

1818_HATSELL_1

PRIVILEGE OF PARLIAMENT

[John Hatsell] *Precedents of Proceedings in the House of Commons; Under Separate Titles. With Observations. In Four Volumes. Vol. I. Relating To Privilege Of Parliament; From The Earliest Records, To The Year 1628: With Observations Upon The Reign Of Car. I. From 1628 To 4 January 1641. A New Edition, with Additions.* (London: Printed by Luke Hansard and Sons, Near Lincoln's-Inn Fields and Sold by Payne and Foss, Pall-Mall; Cadell and Davies, in the Strand, and Clarke and Sons, Portugal-Street, Lincoln's-Inn. 1818).

\\Ed. Note: The foregoing title and bibliographic entry are the editor's; this (mostly) machine-readable edition includes all text of the original, including: title page/s, preface, table of contents and footnotes *but excluding* running chapter heads, printer's marginalia, and the index. The word count of (approximately) 108,000 words is computed from the beginning of the preface to the bottom of the MS Word file. The word count includes \\ editorial notes\\ and //our footnote numbering//. All original page numbering is indicated by { } but this signal is not inserted mid-word. Further explanation of my editorial method is forthcoming on this website.\\

PRECEDENTS
OF
PROCEEDINGS
IN THE
HOUSE OF COMMONS;
WITH OBSERVATIONS.

IN FOUR VOLUMES:

VOL. I.—PRIVILEGE OF PARLIAMENT.
VOL. II.—MEMBERS, SPEAKER, &c.
VOL. III.—LORDS, AND SUPPLY.
VOL. IV.—CONFERENCE, AND IMPEACHMENT.

A NEW EDITION, WITH ADDITIONS.

LONDON:
PRINTED BY LUKE HANSARD AND SONS,
NEAR LINCOLN'S-INN FIELDS
AND SOLD BY PAYNE AND FOSS, PALL-MALL;
CADELL AND DAVIES, IN THE STRAND, AND CLARKE AND SONS,
PORTUGAL-STREET, LINCOLN'S-INN.

1818.

{iv}

TO
THE RIGHT HONORABLE
CHARLES
BARON COLCHESTER,
ONE OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL
&c. &c. &c.
THIS NEW EDITION
OF
PARLIAMENTARY PRECEDENTS,
IS,
WITH THE GREATEST RESPECT,
INSCRIBED,
BY HIS FAITHFUL FRIEND
AND OBEDIENT HUMBLE SERVANT,
JOHN HATSELL.

**PREFACE TO A NEW EDITION OF
PRECEDENTS OF PARLIAMENTARY PROCEEDINGS**

It is now above Forty Years since the publication of the First Volume of this Work; and more than Twenty Years have elapsed, since the whole, in Four Volumes, has been submitted to the Public.—Within that time, many Cases have occurred, and several Acts of Parliament have been passed, which, in some instances have explained and illustrated, in others have made an alteration in the Law of Parliament, as it was then to be collected from the Precedents referred to under the several Titles. This consideration alone would be a sufficient reason for publishing a New Edition of this Work; but whoever has leisure to compare these Volumes with the former, will immediately perceive the advantages, which they derive from {vi} the Notes and Observations, that have been communicated to the Editor by the Right Honourable Charles Abbot, late Speaker of The House of Commons, now Lord Colchester, who presided in that Assembly for more than Fifteen Years, with so much honour to himself, and with such satisfaction to the Public.

Mr. Abbot's constant and uniform attention to the Rules and Orders of the House, and to the Public and Private Business, His intimate knowledge of the Antient Records and Journals of Parliament, His acute and accurate investigation of all the circumstances which have any reference to the History and Constitution of this Country, cannot fail to stamp the highest value on these communications.

In contemplating the merits and services of Mr. Abbot, in the eminent situation in which he was placed, the Editor of this Work cannot refrain from adverting particularly to the dignified and impressive manner in which he delivered the Thanks of The House of Commons, to the {vii} distinguished Officers to whom they were voted in the late War ! The Speeches of Mr. Abbot, on those occasions, may justly be considered as perfect models in that species of eloquence.

It is a source of great comfort to the Editor of these Volumes, to think that, though at a very advanced age, he has been blessed with health and spirits sufficient to permit him to attend to this Republication. And he has the satisfaction to reflect, and to express his hopes, that, when he shall be removed from this World, he shall be thought not to have lived in vain; but to have employed his studies and leisure hours, in putting together a Work, which he trusts may be of public utility; and which

may, in however inferior a degree, contribute to the support and preservation of our justly admired, and most excellent Constitution.

Cotton Garden,
January 1818.

J. H.

PRECEDENTS
OF
PROCEEDINGS
IN THE
HOUSE OF COMMONS:
WITH OBSERVATIONS.

RELATING TO PRIVILEGE OF PARLIAMENT;
FROM THE EARLIEST RECORDS, TO THE YEAR 1628:
WITH OBSERVATIONS UPON THE REIGN OF CAR. I.
FROM 1628 TO 4 JANUARY 1641.

A NEW EDITION, WITH ADDITIONS.

LONDON:
PRINTED BY LUKE HANSARD AND SONS,
NEAR LINCOLN'S-INN FIELDS
AND SOLD BY PAYNE AND FOSS, PALL-MALL;
CADELL AND DAVIES, IN THE STRAND
AND CLARKE AND SONS, PORTUGAL-STREET, LINCOLN'S-INN.

{ix}

TO
THE RIGHT HONOURABLE
JEREMIAH DYSON,
COFFERER TO HIS MAJESTY'S HOUSEHOLD,
AND
ONE OF HIS MAJESTY'S
MOST HONOURABLE 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 TO THE FIRST EDITION.

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.

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 {xi} attention of the Reader to particular points, and, in some degree, to assist him in forming his own opinion upon that question.

This Work ought therefore to be 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 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 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.

{xii} 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 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.

CONTENTS OF THIS VOLUME.

CHAP. I.	
CASES from the earliest Records to the end of the Reign of Henry VIII.	1
CHAP. II.	
CASES from the Reign of Henry VIII. to the end of the Reign of Queen Elizabeth	70
CHAP. III.	
CASES from the Accession of James I. to the end of the Parliament of 1628	130
CHAP. IV.	
Additional Cases between the Year 1549, and the Year 1628	190
CHAP. V.	
Conclusion; being a Parliamentary View of the Reign Car. I. from 1628 to 4 January 1641	205
APPENDIX	
1.—Apology of the Commons on 20 June 1604	227
2.—Report of the Conference in 1667 touching Freedom of Speech	250
3.—Report of 24 April 1640, touching Grievances	259
4.—Rushworth's Account of Charles I. coming to the House of Commons to seize the Five Impeached Members, 4 January 1641	265
5.—Arrest of Lord Cochrane in the House, 21 March 1815	278
6.—Proceedings relative to Sir Francis Burdett, 1810	281
INDEX \\omitted\\	

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 entitled 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 {2} trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so 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. //2-1//

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 even then are 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 {3} 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 Master of the Temple in 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 {4} Fourth Register, p. 820, and in Ryley’s Placita Parliamentaria, p. 6, and is as follows: //4-1//
\\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\\

{5} {6}

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, the lord kings 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 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\\

This Record does not appear 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 said 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, as 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 150 years elapse, 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 {9} 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.

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 fuis 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 {11} 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, 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.

{12}

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:

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

\\See Table 1\\

{13}

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

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\\

{14}

What this sufficient remedy was does not appear; Elsynge arguing from the Case of the Earl of Cornwall mentioned 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 haply 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." //14-1//

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, \\so in text\\ whereby the prosecutor lost the benefit of his arrest, and was put to the charge of new process without any arrest, during the session."

{15}

I do not however agree with Prynne in supposing that this petition was grounded on a violent assault which was made, during the sitting of this Parliament, on one Richard 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 prient 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 complained of to appear, then to be dealt with according to the law as it then stood. The title {17} 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 also 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. ch. 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.” 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°. 57. //18-1//

‘Priount les Communes

\\See Table 1 \\

{19} {20}

This is the Case in which Sir Edward Coke refers, when he says, in the Fourth Institute, p. 25, “Privilege of Parliament in Informations for the King.—Generally the Privilege of Parliament does hold, unless it be in three Cases, viz. Treason, Felony, and the Peace.” The Commons certainly declare it to be their opinion, that they had clearly the Privilege “of being free from all arrests, during the Parliament, “except for Treason, Felony, or Surety of the Peace:” But when at the close of the petition they pray, “that for the future it may be enacted into a law, that

no Knights, Citizens, or Burgesses, or their Servants, may be arrested or detained in prison during the time of Parliament, except for Treason, Felony, or surety of the Peace;" the King refuses their request, and gives a Parliamentary Negative; and therefore, the more natural conclusion to be drawn, as well from the petition itself as from the King's answer, appears to be, That, at that time, this proposition was not acknowledged to be law in the extent in which the Commons laid it down." //20-1//

The House of Lords in their answer to this Case, when cited by the Attorney General in the Case of Lord Arundel, //20-2// suppose the ground upon which the King gave this negative to have been, "that the latter part of the Bill did comprehend more than it was fit the royal assent should be given unto, {21} or more than was, or at this day is, the Law of Parliament; for it is, that no Member of either House be arrested or detained in prison during the Parliament, saving in these three Cases. To be arrested, is to be taken by the officers, by process, or otherwise: To be detained in prison, is either to be detained after an arrest, or after a commitment from the bar of some court, which is never called an arrest, though in truth it be one. So that the Bill desired, not only that none should be arrested or detained upon any arrest, during the Parliament (which is the only Privilege supposed in the body of the Bill) but also, that none should be detained in prison during the Parliament; whereas there is no doubt, but that any of the House of Commons or their servants, or the servants of Lords, being detained in prison upon an execution, served upon them before the time of Privilege of Parliament, or being in execution, in any other ordinary course of justice, before that time, ought to be detained still, as it is practised at this day. And accordingly, also a fourth limitation is added to those three, in the 31st Henry VI. in Thorpe's Case, where Treason, Felony, Surety of the Peace, and Condemnation before the Parliament are the cases excepted; so that there being more asked by the Bill than the Privilege of Parliament allowed, there was reason enough why the King assented not to it." It is certainly impossible at present to determine precisely on what ground the King refused to grant this part of the petition: supposing the explanation given by the House of Lords to be the true one, it was by no means necessary to give a general negative to the whole of the prayer; the King's answer might in this, as it had done in many other cases, have qualified the general words of the petition, and have enacted, "That persons intitled to Privilege should not be arrested, or detained in {22} prison on any arrest made during the time of Parliament, except for Treason, Felony, or Surety of the Peace," which would not have included persons in execution on condemnation before the Parliament, and yet would have satisfied the Commons, by declaring the law in as large a sense as they themselves explained it in the former part of the petition.

Such however are the doubts, and so different are the opinions which may be formed from this Record, as to the question of “What the Law of Privilege really was at that time,” that the conclusion drawn by Sir Robert Cotton in his Abridgement, p. 596, “that herein it is to be noted, that there is no cause to arrest any such man, but for Treason, Felony, or the Peace,” though the remark of so learned an antiquarian, ought not to be hastily and rashly adopted.

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

‘Priort les Communes,’

\\See Table 1\\

{23} {24}

Sir Robert Cotton in his Abridgement of this Record, p. 605, calls it “A Motion for speedy redress of and in the actions of all such as were or should be of the Commons House.” With respect to the former part of the petition, which desires a remedy to compel the offender to appear; I apprehend {24} there was already an act of Parliament to this effect, made but a few years before in Chedder’s Case, 5th Henry IV. the purport of which is almost the same with that prayed for in the present petition, and therefore a new law upon this subject was unnecessary: with regard to the punishment of the offender, when he should deliver himself up to justice, it is remarkable how much more moderate the Commons are in their present demand than they had been in the former case, as they desire nothing more than “that the party so committing the trespass, offence, or damage to the persons of the Members or their servants, and being found guilty, should pay to the party aggrieved his double damages.” And yet even to this the King refuses his assent, leaving them to obtain redress according to the law as it then stood.

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}

And from this petition and answer the Act of 11th Henry VI. ch. 11, “For the punishment of those that make assault upon any that come to the Parliament,” is drawn up and entered on the Statute Roll; and, as I observed before under Chedder’s Case, not only enforces the provisions

of the 5th Henry IV. ch. 6, to compel the appearance of the offender; but, on his conviction, gives double damages to the party grieved, with fine and ransom to the King.” //26-1//

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 further provisions to suppress this very dangerous practice.

‘Rot. 23 Hen. VI. N° 41’ //27-1//

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

\\See Table 1\\

{28}

//28-1//

I cannot, upon the most accurate search, find any thing relating to this Sir Thomas Parr, either in the Records themselves, the Statutes, or the Parliamentary History, and am therefore at a loss to know what particular remedy he had obtained on this occasion.

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 then in prison, the Commons make the following application to the King for his release:

‘Rot. Parl. 31 & 32 Hen. VI. N° 25, 26, 27, 28, 29 //28-2//

‘25. Fait a remembrer’

\\See Table 1\\

{29} {30} {31} {32}

It appears from the Fourth Register, p. 683, “that the Parliament had been adjourned from the 22nd of November to the 11th day of February next following.” Or, as is perhaps more accurately stated in the second volume of the Parliamentary History, p. 270, that the Lord Chancellor, on the 2d day of July, prorogued the Parliament to Reading to {33} the 7th day of November following; and that on that day it was from thence adjourned to the 11th day of February:—“That the Duke immediately after the adjournment sued Thorpe in the Exchequer by Bill, and prosecuted him so close, (though Speaker, and a Baron of the Exchequer), in his own Court, that between the 23d of October and 11th of February, he got both a verdict against him by a Jury of Middlesex for one thousand pounds damages, and ten pounds costs of suit, and likewise a judgment, and took and detained him prisoner in the Fleet thereon, between this adjournment and the Parliament’s meeting, some few days before their re-assembling.”

Indeed the method of proceeding, as well as the expedition, that was used throughout the whole of this Case, appears at first sight very extraordinary; First, that the Commons should apply to the Lords, as well as to the King, for redress in a matter in which their own Privileges were essentially concerned: Secondly, That, notwithstanding the opinion of the Judges most formally declared, “That persons arrested for any other cause than for Treason, Felony, or Surety of the Peace, or for a Condemnation had before the Parliament, ought to be released,” the Lords should adjudge that Thorpe, who came within none of these descriptions, should according to the law remain still in prison: And thirdly, That the Commons should so easily acquiesce in this decision, and immediately proceed to the election of another Speaker; and the whole of this transaction was but the business of three days, the 14th, 15th, and 16th of February.

But when we compare the uncommon expedition with which this very important affair was hurried over; the {34} Judgment of the Lords, so directly contrary to the conclusion which ought to have been drawn from the opinion delivered by the Chief Justice; the command of the Bishop of Ely to elect another Speaker, signified immediately subsequent to the judgment, and, as far as appears, without any communication with the King; and the obedient submission of the Commons; I say, all these circumstances, being compared with the very high situation in which the plaintiff Richard Duke of York then stood, who was, as appears from the Parliamentary History, that very day, the 14th of February, appointed President in the said Parliament, and was himself present, and took a part in the hearing of his cause, may be thought fully to justify the opinion of Sir. N. Rich, who, when this precedent was cited in a debate on the 8th of March 1620, says, “It is a Case begotten by the iniquity of the times, when the Duke of York might have an overgrown power in it; and I therefore wish it may not be meddled with.” //34-1//

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. //34-2//

‘Item, quedam alia Petitio’

\\See Table 1\\

{35} {36}

On comparing this Case with that of Lark, N^o 8, who was likewise a prisoner in Execution on a Judgment, and was released by Act of Parliament, saving to the creditors their right of taking him again in execution when the time of Privilege should expire, I cannot find upon what particular ground it was thought necessary, in the present instance, to indemnify the Chancellor for issuing the writ of his discharge; or the

Warden {37} of the Fleet for obeying it. Elsynge, p. 245, raises a still further doubt, "Whether there was even a necessity for an Act of Parliament to deliver the party privileged out of execution." He says, "There may be much dispute upon this question. The strongest allegation against it is, that it will prejudice the plaintiff's execution: but since the party privileged is not to be arrested for any debt, trespass, or contract, prout an. 5 Hen. IV. N^o 71, nor can be arrested during the Parliament, but for Treason, Felony, or Breach of the Peace, prout an. 8 Hen. VI. N^o 57, my opinion is, that the arrest upon an execution for debt, trespass, or contract, is merely void, and then it can be no prejudice to the plaintiff, but he may have a new execution after the end of the Parliament, so than an Act, to deliver him that is so arrested, or to save the plaintiff's rights for a new execution, is ex abundanti, and needless." But Elsynge had forgot that the Judges, in giving their opinion of the extent of Privilege of Parliament in Thorpe's Case, had, to the three exceptions of Treason, Felony, and Surety of the Peace, added a fourth, viz. "A Condemnation had before the Parliament," which expression, thought Elsynge thinks, p. 247, "that it cannot be understood to except Arrests upon execution sitting the Parliament, but only such Arrests as happen in the interim between the adjournment and the access, as Thorpe's was," will bear the other construction, and may be understood to mean, that for any judgment or condemnation had before the Privilege of Parliament, as he might be for Treason, Felony, or on Surety of the Peace: and if this was then understood to be the law, no Writ of Privilege, nor any thing less than an Act of the Legislature, would certainly have been admitted to release him. I do not presume to give any opinion upon this question started {38} by Elsynge, "Whether the party so taken in execution could be delivered without an Act of Parliament:" But that an Act of Parliament was necessary to save the plaintiff's right to a new execution, appears not only from several instances which follow, but from the statute of the 1st James I. ch. 13, which was made expressly "to allow 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 should be delivered."

It will immediately occur to every one who reads the foregoing Cases as entered at length in the Records, (1) That the Privileges claimed by the House of Commons, during this period, were only for the Knights, Citizens and Burgesses, and their mesnial \\so in text\\ servants, or familiars, present with them in their attendance on Parliament: (2) That the duration of these Privileges is in no instance carried farther than in their coming, staying, and returning to their homes: And (3) That the extent of the Privilege claimed is, to be free from any assault, or from arrests or imprisonment, except for Treason, Felony, or Surety of the

Peace. No Case has hitherto occurred in which the Commons have claimed the Privilege of not being impleaded in any action or suit during their attendance; this is the more remarkable, because about this time it appears, from an Act of Parliament made in Ireland, that the Irish House of Commons considered this as a known, avowed, and established Privilege of Parliament. The Act is as follows:

“Anno 3 Edw. IV. cap. 1^{mi}.

“At the request of the Commons, where the Privilege of every Parliament and great Council of this land of Ireland is, that no Minister of the said Parliament, coming or going {39} to the said Parliament during forty days before and forty days after the said Parliament finished, should not be impleaded, vexed, nor troubled by no mean: This notwithstanding, one Lawrence Tathe, Esq; hath arraign’d Assise of novel disseizin against John Barnewall being Knight for the county of Dublin in this present Parliament, as it is informed, for two water mills in Athirde, in the country of Lowthe, the writ being returnable before our Sovereign Lord the King, in his chief place in Ireland, to the intent that he may recover the said two mills against the said John Barnewall, by default, contrary to reason and conscience, and the Privilege aforesaid: Whereupon, the premises considered, it is ordained, enacted, and established by authority of the said Parliament, That the said Writ of Assise so taken against the said John in any other Court of the King, or before his Commissioners in whatsoever manner it be, against him solely, or against him jointly, with any other person or persons whatsoever, and all the Records thereunto pertaining, to be deemed, adjudged, and holden void, and of none effect in all points as it had never been sued nor taken against him sole, or him jointly with any person or persons whatsoever. And further be it also enacted and established, That every Minister, as well Lords, Proctors, as Commons, be discharged and quitted of all manner of actions, had or moved against them, or any of them, during the time aforesaid, and this to endure for ever.”

