Lord Clarendon observes, //199-2// "when they saw in a Court of Law (that Law which gave them a title to and possession of all they had) reasons of state urged as elements of law; Judges as sharp sighted as Secretaries of State, and in the mysteries of State; judgment of law grounded on matter of fact, of which there was neither enquiry nor proof, the burthen became intolerable."

The Compilers of the Parliamentary History have, with their usual attachment to Charles I. endeavoured to represent these twelve years of intermission from Parliament, as the most halcyon days this nation ever saw. "During this period," {200} say they, "this kingdom, and all the King's dominions, enjoyed the greatest calm, and the fullest

measure of peace and plenty, that any people, in any age, for so long a time

together, were ever blessed with, to the wonder and envy of all other parts of Christendom: Indeed some little disturbances happened in Scotland, in the year 1637 by the introduction of the English liturgy into that kingdom: The doctrine of J. Knox had gained so fast a footing there, that all Archbishop Laud's injunctions and admonitions could not remove it." //200-1//

Fortunately for this country, that bigotted Minister thought proper to support his injunctions and admonitions, by the more prevailing argument of force; and for that purpose in the year 1639, the King marched with an army to the borders, and encamped within two miles of Berwick. The terrors of this force had their effect; and the Scotch promised to be better subjects for the future; but, though this army was disbanded, there being reason to fear an immediate renewal of these insurrections to oppose the tyrannical measures in religion which Laud was determined to introduce into Scotland; it was thought necessary to raise another army; and the Exchequer being already exhausted, no other means could be suggested to support this army, but the alliance of Parliament.

The greatest admirers of Charles I and the most warm defenders of his conduct, admit this difficulty to have been the sole cause of calling the Parliament of April, 1640. His Ministers were not suddenly seized with any violent attachment {201} for these national Councils; they expressed no remorse for those oppressive measures, which, for twelve years together their enemies charge them to have advised; they thought (with the Compilers of the Parliamentary History) that the peace and plenty, the ease and security, with which the nation had been so long blessed, were owing to this very intermission: Nothing therefore could have prevailed with them to have called another Parliament, but the distress from want of money, which the King's peculiar situation at that time brought on, and which was not to be repaired by any of those fruitful and ingenious resources of tonnage and poundage, knighthood, monopolies, ship-money, and military impositions, which, though sufficient for the peaceful expence of masks and revelling, were not adequate to the charge of raising and paying a considerable army.

If any further arguments were necessary to prove this proposition, the King's frequent speeches and messages upon this subject, during this short Parliament, are fully sufficient; besides the speech on the 13th of April, the day of opening the Parliament, //201-1// the Commons were again pressed by the Lord Keeper on the 21st, at Whitehall, in the King's presence, to enter speedily and effectually into this matter of supply; 'this done,' says Lord Keeper Finch, 'his Majesty

will give you scope and liberty to present your just grievances to {202} him.' On the 24th of April, the King came himself to the House of Lords, and, without his robes, made a speech to the Lords only, in which he urged their Lordships on this head; he complained, 'that the Commons, instead of preferring his occasions in the first place, have held consultation of innovation of religion, property of goods, and Privileges of Parliament, and so have put the cart before the horse: — If it were a time to dispute, I should not much stand upon it; but my necessities are so urgent, that there can be no delay.' //202-1// The Lords immediately take this speech into consideration, and, in obedience to his Majesty's recommendation, resolve, (1.) 'That the supply shall have precedency, and be resolved upon before any other matter whatsoever.' And, (2.) 'That there shall be a conference desired with the House of Commons, to dispose them thereunto.'

At this conference which was held on the 25th of April, the Lord Keeper, after recapitulating what he had said before on the 13th and 21st, assured the Commons, 'That his Majesty's necessary affairs will admit of no delay, but require a present and speedy supply; that therefore the Lords had voted, that his Majesty's supply should have precedency, and that they desired the Commons would go on with that first, as that which, in the opinion of the Lords, is most necessary; and that this being done, their Lordships will ' be ready to join in anything to carry on this great business.'

Every measure taken by this unfortunate King throughout {203} these two last Parliament of 1640, seems to have been the effect of infatuation: At a time when he was courting the House of Commons, and when it was his most essential interest that they should be retained in good-humour, what but the most violent folly could have advised this most flagrant and outrageous breach of their Privileges? If they had before been ever so well disposed to have given the supply the preference to every other consideration, this step taken by the Lords, in consequence of the King's earnestness, must have prevented them; the warmest friends to the King could not now, consistently with their regard for the Privileges of the House of Commons, propose proceeding in the supply in the first place.— The interfering of the Lords had precluded this course of proceeding, and it became the immediate duty of the Commons, to resolve, 'That in this conference the Privileges of the House are violated; and that their Lordships voting, propounding, and declaring touching matters of supply, before it moved from this House, is a breach of the Privilege of this House.' A Committee is accordingly appointed to prepare in writing, an address to the Lords for righting the Privileges of the Commons; and this address is sent on the 8th to the Lords by Mr. Pym. //203-1// Upon which, after long and serious debate,

the Lords resolve, ' That this vote was no breach of the Privileges of the House of Commons.' And on the 1st of May, the Lords at a conference give their reasons for this vote, by the mouth of the Lord Keeper; but on the 2d of May, before the Commons had time to consider of these reasons., the King, growing out of all patience, sent {204} another message by Sir Harry Vane, Treasurer of the Household, 'desiring a present answer concerning his supply.' The debate upon this message lasted till six o'clock, on Saturday night, and was then adjourned till Monday morning at eight o'clock: But, on Monday, Mr. Treasurer brings, another message, in which his Majesty proposes the quantum of the supply, 'and expects a present and positive answer, upon which he may rely.' This day was also taken up in preparing an answer to the King's messages, and the debate adjourned till the next morning at eight o'clock: But before they could meet on the 5th of May, the King sent for them to the House of Lords, and dissolved the Parliament. //204-1//

I hope this summary account of the proceedings of the short Parliament of 1640, will not be thought inconsistent with my general plan of treating on the Privileges of the House of Commons, since the whole dispute between the King and the Commons was, as to the right of precedency of business; Whether they should first have redress for the several violations of their Privileges, in the former Parliaments; or should, by virtue of his Majesty's pressing directions, be obliged to proceed first in the matter of supply; a question essentially material to their existence. For if the King's proposition had been adopted, it is not difficult to foretell what would have been the consequence; 'this done, his Majesty would have given them liberty to present their just grievances to him.' {205} This difference also between the two Houses would give me an opportunity of going more largely into the consideration of that most antient, most important, and, essential Privilege of the House of Commons, respecting 'their sole right of beginning the grants of aids, and supplies, and of directing and limiting the ends, purposes, considerations and qualifications of such grants, without the Lords having the power to alter or to change them.' //205-1// — But the discussion of this question, and a collection of the precedents, upon which this right has been supported, is too great to be inserted in this Work, and deserves to be treated of by, itself.

The proceedings of the Court on the dissolution of the Parliament of 1628, against those Members that had then taken an active part; the imprisonment of those respectable men, Mr. Holles, Sir M. Hobart, Sir J. Eliot, Sir P. Hayman, and others, //205-2// together with the prosecutions and judgments obtained against them in the Star-Chamber, and Court of King's Bench, for their speeches and behaviour in Parliament, brought on at the commencement of the Session, in April

1640, an enquiry into these breaches of their Privilege. It was obvious, that if such proceedings were passed over without notice, and if it should, by their silence, be admitted, that Members of the House of Commons are punishable, after a dissolution, for actions or speeches in Parliament; the freedom of speech, and with that, the freedom of acting and voting, would be at an end. It had been in vain to plead {206} Strode's Law, the fourth of Henry VIII. as a general law in favour of this liberty, or to shew that offences, supposed to be committed in Parliament, are not cognizable in any other Court: The Judges of that day had been too well schooled to admit the force of such trifling objections; · they determined {206} Strode's Law to be a private Act of Parliament; //206-1// and as to the Privilege of Parliament of not being questioned elsewhere, they said, 'We are judges of their lives and lands, therefore of their liberties; no outrageous speeches were ever used against a great Minister of State in Parliament, that have not been punished;' and agreeable to these doctrines, Mr. Justice Jones, on the last day of the term, pronounced the judgment of the Court, "That all the defendants should be imprisoned, during the King's pleasure, not to be delivered till they had given security for their good behaviour, and made submission and acknowledgment of their offence; Sir J. Eliot to pay a fine of two thousand pounds, as the greatest offender and the ringleader; Mr. Holles of one thousand

marks; and Mr. Valentine of five hundred pounds." //206-2//

Notwithstanding the temper and moderation, with which this Parliament of April, 1640, is acknowledged to have met, these breaches of Privilege, so destructive of the very existence of a free Council, became an immediate object of their consideration; petitions were presented from all parts, complaining of the several grievances under which the nation had long laboured, and in these debates even the most courtier-like Members, Mr. Waller, and others, could not help expressing {207} their apprehensions of the consequences of such unjustifiable proceedings. //207-1//