We have seen before, by the Writs of Supersedeas issued in the eighth year of Edward II. that the idea of Members not being impleaded, vexed, or troubled during their attendance, was then known and adopted in legal proceedings; it is therefore very strange that, from that time to the twelfth of {40} Edward IV. a space of above one hundred and fifty years, no Case should appear upon the Records of Parliament in which this Privilege is ever brought into question: For Prynne says, in the Fourth Register, p. 735, “that of this there is not one petition or complaint to be found in any Parliament Roll in the Tower, or other antient Record that he could ever meet with the strictest enquiry.” Another circumstance that is curious in the law passed at this time in Ireland is, that the duration of Privilege should be ascertained to forty days before the

meeting, and forty days after the conclusion of the Parliament; whereas, in England, I recollect nothing established by law upon this point till the 12th and 13th William III. ch. 3, and there it is only enacted, "That no Action or Suit shall be prosecuted against any person entitled to Privilege, unless the adjournment shall be for above fourteen days." //40-1// But as to what the duration of Privilege ought to be under the words "coming, staying, and returning to their homes," we shall find in the following Cases a great variety of opinions upon this subject, nor do I know that even to this hour it is any where precisely defined or determined. //40-2//

{41}

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.

Barthol. Donne brings his Bill against John Walsh, a servant of Henry Earl of Essex, for the sum of fourteen pounds eighteen shillings, which Walsh owed upon his bond: To this John Walsh, in his answer, produces the King's Writ under the Great Seal; *ejus tenor sequitur in haec verba:*

'Edwardus Dei gratia Rex Angliae'

\\See Table 1\\

{42}

15. The next Case is that of Ryver and Cosins, taken from the Plea Roll of the Exchequer, Hil. Term, 12^o Edw. 4^{ti}. {43} Rot. 7. Here the defendant pleads the King's Writ, in which the custom is set forth as followeth:

'Edwardus Dei gratia Rex &c. Thes.'

\\See Table 1\\

I beg to refer the Reader to Prynne's Observations on these two Cases, in the Fourth Register, p. 762, as containing matter of much parliamentary instruction.

{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 alicujus 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}

The only object which the Commons seem to have had in this application to the Crown was the release of their Member: for the law “that a Member was not liable to be imprisoned for debt, sitting the Parliament,” had been too lately and too solemnly adjudged, for them not to know how grossly it had been violated in this instance: Mr. Hyde, however, being a prisoner in execution, it was necessary, as in the Case of Lark, N^o 8, and Clerk’s Case N^o 13, to have an Act of Parliament to save to the parties a right of a new Execution after the time of Privilege; but the Commons did not think it necessary to apply to the Crown for any redress for this breach of their Privilege; they had, on a similar occasion, received for answer from the King, //46-1// “that there was already sufficient remedy by Law in this cases;” they therefore cautiously provide by their petition, that this application shall not be understood in the least to infringe their whole Liberties, Franchises, and Privileges.—It is, indeed, something extraordinary that, when all the twelve Judges had but two years before in two several instances adjudged, that a Member ought not to be imprisoned “*ratione alicujus transgressionis, debiti, computi, conventus aut alterius contractus cujuscunque,*” yet, when Mr. Hyde is brought up to the Court of King’s Bench, that Court should remand him to Newgate, and not immediately order him to be set at liberty: This circumstance, added to the necessity (which there appears to have been) of indemnifying the Chancellour and Sheriffs against {47} any prosecution at law for his escape, induces me to suspect that the opinion of the Judges, as delivered in the two former instances in the 12th Edward IV. was confined only to the case of persons entitled to Privilege of Parliament, who should be arrested and imprisoned on Mesne process; and that the right, which such persons had by law to Writs of Privilege and Habeas Corpus for their delivery, did not extend to persons imprisoned under a Writ of Execution; for, if it was otherwise, if Members and their servants had, when in execution for debt, a right by law to be released by a Writ of Privilege, or that the law then was, that such imprisonment was illegal, it is highly absurd to suppose that the Lord Chancellor, who was by his office to issue this writ, or the Sheriffs, who were bound to obey it, should, by their obedience to the law, make themselves liable to the prosecution of the creditor, as for the escape of his debtor; or that the law would not at the same time have provided for a renewal of the Writ of Execution; both which however, we see, were necessary to be specially declared by Act of Parliament. //47-1// This, therefore, I say, makes me think that, at this time, the claim of Privilege of Parliament extended only to secure persons entitled to such Privilege from being arrested for trespass, debt, &c. on mesne process; and against

such arrests the law gave the remedy of a Writ of Privilege, which released the person of the debtor, and did not affect the {48} rights of the creditor; but from an arrest on a judgment, it appears, both from Lark's, and Clerk's Case, and the present, that there was, at this time, no other redress than a special Act of Parliament.

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

'Roll 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 attach'd 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 in coming to, and returning home from it." (3.) //50-1// 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 {51} several foregoing instances, that, when this Privilege was broken, and the body of a Member was put in execution, sitting 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, to be so totally irregular, and against their Privileges, that they Supersede the operation of them even in favour 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: //51-1//

‘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; and that therefore the authority of this Case, with the non-existence of such custom, is of no weight.

{53}

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, being elected a Burgess for the towne of Plimmouth, in the country of Devon, in going to the Parliament House was arrested in London by a process out of the King’s Bench, at the suit of one White, for the sum of two hundred Marks, or thereabouts, wherein he was late afore condemned, as surety for the debt of one Welden of Salisbury; which arrest being signified to Sir Thomas Moile, Knight, then Speaker of the Parliament, and to the Knights and

Burgesses there, order was taken that the Serjeant of the Parliament, called S. J. should forthwith repair to the Counter in Bread-street, whither the said Ferrers was carried, and there to demand delivery of the prisoner. Thereupon the Serjeant, as he had in charge, went to the Counter, and declared to the Clerks there what he had in commandment; but they, and other officers of the City, were so far from obeying the said commandment, as, after many stout words, they forcibly resisted the said Serjeant; whereof ensued a fray within the Counter gates, between the said Ferrers and the said officers, not without hurt of either part, so that the said Serjeant was driven to defend himself with {54} his mace of armes, and had the crown thereof broken by bearing off a stroke, and his man stricken down. During this brawle, the Sheriffs of London, called Rowland Hill, and H. Suckley, came thither; to whom the Serjeant complained of this injury, and required of them the delivery of the said Burgess, as afore; but they bearing with their officers, made little account either of his complaint or of his message, rejecting the same contemptuously, with much proud language, so as the Serjeant was forced to return without the prisoner; and finding the Speaker and all the Knights and Burgesses set in their places, declared unto them the whole cause, as it fell out; who took the same in so ill part, that they all together (of whom there were not a few, as well of the King's Pryvy counsel, as also of his Pryvy Chamber) would sit no longer without their Burgess, but rose up wholly, and retired to the Upper House; where the whole Case was declared by the mouth of the Speaker, before Sir Thomas Audley, Knight, then Lord Chancellour of England, and all the Lords and Judges there assembled; who, judging the contempt to be very great, referred the punishment thereof to the order of the Commons House.

‘They, returning to their places again, upon new debate of the Case, took order, that their Serjeant should eftsoon repair to the Sheriffs of London, and require delivery of the said Burgess, without any writ or warrant had for the same, but only as afore; Albeit the Lord Chancellour offered there to grant a writ, which they of the Commons House refused, being of a clear opinion, that all commandments and other acts proceeding from the Neather House, were to be done and executed by their Serjeant without writ, only by shew of his mace, which was his warrant. But before the Serjeant's return into London, the Sheriffs having intelligence how haynously the {55} matter was taken, became somewhat more milde, so as upon the said second demand they delivered the prisoner without any denial. But the Serjeant having them further in commandment from those of the Neather House, charged the said Sheriffs to appear personally on the morrow, by eight of the clock, before the Speaker of the Neather House, and to bring thither the Clerks of the Counter, and such other of their officers as were parties to the said

affray, and in like manner to take into custody the said White, which wittingly procured the said arrest, in contempt of the Privilege of the Parliament. Which commandment being done by the said Serjeant accordingly, on the morrow, the two Sheriffs, with one of the Clerk of the Counter (which was the chief occasion of the said affray) together with the said White, appeared in the Commons House; where the Speaker charging them with their contempt and misdemeanor aforesaid, they were compelled to make immediate answer, without being admitted to any Counsell; albeit Sir R. Cholmley, then Recorder of London, and other the Counsell of the City then present, offered to speak in the cause, which were all put to silence, and none suffered to speak but the parties themselves; whereupon in the conclusion the said Sheriffs, and the same White, were committed unto the Tower of London, and the said Clerk (which was the occasion of the fray) to a place there called Little Ease, and the officers of L. which did the arrest, called Bayley, with four officers more, to Newgate, where they continued from the 28th until the 30th of March, and then they were delivered, not without humble suit made by the Mayor of L. and other their friends.—And forasmuch as the said Ferrers being in execution upon a condemnation of debt, and set at large by Privilege of Parliament, was not by law to be {55} again into execution, and so the party without remedy for his debt, as well against him as his principal debtor, after long debate of the same by the space of nine or ten days together, at least they resolved upon an Act of Parliament to be made, and to revive the execution of the said debt against the said Welden, which was principal debtour, and to discharge the said Ferrers.

‘But before this came to pass, the Commons House was divided upon the question: but in conclusion the Act passed for the said Ferrers, who won by fourteen voyces.—The King being then advertis’d of all this proceeding, called before him immediately the Lord Chancellour of England, and his Judges, with the Speaker of the Parliament, and other the gravest persons of the Neather House, to whom he declared his opinion to this effect: “First commending their wisdome in maintaining the Privileges of the House (which he would not have to be infringed in any point) alledged that he, being head of the Parliament, and attending in his own person upon the business thereof, ought in reason to have Privilege for him, and all his servants attending there upon him. So that if the said Ferrers had been no Burgess, but only his servant, that in respect thereof he was to have the Privilege, as well as any other. For I understand, quoth he, that you, not only for your own persons, but also for your necessary servants, even to your cooks and horsekeepers, enjoy the said Privilege, insomuch as my Lord //56-1// Chancellour here present hath informed us, that he being Speaker of the Parliament, the

cooke of the Temple was arrested in London, and in execution upon a statute of the {57} Staple. And forasmuch as the said cook during the Parliament served the Speaker in that office, he was taken out of execution by the Privilege of the Parliament. And further, we be informed by our Judges, that we at no time stand so highly in our Estate Royal, as in the time of Parliament; wherein we as Head, and you as Members, are conjoin'd and knit together into one Body Politick, so as whatsoever offence or injury (during that time) is offered to the meanest Member of the House, is to be judg'd as done against our Person and the whole Court of Parliament; which prerogative of the Court is so great (as our learned Counsel informeth us) as all acts and processes coming out of any other inferior Courts, must for the time cease and give place to the highest. And touching the party, it was a great presumption in him, knowing our servant to be one of this House, and being warn'd thereof before, would nevertheless prosecute this matter out of time, and therefore well worthy to have lost his debt, which I would not wish, and therefore do commend your equity, that, having lost the same by law, have restor'd him to the same against him who was the debtor; and this may be a good example to other, not to attempt any thing against the Privilege of this Court, but to take the time better."—Whereupon Sir Edward Montagu, then Lord Chief Justice, very gravely declared his opinion, confirming by divers reasons all that the King had said, which was assented unto by all the residue, none speaking to the contrary.'

Such is the History of this transaction, //57-1// as related by Hollingshead, to have passed in 1543, the thirty-fourth year of {58} the Reign of Henry VIII. It is certainly very extraordinary, that every 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 since been 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 said, 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 Ferrers, 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 {59} doctrine which was now first laid down with respect to the extent of the Privileges of the House of Commons, were more owing 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 as 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 {60} Case, occurs that of Trewynnard, in the 36th and 37th Henry VIII. in the year 1545, of which the Record is as follows: //60-1//

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

‘Laurence Courtney and Richard Tomyewe, executors of John Skewes, Esq; brought an action of debt against Richard Chamond, Esq; late Sheriff of Cornwall, for 74*l.* 15*s.* pro eo, viz quod’

\\See Table 1\\

—And that, afterwards, the said Trewynnard being then in custody of the Sheriff, on the 20th of March the said Richard Chamond let the said Trewynnard go at large, without satisfying the said Skewes (then alive) in his rent and damages.—To this Richard Chamond pleads, that the said executors ought not to have their action against him, because that the said William Trewynnard being, as stated, in his custody, he

received the King's Writ on the 21st day of February, directed to the Sheriff of the county of Cornwall, in this words:

'Henricus Octavus, Dei gratiâ Rex, &c.'

{61}

By virtue of which writ of Privilege, afterwards, on the 20th of March, Chamond pleads that he delivered Trewynnard, and suffered him to go at large.—Unde petit judicium si praedicti Laurentius et Ricardus actionem suam habere {62} debeant. To this plea the plaintiffs demur.—Prynn, in the Fourth Register, //62-1// says there was no Judgment or Resolution of the Court entered in the Record; and Dyer, who reports the Case, says, //62-2// Quaere sequelam hujus placiti.—I should not, therefore, have taken any notice of this Case, but in order to introduce what Dyer, who appears to have argued the point as Counsel for the Sheriff, has said upon it in his Reports. //62-3// “There are three matters to be considered in this Case: (1.) Ou le privilege soit grantable”

\\See Table 1\\

{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 Session 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 had 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 Session, 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 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.

First, It has hitherto been confined expressly to the Members themselves, and to their servants, "familiares," waiting on them during their attendance in Parliament. //65-1//

{66}

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 other than a civil cause, "transgressionis, debiti, computi, conventionis, aut alterius contractûs cujuscunque." 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," //66-1// 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.

{67}

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 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.

{68}

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 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 so 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. {69} 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 it might have been 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 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. //69-1//

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 original Journals are missing. I do not mean to insert, 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.

{71}

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 pleasure of the {72} 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 Counter, at the suit of Gurdon, 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 {73} 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 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 //73-1// of this House shall declare to the Lords, that they take this Writ to be no breach of Privilege.' Neither 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 Subpœna issued, for what purpose it was served, or of what nature the suit was in which this process was used.

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 {74} 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 Under-Sheriff 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, it is 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 recognizance is no breach of the Privilege.’—It does not appear upon what grounds these Lawyers 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 dissolution of the Parliament; nor do I understand for what reason the {75} 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 Session 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, //75-1// 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 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 {76} 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 thereof, 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 the subject to remark here, that it is said by Elsynge, p. 176, and by Sir Simonds Dewes, p. 42, and is also mentioned in 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. {77} 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: //77-2// Antiently, protestations were made by the Speaker in this point: The first prayer was in the first year of Henry IV." //77-3// This debate had arisen on a letter sent by James I. //77-4// 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 {78} *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, 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, {79} are proper subjects and matter of counsel and debate in Parliament: And that, in the handling and proceeding of those businesses, 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 fittest: 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) for 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 King James’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, 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 ill-advis’d King to obliterate this glorious monument of the spirit and wisdom of those great men who directed the councils of the 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 {80} 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 Smith, returned Burgess for Camelford, upon a declaration by Mr. Marsh, that he had come to this House, being outlaw'd, 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 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 {81} 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 fraud, 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 prisoners, before the Lord Chief Justice, to enter with sureties in bond of five hundred pounds to appear, personally, in the Queen's 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 {82} 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, with condition, upon prorogation or dissolution, to be eftsoons prisoner.' This is the whole of the entry in the Journal, and it does not appear to warrant what Prynne collects from it, //82-1// "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.

{83}

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, //83-1// 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 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 {84} 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 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 {85} 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 in the House of Commons, it may not be improper here to observe, how jealous that Assembly has always been of this most valuable and most essential Privilege. As 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 {86} 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 Richard, 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, 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 both 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.” //86-2//

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: //87-1//

‘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 declared and affirmed, wherein the 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 {87} 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 us, warranted as is aforesaid; this order, or 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 //88-1// almost in the same words; but does not explain on what cause {89} 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.”
//89-1/

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 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 {90} 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 fraudently 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 insult {91} on the King and the House.—It is very remarkable, that neither Elsynge nor Prynne mention any thing more of this Case than the Report from the Committee of the 22d of February.—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 direct 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 wise 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 it: //91-1// Or, if it is supposed 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.

{92}

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.

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 3d 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 //92-1// 'not only as reproaching some particular good {93} 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, //93-1// 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 {94} the Queen of

five hundred marks; and that 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; from which, and from the number of punishments which were heaped upon him, “Expulsion, Fine, and Imprisonment,” I cannot but suspect, that there was some private history in this affair; some particular offence against the Queen, //94-2// 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 Session, Mr. Hall having not {95} then made any revocation or retractation of the errors, slanders, and untruths contained in his Book, the House appointed 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 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// {96}

The Original Journals of the House of Commons being missing, from the conclusion of the Parliament of the 23d of 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 Chancellour 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 Chancellour 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 {97} them; and were answered by the Lord Chancellour, that he thought 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 {98} 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 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 {99} then kneeling upon his knees, Mr. Speaker pronounced, unto him the said Judgment in form aforesaid, in the name of the whole 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: {100}

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

'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 Session (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 {101} beyond the actual sitting 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. //101-1// 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 enacted, ‘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 past, the House rose without either the Petition or Book being read.’ On this the Queen sent {102} 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 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, {103} 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 this matter during the remainder of the Session, 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 Session, 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 sort, 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 {104} Privileges of this House. //104-1// 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 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 since his complaint, put in his answer to the Bill, and that so the matter was actually at issue,' the House ordered, 'That {105} 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. //105-1//

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 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, was 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, page 6, in this Volume).—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 {106} Lord Chancellor (then Sir Christopher Hatton) obeyed the Speaker's Warrant. //106-1//

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 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 it is surprising 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 consenting 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 earnest suitors to her Majesty, that she would be pleased to set at {107} 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 further motions were made about them. //10-1//

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 ensued upon these questions, until the 5th of April; for which I shall refer the Reader to Dewes’s Journal, where they are entered {108} 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 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 {109} 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 March, Mr. Serjeant Moore was heard at the Bar as Counsel for the Sheriff; and, as appears from his report of the Case, 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 {110} 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." 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." Elsynge //110-1// indeed 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 {111} 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 Elsynge 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. //111-1//

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, 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, Mr. 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. //111-2//

{112}

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. //112-1//—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 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 important duty in the High Court of Parliament. //112-2//

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 {113} House, in disturbing, 'by way of an appearance,' Robert Sherry, a Member of the House. //113-1//

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. //113-2//

53. The following is 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 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 {114} 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 Bindon.

(3.) Anno, 39 Eliz. 26th of November, of Edward Barston, 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 this attachment was served in the time of the Parliament, it doth not certainly appear.

Before taking notice of the principal Case; it may be worth while 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 is inserted before at length, N^o 35. //114-1//

{115}

(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 shall set 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.), 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 {116} 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. //116-1//

(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. //116-2//

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), concerning the proceedings of the House //116-3// in the like Case of George Ferrers, an ordinary servant of King Henry VIII., //116-4// 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 {117} such Writ.' Accordingly, Hogan being brought up on 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, {118} 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, 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 {119} 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. //119-1//

56. On the 19th and 20th of November, 1601, two servants of Members being arrested, were, by order of the House, discharged, and the persons procuring the arrest, and the officers, were ordered into the custody of the Serjeant. //119-2//

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 space of five days, and then to be discharged, paying their fees. //119-2//

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 {120} 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 Curiâ*, 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 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 {121} 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. //121-1//

These are all the precedents, or at least the most material, relating to the Privileges of Members of the House of Commons, 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 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,’ was insisted on by the House of Commons.—In earlier times, when a Session 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 {122} 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, is 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 was observed before, 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 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 {123} 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, 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 {124} 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 so 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 free from any abuse to the House," 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 prosecutions, 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, {125} 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 minimè debeant, implacitari, aut imprisonari;*' and therefore, '*quibus-libet placitis, querelis, actionibus seu demandis versus ipsum Anthonium Curwen, supersedeatis omninò et ipsum Anthonium 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, //125-1// 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 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 {126} 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, there can be little 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 Commons were determined, she was not ashamed to give way, even where the Prerogatives 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. //126-1//

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's 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 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 liberty of speech is so essential to the very existence of a Free Council, that it always made a part of (127} 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 declared, and all proceedings on condemnations for such speaking are held to be void. //127-1//

It appears from 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 Pryn'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 inquire 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 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 enacted on those that make assault on Members coming to the Parliament: But in later times these laws being found ineffectual, it appears from the Cases (N^o 25, 37, and 57.) that the House of Commons very properly took (128} the inquiry into these offences, and the punishment of the offenders, into their own hands. //128-1//

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. //128-

2// It appears from the report of the Committee appointed to {129} examine Mr. Hall's book, that it contained a variety of 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: {130} 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 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.

{132}

(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.

(1.) 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 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 {133} 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 against 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 desires to know the pleasure of the House thereupon.— Here the entry in the Journal stops, and I find nothing further relating to this matter, or that the House ever came to any determination on the question.