This matter did not rest here; in the next Parliament, on the 6th of July, 1641, the House of Commons again took up this breach of their Privileges in 1628, and came to resolutions:

(1.) That the Warrants of the Lords, and others of the Privy Council, compelling Mr. Holles and others to appear before them during that Parliament; that the committing of Mr. Holles and others, by the Lords and others of the Privy Council, in 4^{to} Car. during that Parliament; that the searching and sealing of the chambers, studies, and papers of Mr. Holles, Mr. Selden, and Sir J. Eliot, being Members of that Parliament, and issuing out Warrants for that purpose; and that the exhibiting an information in the Court of Star-Chamber, against Mr.

Holles and others, for matters done by them in Parliament, being Members of Parliament, are breaches of Privilege. — (2.) That Sir Robert Heath, Sir H. Davenport, and others who subscribed the said informations, are guilty of a breach of Privilege. — And on the 8th of July, the Commons came to several other resolutions touching this matter, and committed Mr. Laurence Whitaker, who had entered the chamber of Sir J. Eliot and, been concerned in searching his trunks and papers to the Tower.

But, as if the heinousness of this crime could never be expiated, {208} on the 15th of October, 1667, at the distance of almost forty years, a Committee is appointed to consider of this Case, of the information brought in the King's Bench, and how the Law and Report is in that particular. On the 12th of November, Mr. Vaughan reports from this Committee, and on the 23d of November, the House resolve, “That

the judgment given in the fifth Car. I. against Sir J. Eliot, Denzil Holles, and Benjamin Valentine, Esquires, in the King's Bench, was an illegal judgment, and against the freedom of Privilege of Parliament.’ To this vote, the Commons at a conference desire the concurrence of the Lords and on the 11th of December, //208-1// the Lords report this conference, and agree to the resolution.

In Mr. Pym's speech //208-2// is a summary of all the oppressions of which the public had had reason to complain, during the last twelve years; and in the Journal of the 24th of April, 1640, these are all recapitulated in a report from a Committee, appointed to prepare the inducements for the conference with the Lords: //208-3// {209} But this conference was never held, the King was unfortunately advised to dissolve this Parliament on the 5th of May, much to the dissatisfaction of the more moderate part of the nation; and so much to his Majesty's own, that, upon recollection, Lord Clarendon says, he wished to recall them, and consulted whether he could not do it by proclamation. //209-1// — Notwithstanding all that had passed, the very next day after this Parliament was dissolved, fresh violences of the same nature were committed; Sir Henry Bellasyse, and Sir John Botham were called before the Council, and, upon their refusing to answer to questions about matters done in Parliament, were committed to the Fleet; and Mr. Crewe, who was chairman to the Committee on religion, was, for refusing to deliver up the petitions and complaints made upon those matters, committed to the Tower. //209-2// When therefore the necessities of government, administered by the advice of the bold and daring Strafford, and the bigotted Archbishop Laud, had so involved the King, that he was again compelled within a few months, contrary to his own inclinations, to call another Parliament; it is no wonder that they met, determined to have ample satisfaction for these enormous breaches

of the constitution. They had had too long experience of the King's own disposition, and of the wisdom of his Counsellors, any longer to trust the reins of government in such hands; they knew they were called together, not from any affection the King had taken to Parliaments, but, "because his Ministers were puzzled how to find supplies." //209-3// — They were therefore naturally led, in the first place, to secure their own existence, and no longer to depend on the capricious temper of the King; they accordingly {210} obtained the Act for preventing their dissolution: //210-1// This security, though it altered the Constitution, gave a new spirit to the leading Members of the House of Commons; — all fears of a dissolution being removed, they were enabled to insist upon every measure, which they thought necessary for the security of the State: They had the satisfaction and the merit of bringing down just punishments on Laud and Strafford; they abolished the Courts of Star-Chamber and High Commission; they reduced the influence of the Crown, by taking away the votes of the Bishops in the House of Lords. — If both sides had stopt here, all might have been well; but so rooted was the jealousy of the Commons against the King, and so averse was the King, in his own nature from submitting to any restraints on the Regal Power by his subjects, that no concessions on his part, no intentions for the public good on theirs, however upright, could induce confidence and harmony between them. Every day produced bickerings and heats, which were probably fomented by designing persons on both sides, till at length the King was persuaded to take the fatal step of going in person to the House of Commons, and endeavouring to seize the Members, who (he thought) had offended him: From this day, the 4th of January 1641, there could be no hopes of a reconciliation; the King soon withdrew into the North, and the Civil War began. This violent and fatal step, as it was subversive of every idea of the Privileges of the House of Commons, was the signal to all, who wished ill to the King's power, to go every length, however little to be justified by the ancient laws of the Constitution, or the rules of proceeding in Parliament. On the King's retiring from London, the Popular Leaders, in the {211} House of Commons proceeded to take such measures, as appeared to them to be necessary to protect the State from the revival of arbitrary power; measures, which however they might then be excused from the very particular circumstances of the times, or justified by the confusion into which the King's retiring from the Government had thrown the Constitution, I cannot look upon as precedents to be followed in times of peace and quietness. — And therefore, if I shall ever have leisure or inclination to continue this Work, I shall think myself obliged to pass over every thing that occurred after this unhappy day, and shall collect only such precedents as are to be met