{134}

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, //134-1//from an original manuscript in Queen's College, Oxford) that, at the end of the last Session of Parliament in 1614, //134-2// 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 satisfied with this, rather than to trouble him with any petition or message, and so cast ourselves upon one of {135} 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 further proceeding upon this matter. //135-1//—It is remarkable, that, notwithstanding the impartiality professed by the writers of the Parliamentary History, //135-2// it does not appear that they take any notice of these debates, (although they are to be found 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, they censure the biographer Wilson, //135-3// 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, //135-4//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 the conduct of James I. and Charles I.

{136}

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, //136-1//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: //136-2// 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 against 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 {137} the House, ‘that he had been confined;’ but does not make 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, //137-1// “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 further 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; but 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 {138} late restraint, you 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.’ //138-1// 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 {139} 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 style, 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 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. //139-1//

{140}

This protestation, made and recorded in the Journal of the 18th of December, 1621, 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 Phelps, Mr. Pym, //140-1// Mr. Selden, //140-2// and Mr. Mallory, who had been {141} the most forward in asserting the Privileges of the House of Commons, were committed to the Tower and other prisons; the 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 inquiring into matters concerning his Majesty’s service, into Ireland, and Sir Peter Hayman into the Palatinate.

{142}

And thus ended this very important question between the King and the House of Commons: 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 is that of Lord Arundel; which, though it is not strictly within the line I originally proposed, 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 understanding the principles upon which the Lords proceeded in this business.

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, {143} 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 farther at present: On the 18th of April, the Lord President 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.' //143-1// This report {144} being read, it was agreed upon the question by the whole House, *nemine contradicente*, 'That the Privilege of this House is, that no Lord of Parliament, sitting 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.' //144-1//—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 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 {145} 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 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 {146} 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 Session.' 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 Session, 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 the 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 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 Session, but that there shall be an ample space for the dispatch of {147} 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, and, that the Privileges of the Lords may be in the same estate as they were when this Parliament began, his Majesty hath 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 {148} 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, till 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 //148-1// ‘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 Strafford, and of the Bishops, and which (the repeated violation of his royal word rendering all confidence impossible) necessarily brought on that scene of confusion, which 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 Buckingham, Sir John Eliot and Sir Dudley Digges, having used expressions that were thought to reflect upon the King and {149} upon the Duke, were both committed to the Tower. The House of Commons, inflamed by 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 honour.’ But the House having appointed a Committee to inquire 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 \\so in text\\ 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, he had insolently called him "the man," saying, "you see the man," which, as was observed {150} by that grave but supple courtier Sir Dudley Carlton, //150-1// 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 {151} 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 House, catching the spirit of this great patriot, immediately resolved without one negative, and even refusing to order him to withdraw, //151-1// '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, //151-2// "That imprisonment of Commoners, however unjustifiable in itself, was no unprecedented stretch of the Royal Prerogative." How much then are we, at this moment, obliged to those

great men, Sir John Eliot, Sir Dudley Digges, Sir Edward Coke, Mr. Selden, Mr. Pym, 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 {152} 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.” //152-1//

10. The last Case I shall mention under this head, is that of Sir Henry Stanhope, who was committed by the Council 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, //152-2// 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 in which this affair was put an end to; for he says //152-3// “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 {153} their resolution on Lord Arundel’s Case, and was certainly meant to meet the interposition of the House.

It does not appear 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, 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 for 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, {154} 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," //154-1// 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. p. 133.) I believe the law, with respect to bastards, stood at that time on the Statute 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 {155} 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 could affright, would, by the exercise this power, have been withdrawn from their attendance on the House; and the Court might easily have prevailed with the timid herd, which were left behind, to give 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, as 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 Privileges which they could not deny to exist, and which they were aware the Parliament would never resign.—Yet in the instance of Sir Edwyn Sandys, (N^o 6.) that weak Prince, James I. induced by his fondness for big words, and angry {156} 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 unwise Monarch; 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 and determined patriots, who, in opposition to his arbitrary measures, examined into the History of the Constitution of this Government, and brought forward 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 Phelps, 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 other hand, he had had more true spirit, and resolution to have abided by and supported those

claims, upon the foundation of the powers exercised 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 have continued the same opposition, though they had been obliged to purchase their liberty with their lives: {157} 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 in this period 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 sitting 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 the Journal of this Session; //156-1// I shall here therefore only insert a summary account of the Case, copied from the fifth volume of the Parliamentary History. //156-2//

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 {158} House might be selected and sent to the Fleet, 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, Sir Edward Phelips, 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 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 {159} 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 forms 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 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 lost 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 {160} 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 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 ensure to the creditor his right to a new Writ of Execution. //160-1//

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 Session; the next day, Mallorie is brought to the Bar, in custody of the Serjeant, but on his protesting ignorance of Mr. Brook’s {161} 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 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.

{162}

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 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.

{163}

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 upon, 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 Phelips, Sir Edwin Sandys, and many other experienced Members, are delivered upon this occasion; but it appears

from the second volume of the Parliamentary proceedings, //163-1// 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. //163-2// As {164} 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, //164-1// 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 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 respect for the character which Sir Edward Coke sustained throughout this Parliament of 1621; 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 difference of situation in which he acted.

9. On the 4th of June, 1621, the House is informed of {165} 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 Curiâ*.' 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, //165-1// that both these parties had acknowledged their fault, 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.

{166}

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 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 {167} 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.

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 //167-1// 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,*' {168} 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 during the Privilege thereof.” //168-1//— 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 Session, 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. //168-2//

{169}

(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) //168-2// the 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 delinquents by the Serjeant, and bringing them to the Bar to answer their contempts. //169-2//

3. On the 14th of May, 1604, Sir Edward Montagu informs the House, that he was warned to appear upon a trial at Guildhall to-morrow; and prays to know whether he {170} 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 Session, 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 it was issued, 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 Master, Mr. Lloyd, who delivered the process into his hands, are committed to the Serjeant.

6. On the 31st of March, 1607, is an entry of a letter written by the Speaker, Sir Edward Phelips, 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.'

{171}

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 comparendum 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; 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 {172} 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.' //172-1//—It is not said where Sir Edward Coke found this precedent; but the note which is written in the original Journal, 'that there was no Parliament that year,' is a mistake, as appears from the commission, which is in the {173} 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. //173-1//

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 hearing, 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 {174} 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 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.
//174-1//

16. On the 15th of May, 1628, Sir William Alford, returned on 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.

{175}

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. 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 which are here inserted: Even many of these might perhaps have been more properly introduced under the next general head, //175-1// as they are, in substance, rather complaints of being compelled to plead, than of being obliged to make a personal appearance; there are, however, among these, sufficient instances to show, 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 {176} 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 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.

{177}

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 Plaintiff, his Privilege being now as warrantable as in the time of sitting.’ //177-1//

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 Serjeant.

5. On the 13th of May, 1607, upon information of an attachment being served upon the person of a Member, the {178} 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 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.

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 {180} 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, 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; //180-1// 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 sitting; 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.—This certainly appears to have been a very extraordinary extension of this claim of Privilege. We have {181} 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 sort of Privilege, to which a Member of the House of Commons was at this time thought to be entitled. //181-1//—As it was intended that this adjournment of the 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 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 {182} 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, //182-1// 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." //182-2//

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 //182-3// Journal of this Session (which is, in many instances, more complete 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 {183} 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, //183-1//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 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 {184} he ought to have had Privilege;’ //184-1// 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, and the Writs of Supersedeas, are cited by Mr. Noy, in his argument for the Privilege of Sir Robert Howard. //184-2// Mr. Selden

mentions the Case of the Countess of Warren, which I have referred to before, //184-3// with Mr. Prynne'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, Prynne reports the Case of Hodges and Moore, in the first year of Charles I. as follows: 'Moore, having the Privilege of Parliament, procures the Speaker Sir H. Finch, to write his letter, in the name of {185} 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 leur 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, //185-1// and in Noy there is a very short note of it. //185-2// 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 Parliament is dissolved upon the 15th of June. If the Judges had continued of the same mind, which the reporter, Latch, says they were, "to have written a sharp answer to the {186} 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.

There is no occasion to repeat what was 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 held the language of Sir {187} 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.) //187-1// 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 the 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 just 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; {188} the Vintner and his servant, who kept the cloak by force from the 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 {189} Serjeant, during pleasure. On the 23d of March he is set at liberty; though at this time the Speaker was detained by sickness for several days, from attending the service of the House. //189-1//

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. //189-2//—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 bring the King's authority into dispute, but to {190} 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 be 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 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; //190-1// 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. //190-2//

{191}

(6.) The sixth and last general head of Cases of Privilege, within this period, is the assaulting or insulting a Member, or his servant, or traducing his character. {192}

I have taken notice before of such instances as occurred prior to the Reign of James I. of this breach of Privilege, {193} 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, stopt Sir Herbert Croft, and shut the door upon him, saying, 'Goodman Burgess, you come not here:' Some debate arose how {194} 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 there does not appear any further entry in the Journal, during this Session.

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 to be examined; very gravely objecting, on the authority of St. Bernard, 'That a woman ought not to speak in the congregation.' A Committee {195} 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. Crooke 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; upon which, Sir Robert Phelips 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 Phelips, 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, {197} 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 inquiry 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 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 {197} 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. //197-1//

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

1. On the 5th of November, 1549, it is ordered, that Mr. 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 womens 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 {199} 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.' //199-1//

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. //199-2//—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. //199-3//

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.

{200}

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; //200-1// Different methods were proposed 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 a 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 {201} 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 fame only.' Upon this message the Commons were satisfied, and returned o \\so in text\\ business. //201-1//

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 {202} 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 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 Session.

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 {203} 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. //203-1//

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. //203-2//

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 {204} 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, that have any reference 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, with such observations as have occurred upon them.—We have seen in what manner the Commons were, at different periods, obliged to make new claims of Privilege, and to exert new modes of maintaining and defending those claims, in proportion as the lengthening the duration of the Session 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 causes; or, which was of more {206} 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; //206-1// for offences against the public peace they always thought themselves amenable for to the laws of their country; //206-2// 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;’ //206-3// or, as it is expressed in Mr. Glynn’s Report {207} of the 6th of January, 1641, //207-1// “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 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.) By his circular letters to the Lords Lieutenants of Counties, he 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 {208} 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 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-traitor 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. //208-1//—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, //208-2// {209} “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 inquiry 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,” 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."

//209-1//

Fortunately for this country, that bigoted Minister thought proper to support his injunctions and admonitions, by the more prevailing argument of force; //209-2// and for that purpose, {210} in the year 1639, the King marched with an army to the borders, and encamped within two miles of Berwick. //210-1// The terrors of this force had their effect, and the Scots 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 assistance 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 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 {211} 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.

"Though the raising an army was visibly necessary, there appeared no means how to raise that army.—No expedient occurred, so proper as a Parliament, which had been now intermitted, near twelve years." //211-1//

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, 1640, the day of opening the Parliament, //211-2// 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 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 {212} 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.' //212-1// The Lordships 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 any thing to carry on this great business.'

Every measure taken by this unfortunate King, //212-2// throughout these two Parliaments of 1640, seems to have been the effect {213} of infatuation: At a time when he was courting the House of Commons, and when it was his most essential interest that they {214} 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 take into consideration the supply, preferably to every other subject, 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. //214-1//—The interference 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 Privileges 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 28th of April to the Lords by Mr. Pym. //214-2// 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 {215} for this vote, by the mouth of the Lord Keeper: On the 2d of May, before the Commons had time to consider these reasons, the King growing out of all patience, sent 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: 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. //215-1//

I hope this summary account of the proceedings of the short Parliament of 1640, will not be thought inconsistent with the 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 proposal had been adopted, it is not difficult to foretell what would have been the consequence: 'this done, his Majesty would have {216} given them liberty to present their just grievances to him.' This difference, between the two Houses, would afford an opportunity of going more largely into the consideration of that most ancient, 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:' //216-1//—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 Volume, and deserves to be treated of by itself. //216-2//

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, //216-3// together with the

prosecutions and judgments obtained against them in the Star Chamber, and Court of King's Bench, //216-4// for their speeches and behaviour in Parliament, brought on at the commencement of the Session, in April 1640, an inquiry into these breaches of 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, {217} would be at an end. It had been in vain to plead Strode's Law, the fourth of Henry VIII. as a general law in favour of this liberty; or to show 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 Strode's Law to be a private Act of Parliament; //217-1// 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." //217-2//

Notwithstanding the temper and moderation with which this Parliament of April, 1640, is acknowledged to have met, these breaches of Privilege, so destructive to 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 {218} expressing their apprehensions of the consequences of such unjustifiable proceedings. //218-1//

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 4th 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, a Committee is appointed on the 15th of October, 1667, at the distance of almost forty years, to consider of this Case, of the information brought in the King's Bench, and {219} 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, //219-1// the Lords report this conference, and agree to the resolution.

In Mr. Pym's speech //219-2// 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: //219-3// But this conference was never held; the King {220} was unfortunately //220-1// 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. //220-2//—Notwithstanding all that had passed, the very next day after this short Parliament was dissolved, fresh violences of the same nature were committed; Sir Henry Bellasyse, and Sir John Hotham, 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 of the Committee on religion, was, for refusing to deliver up the petitions and complaints made upon those matters, committed to the Tower. //220-3// When therefore the necessities of government, administered by the advice of the bold and daring Strafford, and the bigoted 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. //220-4// They had had too long experience of the King's own disposition, and of the {221} 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.' //221-1//—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 obtained the Act for preventing their dissolution. //221-2// 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 {222} 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.—This was a violent measure; and, (if it can be justified at all) it must be from the particular circumstances of the times; which rendered it expedient to weaken the influence of the Crown.—However, if both sides had stopped here, perhaps 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 restraint 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. //222-1// From this day, the 4th of January, 1641, there could be no hopes {223} of a reconciliation; the King soon withdrew into the North, //223-1// and the Civil War began. This violent and fatal step of endeavouring to seize the persons of the Members, 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 Regal 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 House of Commons proceeded to take such measures, as appeared to them to be necessary to protect the State from the return 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 Government was thrown by the conduct of the King, cannot be considered 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, //223-2// I shall think myself obliged to pass over every thing that occurred in {224} the Long Parliament, after this unhappy day, and shall collect only such precedents as are to be met with before the 4th of January, 1641, and then proceed directly to the Restoration.

APPENDIX
TO THE
FIRST VOLUME.

=====

Appendix N^o 1.—p. 138.

[Reported from a Committee, on the 20th June 1604.]
Petyt's Jus Parliamentarium, Ch. 10.—p. 227.

To the KING's Most Excellent Majesty; from the
House of Commons assembled in Parliament.

Most Gracious Sovereign,

We cannot but with much joy and thankfulness of mind acknowledge your Majesty's great graciousness, in declaring lately unto us, by the mouth of our Speaker, That you rested now satisfied with our doings.

Which satisfaction notwithstanding, though most desired and dear unto us, yet proceeding merely from your Majesty's most gracious disposition, and not from any justification which on our behalf hath been made; we found this joy intermingled with no small grief; and could not, dread Sovereign, in our dutiful love to your Majesty, and in our ardent desire of the continuance of your favour towards us, but tender in humble sort this farther {228} satisfaction, being careful to stand right, not only in the eye of your Majesty's grace, but also (and that much more) in the balance of your princely judgment; on which all assuredness of love and grace is founded. Into which course of proceedings we have not been rashly carried by vain humour of curiosity, of contradiction, of presumption, or of love of our own devices or doings, unworthy affections in a Council of Parliament, and more unworthy in subjects towards their Lord and Sovereign; but, as the Searcher and Judge of all hearts doth know, for these and for no other undue ends in the world; to increase and nourish your Majesty's gracious affection towards your loyal and most loving people, to assure and knit all your subjects hearts most firmly to your Majesty, to take away all cause of jealousy on either part, and diffidence for times ensuing, and to prevent and control all sinister reports, which might be unreasonably spread

either at home or abroad with prejudice your Majesty, or the good state of your Kingdom.

With these minds, dread Sovereign, your Commons of England, represented in us their Knights, Citizens and Burgesses, do come with this humble declaration to your Highness, and in great affiance of your most gracious disposition, that your Majesty, with benignity of mind correspondent to our dutifulness, will be pleased to peruse it.

We know, and with great thankfulness to God acknowledge, that he hath given us a King of such understanding and wisdom as is rare to find in any Prince of the World.

Howbeit seeing no human wisdom, how great soever, can pierce into the particularities of the rights and customs of people, or of the sayings and doings of particular persons, but by tract of experience and faithful report of such as know them (which it hath pleased your Majesty's princely mouth to deliver) what grief, what anguish of mind hath it been unto us at some time, {229} in presence to hear, and so in other things to find and feel by effect your gracious Majesty (to the extream prejudice of all your subjects of England, and in particular of this House of the Commons thereof) so greatly wronged by misinformation, as well touching the Estate of the one, as the Privileges of the other, and their several Proceedings during this Parliament: which misinformations, though apparent in themselves, and to your subjects most injurious, yet have we in some humble and dutiful respect rather hitherto complained of amongst ourselves, than presumed to discover and oppose against your Majesty.

But now, no other help or redress appearing, and finding those misinformations to have been the firs, yea the chief and almost the sole cause of all the discontentful and troublesome Proceedings so much blamed in this Parliament; and that they might be again the cause of like or greater discontents and troubles hereafter (which the Almighty Lord forbid) we have been constrained, as well in duty to your Royal Majesty, whom with faithful hearts we serve, as to our dear native country, for which we serve in this Parliament, to break our silence, and freely to disclose unto your Majesty the truth of such matters concerning your subjects the Commons, as hitherto by misinformation hath been suppressed or perverted: Wherein that we may more plainly proceed, (which next unto truth we affect in this discourse) we shall reduce these misinformations to three principal heads;

First, Touching the cause of the joyful receiving of your Majesty into this your Kingdom.

Secondly, Concerning the Rights and Liberties of your subjects of England, and the Privileges of this House.

Thirdly, Touching the several Actions and Speeches passed in the House, it has been told us to our faces by some of no {230} small place (and the same spoken also in the presence of your Majesty) 'that on the 24th of March was a twelvemonth, //230-1// we stood in so great fear, that we would have given half we were worth for the security wherein we now stand.'

Whereby some misunderstanders of things might perhaps conjecture, that fear of our own misery had more prevailed with us in the duty which on that day was performed, than love of your Majesty's virtues, and hope of your goodness towards us.

We contrarywise most truly protest the contrary, that we stood not at that time, nor of many a day before, in any doubt or fear at all.

We all professing true Religion by law established (being by manifold degrees the greater, the stronger, and more respective part of this your Majesty's realm) standing clear in our consciences touching your Majesty's right, were both resolute with our lives and all other our abilities, to have maintained the same against all the world, and vigilant also in all parts to have suppressed such tumults, as, but in regard of our poor united minds and readiness, by the male-contented and turbulent might have been attempted.

But the true cause of our extraordinary great cheerfulness and joy in performing that day's duty, was the great and extraordinary love which we bear towards your Majesty's most royal and renowned Person, and a longing thirst to enjoy the happy fruits of your Majesty's most wise, religious, just, virtuous, and gracious heart.

Whereof not rumour, but your Majesty's own writings, had given us a strong and undoubted assurance.

For from hence, dread Sovereign, a general hope was raised in the minds of all your people, that under your Majesty's {231} reign religion, peace, justice, and all virtue should renew again and flourish.

That the better sort should be cherished, the bad reformed or repressed, and some moderate ease should be given us of those burdens and sore oppressions, under which the whole land did groan.

This hope being so generally and so firmly settled in the minds of all your most loyal and most loving people, recounting what great alienation of men's hearts the defeating of great hopes doth usually breed, we could not in duty, as well unto your Majesty as to our Country, Cities, and Boroughs, (who hath sent us hither not ignorant or uninstructed of their griefs, of their desires, and hopes) but, according to the ancient use and liberty of Parliaments, present our several humble Petitions to your Majesty of different nature:

Some for Right and some for Grace, to the easing and relieving of us of some just burdens, and of other some unjust oppressions, wherein what

due care, and what respect we have had, that your Majesty's honour and profit should be enjoyed with the content and satisfaction of your people, shall afterwards in their several due places appear.

Now concerning the ancient Rights of the subjects of this realm, chiefly consisting in the privileges of this House of Parliament, the misinformation openly delivered to your Majesty, hath been in three things.