with in the two Parliaments of 1640, till the 4th of January, 1641, and then proceed directly to the Restoration.

FOOTNOTES TO 1776_HATSELL_1 COLLECTION OF CASES

//3-1// It is remarkable that Prynne, in the Fourth part of his Register of Writs, p. 817, and 1188, twice asserts, that after the most accurate search no such petition is to be found; however, in his Animadversions on the Fourth Institute, p. 18, he admits, that at last he has found it in the Treasury of the King's Receipt in the Exchequer.

//3-2// See Rotul. De Ann. 18 & 19 Ed. I. p. 17.

//5-1// (Duas) in Ryley's Placita Parliamentaria.

//6-1// It has been very properly suggested to me, that in differing from so great an authority as Sir Edward Coke, one should speak with diffidence; especially in matters in themselves obscure, on account of their remoteness from the present times.—I have always endeavoured to do so.

There is a very similar case quoted in the Fourth Register, p. 1189 of a Citation served in the 8th year of Edward II. on Joan de Barro, Countess of Warren, at that time resident in the King's palace. The record at large, and Prynne's observations upon it, are worth consulting.

//6-2// See Appendix ad Rotulos Parliamenti, temp. Ed. II. p. 449.

//8-1// How far the distinction made in the Fourth Register, p. 836, (quod vide) between Captions, sworn Assizes, and any the other real and personal action, is true, I leave to abler lawyers than I am to determine.

//11-1// Qu. Whether this Marginal Note is Sir Edward Coke's or some subsequent Editor's?

//13-1// Page 186.

//13-2// Page 541.

//15-1// Page 542.

//18-1// Page 357.

//20-1// It seems difficult to ascertain what the meaning of the King's Negative is. – Perhaps it meant nothing more than that, the particular Case being provided for, the King would consent to no general law on the subject.

//20-2// Elsynge, p. 217.

//22-1// Page 404.

//24-1// Page 453.

//27-1// The very ingenious Author of "Observations on the Statutes, chiefly the more antient," has, in a note in his Commentaries on the 5th Henry IV. ch. 6, page 301, made a slight mistake, which, in a work abounding with such a variety of useful and excellent learning, I am almost ashamed to take notice of; he says, "that it deserves notice that *Richard Chedder* (this should be *John Salage*; the names are right in the text) on surrendering himself is to make satisfaction, either by the award of the Judges of the King's Bench, or by a Jury: and I do not recollect an instance of such an alternative." Now, it is clear that the act 5 Henry IV, ch. 6, is made in order to compel *John Salage* to surrender, and that these penalties are only to take place if he does not appear within three months. – However, in the Statute of 11th Henry VI. ch. 11. wherein it is declared what punishment shall for the future be inflicted on such offenders when they do surrender; it is enacted, "that if he *come and be found guilty by inquest, by examination or otherwise, of such affray or assault*, that he shall pay to the party so grieved his double damages found by the inquest, or to be taxed by the discretion of the said Justices, and make fine and ransom at the King's will."

//27-2// Page 111.

//28-1// That is, the Statutes of 5 Henry IV. ch. 6, and 11 Henry VI. ch. 11.

//29-1// Page 239 and 240.

//35-1// Commons Journals, Vol. I. p. 546.

//35-2// Page 374.

//41-1// By statute 4th Geo. III. ch. 24. the right of Members to send their letters free from postage, is ascertained to continue, during the sitting of Parliament, and within 40 days before, and 40 days after any summons or prorogation of the same.

//41-2// See Lord Hardwicke's opinion upon this question, in giving judgment in Colonel Pitt's Case, which is reported in Strange's Reports, page 985.

//44-1// Page 160.

//47-1// It has been suggested to me, that the observation on this Case is not settled with sufficient precision; it being of great importance to determine this question, — Whether the Supersedeas and Habeas Corpus, and consequently the real Privilege of the House of Commons, extended only to Arrests on Mesne Process, or to Executions also?” — And: that this is a point which a Commentator should settle. To which I beg leave to answer, that the intention of this work is principally to produce the Cases, and to leave to others to settle the law which arises out of them.

//48-1// Page 191.

//51-1// See the Note Page 47.

//51-2// Pryn's Fourth Register, p. 776.

//58-1// Page 57.

//58-2// Page 61.

//59-1// The following observation was made by a friend, to whom I shewed the work before it was printed. — It is true they certainly had done so in former instances; but whether that was agreeable to the principles of Law and Equity, depends on the question of What was the real Privilege of Parliament in Cases of Executions? — If the Privilege did extend to Executions, those Acts in favour of the plaintiff were *ex gratia*, and might be made in what proportion the House thought proper for his benefit, under the particular circumstance of the Case.

//59-2// Page 859.

//59-3// Pryn's Fourth Register, p. 780.

//62-1// Page 789.

//62-2// Page 61.

//62-3// Page 59.

//70-1// See the 21st January 1548.

//70-2// See the 18th January 1549; the 19th February 1552; the 24th February 1552; and the 15th November 1553.

//76-1// See Sir Simonds Dewes's Journal, p. 16.

//77-1// It appears from the preamble to the Petition of the Commons in Atwyll's Case (vide page 48.) "that, at the commencement of the Parliament of 17th Edward IV. the King ratified and confirmed to the Commons their Privilege of not being impleaded in any action personal, or of being attached by their persons or goods, etc." This must probably have been in his answer to the Speaker's petition, and if so, this observation of Elsyng is not accurately true.

//77-2// See Vol. I. Commons Journal, p. 667.

//78-1// See the King's letter, dated from Newmarket, December 11th, 1621. — Parliamentary History, Vol. V. p, 497. And another letter to Mr. Secretary Calvert, dated from Royston, 16th December, 1621, in 2d Vol. of Proceedings and Debates of the House of Commons in 1620-1, p. 339.

//80-1// It is to be found in Rushworth, Vol. I. page 53; in the Parliamentary History, Vol. V. page 512; and, together with the Debates and Proceedings that gave occasion to it, in Vol. II. of Proceedings and Debates of the House of Commons in 1620-1, page 359.

//83-1// Fourth Register, p. 1209.

//83-2// Page 166.

//85-1// See 4th Vol. of Parliamentary History, p. 155.

//86-1// I cannot find either in Lord Herbert, or the Parliamentary History, or in Rapin, or Mr. Hume, any thing relating to this very extraordinary transaction.

//86-2// See the 4th Henry VIII. Ch 8.

//87-1// See the Commons Journal, 12th November 1667, and the Lords Journal, 11th December, 1667.

//87-2// See also the Lords Journal, 1st Vol. p. 727.

//89-1// Page 314.

//89-2// See fourth Register, p. 792.

//90-1// See the Journal of the 7th, and 10th of March, 1575.

//90-2// It has been suggested by a very ingenious friend of mine, that the hesitation of the House touching the manner of delivering Smalley, may be accounted for by considering that he was only a member's servant; and therefore, when the report says that they could find no precedent for setting at large by the Mace *any person* in arrest, but only by Writ, it should be understood to mean any person of the same description with Smalley, i. e. any Member's servant.

//91-1// In fact, this judgment was pronounced by the Speaker on the 10th of March, 1575, and on the 14th of March the Parliament was prorogued. — If, therefore, the judgment was executed, he was certainly imprisoned for several days after the conclusion of the Session.

//94-1// It is extremely well worth while to read the Entries in the Journal of the whole of this proceeding, of which I have only given an abstract.

//95-1// It should seem from this, that Mr. Hall was elected for Grantham, in the Parliament which met on the 23d of November, 1584 (the Parliament immediately succeeding that in which he was expelled); and again in that which met on the 29th of October, 1586.

//95-2// See this Report in Dewes, p. 417.

//97-1// See Dewes's Journal, p. 347.

//99-1// See Dewes's Journal, p. 347. et seq.

//100-1// See Dewes's Journal p. 410. et seq.