First, That we held not Privileges of Right, but of Grace only, renewed every Parliament by way of Donature upon Petition, and so to be limited. Secondly, That we are no Court of Record, nor yet a Court that can command view of Records; but that our Proceedings here are only to Acts and Memorials, and that the attendance with the Records is courtesy, not duty.

{232}

Thirdly, and lastly, That the examination of the return of Writs for Knights and Burgesses is without our compass, and due to the Chancery. Against which assertions (most gracious Sovereign) tending directly and apparently to the utter overthrow of the very fundamental Privileges of our House, and therein of the Rights and Liberties of the whole Commons of your Realm of England, which they and their Ancestors from time immemorable have undoubtedly enjoyed under your Majesty's not noble Progenitors; We the Knights, Citizens, and Burgesses of the House of Commons assembled in Parliament, and in the name of the whole Commons of the Realm of England, with uniform consent for ourselves and our posterity, do expressly protest, as being derogatory in the highest degree to the true dignity, liberty, and authority of your Majesty's High Court of Parliament, and consequently to the Rights of all your Majesty's said subjects, and the whole body of this your Kingdom; And desire that this our Protestation may be recorded to all Posterity. And contrarywise with all humble and due respect to your Majesty, our Sovereign Lord and Head, against those misinformations we most truly avouch;

First, That our Privileges and Liberties are our Right and due Inheritance, no less than our very Lands and Goods.

Secondly, That they cannot be with-held from us, denied, or impaired, but with apparent wrong to the whole state of the Realm.

Thirdly, And that our making of request, in the entrance of Parliament, to enjoy our Privilege, is an act only of manners, and doth weaken our Right no more than our suing to the King for our lands by petition; Which form, though new and more decent than the old by Precipe, yet the subject's right is no less new than of old.

{233}

We avouch also, that our House is a Court of Record, and so ever esteemed.

Fifthly, That there is not the highest standing Court in this land that ought to enter into competency either for dignity or authority with this High Court of Parliament, which with your Majesty's Royal Assent gives Laws to other Courts, but from other Courts receives neither Laws nor Orders.

Sixthly, and lastly, We avouch that the House of Commons is the sole proper judge of Return of all such Writs, and of the Election of all such Members as belong unto it, without which the freedom of election were not entire.

And that the Chancery, though a standing Court under your Majesty, be to send out those Writs, and receive the returns, and to preserve them, yet the same is done only for the use of the Parliament:

Over which neither the Chancery, nor any other Court, ever had, or ought to have, any manner of jurisdiction.

From these misinformed positions (most gracious Sovereign) the greatest part of our troubles, distrusts, and jealousies have risen; having apparently found, that in the first Parliament of the happy Reign of your Majesty, the Privileges of our House, and therein the Liberties and Stability of the whole Kingdom, have been more universally and dangerously impugned than ever (as we suppose) since the beginnings of Parliaments.

Besides that in regard of her //233-1// sex and age which we had great cause to tender, and much more upon care to avoid all trouble, which by wicked practice might have been drawn to impeach the quiet of your Majesty's right in the succession, those actions were then passed over, which we hoped, in succeeding times of freer access to your Highness of renowned grace and justice, to redress, restore, and rectify.

{234}

Whereas contrarywise in this Parliament, which your Majesty in great Grace (as we nothing doubt) intended to be a Precedent for all Parliaments that should succeed, clean contrary to your Majesty's so gracious desire; by reason of thee Misinformations, not Privileges, but the whole Freedom of the Parliament and Realm have from time to time, upon all occasions, been mainly hewed at us.

First, The Freedom of Persons in our Election hath been impeached.

Secondly, The Freedom of our Speech prejudiced by often reproofs.

Thirdly, Particular persons noted with Taunt and Disgrace, who have spoken their consciences in matters proposed to the House, but with all due respect and reverence to your Majesty.

Whereby we have been in the end subject to so extreme contempt, as a gaoler durst so obstinately withstand the decrees of our house;

Some of the higher Clergy to write a book against us, even sitting the Parliament;

The inferior Clergy to inveigh against us in pulpits, yea to publish their protestations, tending to the impeachment of our most ancient and undoubted Rights in treating of matters for the peace and good order of the Church.

What cause we your poor Commons have to watch over our Privileges, is manifest in itself to all men.

The Prerogatives of Princes may easily, and do daily grow.

The Privileges of the Subject are for the most part at an everlasting stand.

They may be by good Providence and Care preserved, but being once lost are not recovered but with much disquiet.

{235}

If good Kings were immortal as well as Kingdoms, to strive so for Privilege were but vanity, perhaps, and folly; but seeing the same God who in his great Mercy hath given us a wise King and religious, doth also sometimes permit Hypocrites and Tyrants in his displeasure, and for the sins of the people;

From hence hath the desire of Rights, Liberties, and Privileges, both for Nobles and Commons, had its just original;

By which an harmonical and stable state is framed;

Each Member under the Head enjoying that Right, and performing that Duty, which for the honour of the Head and happiness of the whole is requisite.

Thus much touching the wrong done to your Majesty by Misinformation touching our Privileges.

The last kind of Misinformation made to your Majesty, hath been touching the actions and speeches of particular persons used in the House.

Which imputation notwithstanding, seeing it reacheth the whole House in general, who neither ought, neither have at any time suffered any speech touching your Majesty, other than respective, dutiful, and as become loyal subjects of a King so gracious;

And forasmuch as it is very clear unto us by the effect, that divers things spoken in the House, have been perverted and very untruly reported to your Majesty;

If it might seem so fit in your Majesty's wisdom, and were seemingly for us to crave, we should be most glad, if, for our better justification, and for your further satisfaction, which we principally desire, the accusers and the accused might be confronted.

And now (most gracious Sovereign) these necessary grounds of our causes and defences being truly laid, and presented sincerely to your

Majesty's grace and wisdom, the justification {236} of such particulars, wherein your Highness seemed doubtful of our dutiful carriage (though not so much for the matter, as for the manner of our proceedings) we trust will be plain; and to expedite which particulars, we find them to have been of three different natures;

The first sort, Concerning the Dignity and Privileges of our House.

The second, The good Estate of the Realm and Church.

The third, Was for Ease of certain Grievances and Oppressions.

In the first Rank there were five particulars,

1. The Matter of the Gentleman Usher.
2. Of the Yeomen of the Guard.
3. Of the Election of the Knights of Buckinghamshire.
4. Of Sir Thomas Shirley's Deliverance.
5. And of the Bishop of Bristow's Pamphlet.

The second Head had two particulars.

The Union, and Matters of Religion.

The third Head had three,

The Bill of Assarts; //236-1// and Matters of Purveyors; and the Petition for Wardships.

Of each of these we must say somewhat to give your Majesty satisfaction, and that with all brevity, to shun tediousness and trouble.

The Gentleman Usher's fault in depriving, by his unaccustomed neglect, a great part of our House from hearing your {237} Majesty's speech the first say of Parliament, we could not, in the grief of being frustrate of our so longing and just desire to hear your Majesty's voice and renowned wisdom, but complain of in decent sort among ourselves, and further we proceeded not.

Your Majesty's extraordinay \\so in text\\ great grace and favour, in rehearsing the day ensuing your former admirable speech, did give us content, with abundance of increase of joy.

The Yeomen of the Guard's //237-1// words were very opprobrious; and howsoever they might have been not unfitly applied to the Peasants of France, or Boores of Germany,

Yet could they not be other than very reproachful and injurious to the great dignities and honour of the Commons of this Realm, who contain not only the Citizens, Burgesses, and Yeomanry, but also the whole inferior Nobility of the Kingdom, Knights, Esquires, and Gentlemen, many of which are come immediately out of the most noble Families, and some other of their worth advanced to the high honour of your

Majesty's Privy Council, and otherwise have been employed in very honourable service;

In sum, the sold persons of the higher Nobility excepted, they contain the whole power and flower of your Kingdom;

First, With their Bodies, your Wars,

Secondly, With their Purses, your Treasures are upheld and supplied.

Thirdly, they Hearts are the strength and stability of your Royal Seat.

{238}

All these, amounting to many millions of people, are representatively present in us of the House of Commons.

The wrong done to us doth redound upon the whole land, and will be so construed.

We could not therefore do less in our duties to the Realm than to advertise such a delinquent of the unseemliness of his fault, neither could we yet do more in duty to your Majesty, than upon his acknowledgment thereof so freely to remit it.

The Rights of the Liberties of the Commons of England consisteth chiefly in these three things:

First, That the Shires, Cities, and Boroughs of England, by representation to be present, have free choice of such persons as they shall put in trust to represent them:

Secondly, That the Persons chosen during the time of the Parliament, as also of their access and recess, be free from Restraint, Arrest, and Imprisonment:

Thirdly, That in Parliament they may speak freely their Consciences without check and controlment, doing the same with due Reverence to the Sovereign Court of Parliament, that is to your Majesty and both the Houses, who all in this case make but one Politick Body, whereof your Highness is the Head.

These three several branches of the antient inheritance of our Liberty, were in three matters ensuing apparently injured;

The Freedom of Election in the Case of Sir Francis Goodwin.

The Freedom of the Persons elected, in Sir Thomas Shirley's Imprisonment:

{239}

The Freedom of our Speech, as by divers other reproofs, so also in some sort by the Bishop of Bristow's invective.

For the Matter of Sir Francis Goodwin, the Knight chosen for Buckinghamshire, we were and still are of a clear opinion, that the Freedom of Election was in that action extremely injured; that by the same Right it might be at all times in a Lord Chancellor's power to reverse, defeat, to evert and substitute all the Elections, and Persons elected, over all the Realm.

Neither thought we that the //239-1// Judges opinion, which yet in due place we greatly reverence, being delivered what the Common Law was, which extends only to inferior and standing Courts, ought to bring any prejudice to this High Court of Parliament, whose power being above the law, is not founded on the Common Law, but have their Rights And Privileges peculiar to themselves.

For the Manner of our Proceeding, which your Majesty seemed to blame, in that the second Writ going out in your Majesty's Name, we presumed to censure it, without first craving access to acquaint your Highness with our reasons therein, we trust our defence shall appear just and reasonable:

It is the form of the Court of Chancery, as of divers other Courts, that Writs going out in your Majesty's Name are returned also as to your Majesty; in that Court from whence they issue;

{240}

Howbeit therefore, no man ever repaireth to your Majesty's person, but proceeds according to law, notwithstanding the writ.

This being the universal custom of this Kingdom, it was not, nor could be admitted into our conceits, that the difference was between your Majesty and us (for God forbid that between so gracious a Sovereign, and so dutiful and loving Subjects, any difference should arise):

But it always was and still is conceived, that the controversy was between the Court of Chancery and our Court; an usual controversy between Courts about their pre-eminences and privileges:

And that the question was, whether the Chancery, or our House of the Commons, were judge of the Members returned for it.

Wherein though we supposed the wrong done to be most apparent, and extremely prejudicial for the rights and liberties of this Realm,

Yet such and so great was our willingness to please your majesty, as to yield to a middle course proposed by your Highness, preserving only our Privileges by voluntary cessions of the lawful right.

And this course, as it were, of deceiving of ourselves, and yielding in our apparent right, wheresoever we could but invent such ways of escape as that the precedent might not be hurtful, we have held, dread Sovereign, more than once this Parliament, upon desire to avoid that, which in your Majesty by misinformation, whereof we have had cause always to stand in doubt, might be distasteful or not approveable: So dear hath your Majesty's gracious favour been unto us.

In the delivery of Sir Thomas Shirley, our proceedings were long; our defence of them shall be brief.

{241}

We had to do with a man, the Warden of the Fleet, so intractable, and of so resolved obstinacy, as that nothing we could do, no not your Majesty's

Royal word for confirmation thereof, could satisfy him for his own security.

This was the cause of the length of that business; our Privileges were so shaken before, and so extremely vilified, as that we held it not fit in so unreasonable a time, and against so mean a subject, to seek our right by any other course of law, or by any strength than by our own.

The Bishop of Bristow's book was injurious and grievous to us, being written expressly with contempt of the Parliament, and of both the Houses in the highest degree; undertaking to deface the reasons proposed by the Commons, approved by the honourable Lords, confirmed by the Judges, and finally by your Royal Majesty not disassented to.

And to increase the wrong, with strange untruths he had perverted those reasons in their main drift and scope, pretending that they were devised to impugn the Union itself.

Whereas both by their title and by themselves it was clear and evident, that they were only used against alteration of name, and that not simply, but before the Union of both Realms in substance were perfected.

//241-1// This book being thus written and published to the world, containing moreover sundry slanderous passages, and tending to murmurs, distraction, and sedition;

We could not do less against the writer thereof, than to complain of the injury to the Lords of the Higher House, whereof he had now attained to be a Member.

These wrongs were to the dignity of our House and Privileges.

{242}

Touching the causes appertaining to State and Church, true it is, we were long in treating and debating the matter of Union.

The propositions were new;

The importance great;

The consequence far reaching, and not discoverable but by long disputes; our numbers also are large, and each hath liberty to speak.

But the doubts and difficulties once cleared or removed, how far we are from opposing to the just desires of your Majesty, as some evil-disposed minds would perhaps insinuate, who live by division, and prosper by disgrace of other men, the great expedition, alacrity, and unanimity, which was used and showed in passing the Bill, may sufficiently testify.

For matter of religion, it will appear by examination of truth and right, that your Majesty should be misinformed, if any man should deliver, that the Kings of England have any absolute power in themselves, either to alter religion (which God defend should be in the power of any moral man whatsoever) or to make any laws concerning the same, otherwise than as in temporal causes, by consent of Parliament.

We have and shall at all times by our oaths acknowledge, that your Majesty is Sovereign Lord and Supreme Governor in both.

{243}

Touching our own desires and proceedings therein, they have not been a little misconceived and misreported.

We have not come in any Puritan or Brownish spirit to introduce their party, or to work the subversion of the State Ecclesiastical, as now it standeth:

Things so far and so clearly from our meaning, as that with uniform consent in the beginning of this Parliament we committed to the Tower a man, who out of that humour, in a Petition exhibited to our House, had slandered the Bishops.

But according to the tenour of your Majesty's Writ of Summons directed to the Counties from whence we came, and according to the ancient and long continued use of Parliaments, as by many Records from time to time appeareth, we come with another spirit, even with the spirit of Peace.

We disputed not of matters of faith and doctrine; our desire was peace only; and our device of unity, how this lamentable and long lasting dissension amongst the ministers, from which both atheism, sects, and all ill life have received such encouragement and so dangerous increase, might at length, before help come too late, be extinguished.

And for the ways of this peace, we are not at all addicted to our own inventions, but ready to embrace any fit way that may be offered; neither desire we so much, that any man in regard of weakness of conscience may be exempted after Parliament from obedience unto laws established, a that in this Parliament such laws may be enacted, as by the relinquishment of some few ceremonies of small importance, or by any way better, a perpetual uniformity may be enjoyed and observed.

Our desire hath also been, to reform certain abuses crept into the Ecclesiastical State, even as into the Temporal:

{244}

And lastly, that the Land might be furnished with a learned, religious, and godly ministry:

For the maintenance of whom we would have granted no small contributions, if in these, as we trust just and religious desires, we had found that correspondency from others which was expected.

These minds and hearts we in secret profess to your gracious Majesty, who we trust will so esteem them.

There remains the Matter of Oppression or Grievance in the bill of Assarts.

Your Majesty's Council was heard, namely, your Solicitor and Sir Francis Bacon.

It was also desired by the House, that other of your Council would have been present.

We knew that our passing Bill could not bind your Majesty: Howbeit, for sundry equitable considerations (as to us they seemed) we thought good to give so much passage to the Bill, in hope your Majesty might either be pleased to remit in some sort unto this equity that Right, which the rigour of Law had given, or otherwise entreated by this kind of solicitation, to let them fall into your Majesty's hands full of piety and mercy, and not into the jaws of devouring promoters.

And this do we understand to be your gracious intent, wherewith we rest joyfully content and satisfied.

The grievance was not unjust in rigour of law, and was particular; But a general, extreme, unjust, and crying oppression is in cart-takers and purveyors, who have rummaged and ransacked since your Majesty's coming in, far more than under any of your Royal Progenitors: There hath been no Prince since {245} Henry III. except Queen Elizabeth, who hath not made some one law or other to repress or limit them: They have no prescription, no custom to plead.

For there hath not been any Parliament, wherein complaint hath not been made, and claim of our Rights, which doth interrupt prescription.

We have not in this present Parliament sought any thing against them but execution of those laws, which are in force already.

We demand but that justice, which our Princes are sworn neither to deny, delay, nor sell.

That we sought into the accounts of your Majesty's expence, was not our presumption, but upon motion from the Lords of your Majesty's Council, and after from your Officers of your Highness's Household; and that, upon a demand of a perpetual yearly revenue, in lieu of the taking away of those oppressions, unto which Composition neither know we well how to yield, being only for Justice and due Right, which is unsaleable:

Neither yet durst we impose it by Law upon the people, without first acquainting them, and having their consents unto it.

But if your Majesty might be pleased, in your gracious favour, to treat of Composition with us for some Grievance, which is by Law and just; how ready we should be to take that occasion and colour to supply your Majesty's desire, concerning these also, which we hold for unjust, should appear, we nothing doubt, to your Majesty's full satisfaction.

And therefore we come, lastly, to the matter of Wards, and such other burthens (for so we acknowledge them) as to the Tenures of Capite and Knights Service are incident: We cannot forget (for how were it possible?) how your Majesty, in a former most gracious speech in your gallery at Whitehall, advised us, for {246} unjust burthens to proceed against them by Bill: But for such as were just, if we desired any ease,

that we should come to yourself, by way of Petition, with tender of such countervailable Composition in profit, as for the supporting of your Royal Estate was requisite. According unto which your Majesty's most favourable grant and direction, we prepared a petition to your most excellent Majesty, for leave to treat with your Highness touching a perpetual Composition, to be raised by yearly revenue out of the lands of your subjects, for Wardships and other burthens depending upon them, or springing with them wherein we first entered into this dutiful consideration, That this Prerogative of the Crown, which we desire to compound for, was matter of mere profit, and not of any honour at all or princely dignity: For it could not then, neither yet can by any means, sink into our understandings, that these oeconomical matters of education and marrying of Children, which are common also to subjects, should bring any renown or reputation to a potent Monarch, whose honour is settled on a higher and stronger foundation: Faithful and loving subjects, valiant soldiers, an honourable Nobility, wise Counsellors, a learned and religious Clergy, and a contented and a happy people, are the true honour of a King: And contrarywise, that it would be an exceeding great honour, and of memorable renown to your Majesty with all posterity, and in present an assured bond of the hearts of all your people, to remit unto them this burthen, under which our children are born.

This Prerogative then appearing to be a mere matter of great profit, we entered into a second degree of consideration, with how great grievance and damage of the subject, to the decay of many houses, and disabling of them to serve their prince and country; with how great mischief also, by occasion of many forced and ill-suited marriages; and lastly, with how {247} great contempt and reproach of our nation in foreign countries; how small a commodity now was raised to the Crown in respect of that, which with great love and joy and thankfulness, for the restitution of this original Right in disposing of our children, we would be content and glad to assure unto your Majesty.

We fell also from hence into a third degree of consideration, That it might be, that in regard that the original of these Wardships was, serving of the King in his wars against Scotland, which cause we hope now to be at an everlasting end:

And in regard moreover of that general hope, which at your Majesty's first entry, by the whole land was embraced (a thing known unto all men) that they should be now for ever eased of this burthen;

Your Majesty, out of your most noble and gracious disposition, and desire to overcome our expectation with your goodness, may be pleased to accept the offer of a perpetual and certain revenue, not only proportionable to the uttermost benefit that any of your Progenitors ever reaped thereby, but also with such an overplus and large addition, as in

great part to supply your Majesty's other occasions, that our case might breed you plenty with their humble minds.

With these dutiful respects, we intended to crave access unto your Majesty.

But that ever it was said in our House by any man, That it was a slavery unto your Majesty more than under our former princes, hath come from an untrue and calumnious report: Our sayings have always been, That this burthen was just; that the remitting thereof must come from your Majesty's grace; and that the denying our suit was no wrong.

And thus, most gracious Sovereign, with dutiful minds and sincere hearts towards your Majesty, have we truly disclosed our {248} secret intents, and delivered our outward actions in all these so much traduced and blamed matters:

And from henceforward shall remain in great affiance, that your Majesty resteth satisfied, both in your grace and in your judgment, which above all worldly things we desire to effect, before the dissolving of this Parliament, where in so long time, with so much pains and endurance of so great sorrow, scarce any thing hath been done for their good and content who sent us hither; and whom we left full of hope and joyful expectation.