//102-1// For Mr. Wentworth's Speech and questions, see Dewes's Journal, p. 410.

//103-1// It has been very properly observed, that it is rather extraordinary, that Mr. Aylmer, in alleviation of his contempt in filing a Bill in the Star-Chamber, should allege that the Bill was for election matters.

//104-1// Vide Dewes's Journal, page 431. et seq.

//105-1// See Dewes, p. 436.

//106-1// See Dewes, p. 470, et seq.

//109-1// See Moore's Reports, p. 340. — From whence it appears that the Serjeant, though himself Counsel in the cause, entirely mistook both the fact and the grounds on which the House proceeded; as may be seen from the History of this Case in Dewes, Townshend, and Prynne.

//110-1// Page 245.

//110-2// The curious Reader will not be content with the abstract I have given of this Case of Fitzherbert, but will consult the several Entries in Sir S. Dewes's Journal, p. 479, et seq.

//111-1// See Dewes, p. 518, 519, 520.

//111-2// Dewes, p. 560.

//112-1// Dewes, p. 564.

//112-2// Dewes, p. 595.

//112-3// Dewes, p. 629, 633.

//114-1// See the Lords Journals, Vol. I. p. 727.

//115-1// See the Lords Journals, Vol. II. p. 66.

//115-2// See the Lords Journals, Vol. II. P. 93

//115-3// See the Lords Journals, Vol. II. p. 69

//115-4// See the Lords Journals, Vol. II p. 201, et seq.

//116-1// See before N^o. 19.

//117-1// For the proceedings at large in this Case, see the Lords Journals, Vol. II, p. 230, and Dewes, p. 603.

//118-1// See Lords Journals, Vol. II. p. 238, and Dewes, p. 607.

//118-2// Page 637.

//118-3// See other cases of the like nature in Dewes, 647, 651, 655, 656.

//118-4// See also another Case, on the 14th of December, 1601. — Dewes, p. 642, 643, 685, 686.

//119-1// See Dewes p. 656, 657.

//120-1// See this Case at length, and the debates upon it, in Dewes, p. 610, 614, 666, et subs. To p. 688, and Lords Journals, Vol. II. P. 247.

//122-1// See before No 22.

//122-2// See Huddleston's Case in Dewes, p. 685, 686.

//124-1// Page 685, 686.

//125-1// See Vol. IV. of Parliamentary History, from p. 452 to 482.

//126-1// See the 4th of Henry VIII. Ch. 8.— Commons Journal, 12th of November, 1667. — Lords Journal, 11th of December, 1667.

//127-1// The only Cases that appear to be exceptions to this observation, are,

(1.) On the 5th of April, 1626, Sir T. Hobby moveth, “That a scrivener hath sold a copy of the Remonstrance, this day presented to his Majesty, *before the same was presented unto him.*”—Resolved, “he shall be sent for presently.”—The scrivener is one *Turner*, dwelling without Westminster Hall Gate —

The Serjeant sent for him, but answer brought, he was not within.

(2.) See in Appendix, (N^o 11.) a Committee appointed to enquire into a printed book, Who printed it, and by what allowance? —

(3.) Though it is not immediately applicable to this point, I cannot help referring the curious Reader to the proceedings of the two Houses, in relation to a Book published by the Bishop of Bristol about *The Union*, which was then in agitation; particularly, the Bishop's acknowledgment in the Lords Journals of the 5th of June, 1604. – See the Journals of the Lords and Commons, from the 16th of May, 1604, to the end of the Session.

//133-1// Or of the last *convention*, as it is more properly called in the debates; the King also in his commission for the dissolution, saying, that it was no Session, 'pro eo quod nullus regalia assensus aut responsio, per nos, praestita suit.' Parliamentary History, Vol. V. p. 303.

//134-1// Vide Journal the 5th, 12th, and 15th of February, 1620.— Debates, vol. I. p. 14, 32, and 47. and vol. II, in the Appendix.

//134-2// Vol. V. p. 320.

//134-3// In p. 303 of the 5th volume.

//134-4// Vol. I. p. 15. et seq.

//135-1// It appears from the Appendix to the debates of 1621, in the Note on Vol. II. p. 182, that Sir Edwyn Sandys was committed on the 16th of June; the two houses had adjourned on the 4th of June.

//135-2// See Sir Edwyn Sandys's Examinations, as preserved in the British Museum, and printed in the Appendix to the debates of 1621.

//136-1// Vol. II. p. 200.

//138-1// See this protestation before in p. 78.