There remaineth, dread Sovereign, yet one part of our duty at this present, which faithfulness of heart, not presumption, doth press: We stand not in place to speak or do things pleasing.

Our care is, and must be, to confirm the love, and tye the hearts of your subjects, the Commons, most firmly to your Majesty.

Herein lieth the means of our well deserving of both:

There was never Prince entered with greater love, with greater joy and applause of all his people:

This love, this joy, let it flourish in their hearts for ever.

Let no suspicion have access to their fearful thoughts, that their Privileges, which they think by your Majesty should be protected, should now by sinister informations or council be violated or impaired:

Or that those, which with dutiful respects to your Majesty, speak freely for the right and good of their country, shall be oppressed or disgraced.

Let your Majesty be pleased to receive publick information from your Commons in Parliament, as to the civil estate and government: for private informations pass often by practice: The voice of the people, in the things of their knowledge, is said to be as the voice of God.

{249}

And if your Majesty shall vouchsafe, at your best pleasure and leisure, to enter into your gracious consideration of our Petition for the ease of these burthens, under which your whole people have of long time mourned, hoping for relief by your Majesty; then may you be assured to

be possessed of their hearts; and, if of their hearts, of all they can do or have.

And so we, your Majesty's most humble and loyal subjects, whose Ancestors have with great loyalty, readiness and joyfulness, served your famous Progenitors, Kings and Queens of this Realm, shall with like loyalty and joy, both we and our posterity, serve your Majesty and your most Royal Issue for ever, with our lives, lands, and goods, and all other our abilities:

And by all means endeavour to procure your Majesty honour, with all plenty, tranquillity, content, joy and felicity.

Extract from the Lords Journal, 11th December, 1667.

Next, the Lord Chamberlain and the Lord Ashley reported the effect of the Conference with the house of Commons yesterday, which was managed by Mr. Vaughan, who said,

“He was commanded by the House of Commons, to acquaint their Lordships with some resolves of their House, concerning the Freedom of Speech in Parliament, and to desire their Lordships concurrence therein. “In order to which, he was to acquaint their Lordships with the reasons that induced the House of Commons to pass those resolves.

“He said, the House of Commons was accidentally informed of certain books published under the name of Sir George Croke’s Reports; in one of which there was a Case published, which did very much concern this great Privilege of Parliament; and which passing from hand to hand amongst the men of the long robe, might come in time to be a received opinion, as good law.

“The House of Commons, considering the consequence, did take care that this Case might be inquired into, and caused the book to be produced and read in their House; and he {251} thought, that the next and clearest way to inform their Lordships is, to read the Case itself, which is Quinto Caroli Primi, Michaelmas terme; which case was read as followeth:

“The King versus Sir John Eliot, Denzell Holles, and Benjamine Valentine.

“An information was exhibited against them, by the Attorney General, reciting, that a Parliament was summoned to be held at Westminster, decimo septimo Martii, tertio Caroli Regis ibidem inchoat. and that Sir John Eliot was duly elected and returned Knight for the County of Cornwall, and the other two Burgesses of Parliament for other places; and Sir John Finch chosen Speaker; That Sir John Eliot, machinans et intendens omnibus viis et modis seminare et excitare, discord, evil-will, murmurings, and seditions, as ell versus Regem, magnates, prelatos, proceres, et justiciarios, et reliquos subditos Regis, et totaliter deprivare et avertere regimen et gubernationem regni Angliae, tam in Domino Rege, quam in consiliariis et ministris suis cujuscumque generis, et introducere tumultum et confusionem in all estates and parts, et aqd intentionem, that all the King’s subjects should withdraw their affections from the King, the twenty-third of February, anno quarto Caroli, in the Parliament and hearing of the Commons, falsò malitiosè, et seditiosè, used these words, ‘The King’s Privy Council, his Judges, and his Council

learned, have conspired together, to trample under their feet the liberties of the subjects of this Realm, and the liberties of {252} of this House;’

“And afterwards, upon the second of March, anno quarto aforesaid, the King appointed the Parliament to be adjourned until the 10th of March next following, and so signified \\so in text\\ his pleasure to the House of Commons; and that the three defendants, the said second day of March, quarto Varoli, mailitiosè agreed, and amongst themselves conspired, to disturb and distract the Commons, that they should not adjourn themselves, according to the King’s pleasure before signified; and that the said Sir John Eliot, according to the agreement and conspiracy aforesaid, had maliciously, in propositum et intentionem praedict. in the House of Commons aforesaid, spoken these false, malicious, pernicious, and seditious words precedent, &c.; and that the said Denzell Holles, according to the agreement and conspiracy aforesaid, between him and the other defendants, then and there, falsò, malitiosè, et seditiosè, uttered haec falsa, malitiosa, et scandalosa verba praecedentia, &c.; and that the said Denzell Holles and Benjamin Valentine, secundum agreementum et conspiracy praedict. &c.; ad intentionem et propositum praedict. uttered the said words, upon the said second day of March, after the signifying the King’s pleasure to adjourn; and the said Sir John Finch, the Speaker, endeavouring to get out of the chair, according to the King’s command, they vi et armis, manu forti, et illicitò, assaulted, evil-entreated, and forcibly detained him in the chair; and afterwards, being out of the chair, they assaulted him in the House, and evil-entreated him, et violenter, manu forti, et illicitò, drew him to the chair, and thrust him into it; whereupon there was great tumult and commotion in the House, to the great terror of the Commons there {253} assembled, against their allegiance, in maximum contemptum, and to the disherison of the King, his Crown, and dignity: for which, &c.

“To this information, the defendants appearing, pleaded to the jurisdiction of the Court, That the Court ought not to have cognizance thereof, because it is for offences done in Parliament, and ought to be there examined and punished, and not elsewhere: It was thereupon demurred, and after argument adjudged, That they ought to answer; for the charge is for conspiracy, seditious acts, and practices to stop the adjournment of the Parliament, which may be examined out of Parliament, being seditious and unlawful acts; and this Court may take cognizance, and punish them.

“Afterwards divers rules being given against them videlicet, Sir John Eliot, That he should be committed to the Tower, and should pay two thousand pounds fine, and upon his enlargement should find sureties for his good behaviour; and against Holles, that he should pay a thousand marks, and should be imprisoned, and find sureties, &c.: and against

Valentine, that he should pay five hundred pounds fine, be imprisoned, and find sureties.

“Then Mr. Vaughan laid much emphasis upon the words *machinans et intendens*, &c. and then went on; that the House of Commons had not only read the Case as it was in the book, but did look in the record, where, in the information itself they found some considerable differences from the print; as, that the crime alleged, consisting partly of words {254} spoken in the House, partly of criminal actions pretended to be committed. The gentlemen accused pleaded severally, namely, specially to the words, and a several plea apart to the criminal actions: But the court dealt so craftily, that they over-ruled the whole plea mingled together, and took it in general; so that perhaps whatsoever was criminal in the actions might make it seem in time to come a precedent, and a ruled case, against the liberty of speech in Parliament, which they durst not singly and bare-faced have done.

“The House of Commons did take care to inquire what antient laws did fortify this the greatest Privilege of both Houses; and they found, in the fourth year of Henry VIII. an Act concerning one Richard Strowd, who was a Member of Parliament, and was fined at the Stannary Courts, in the West, for condescending and agreeing, with other Members of the House, to pass certain Acts to the prejudice of the Stannaries. This Act was made occasionally for him, but did reach to every Member of Parliament that then was, or shall be; the very words being, *videlicet*, “And over that, be it enacted, by the same authority, that all suits, accusations, condemnations, executions, fines, amerciaments, punishment, corrections, grievances, charges, and impositions, put or had, or hereafter to be put or had, unto or upon the said Richard, and to every other of the person or persons afore specified, that now be of this present Parliament, or that of any Parliament hereafter 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 {255} void and of none effect: And over that, be it enacted by the said authority, that if the said Richard Strowd, or any of all the said other person or persons, hereafter be vexed, troubled, or otherwise charged, for any causes as is aforesaid; that then he or they, and every of them, so vexed or troubled of or for the same, to have action upon the case against every such person or persons so vexing or troubling any, contrary to this ordinance and provision, in the which action the party grieved shall recover treble damages and costs; and that no protection, *essoign*, nor *wager of law*, in the said action, in any wise, be admitted nor received. “He said, ’Tis very possible the plea of those worthy persons Denzell Holles, Sir John Eliot, and the rest, was not sufficient to the jurisdiction of the Court, if you take in their criminal actions altogether; but as to the

words spoken in Parliament, the Court could have no jurisdiction, whilst this act of the fourth of Henry VIII. is in force, which extends to all Members that then were, or ever should be, as well as Strowd; and was a public general law, though made upon a private and particular occasion. “He recommended to their Lordships the consideration of the time when these words, in the case of Sir George Croke’s Reports, were spoken, which was the 2d of March, 4^o Caroli Primi, being in that Parliament which began in the precedent March, 3^o Caroli, at which time the judgment given in the King’s Bench about Habeas Corpus, was newly reversed, which concerned the freedom of our persons; the liberty of speech invaded in this Case; and not long after the same judges, with some others joined with them, in {256} the case of ship-money, invaded the propriety of our goods and estates; So that their Lordships find every part of these words, for which those worthy persons were accused, justified.

“If any man should speak against any of the great officers, as the Chancellor, or Treasurer, or any of the rest recited in those acts, as by accusing them of corruption, ill council, or the like, he might possibly justify himself by proving of it: But in this case it was impossible to do it, because these judgments had preceded and concluded him; for he could make none, but by alleging their own judgments, which they themselves had resolved, and would not therefore allow to be crimes, which they had made for laws.

“He did inform their Lordships, that the Bill in the Rolls hath another title than that he did mention; this being that the Clerks knew it by, rather than the proper title.

“The words in the Case are charged eâ intentione; which ought not to be; for it is clear and undoubted law, that whatever is in itself lawful, cannot have an unlawful intent annexed to it. Things unlawful may be made a higher crime by the illness of the intent. For instance, taking away my horse, is a trespass only; but intending to steal him, makes it felony: Borrowing my horse, though intending to steal him, is not felony, because borrowing is lawful, and there were no use of freedom of speech otherwise; for a depraved intention may be annexed to any the most justifiable action: If a man eat no flesh, he may be accused for the depraved intention of bringing in the Pythagorean Religion, and subverting the Christian. If a man drink water, he may {257} be accused of the depraved intention of subverting the King’s Government, by destroying his revenue both of Excise and Custom.

“No man can make a doubt, but whatever is once enacted is lawful; but nothing can come into an Act of Parliament, but it must be first affirmed or propounded by somebody; so that, if the Act can wrong nobody, no more can the first propounding: The Members must be as free as the

Houses. An Act of Parliament cannot disturb the State; therefore the debate that tends to it cannot, for it must be propounded and debated before it can be enacted.

“In the reign of Henry VIII. when there were so many persons taken by Act of Parliament out of the Lords House, as the Abbots and Priors, and all the religious houses and lands taken away; it had been a strange information against any Member of the Parliament then, for propounding so great an alteration in Church and State.

“Besides, Religion itself began then to be altered, and was perfected in the beginning of Edward VI.’s reign, and returned again to Popery in the beginning of Queen Mary’s, and the Protestant Religion restored again in the beginning of Queen Elizabeth’s.

“Should a Member of Parliament, in any of these times, have been justly informed against in the King’s Bench, for propounding or debating any of these alterations? So that their Lordships perceive the reasons and inducements the House of Commons had to pass these votes now presented to their Lordships.”

{258}

After this, the votes were read, videlicet,

“Resolved, &c. That the Act of Parliament quarto Henrici VIII. commonly intituled, ‘An Act concerning Richard Strowd,’ is a general law, extending to indemnify all and every the Members of both Houses of Parliament, in all Parliaments, for and touching any Bills, speaking, reasoning, or declaring, of any matter or matters in and concerning the Parliament, to be communed and treated of: and is a declaratory law of the ancient and necessary Rights and Privileges of Parliament.

“Resolved, &c. That the Judgment given Quinto Caroli against Sir John Eliot, Denzell Holles, and Benjamin Valentine, Esquires, in the King’s Bench, was an illegal judgment, and against the Freedom and Privilege of Parliament.”

To both which votes the Lords agree with the House of Commons.

Extract from the Commons Journal, 24th April, 1640.

“These heads following were by the Committee, according to yesterday’s order, brought in, as inducements and matter for the conference to be desired with the Lords:

“Sir W. Erle reports from the Committee, appointed to prepare the inducements for the conference with the Lords, in haec verba, viz.

INDUCEMENTS.

(1.) *Concerning Innovation in Matters of Religion.*

1. The commission that was lately granted to the Convocation House:—the rather because of the Innovations brought in and practised, when there was no such commission.
 2. The complaints arising from the petitions brought in from the several counties, by the Members of the House, against Innovations in Religion.
 3. The molesting and depriving of godly and conformable ministers, for not yielding to matters enjoined without warrant of law.
 4. The publishing of Popish tenets, in licensed books, sermons, and disputations.
- {260}
5. Restraining of conformable ministers from preaching in their own charges.

(2.) *Concerning Propriety of Goods.*

1. Monopolies, and restraint of trade.
2. Ship-money.
3. Enlarging the bounds of forests, beyond what they have been for some hundreds of years last past.
4. Military charges, viz. coat and conduct-money, wages, arms taken from the owners; forcing the counties to buy or provide, at their charges, horses and carts, by way of tax.
5. The denial of justice in the Courts at Westminster, to the subject’s prejudice, in point of the propriety of his goods.
6. Frequent imprisonments and vexations for non-payment of unwarrantable taxes, and not submitting to unlawful monopolies.

(3.) *Liberties and Privileges of Parliament.*

1. Punishing men, out of Parliament, for things done in Parliament.
2. That which is already voted in the House, concerning Privilege of Parliament.
3. Sudden dissolving of Parliaments without redress of grievances. — Laid by for the present, and not put to the question.

Lastly (as that which relates unto all, and is a great cause of all the former grievances), the not holding of {261} Parliaments every year, according to the laws and statutes of this Realm.—Laid by for the present, and not put to the question.

That business of pressing the Trained Bands out of the counties was only moved; and nothing more done in it at this time.

A transcript of the Commission lately granted to the Convocation House, was read.

Motion was made, That this House might be informed, by what means this transcript was had.

Whereupon Mr. Holborne, one of that Select Committee that was appointed to view this commission, said, that, according to this House's order, they repaired to the Lord * *, who told them, that if they had come to him before any question had been made of this business,—but now desired he might first acquaint his Majesty; which he did; and, at our repair again unto him the same evening he gave us leave, not only to see it, but to have this transcript of it.

The first question was upon the commission that was lately granted to the Convocation,—Whether this matter of the commission lately granted to the Convocation, shall be one of the heads of the Conference with the Lords, to the end to prevent any innovations in matter of Religion?

Innovation in Matter of Religion.

1. Resolved, upon the question, That, in this conference with the Lords, for prevention of innovations in matter of {262} Religion, there shall be used made of this commission lately granted to the Convocation, the rather because of the complaints of innovations practised before the grant of this commission.
2. Resolved, upon the question, That, in this conference with the Lords, use shall be made of the complaints arising from the petitions brought in by the several Members of the House, from several counties, against innovations in matter of religion.
3. Resolved, upon the question, That, in this conference with the Lords, use shall be made of the complaints that have been made here, for the

molesting and depriving of godly and conformable ministers, for not yielding to matters enjoined, complained of to be without warrant of law.

4. Resolved, upon the question, That, in this conference with the Lords, use shall be made of the complaints that have been made for the publishing of Popish tenets, contrary to the doctrine of the Church of England, in licensed books, sermons, and disputations.

5. Resolved, upon the question, That, in this conference with the Lords, use shall likewise be made of the complaints that have been made, touching the restraint of conformable ministers from preaching in their own charges.

Propriety of Goods.

1. Resolved, upon the question, That, in this conference with the Lords, use shall be made of the complaints that have been here presented, touching monopolies, and restraint of trade.

2. Resolved, upon the question, That, in this conference with the Lords, use shall be made of the complaints that have been, touching ship-money.

{263}

3. Resolved, upon the question, That, in this conference with the Lords, use shall be made of the complaints that have been had, of enlarging the bounds of forests, beyond what they have been for some hundreds of years last past.

4. Resolved, upon the question, That, in this conference with the Lords, use shall likewise be made of the complaints that have been had, concerning military charges, viz. coat and conduct-money, wages, arms taken from the owners, forcing the counties to buy or provide, at their charges, horses and carts, by way of tax.

5. Resolved, upon the question, That, in this conference with the Lords, use shall be likewise made of the complaints that have been had, concerning denial of justice in the Courts at Westminster, to the subject's prejudice, in point of the propriety of his goods.

6. Resolved, upon the question, That, in this conference, with the Lords, use shall be likewise made of the complaints that have been, for the frequent imprisonments and vexations for non-payment of unwarrantable taxes, and not submitting to unlawful monopolies.

Liberties and Privileges of Parliament.

1. Resolved, upon the question, That, in this conference with the Lords, use shall be likewise made of the complaints that have been, touching the punishing of men out of Parliament, for things done in Parliament.

2. Resolved, upon the question, That, in this conference with the Lords, use shall likewise be made of that which is already voted in this House, touching Privilege of Parliament.

The other propositions,—Of sudden dissolving of Parliaments, without redress of grievances,—and that, Of not {264} holding Parliaments once a year,—and that, Of pressing the Trained Bands out of their proper Counties,—were for this present laid aside, and not put to the question.

Mr. Treasurer, Mr. Comptroller, Mr. Secretary Windebank, Mr. Holborne, Mr. Ed. Hyde, Mr. St. John, Dr. Jones, Dr. Eden, Sir Robt. Harley, Mr. Vaughan, Sir Ben. Rudyard, Sir M. Fleetwood, Mr. Pym, Mr. Hampden, Sir. Tho. Paddington, Sir Fr. Seymour, Mr. Crewe, Sir H. Martyn, Mr. Bridgman, Mr. Grimston, Mr. Kirton, Sir Jo. Strangeways, Sir Peter Hayman, Sir Walth. Erle, Mr. Lenthall, Sir Oliver Luke, Sir Wm. Masham, Sir Christ. Hatton, Sir Robt. Cooke, Lord Digby, Sir. Jo. Hotham, Sir Hugh Cholmeley, Sir Jo. Culpepper, Mr. Maynard, Mr. Hatcher, Lord Ruthyn, Mr. Glynn.

This Committee is to use all expedition in preparing and giving directions for the managing of the business of this conference; and have power to send for records and witnesses; and are to report it to the House to-morrow morning, if possible; and are to meet this afternoon at two of the clock in the Court of Wards.

Mr. Vassal moved, that his particular grievance, of having his goods, viz. six hundred and odd pounds, detained from him, by colour, as he said, of orders from the Lords of the Privy Council, might be inserted, as one of the inducements for this conference: But it was said, it might serve for an instance in one of the particulars contained under the head of propriety of goods; and so it was passed by, and no further resolution taken in it.

Extracts from RUSHWORTH (Vol. IV. p. 474.)

The House of Peers sent a Message to the Commons (who were then in debate of his Majesty's answer concerning their desire of a guard) to acquaint them that some of their Members were accused in the Lords House of high treason by the King's Attorney General.

At the same time information was also brought them, that several persons were sealing up the trunks, doors, and papers, belonging to Mr. Pym and Mr. Holles, and afterwards of the other accused Members; whereupon it was ordered by the House of Commons, that the Serjeant attending this House shall have power to break open the said doors, and the seals upon the trunks, &c.; and the Speaker to sign a warrant to apprehend the said persons: and likewise they passed this following Order:

Die Lunae, 3 January 1641.

It is this day ordered, upon the question, by the Commons House of Parliament, that if any persons whatsoever shall come to the lodgings of any Member of this House, and there do offer to seal the trunks, doors, or papers of any {266} Member of this House, or to seize upon their persons, that then such Members shall require the aid of the Constable, to keep such persons in safe custody, till this House do give further order. And this House doth further declare, that if any person whatsoever shall offer to arrest or detain the person of any Member of this House, without first acquainting this House therewith, and receiving further order from this House, that it is lawful for such Member, or any person to assist him, and to stand upon his and their guard of defence, and to make resistance, according to the Protestation taken to defend the Privileges of Parliament.

H. Elsynge, Cler. Parl. D. Com.

And immediately the Commons sent up Mr. Walter Long, to desire a conference with the Lords about breach of Privileges: the heads of which conference were to this purpose:

That the violating of the Privilege of Parliament, is the overthrow of Parliament. That by the Protestation taken by both Houses of Parliament, to defend the Privileges of Parliament, both Houses are concerned in the breach of either. That the trunks, chambers, and studies of divers Members of this House are this day sealed up. That the Parliament, as the great Council of the kingdom, ought to sit as a free

Council, and no force ought to be set about them without their consent. That, notwithstanding, there is a guard in a warlike manner placed at Whitehall, to the breach of the Privilege of Parliament. Also to desire the Lords, that such a guard may be set about the Parliament as shall be approved of by both Houses, or else to join with this House to adjourn to a place of safety; and the House ordered Mr. {267} Glyn, Sir Philip Stapelton, and Mr. Fiennes, to manage this conference.

Whilst these Members were about to go to the Lords House, Serjeant Francis being come to the door of the House, having the mace in his hand, sends in word that he was at the door of that House, and had a command to deliver a message from his Majesty to Mr. Speaker; whereupon he was called in to the bar (but without his mace) and there he delivered this message, viz.

‘I am commanded by the King’s Majesty, my master, upon my allegiance, that I should come and repair to the House of Commons, where Mr. Speaker is, and there to require of Mr. Speaker five Gentlemen, Members of the House of Commons; and those Gentlemen being delivered, I am commanded to arrest them in his Majesty’s name of high treason: Their names re Denzell Holles, Sir Arthur Haslerig, John Pym, John Hampden, and William Strowd.’

After he delivered his message, the House commanded him to withdraw, and appointed Sir John Culpepper, Lord Falkland, Sir Philip Stapleton, and Dir John Hotham, to attend his Majesty, and to acquaint him, That this Message from his Majesty was a matter of great consequence; that it concerneth the Privilege of Parliament, and therein the Privilege of the Commons of England: That this House will take it into serious consideration, and will attend his Majesty with an answer, in all humility and duty, with as much speed as the greatness of the business will permit; and in the mean time the said Members shall be ready to answer any legal charge made against them.

{268}

At this time Mr. Speaker, by command of the House, enjoined these five Members before named, particularly (one by one) to give their attendance on this House de die in diem, till the House take further order; and further ordered, that to-morrow morning, at ten of the clock, the House be turned into a Grand Committee, to take into consideration the message sent by Serjeant Francis from the King concerning the said Members.

Mr. Glyn reports the conference this day had with the Lords concerning this matter, that the Lords had made an order to open the doors and trunks of the Members of both Houses, which were shut up and sealed; and that they have resolved to join with this House in an humble Petition to the King, to desire that such a guard as himself and both Houses of

Parliament shall approve of, may be appointed; and that they have appointed two Lords to attend the King, with a proportionable number of the Members of this House, in this matter.

Then the House returned answer to Serjeant Francis (who attended all this while at the door of the House of Commons) That this House will send an answer to his Majesty, to the message the Serjeant brought, by Members of their own: whereupon he returned.

The House being informed, that it was Sir William Flemming, Sir William Killigrew, and other Gentlemen, who sealed up the studies and doors of the five Members, ordered that they should be forthwith apprehended by the Serjeant at Arms attending this House, and to remain in the custody of the Serjeant of this House till further order.

{269}

The Lord Falkland reported the King's answer to the said message, delivered the last night to his Majesty, concerning the breach of Privilege of Parliament, in accusing five Members of this House, and sending Serjeant Francis with the mace to seize upon their persons.

That at the delivery of this message to the King, his Majesty did ask the lord Falkland, Whether the House did expect an answer? and before the Lord Falkland made an answer, his Majesty said he would send an answer this morning (being the 4th of January) as soon as the House was set; and in the mean time he bid him acquaint the House, that the Serjeant at Arms did nothing but what he had directions from himself to do.

After the report of this answer of the King's, the House of Commons presently ordered, That a conference be desired with the Lords, to acquaint them, that there is a scandalous Paper published, containing articles of high treason against the Lord Kimbolton, of the House of Peers; Denzell Holles, Sir Arthur Haslerig, John Pym, John Hampden, and William Strowd, Members of the House of Commons. And that forasmuch as it being against the Members of both Houses, they do desire the Lords, that right may be done against the publishers of the said scandalous Paper, and to inquire who are the authors and publishers thereof, that they may receive condign punishment, and that the Commonwealth may be secured against such persons.

The Gentlemen of the Inns of Court having, upon the apprehensions of tumults, offered themselves to be a guard to his Majesty, and the Parliament understanding there had {270} been some practices used to bid them be this day in readiness, sent some of their Members to the four Inns of Court, to inquire into the same, who now made their report; and first Mr. Brown spake, and said, That he had done the message enjoined him by this House, to the gentlemen of the society of Lincoln's Inn, and received this answer, viz. That they had at first gone to the Court this last

week, only upon occasion of a report brought to them, that the King's person was in danger. That yesternight they had received a message from his Majesty by Sir William Killigrew, and Sir William Flemming, that they should keep within this day, and be ready at an hour's warning, if his Majesty should have occasion to use them. That they likewise brought a paper of articles to them, by which the Lord Mandeville, and five Members of the House of Commons were accused of high treason. That they had only an intent to defend the King's person, and would do their utmost also to defend the Parliament; being not able to make any distinction between the King and his Parliament: and that they would ever express all true affection to the House of Commons in particular. Mr. Ellis of Gray's Inn, Mr. Hill of the Inner Temple, and Mr. Smith of the Middle Temple, made the like relation from the gentlemen of those other three societies; only the gentlemen of the Middle Temple sent their answer in writing, by the said Mr. Smith; in which they showed, that their intention to defend the King's person was no more than they were bound unto by the oath of allegiance: with which several answers from the Inns of Court the House rested well satisfied.

The said five accused Members, this day after dinner, came into the House, and did appear according to the special order {271} and injunction of the House laid upon them yesterday, to give their attendance upon the House, *de die in diem*; and their appearance was entered in the Journal.

They were no sooner sate in their places, but the House was informed by one Captain Langrish, lately an officer in arms in France, that he came from among the officers and soldiers at Whitehall, and understanding by them that his Majesty was coming with a guard of military men, commanders, and soldiers, to the House of Commons, he passed by them with some difficulty to get to the House before them; and sent in word how near the said officers and soldiers were come. Whereupon a certain Member of the House, //271-1// having also private intimation from the Countess of Carlisle, sister to the Earl of Northumberland, that endeavours would be used this day to apprehend the five Members, the House required the five Members to depart the House forthwith to the end to avoid combustion in the House, if the said soldiers should use violence, to pull any of them out. To which command of the House, four of the said Members yielded ready obedience; but Mr. Strowd was obstinate, till Sir Walter Erle (his ancient acquaintance) pulled him out by force, the King being at that time entering into the New Palace Yard, in Westminster. And as his Majesty came through Westminster Hall, the commanders, reformadoes, &c. that attended him, made a lane on both sides the hall (through which his Majesty passed, and came up the stairs to the House of Commons) and stood before the guard of pensioners and

halberteers (who also attended the King's person): and the door of the House of Commons being thrown {272} open, his Majesty entered the House; and as he passed up towards the Chair, he cast his eye on the right hand, near the Bar of the House, where Mr. Pym used to sit; but his Majesty not seeing him there (knowing him well) went up to the Chair, and said, *'By your leave, Mr. Speaker, I must borrow your Chair a little:'* whereupon the Speaker came out of the Chair, and his Majesty stept up into it. After he had stood in the chair a while, casting his eye upon the Members as they as they stood up uncovered, but could not discern any of the five Members to be there; nor indeed were they easy to be discerned (had they been there) among so many bare faces all standing up together:

Then his Majesty made this speech:

Gentlemen,

I am sorry for this occasion of coming unto you. Yesterday I sent a Serjeant at Arms, upon a very important occasion, to apprehend some that, by my command, were accused of high treason; whereunto I did expect obedience, and not a message. And I must declare unto you here, that albeit no King that ever was in England shall be more careful of your Privileges, to maintain them to the uttermost of his power, than I shall be; yet you must know that, in case of treason, no person hath a Privilege. And therefore I am come to know if any of these persons, that were accused, are here: for I must tell you, gentlemen, that so long as these persons that I have accused (for no slight crime, but for treason) are here, I cannot expect that this House will be in the right way that I do heartily wish it; therefore I am come to tell you, that I must have them wheresoever I find them. Well, since I see all the birds are flown, I do expect from you, that you shall send them unto me, as soon as they return hither. But I assure you, on the word {273} of a King, I never did intend any force, but I shall proceed against them in a legal and fair way, for I never meant any other.

'And now, since I see I cannot do what I came for, I think this no unfit occasion to repeat what I have said formerly, That whatsoever I have done in favour and to the good of my subjects, I do mean to maintain it. I will trouble you no more, but tell you I do expect, as soon as they come to the House, you will send them to me; otherwise I must take my own course to find them.'

When the King was looking about the House, the Speaker standing below by the Chair, his Majesty asked him, 'Whether any of these persons were in the House? Whether he saw any of them? and, Where they were?' to which the Speaker, falling on his knee, thus answered:

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

The King having concluded his speech, went out of the House again, which was in great disorder; and many Members cried out aloud, so as he might hear them, *Privilege! Privilege!* and forthwith adjourned till the next day, at one of the clock.

{274}

The same evening his Majesty sent James Maxwell, Usher of the House of Peers, to the House of Commons, to require Mr. Rushworth, the Clerk Assistant, whom his Majesty had observed to take his speech in characters at the Table in the House, to come to his Majesty; and when Maxwell brought him to the King, his Majesty commanded him to give him a copy of his speech in the House. Mr. Rushworth humbly besought his Majesty (hoping for an excuse) to call to mind how Mr. Francis Nevil, a Yorkshire Member of the House of Commons, was committed to the Tower, but for telling his Majesty what words were spoken in the House by Mr. Henry Bellasis, son to the Lord Faulconbridge; to which his Majesty smartly replied, *'I do not ask you to tell me what was said by any Member of the House, but what I said myself.'* Whereupon he readily gave obedience to his Majesty's command, and in his Majesty's presence, in the room called the Jewel House, he transcribed his Majesty's speech out of his characters, his Majesty staying in the room all the while. And then and there presented the same to the King, which his Majesty was pleased to command to be sent speedily to the press, and the next morning it came forth in print.

The Commons sent Mr. Fiennes with a message to the Lords, to give them notice of the King's coming yesterday, and that they conceived it a high and great breach of Privilege; and to repeat their desires, that their Lordships would join with them in a petition to the King, that the Parliament may have a guard to secure them, as shall be approved of by his Majesty and both Houses; and also to let them know, that they have appointed a committee to sit at Guildhall, London; and have also appointed the Committee for the Irish affairs to meet there.

{275}

Then falling into further detail about yesterday's transactions, passed the following Order:

Die Mercurii, 5 Januarii.

Whereas his Majesty, in his royal person, yesterday, being the 4th of January 1641, did come to the House of Commons, attended with a

great multitude of men armed in a warlike manner, with halberts, swords, and pistols, who came up to the very door of the House, and placed themselves there, and in other places and passages near to the House, to the great terror and disturbance of the Members thereof then sitting, and, according to their duty, in an orderly and peaceable manner treating of the great affairs of both kingdoms of England and Ireland; and his Majesty having placed himself in the Speaker's Chair, did demand the persons of divers Members of the House to be delivered unto him;

It is this day declared by the House of Commons, that the same is a high breach of the Rights and Privileges of Parliament, and inconsistent with the liberty and freedom thereof; and therefore this House doth conceive they cannot, with the safety of their own persons, or indemnity of the Rights and Privileges of Parliament, sit here any longer without a full vindication of so high a breach, and sufficient guard wherein they may confide; for which both Houses jointly, and this House by itself, have been humble suitors to his Majesty, and cannot yet obtain.

Notwithstanding which, this House being very sensible of the greatest trust reposed in them, and especially at this time of the manifold distractions of this kingdom, and the lamentable and distressed condition of the kingdom of Ireland, doth order that this House shall be adjourned till Tuesday next, {276} at one of the clock in the afternoon, and a Committee be named by this House, and all that will come to have voices, shall sit at the Guildhall in the City of London, to-morrow morning at nine of the clock, and shall have power to consider and resolve of all things that may concern the good and safety of the City and Kingdom, and particularly how our privileges may be vindicated, and our persons secured; and to consider of the affairs and relief of Ireland; and shall have power to consult and advise with any person or persons touching the premises; and shall have power to send for parties, witnesses, papers, and records: And it is further ordered, that the Committee for Irish affairs shall meet at the Guildhall aforesaid, at what time they shall think fit, and consult and do touching the affairs of Ireland, according to the power formerly given them by this House; and both the said Committees shall report the results of their consideration and resolution to this House. The names of the Committee do follow, viz.

Mr. Chancellor of the Exchequer, Mr. Glyn, Mr. Whitlock, Lord Falkland, Sir Philip Stapleton, Mr. Nathaniel Fiennes, Sir Ralph Hopton, Sir John Hotham, Sir Walter Earl, Sir Robert Crook, Sir Thomas Walsingham, Sir Samuel Roll, Mr. Pierpoint, Mr. Walter Long, Sir Richard Cave, Sir Edward Hungerford, Mr. Grimstone, Sir Christopher Wray, Sir Benjamin Rudyard, Sir John Heppisley, Mr. Herbert Price, Sir

John Wray, Sir Thomas Barrington, Mr. Wheeler, Sir William Litton:
And all that will come are to have voices at this Committee. //276-1//
And then the House adjourned till Tuesday the 11th of January, at one in
the afternoon, according to the said order.

{277}

The same day his Majesty was also pleased to go into London with his
usual attendance; and in his passage some people did cry out aloud,
Privileges of Parliament! Privileges of Parliament! And one Henry
Walker, an ironmonger and pamphlet-writer, threw into his Majesty's
coach a paper, wherein was written, '*To your tents, O Israel!*' For which
he was committed, and afterward proceeded against at the Sessions.
His Majesty being arrived at Guildhall, and the Common Council
assembled, he made this speech to them:

'Gentlemen,

*'I am come to demand such persons as I have already accused of high
treason, and do believe are shrouded in the City. I hope no good man
will keep them from me; their offences are treason, and misdemeanors
of an high nature. I desire your loving assistance herein, that they may
be brought to a legal trial.*

*'And whereas there are divers suspicions raised, that I am a favourer of
the Popish Religion; I do profess, in the name of a King,; that I did and
ever will, and that to the utmost of my power, be a prosecutor of all
such as shall any ways oppose the laws and statutes of this kingdom,
either Papists or Separatists; and not only so, but I will maintain and
defend that true Protestant Religion which my father did profess, and I
will continue in it during life.'*

His Majesty was nobly entertained that day in London, at the house of
one of the Sheriffs; and after dinner returned to Whitehall without
interruption of tumults.

Report from the Committee of Privileges; 23 March 1815.

The Committee of Privileges, to whom the Letter of *William Jones*, Esquire, Marshal of the King's Bench Prison, stating, "that he had taken Lord *Cochrane* (who had made his escape from out of the King's Bench Prison) into custody, in the House of Commons," was referred; and who were to examine the matter thereof, and to report the same, together with their opinion thereupon;—

Having read the Letter from the Marshal of the King's Bench to Mr. Speaker, giving an account of his having arrested Lord *Cochrane* within the walls of this House, on the 21st Instant, proceeded to inquire into the circumstances of the subject matter referred to their consideration:

And They find,

That Lord *Cochrane* having been indicted and convicted for a Conspiracy, was committed by the Court of King's Bench on the 21st day of June 1815:

That from the date of the said Commitment no pardon, nor any remission of the confinement of Lord *Cochrane* had been granted:

{279}

That between the 5th day of March and the 10th day of March last, Lord *Cochrane* escaped from the prison above mentioned, and remained at large until the 21st of this Month:

That on the day last mentioned, Lord *Cochrane* went between the hours of one and three to the Clerk's room in which Members are usually sworn previously to taking the oaths at the Table of the House; and being informed it was necessary he should have the Certificate of his Return with him, sent for the same to the Crown Office, and went into the House, where he sat down on the Privy Councillors Bench on the right hand of the Chair, at which time there was no Member present, Prayers not having been read:

That soon after Lord *Cochrane* had sat down in the House, the Marshal of the King's Bench entered it with two or three of his Officers, and other Assistants, and carried his Lordship away to the Prison from which he had escaped; notwithstanding a remonstrance from him, that they had no right to lay their hands upon him there:

That by a Return in the Crown Office of the 16th day of July 1814, it appears that Lord *Cochrane* was returned to serve as a Citizen for the City of Westminster on the 16th day of July 1814.

Having ascertained these Facts, it became the duty of Your Committee to consider whether the Marshal of the King's Bench, in the execution of what he conceived to be his duty, has been guilty of a Breach of the Privilege of this House.

In deliberating on a matter of such high importance, Your Committee have to regret that they could find nothing in the {280} Journals of this House to guide them: The Case is entirely of a novel nature; they can therefore only report it, as their Opinion,—

That, under the particular circumstances given in Evidence, it does not appear to Your Committee \\so in text\\ that the Privileges of Parliament have been violated, so as to call for the interposition of the House by any Proceedings against the Marshal of the King's Bench.

REPORTS *from the Select Committee appointed to consider of the Proceedings had, and to be had, with reference to the several Papers signed “Francis Burdett;” the Contents of which relate to his being apprehended, and committed to the Tower of London: together with an Appendix, as amended on Re-commitment.—Ordered to be printed 11th May and 15th June, 1810.*

\\What follows are lettered Appendices to Appendix_Number_6; These match the materials found in the standard 19th century HC Reports series numbered as HC 256 and 295; further detail will be supplied in a Research Note \\

FIRST REPORT	pp. 281 to 294
SECOND REPORT	pp. 294 to 298
APPENDIX;—viz.	
(A.)—Precedents of Commitments for Words and Publications, Speeches, &c. reflecting on the Proceedings of the House	p. 299
(B.)—Cases since 1697, of Prosecutions at Law Against Persons for Libels, &c. upon the House of Commons or any of its Members, and whether by Order or Address	p. 302
(C.)—Claim and Recognition of the Privileges of Parliament, and the Power of Commitment	p. 304
(D.)—Recognition of the Law and Privilege of Parliament, and of the Power of the House of Commons to commit for Contempt, by Legal Authorities, and by the Decision of Courts of Justice	p. 306
(E.)—Cases of Commitments for Contempt, by Courts of Justice.—(Analogy)	pp. 314 to 322

=====

FIRST REPORT.

The SELECT COMMITTEE appointed to consider of the Proceedings had, and to be had, with reference to the several Papers signed “*Francis Burdett;*”—the Contents of which related to his being apprehended and committed to the Tower of London, and which Papers were communicated to the House, by Mr. Speaker, upon the 13th and 17th

days of April last;—and to report such Facts, as they may think necessary, together with their Opinion thereupon, from time to time, to {282} the House;—And to whom the matters stated by the Serjeant at Arms attending the House, and the Process served upon him in an Action at Law by Sir Francis Burdett;—and also the Summons served on Mr. Speaker, and the Notice of Declaration delivered to the Serjeant at Arms, at the suit of the said Sir Francis Burdett; were referred;—Have, pursuant to the Orders of the House, with all dispatch, considered the matters referred to them; and have agreed to the following REPORT:

It appears to Your Committee, after referring to the Order of the House of the 5th day of April last, for the commitment of Sir Francis Burdett to the Tower; the Warrants of the Speaker for that purpose; the Letter of Sir Francis Burdett to the Speaker, dated the 17th day of April last; the Report and Examination of the Serjeant at Arms, touching his proceedings in the execution of such warrants; the Notices to the Speaker referred to your Committee; the demand made upon the Serjeant at Arms of a copy of the Warrant under which he arrested Sir Francis Burdett; the Writ served upon the Serjeant, and the Summons served upon the Speaker, and the Notice of Declaration filed against the Serjeant; which said Notices, Demands, Writ and Summons, are all at the suit or on behalf of the said Sir Francis Burdett, and all bear the name of the same solicitor, John Ellis;—That the said proceedings have been brought against the Speaker, and the Serjeant, on account of what was done by them respectively in obedience to the Order of the House; and for the purpose of bringing into question, before a Court of Law, the legality of the proceedings of the House in ordering the Commitment of Sir Francis Burdett, and of the conduct of the Speaker, and the Serjeant, in obedience to that Order.