//141-1// These precedents, with the answers to them, are entered at length in the Journal of the House of Lords, and are also to be found in Elsynge; to which books I beg leave to refer the Reader.

//148-1// Vol. VII, p. 168.

//148-2// Lord Lytteson's Persian Letters.

//149-1// Fourth Register, p. 714.

//149-2// Page 716.

//154-1// Which is very well worth the Reader's perusal.

//154-2// Page 113.

//157-1// See Note, p. 47, and 59.

//160-1// Page 146.

//160-2// See page 108.

//165-1// See the Parliamentary History, Vol. VIII. p. 105.

//165-2// See before Page 96 and 97.

//166-1// See the 15th of May, 1604, and 11th of February, 1605.

//169-1// See this Commission, intituled, "Assignatio personarum loco Regis ad inchoandum concilium suum."

//170-1// Fourth Register, p. 843.

//171-1// It has been properly suggested to me, that there is some confusion between these heads: It is not always possible, from the shortness of the entry, to distinguish, whether the summons is to attend personally, as in the case of *jurers* and *witnesses*; especially in the proceedings of the Star-Chamber, where, even in civil cases, the Court exercised a sort of criminal jurisdiction.

//173-1// It appears from the Journals, that the House had adjourned from the 18th of December, to the 10th of February.

//176-1// Though this order is inserted before, I have repeated it here; "That, if any arrest, or any distress of goods, serving any process, summoning his land, citation or summoning his person, arresting his person, suing him in any Court, or breaking any other Privilege of this House, a letter shall 'issue under Mr. Speaker's hand for the party's relief therein, as if the Parliament was sitting, and the party refusing to obey it to be censured at the next access.'

//177-1// This venerable old patriot was at this time upwards of seventy years of age.

//177-2// See the Journal of the 4th of June, 1621, and the second volume of the printed debates of this Parliament.

//178-1// There are two separate Journals preserved of this Session; which are both in the first volume of the printed Journals.

//179-1// See the further proceedings in this Case, in the Journal of the 29th of April, and 3d of May.

//179-2// See the Note, p. 6.

//180-1// Page 15, 48, 150.

//180-2// Page 83.

//184-1// The entries in the Journals for several days begin, *Absente Prelocutore*.—But it appears that very little business was done, except the appointing a Committee to consider of such precedents, as could be found, for the proceeding of the House, in the absence of the Speaker; this Committee make no report, as the Speaker returns the next day.

//184-2// In the eighth volume of the Parliamentary History, p. 247, and 254, et subseq. There is an account of this transaction, published from a Book, collected by Sir Thomas Crewe, and which the Compilers of that History say is fuller than what is in Rushworth, Vol. I. p. 642. Et subs.

//185-1// The Parliament had been prorogued from the 26th of June, to the 20th of October, and then further prorogued to the 20th of January.

//185-2// See, in the first volume of Rushworth, p. 655, the first speech, which this extraordinary man appears to have made.— The following extract from Sir Philip Warwick's Memoirs, p. 247, is very curious. — ‘The first time that ever I took notice of Cromwell, was in the very beginning of the Parliament held in November, 1640, when I vainly thought myself a courtly young Gentleman; (for we Courtiers valued ourselves much upon our good cloaths.) I came one morning into the House well clad, and perceived a Gentleman speaking (whom I knew not) very ordinarily apparelled, for it was a plain cloth suit, which seemed to have been made by an ill country taylor; his linen was plain, and not very clean; and I remember a speck or two of blood upon his little band, which was not much larger than his collar; his hat was

without a hatband; his stature was of a good size, his sword stuck close to his side, his countenance swoln and reddish, his voice sharp and untunable, and his eloquence full of fervor. — Yet I lived to see this very Gentleman, by multiplied, and good success, and by real (but usurpt) power, (having had a better taylor, and more converse among good company) in my own eye appear of a great and majestic deportment, and comely presence.'

//189-1// It has been observed, that these Cases would have been more properly inserted under the several heads, to which they relate.—It is very true: but as they occurred to me, after I had finished the former part of the Work, and as it would have required more trouble, than I thought such an alteration would deserve, I trust I shall be excused in giving them in the form in which they appear.

//191-1// Note, the Parliament was prorogued from the 9th of November, to the 21st of January.

//191-2// See a similar instance of the 13th of February, 1575, 23^d of January, 1580, and many others.

//191-3// See also the Case of Bukeley, 14th of May, 1614.