{283}

1.—Your Committee, not in consequence of any doubt upon the question so intended to be raised, but for the purpose of collecting into one view such Precedents of the Proceedings of the House upon Cases of Breach of Privilege as might afford light upon this important object, have in the first place examined the Journals, with relation to the practice of the House in commitment of persons, whether Members or others, for Breaches of Privilege, by offensive words or writings derogatory to the honour and character of the House, or of any of its Members; and they have found numerous instances, in the History of Parliament, so far as the Journals extend, of the frequent, uniform, and uninterrupted practice of the House of Commons to commit to different custodies, persons whom they have adjudged guilty of a Breach of their Privileges by so offending.

The statement of these Precedents, which establish the Law of Parliament upon this point by the usage of Parliament; the utility of such Law, and the necessity which exists for its continuance, in order to maintain the dignity and independence of the House of Commons; its analogy to the acknowledged powers of courts of justice, and the recognition of such right in various instances, by legal authorities, by judicial decisions, and by the other branch of the Legislature; as well as the invariable assertion and maintenance of it by the House of Commons, are topics which may be reserved for a further Report. And although there are some instances in which the House has thought proper to direct prosecutions for such offences, yet the Committee confidently state that the more frequent practice of the House, at all times, has been to vindicate its own Privileges by its own Authority.

{284}

2.—The subject which appears to Your Committee to press most urgently for an immediate Report, is, The state of the Law and the practice of the House in cases either of criminal prosecution or civil action against any of its Members, for any thing spoken or done in the House of Commons; or for any proceeding against any of its officers or other persons acting under its authority.

The principal instances to be found under this head arose out of those proceedings which, in the time of Charles the first, Charles the second, and James the second, were instituted by the Officers of the Crown, in derogation of the Rights and Privileges of the Commons of England. Those proceedings were resisted and resented by the House of Commons; were condemned by the whole Legislature, as utterly and directly contrary to the known Laws and Statutes and Freedom of this Realm; and led directly to the Declaration of the Bill of Rights, “That the Freedom of Speech, and Debate or Proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament;”—and Your Committee have no hesitation in stating, that this article in the Bill of Rights extends as clearly to Actions or Indictments brought or Prosecutions by Individuals, as to Informations or other proceedings directly instituted by the authority of the Crown. The Law of Parliament on this subject, so far as relates to words spoken in Parliament, was legislatively declared in a Statute to be found in the Parliament Roll of the 4th of Henry VIII.: By that Act, the Rights and Privileges of free Speech in Parliament are established, and a special action is given in favour of the party injured by any action brought against him for words {285} spoken in Parliament. And, from this Statute, it appears that Parliament at that time, when the case occurred which seemed to show the expediency of legislative provision to give

fuller force and protection to its Privileges, made it the subject of such provision.

In the 5th of Charles I. an Information was filed against Sir J. Eliot, Denzel Holles, esq. and Benjamin Valentine, for their speeches and conduct in the House of Commons; Judgment was given against them in the King's Bench, they were sentenced to imprisonment, and were fined: In the parliament which met in 1640, the House of Commons, after a Report made of the state of the cases of Mr. Holles and the rest of the imprisoned Members, in the 3d of Charles, came to several Resolutions; by which they resolved, That these Proceedings were against the law and Privilege of Parliament; and condemned the authors and actors in them as persons guilty of a Breach of the Privilege of Parliament.

In the reign of Charles II. these Proceedings were again taken into consideration; and the House of Commons came to several Resolutions. On the 12th of November 1667, they resolved, That the Act of Parliament in the 4th year of the reign of Henry VIII. above referred to, is a Declaratory Law of the ancient and necessary Rights and Privileges of Parliament. On the 23d of November 1667, they resolved, That the Judgment above referred to against Sir J. Eliot, D. Holles, and B. Valentine, esquires, in the King's Bench, was an illegal Judgment; and on the 7th December 1667, they desired the concurrence of the Lords. The Lords on the 12th of December agreed with the Commons in these Votes.

//285-1//

{286}

Your Committee next refer to the case of Sir William Williams; the detail of which they proceed to insert from the Report of a former Committee of this House.

'The case of Sir William Williams, against whom, after the dissolution of the Parliament held at Oxford, an Information was brought by the Attorney General, in the King's Bench, in Trin. Term. 36 Car. II, for a misdemeanour, for having printed the Information against Thomas Dangerfield, which he had ordered to be printed when he was Speaker, by order of the House. Judgment passed against him on this Information in the second year of King James the second. This Proceeding the Convention Parliament deemed so great a grievance, and so high an infringement of the Rights of Parliament, that it appears to Your Committee to be the principal, if not the sole object of the first part of the Eighth Head of the means used by King James to subvert the laws and liberties of this Kingdom, as set forth in the Declaration of the two Houses; which will appear evident from the account given in the Journal, 8th February 1688, of the forming of that Declaration, the Eighth Head of which was at first conceived in these words; videlicet, "By causing Informations to be brought and prosecuted in the Court of King's Bench,

for matters and causes cognizable only in Parliament, and by divers other arbitrary and illegal courses.”

11th February 1688. “To this article the lords disagreed; and gave for a reason, Because they do not fully apprehend what is meant by it, nor what instances there have been of it; which therefore they desire may be explained, if the House shall think fit to insist further on it.”

{287}

12th February 1688. “The House disagree with the Lords in their amendment of leaving out the Eighth Article. But in respect of the liberty given by the Lords in explaining that matter; Resolved, That the words do stand in this manner; By prosecutions in the Court of King’s Bench for matters and causes cognizable only in Parliament, and by divers other arbitrary and illegal courses.” ‘By which Amendment, your Committee observes, that the House adapted the article more directly to the case they had in view; for the Information was filed in King Charles the second’s time; but the prosecution was carried on, and judgment obtained, in the second year of King James.’

‘That the meaning of the House should be made more evident to the Lords, the House ordered, “That Sir William Williams be added to the Managers of the Conference;” and Sir William Williams the same day reports the Conference with the Lords; and, “That their Lordships had adopted the article in the words as amended by the Commons.” ‘And corresponding to this article of Grievance, is the assertion of the right of the Subject in the Ninth Article of the declaratory part of the Bill of Rights; videlicet, “That the Freedom and Debates or Proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”

‘To which may be added, the latter part of the sixth Resolution of the Exceptions to be made in the Bill of Indemnity, Journal, vol. x. p. 146, wherein, after reciting the surrender of Charters, and the violating the rights and freedoms of Elections, &c. it proceeds in these words: “And the questioning the Proceedings of Parliament, out of Parliament, by Declarations, Informations or otherwise, are crimes for which {288} \\in text the page number here is erroneously shown as 256\\ some persons may be justly excepted out of the Bill of Indemnity.”

On the 11th June 1689, the House ordered, “That the Records of the Court of King’s Bench, relating to the Proceedings against William Williams, Esquire, now Sir William Williams, Knight and Baronet, late Speaker of this House, be brought into this House, by the Custos Brevium of the said Court, on Thursday morning next.”

On the 12th of July, “the Record was read; and the House thereupon Resolved, That the Judgment given in the Court of King’s Bench in Easter Term 2 Jac. II. against William Williams, Esquire,

Speaker of the House of Commons in the Parliament held at Westminster 5th October 32 Car. II. for matter done by Order of the House of Commons, and as Speaker thereof, is an illegal Judgment, and against the Freedom of Parliament.”

“Resolved, That a Bill be brought in to reverse the said Judgment.”

“This Bill was twice read, but went no farther in that Session:”—A similar Bill was in the following Session ordered to be brought in; and a third Bill passed the Commons in 1695, and was sent up to the House of Lords, but did not proceed there to a second reading.

It appears further, that on the 4th June 1689, “a Petition of John Topham, Esq. was read; setting forth, That he, being a Serjeant at Arms, and attending the House in the years 1679 and 1680, when several Orders were made, and directed to the Petitioner, for the taking into his custody the several {289} persons of Sir Charles Neal, &c. &c. and others, for several misdemeanors by them committed in breach of the Privilege of the House; and after that the Commons were dissolved, the said persons being resolved to ruin the Petitioner, did, in Hilary Term, the 33d or 34th of King Charles, sue the Petitioner in the King’s Bench in several Actions of Trespass, Battery, and false Imprisonment, for taking and detaining them as aforesaid: to which Actions the Petitioner pleaded to the jurisdiction of the Court the said several Orders; but such his Plea was over-ruled; the then Judges ruling the Petitioner to plead in chief, and thereupon he pleaded the Orders in bar to the Actions: notwithstanding which Plea and Orders, the then Judges gave Judgment against him,” &c.

“Upon the Report from the Committee of Privileges and Elections, to whom this Petition of J. Topham was referred, the House Resolved, That this House doth agree with the Committee, That the Judgment given by the Court of King’s Bench, Easter term 34 Car. II. Regis, upon the Plea of John Topham, at the suit of Samuel Verdon, &c. are illegal, and a violation of the Privileges of Parliament, and pernicious to the rights of Parliament.” Whereupon it was Ordered, That Sir Francis Pemberton, Sir Thomas Jones, and Sir Francis Wythens, do attend this House on Wednesday morning next.”

“In consequence of this Order, Sir Francis Pemberton and Sir Thomas Jones, who had been two of the Judges of the Court of King’s Bench at the time when the Judgment was {290} passed, were heard in their defence; and afterwards committed to the Serjeant at Arms, for their breach of the Privileges of this House by giving Judgment to over-rule the Plea to the Jurisdiction of the Court of King’s Bench.”

Your Committee think it proper to state, that Sir Francis Pemberton and Sir Thomas Jones, in defending themselves at the bar of this House for their conduct in over-ruling the Plea to their Jurisdiction

in the Actions of *Jay v. Topham, &c.* defended the Judgment they had given, by resting upon the nature of the pleading, and not by denying the Jurisdiction or Authority of this House; and Sir Francis Pemberton expressly admitted, that for any thing transaction in this House no other Court had any jurisdiction to hear and determine it.

Your Committee in the next place think it expedient to state to the House, that there are various instances in which persons committed by the House of Commons have been brought up by Habeas Corpus before the Judges and Courts of Common Law; and in these cases, upon its appearing by the Return to the Habeas Corpus that they were committed under the Speaker's Warrant, they have been invariably remanded.

3.—Having stated thee instances of the manner in which the Acts and Commitments of this House have been brought into Judgment in other Courts, and the consequences of such Proceedings; Your Committee further think it proper, and in some degree connected with this subject, to advert to the course which was adopted for staying Proceedings in Suits brought against Members and their Servants, while they were protected from such Suits during the sitting of Parliament.

{291}

The Roll of Parliament 8 Ed. II. affords the earliest trace which Your Committee has found upon this subject. //291-1// It is a Writ from the King confirmatory of the Privilege of being free from suits in time of Parliament, and is in the following words: “Rex mandavit justiciariis suis ad assisas, jurat’, &c. capiend. assignat’ quòd supersedeant captioni eorundem ubi comites, barones et alii summoniti ad Parliamentum regis sunt partes, quamdiu dictum Parliam. duraverit.”

There have been various modes of proceeding to enforce this Privilege. In Dewes's Journal, pa. 436, 31 Eliz. 1588-1589, Friday 21st of February, Your Committee find the following Entry: “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 Assises in sundry places of this 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 cases 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.”

But the House used to stay also Proceedings by its own authority: sometimes by sending the Serjeant at Arms to deliver the person arrested out of custody; and sometimes by Letter from the Speaker to the

Judges before whom the cause was to be tried. Of this latter mode of proceeding, Your Committee find many instances previous to the 3d of Charles I. Your {292} Committee find a decision //292-1// against the authority of such a Letter in the Court of King's Bench, which is reported in the marg. of Dyer's Reports, p. 60, and in Latch, pp. 48 & 150. And shortly after the refusal by the Court of King's Bench to notice this Letter from the Speaker, the Parliament was dissolved. There are however many other instances of this course of proceeding after the Restoration; and in the instance of Lord Newburgh (23 February 1669) the House ordered the proceedings to outlawry to be stayed during the Session, and the Record of the Exigents to be vacated and taken off the file.

The last instance which Your Committee find of such Letters having been written, occurs in the Lord Bulkeley's case in 1691, in which the Speaker is directed to write a Letter to the Prothonotary that he do not make out, and to the Sheriff of the county of Pembroke that he do not execute, any Writ, whereby the Lord Bulkeley's possessions may be disturbed, until Mr. Speaker shall have examined and reported the matter to the House, and this House take further Order thereon. By the 12 & 13 W. III. c. 3, this Privilege was curtailed; and further by Stat. 2 & 3 Ann. C. 18.—11 Geo. II. c. 24.—10 Geo. III. c. 50.

Lord Chief Justice De Grey says in Crosby's case, "If a Member was arrested before the 12 & 13 W. III. the method in Westminster Hall was to discharge him by Writ of Privilege under the Great Seal, which was in the nature of a Supersedeas to the proceeding. The statute of William has now altered this, and there is no necessity to plead the Privilege of a Member of Parliament."

{293}

All these Acts merely apply to proceedings against Members in respect of their debts and actions as individuals, and not in respect of their conduct as Members of Parliament; and therefore they do not in any way abridge the ancient Law and Privilege of Parliament so far as they respect the freedom and conduct of Members of Parliament as such, or the protection which the House may give to persons acting under its authority.

4.—Upon the whole, it appears to Your Committee, That the bringing these Actions against the Speaker, and the Serjeant, for acts done in obedience to the Orders of this House, is a Breach of the Privileges of this House.

And it appears, that in the several instances of Actions commenced in breach of the Privileges of this House, the House has proceeded by commitment, not only against the party, but against the Solicitor and other persons concerned in bringing such Actions; but Your Committee think it right to observe, that the commitment of such party, Solicitor, or

other persons, would not necessarily stop the proceedings in such Action.

That as the particular ground of Action does not necessarily appear upon the Writ or upon the Declaration, the Court before which such Action is brought cannot stay the Suit, or give Judgment against the Plaintiff, till it is informed by due course of legal proceeding that such Action is brought for a thing done by Order of the House.

And it therefore appears to Your Committee, That even though the House should think fit to commit the Solicitor or {294} other person concerned in commencing these Actions; yet it will still be expedient that the House should give leave to the Speaker and the Serjeant to appear to the said Actions, and to plead to the same; for the purpose of bringing under the knowledge of the Court the authority under which they acted: And if the House should agree with that opinion, Your Committee submits to the House, whether it would not be proper that directions should be given by this House, for defending the Speaker, and the Serjeant, against the said Actions.

=====

SECOND REPORT.

The SELECT COMMITTEE appointed to consider of the Proceedings had, and to be had, with reference to the several Papers signed “*Francis Burdett*;”—the Contents of which related to his being apprehended and committed to the Tower of London, and which Papers were communicated to the House, by Mr. Speaker, upon the 13th and 17th days of April last;—and to report such Facts, as they may think necessary, together with their Opinion thereupon, from time to time, to the House;—and to whom the matters stated by the Serjeant at Arms attending the House, and the Process served upon him in an Action at Law by Sir Francis Burdett;—and also the Summons served on Mr. Speaker, and the Notice of Declaration delivered to the Serjeant at Arms, at the Suit of the said Sir Francis Burdett; were referred;—And to whom the Report was against re-committed, which was made from the said Committee;—HAVE, pursuant to the Orders of the House, further considered the Appendix to {295} the said Report, and corrected some of the References to the Authorities therein cited; and have agreed to the following REPORT:

Your Committee, resuming the consideration of the principal matters reserved in their former Report, do not think it necessary to state all the various Precedents which are to be found of the exercise of the power of Commitment by the House of Commons for Breaches of Privilege and

Contempt in general, conceiving that to be a power too clear to be called in question, and proved, if proof were necessary, by the same Precedents, which they have collected with a view to the point to which they have more immediately directed their attention, and which Precedents are subjoined to their Report.

The Cases which Your Committee have selected as most directly connected with the subject referred to them, are those of Commitments for Libel, an offence which tends to excite popular misapprehension and disaffection, endangers the Freedom of the Debates and Proceedings in Parliament, and requires the most prompt interposition and restraint. The effect of immediate punishment and example is required to prevent the evils necessarily arising from this offence, which evil it is obvious would be much less effectually guarded against by the more dilatory proceedings of the ordinary courts of law: nevertheless upon some occasions the House of Commons have proceeded against persons committing such offences, by directing prosecutions, or by addressing His Majesty to direct them, as appears by the Precedents collected in the Appendix.

From the series of precedents which Your Committee find on your Journals, it will most clearly appear that the House of {296} Commons have treated Libels as Contempts; that they have frequently punished the authors and publishers of them by commitment, whether those authors and publishers were or were not Members of the House; and that this power has been exercised at all times, as far back as the Journals afford an opportunity of tracing it. And your Committee cannot forbear observing, that the Precedents subjoined to their Report establish this Law of Parliament, upon the ground and evidence of an immemorial usage, as strong and satisfactory as would be held sufficient in a Court of Law for the establishment of any legal right.

Your Committee also beg leave to observe, that the general power of commitment was solemnly asserted by the House of Commons in 1675, and in their Resolutions of 1701; and was also claimed by the House of Commons, and admitted by the House of Lords in the most explicit terms, in the Conference between the two Houses, in the case of Ashby and White, in 1704; although other points arising in that case were strongly controverted between the two Houses.

Your Committee further state, that it has been recognized by legal authority, and by the most solemn decisions of the Courts of Law on various occasions, whenever any question upon it has been brought before them:

By eleven of the Judges—in the Case of the Aylesbury men. 2 Lord Raym. P. 1105. 3 Wils. P. 205.

By the Court of King's Bench—in Murray's case. 1 Wils. P. 299. 1751.

{297}

By the Court of Common Pleas—in the Case of Brass Crosby. 3 Wils. P. 203. 1771.

By the Court of Exchequer—in the Case of Oliver. 1771.

And that this power of commitment by either House of Parliament was further recognized by the Court of King's Bench in the case of Benjamin Flower, 8 Term Reports, p. 323, who had been committed by the House of Lords. And Your Committee have not found the authority of a single decision to the contrary in any Court whatever.

Your Committee also beg leave to state, that the Judges of the Common Law have considered Libels upon their Courts, or the proceedings in Judicature, as Contempts, and have frequently punished the authors and publishers of them by summary commitment. This appears from various instances stated in the Appendix, which have occurred both in Courts of Law and Equity.

Amongst the Judges who have concurred in those decisions, upon the power of Parliament and of the Courts of Law and Equity to commit for such Contempts, are to be found Lawyers the most distinguished for their zealous regard for the liberty of the Subject, and the most upright, able and enlightened men that ever adorned the Seat of Justice; and the doctrines laid down by them all coincide with the opinion solemnly delivered by Lord Chief Justice De Grey in Crosby's case, that the power of Commitment is "inherent in the House of Commons from the very nature of its institution, and that they can commit generally for all contempts." 3 Wils. P. 198.

{298}

Under all these circumstances, Your Committee can have no hesitation in submitting their decided Opinion, that the power of Commitment for a Libel upon the House, or upon its Members, for or relative to any thing said or done therein, is essential to the Freedom of Debate, to the Independence of Parliament, to the Security of the Liberty of the Subject, and to the general preservation of the State.

This power is in truth part of the fundamental Law of Parliament; the Law of Parliament is the Law of the Land: part of the Lex Terrae, mentioned in Magna Charta, where it is declared, that no "Freeman shall be taken or imprisoned but by lawful judgment of his Peers, or by the Law of the Land;" and it is as much within the meaning of these words, "the Law of the Land," as the universally acknowledged power of Commitment for Contempt by the Courts of Justice in Westminster Hall, which Courts have inherent in them the summary power of punishing such Contempts by Commitment of the offenders, without the intervention of a Jury. Your Committee therefore are of opinion. That this power is founded on the clearest principles of expediency and right, proved by immemorial

usage, recognized and sanctioned by the highest legal Authorities, and analogous to the power exercised without dispute by Courts of Justice: that it grew up with our Constitution: that it is established and confirmed as clearly and incontrovertibly as any part of the Law of the Land, and is one of the most important safeguards of the Rights and Liberties of the People.

APPENDIX to the SECOND REPORT

Appendix (A.)

Precedents of Commitments for Words and Publications. Speeches, &c.
reflecting on the proceedings of the House.