//193-1// This Bishop of Lincoln was the famous Dr. Richard Neil, who was afterwards advanced to the Bishoprics of Durham and Winchester; and who, in the Remonstrance presented by the Commons to Charles I. in 1628, was complained of, together with Bishop Laud, as being a favourer of Arminianism.

//195-1// See the 24th of June.

//197-1// On the 17th of August, 1641, Mr. Pym reports from the Committee appointed to prepare heads for a conference with the Lords — 'To let the Lords understand that the conviction of divers recusants hath been hindered under pretence of Privilege of Parliament from their Lordships; and to declare unto their Lordships, that the opinion of this House is, That no Privilege of Parliament ought to be allowed in this case, for these reasons; (1.) Privilege of Parliament is not to be allowed in case of peace, if the peace be required. (2.) It is not to be allowed *against any indictment* for any thing done out of Parliament. (3.) It is not to be allowed in case of public service for the Commonwealth, for that it must not be used for the danger of the Commonwealth.' — In the report of this conference in the Lords Journals of the 18th of August,

1641, these reasons are somewhat differently expressed. (1.) ' That no Privilege is allowable in case of the peace betwixt private men, much more in case of the peace of the Kingdom. (2.) That Privilege cannot be pleaded against an indictment for any thing done out of Parliament, because all indictments are *contra pacem Domini Regit*.

(3.) Privilege of Parliament is granted in regard of the service of the Commonwealth, and is not to be used to the danger of the Commonwealth.

//197-2// See the second Volume of Commons Journals, p. 374.

//199-1// For proof of these particulars, consult Lord Clarendon, Whitelocke, and other contemporary Writers.

//199-2// Lord Clarendon's History of the Rebellion, Vol. I. p. 54. — To which he adds, .in p. 57, ‘These errors (for errors they were in view, and errors they are proved by the success) are not to be imputed to the Court, but to the spirit *and eager activity of the Lawyers*; who should more carefully have preferred their profession, and its professors, from being profaned by those services, which have rendered both so obnoxious to reproach.’

//200-1// Eighth Vol. p. 393.

//201-1// The charge of such an army hath been thoroughly advised, and must needs amount to a very great sum, *such as cannot be imagined to be found in his Majesty's coffers*; which, how empty soever, have neither yet been exhausted by unnecessary triumphs, or sumptuous buildings, or other magnificence: *Wherefore* his Majesty hast now called this Parliament.” – Lord Keeper's speech, eighth Volume of Parliamentary History, p. 403.

//202-1// See the Lords Journals, Vol. IV. p. 66.

//203-1// See Lords Journals, Vol. IV. p. 72. et subs.

//204-1// See Parliamentary History, Vol. VIII. p. 436 to 468. - Lord Clarendon supposes, that the part which Sir H. Vane took in this affair was with a malicious intention, and to bring all into confusion.—History of Rebellion, Vol. I. p. 110.

//205-1// See Commons Journals, 3d of July, 1678.

//205-2// See the Parliamentary History, Vol. VIII. p. 354.

//206-1// See Whitelocke's Memoirs, p. 12, and 13.

//206-2// See the Parliamentary History, Vol. VIII. p. 354 to 389.

//207-1// See Rushworth, Vol. III. p. 1140.

//208-1// Vide Lords Journals.

//208-2// Parliamentary History, Vol. VIII. p. 425.

//208-3// Lord Clarendon's encomiums on the temper and moderation of this Parliament, render the Report from this Committee (which was agreed to by the House) sufficient evidence of the truth of the charges against the King and his Ministers, for their tyrannical behaviour during this period. — In the first volume of the History of the Rebellion, p.110,— he says, " It could never be hoped that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill purposes with them."

— In p. 106, he mentions a circumstance only "that the temper and sobriety of the House may be taken notice of, and their dissolution, which shortly after fell out, the more lamented." — This Report therefore, which is to be found at length in the second volume of the Commons Journals, p. 11, contains a complete answer to the Compilers of the Parliamentary History, and to those other Historians, who have so artfully laboured to prove, that the Civil War was more owing to the violent spirit, and illegal pretensions of the Commons, than to the arbitrary measures of the Court.

//209-1// Lord Clarendon's History, Vol. I. p. 111.

//209-2// See Parliamentary History, Vol. VIII. p. 489.

//209-3// See the Sidney Papers, Vol. II. p. 623.

//210-1// I do not mean to approve of this measure — it was certainly a violent breach in the Constitution of this Government; and yet, if this Act had not been obtained, perhaps it would have been impossible to oppose the King's attempts with effect.