I. From the Beginning of the Journals to the Commonwealth						
Year	Volume and Page	Name of Person	Cause of Commitment	Sort Serjeant	of Newgate	Custody Tower
Eliz. 1559	i. 59	Trower.	For contumelious words against the House	Serjeant		
1580	i. 122, 124. 125, 126. 132	Hall, a Member	For publishing a book against the authority of the House. N.B.—Also fined and expelled.			Tower
1625.	i. 805, 806	Montague.	For a great contempt against the House, in publishing a book traducing persons for petitioning the House.	Serjeant.		
1628.	i. 922	Lewes.	For words spoken against the last Parliament.	Serjeant.		
1628.	i. 925`	Aleyn.	For a libel on last Parliament.	Serjeant.		
Car. I. 1640.	ii. 63	Piers.	Archdeacon of Bath, for abusing the last Parliament.	Serjeant.		
1640.	ii. 71	Preston.	Scandalous words against	Gate-house.		

			<p>this House. N.B.—The King did not leave London till the 10th of January 1641. In the year preceding, there are very many cases of strangers committed for contemptuous words spoken against the Parliament.</p>			
--	--	--	--	--	--	--

II. Precedents of the like nature, from the Restoration to the Revolution

Year	Volume and Page	Name of Person	Cause of Commitment	Sort Serjeant	of Newgate	Custody Tower
Car. II. 1660.	viii. 24	Lenthall, a Member.	For words in the House against the preceding Parliament.	Serjeant.		
1660.	viii. 183, 185, 186	Drake.	For a pamphlet reflecting on the Parliament; and impeached.	Serjeant.		
	viii. 193	Cranford.	D ^o	D ^o		{300}
1661.	viii. 368	Gregory & Withers.	For pamphlets reflecting on the justice of the House: They were prisoners in Newgate, and were committed to the Tower, and ordered into close custody.			Tower.
1662.	viii. 446	Green.	D ^o	Serjeant.		
1670.	ix. 147	Woodyard.	For a breach of Privilege against a Member, and speaking contemptuous words against this House.	Serjeant.		
1675.	ix. 364	Howard.	For a scandalous			Tower.

			paper, and a breach of the Privilege of the House.			
1680.	ix. 642	Sir Robert Cann, a Member.	For words in the House, reflecting on a Member—brought to the Bar, and received a reprimand from the Speaker:—And for words spoken out of the House—committed and expelled.			Tower.
1680.	ix. 654, 656	Yarington and Groome.	For a pamphlet against a Member	Serjeant.		
1685.	ix. 760	Cooke, a Member.	For words in the House.			Tower.

III. Precedents, &c. from the Revolution to the end of King William

Year	Volume and Page	Name of Person	Cause of Commitment	Sort Serjeant	of Newgate	Custody Tower
1689.	x. 244	Christopher Smelt.	Spreading a false and scandalous report of Sir Peter Rich, a Member.	Serjeant, 29th July.		
1690.	x. 512	William Briggs.	Contemptuous words and behaviour, and scandalous reflections upon the House and upon Sir Jonath. Jennings, a Member thereof.	18th Dec.		
1691.	x. 548, 558	Richard Baldwin.	Printer of a pamphlet intituled, "Mercurius Reformatus," reflecting on the proceedings of the House.	9th & 21st Nov.		
1693.	xi. 123	William Soader.	Affirming and reporting that Sir Francis Massam, a Member, was a pensioner.	9th Mar.		
1695.	xi. 371	Sir George Meggot.	Having scandalized the House, in declaring that without being duly chosen he	27th Dec.		

			had friends enough in the House to bring him into the House.			
1696.	xi. 581	John Manley.	A Member, for words in the House			Tower, 9 Nov. {301}
1696.	xi. 651	Francis Duncomb.	Having declared before two witnesses, that he had distributed money to several Members of the House, and afterwards denied it before a Committee of the House.	5th Jan.		
1696.	xi. 656	John Rye.	Having caused a libel, reflecting on a Member of the House to be printed and delivered at the door.	11th Jan.		
1699.	xiii. 141	John Haynes.	For being the occasion of a letter being written, reflecting upon the honour of the House, and of a Committee.	24th Jan.		
1701.	xiii. 735	Thomas Colepeper.	Reflections upon the last House of Commons. N.B.—And Attorney		7th Feb.	

			General ordered to prosecute him for his said crimes.			
--	--	--	---	--	--	--

Volume and Page	Name of Person	Cause of Commitment	Sort Serjeant	of Newgate	Custody Tower
xiv. 270	John Tutchin, John How, Benjamin Bragg.	As Author, Printer, and Publisher of a printed paper entitled, "The Observator," reflecting upon the Proceedings of the House.	3d Jan.		
xiv. 565	James Mellot.	False and scandalous reflections upon two Members.	9th Mar.		
xiv. 557	Edward Theobalds.	Scandalous reflections upon a Member.	2d Mar.		
xvii. 182	Samuel Buckley.	As Printer of a pretended Memorial printed in the "Daily Courant," reflecting upon the Resolutions of the House.	11th Apr.		
xviii. 195	E. Berrington, J. Morphen.	As Printer and Publisher of a pamphlet, intituled, "The Evening Post," reflecting on his Majesty and the two Houses of Parliament.	1st July.		
xxi. 307	Richard Corbet.	Reflecting upon the Proceedings and the authority of a	31st Mar.		

		Committee.			
xxii. 245	William Noble.	Asserting that a Member received a pension for his voting in Parliament.	19th Feb.		
xxiii. 545, 546, 547	William Cooley, John Meres, John Hughes.	As Author, Printer, and Publisher of papers reflecting upon his Majesty's Government, and the Proceedings of both Houses of Parliament.	3d Dec.	2 Dec.	{302}
xxv. 154	Samuel Johns.	Author of a printed paper containing impudent reflections on the Proceedings of the House.	13th May.		
xxxii. 97	Dennis Shade. Joseph Thornton.	Sticking up a paper to inflame the minds of the people against the House. Giving directions for sticking up the above-mentioned paper.	9th Dec.	10th Dec.	
xxxiii. 258, 259	Henry Baldwin, Thomas Wright.	Printing the Debates, and misrepresenting the Speeches of Members.	14th Mar.		
xxxiv. 456	H.S. Woodfall.	For publishing a Letter highly	14th Feb.		

		reflecting on the character of the Speaker.			
lx. 217	Peter Stuart.	For printing in his Paper libellous reflections on the character and conduct of the House.	26th Apr.		

Appendix (B.)

Cases since 1697, of Prosecutions at Law against Persons for Libels, &c. upon the House of Commons or any of its members; and whether by Order or Address.

Year.	Vol. & Page.	Name.	TITLE or DESCRIPTION of PUBLICATION.	By Order	By Address
1699.	xiii. 230	Edward Stephen.	Libel on the House, and on an individual Member.	27th Feb.	
1701.	xiii. 735	Thomas Colepeper.	A Letter to the Freeholders and Freemen of England, aspersing the House.	7th Feb.	
1702.	xiv. 37	Mr. Lloyd.	Aspersing the character of a Member.	18th Nov.	
1702	xiv. 207, 208	Dyer.	Misrepresenting the Proceedings of the House.	26th Feb.	
1740.	xxiii. 546	John Meres.	"The Daily Post:" Highly and injuriously reflecting upon an act of Government, and the Proceedings of both Houses of Parliament.		3d Dec.
1750.	xxvi. 9	Author, Printer and Publisher.	Publishing paper, intituled "Constitutional Queries," grossly reflecting on the House.		22d Jan. {303}
1751.	xxvi. 304	Authors, Printers	The case of the Honourable		20th Nov.

		and Publishers.	Alexander Murray: Aspersing the Proceedings of the House, and tending to create misapprehensions of the same in the minds of the people.		
1774.	xxxiv. 464	Author, Printers and Publishers.	Publishing paper called the "South Briton," reflecting on the House.	16th Feb.	
1788.	xliii. 213	Authors, Printers and Publishers.	"The Morning Herald, The Gazetteer, and New Daily Advertiser." Grossly reflecting on the House and the Members, and tending to prejudice the defence of a person answering at the Bar.		8th Feb.
1788.	xliii. 232	Authors, Printers and Publishers.	"Review of the principal Charges against Warren Hastings," &c. Highly disrespectful to His Majesty, and the House; and indecent observations reflecting on the motives which induced the House to prefer the Impeachment against Warren		15th Feb.

			Hastings.		
1789.	xliv. 463	Printer and Publisher.	“The World.” Containing matter of scandalous and libellous nature, reflecting on the Proceedings of the House.		16th June.
1795.	li. 119, 235.	John Reeves.	As author of a pamphlet, intituled, “Thoughts on the English Government;” which was adjudged by the House to be a malicious, scandalous, and seditious libel, containing matter tending to create jealousies and divisions among His Majesty’s loyal subjects: to alienate their affections from our present happy form of Government in King, Lords, and Commons, and to subvert the true principles of our free Constitution; and to be a high breach of the privileges of the House.		15th Dec.

Claim and Recognition of the Privileges of Parliament, and the Power of Commitment.

11 Rich. II.—Rot. Parl. Vol. iii. p. 244.

EN yeest Parlement, toutz les Seignurs si bien Espiritels come Temporels alors presentz clamerent come lour Libertee & Franchise, q~ les grosses matires moevez en cest Parlement, & a movers en autres Parlementz en temps a venir, tochantz Pieres de la Terre, serroient demesnez, ajuggez, & discus par le cours de Parlement, & nemye par la Loy Civile, ne par la Commune Ley de la Terre, usez en autres plus bas Courtes du Roialme: quell claym, liberte, & franchise le Roy lour benignement alloua & ottroia en plein Parlement.

32 Hen. VI.—Rot. Parl. Vol. v. p. 239.—Thorp's Case.

The seid Lords Spirituelx and Temporelx, not entending to empeche or hurt the Libertees and Privileges of theym that were com~en for the Commune of this lande to this present Parlement, but egally after the cours of lawe to mynystre justice, and to have knowlegge what the lawe will wey in that behalve, opened and declared to the Justices the premisses, and axed of them whether the seid Thomas ought to be delivered from prison, by force and virtue of the Privelegge of Parlement or noo. To the which question the chefe Justcez in the name of all the Justicez, after sadde communication and mature deliberation hadde among them, aunswered and said; that they ought not to aunswere to that question, for it hath not be used afore tyme, that the Justicez shuld in eny wyse determine the Privelegge of this high Court of Parlement.

4 Hen. VIII.—The original Roll in the Parliament Office.—Stroude's Case.

This is the act conc'nyng Richard Stroude for matt^s resoned in the P'liament.—The Act begins by reciting the Petition of R^d Stroude, and after that recital proceeds thus:

HENRY R.

Soit baill aux Senio's.

And on that be it inacted by the seide Autorite, That al suits, accusementis, grev'ncez, charges, & impositions putt or hadde or her aft' to be put or hadde unto or upon the seide Richard, and to every other of the p'son or p'sons afore specyfied that nowe be of this p'sent P'liament or that of any P'liament her {305} after shall be for any bylle speyking, reasonyng or declaryng of any mat' or maters conc'nyng the P'liament to be comenced and treated off, be utt'ly voyde & of none effecte, and on that be hyt inacted by the seide Autorite, That if the seide Richard Strode, or any of all the seide other p'son or persons her after be vexy'd, trobeled or other wyse charged for any causes aqs is aforesaide, that then he or they & every of them so vexed or troubled off and for the same, have acc'on upon the case agaynste ev'ry such p'son or p'sons so vexyng or trobelyng any cot'rie to this Ordin'ns & p'vision, in the which acc'on the p'tie greyvd shall be recov' treby'll damages & costis, & that no p'tecon, essoine, nor wager of Lawe in the seide acc'on in any wise be admytted nor receyvid.

A Ce'st Bill Ley Seinos ss Assent.

1606.—Com. Journ. Vol. i. p. 349.

The Commons tell the Lords “that they doubt not, but the Commons House is a Court, and a Court of Record.”

1620.—Com. Journ. Vol. i. p. 545.

In a Report of Precedents by Sir Edward Coke, it is agreed, “The House of Commons, alone, hath a power of punishment, and that judicial.”—Hall's Case, 23 Elizth, and Long's Case, 5th Elizth cited.

1675, June 4th.—Com. Journ. Vol. ix. p. 354.

In the matter of the appellant Jurisdiction of the House of Lords, the Commons assert their right “to punish by imprisonment a Commoner that is guilty of violating their Privileges, that being according to the known Laws and Custom of Parliament, and the right of their Privileges declared by the king's Royal Predecessors in former Parliaments and by himself in this;” and “that neither the great Charter, the Petition of Right, nor any other Laws, do take away the Law and Custom of Parliament, or of either House of Parliament.”

1701.—Vol. xiii. p. 767.—Kentish Petition.

Resolved, That it is the Opinion of this Committee, that to assert the House of Commons have no power of Commitment, but of their own Members, tends to the subversion of the Constitution of the House of Commons.

Resolved, That it is the Opinion of this Committee, That to print or publish any Books or Libels reflecting upon the proceedings of the House of Commons, or any Member thereof, for or relating to his service therein, is a high violation of the Rights and Privileges of the House of Commons.

Ashby & White.

Conferences between the two Houses.

The Commons at the second Conference with the Lords re-assert their Resolution of 1701:

{306}

“For it is the ancient and undoubted right of the House of Commons to commit for breach of Privilege; and the instances of their committing persons (not Members of the House) for breach of Privilege, and that to any her Majesty’s prisons, are ancient, so many, and so well known to your Lordships, that the Commons think it needless to produce them.”—Lords Journ. Vol. xvii. p. 709.

Lords Journ. Vol. xvii. p. 714.

The Lords in answer say,—“The Lords never disputed the Commons power of committing for breach of Privilege, as well persons who are not of the House of Commons as those who are,” &c.

APPENDIX (D.)

Recognition of the Law and Privilege of Parliament, and of the Power of the House of Commons to commit for Contempt, by Legal Authorities, and by the Decision of Courts of Justice.

Coke, 4 Inst. fo. 15.

Lord Coke observes, upon the Claim of the Lords, in 11 Rich. II. sanctioned by the King, as stated in the first paragraph of Appendix (C.) under the head of ‘Lex & Consuetudo Parliamenti;’ as followeth—“And as every Court of Justice hath Laws and Customs for its direction, some by the Common Law, some by the Civil Law and Common Law, some by peculiar Laws and Customs, &c. so the High Court of Parliament—suis proprijs legibus et consuetudinibus subsistit—It is lex et consuetudo Parliamenti, that all weighty matters in any Parliament, moved concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged, and discussed by the course of Parliament, and not by Civil Law, nor yet by the Common Laws of this Realm used in inferior Courts; which was so declared to be—secundum legem et consuetudinem Parliamenti—concerning the Peers of this Realm, by the King, and all the Lords Spiritual and Temporal: And the like, *pari ratione*, is for the Commons for any thing moved or done in the House of Commons.”

Coke, 4 Inst. fo. 50.

And on another occasion, in treating of the Laws, Customs, Liberties, and Privileges of the Court of Parliament, which he saith, “hath been much desired, {307} are the very heart-strings of the Commonwealth.” Lord Coke says—“All the Justices of England, and Barons of the Exchequer, are assistants to the Lords, to inform them of the Common Law, and thereunto are called severally by Writ: neither doth it belong to them (as hath been said) to judge of any Law, Custom, or Privilege of Parliament: And to say the truth, the Laws, Customs, Liberties, and Privileges of Parliament, are better to be learned out of the Rolls of Parliament, and other Records, and by Precedents and continued experience, that can be expressed by any one man’s pen.”

26 Car. II.—1674.—State Trials, Vol. vii. p. 449.—Soame's Case.

Lord Chief Justice North said—"I can see no other way to avoid consequences derogatory to the honour of the Parliament, but to reject the action; and all others that shall relate either to the Proceedings or Privilege of Parliament, as our predecessors have done.

"For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province; for if we err, Privilege of Parliament will be invaded, which we ought not in any way to endamage."

1675.—State Trials, Vol. ii. p. 622.—Earl of Shaftesbury's Case.

In the Case of the Earl of Shaftesbury, who was committed by the House of Lords "for high contempts committed against the House," on being brought up to the King's Bench on the Return of an Habeas Corpus, the Court unanimously determined against entertaining the case; when Rainsford, Chief Justice, said, "This Court has no jurisdiction of the Cause, and therefore the form of the Return is not considerable. We ought not to extend our jurisdiction beyond its limits, and the actions of our ancestors will not warrant such an attempt.

"The consequence would be very mischievous, if this Court should deliver a Member of the House of Peers and Commons who are committed, for thereby the business of Parliament may be retarded; for it may be the commitment was for evil behaviour, or indecent reflections on other Members, to the disturbance of the affairs of Parliament.

"The commitment in this case is not for safe custody; but he is in execution of the judgment given by the Lords for contempt; and therefore, if he should be bailed, he would be delivered out of execution; for a contempt *in facie curiae* there is no other judgment or execution.

"This Court has no jurisdiction, and therefore he ought to be remanded. I deliver no opinion whether it would be otherwise in case of a Prerogative."

{308}

1751, Feb. 7th.—1 Wilson, p. 200.—Murray's Case.

When he was brought up to the King's Bench by a Habeas Corpus, and the Court unanimously refused to discharge him, Mr. Justice Wright said, "It appears upon the Return of this Habeas Corpus, that Mr. Murray is committed to Newgate by the House of Commons, for an high and dangerous contempt of the Privileges of that House; and it is now insisted on at the Bar, that this is aailable case, within the meaning of the Habeas Corpus Act.

“To this I answer, that it has been determined by all the Judges to the contrary; that it could never be the intent of that Statute to give a Judge at his chamber, or this Court, power to judge of the Privileges of the House of Commons.

“The House of Commons is undoubtedly an high Court; and it is agreed on all hands that they have power to judge of their own Privileges; it need not appear to us what the contempt was for; if it did appear, we could not judge thereof.

“Lord Shaftesbury was committed for a contempt of the House; and being brought here by an Habeas Corpus, the Court remanded him; and no case has been cited wherever this Court interposed.

“The House of Commons is superior to this Court in this particular; this Court cannot admit to bail a person committed for a contempt in any other Court in Westminster Hall.

Dennison, Justice.—“This Court has no jurisdiction in the present case. We granted the Habeas Corpus, not knowing what the commitment was; but now it appears to be for a contempt of the Privileges of the House of Commons: what those Privileges (of either House) are, we do not know; nor need they tell us what the contempt was, because we cannot judge of it; for I must call this Court inferior to the House of Commons with respect to judging of their Privileges, and Contempts against them. I give my Judgment so suddenly, because I think it a clear case, and requires no time for consideration.”

Foster, Justice.—“*The Law of Parliament is part of the Law of the Land*; and there would be an end of all Law, if the house of Commons could not commit for a Contempt; and Lord Holt, though he differed with the other Judges, yet agreed the House might commit for a Contempt in the face of the House. As for the Prisoner’s illness, we can take no notice of it, having now power at all in this case.”

The Prisoner was remanded.

{309}

1771.—3 Wils. 188.—Crosby’s Case.

In the year 1771, Brass Crosby, esq. the Lord Mayor, who was committed to the Tower by order of this House, under the Speaker’s Warrant on 25th March, 1771, was brought up by Habeas Corpus before the Court of Common Pleas in Ester term. The question was fully argued, and, by the unanimous judgment of the Court, he was remanded.

The Lord Chief Justice de Grey, in giving the opinion of the Court, stated, “That this power (viz. of commitment) must be inherent in the House of Commons, from the very nature of its institution; and therefore is part of the Law of the Land. They certainly always could commit in many cases; in matter of Elections they can commit Sheriffs, Mayors,

Officers, Witnesses, &c. and it is now agreed, that they can commit generally for all Contempts. All Contempts are either punishable in the Court contemned, or in some higher Court. Now the Parliament has no superior Court; therefore the contempt against either House can only be punished by themselves.”

“The Stat. of James I. cap. 13, sufficiently proves that they have power to punish it, in these words: ‘Provided always, that this Act, or any thing therein contained, shall not 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 arrest as aforesaid;’ so that it is most clear that the Legislature have recognized this power of the House of Commons. In the case of the Aylesbury Men, the Council admitted, Lord Chief Justice Holt owned, and the House of Lords acknowledged, that the House of Commons had power to commit for Contempt or Breach of Privilege. Indeed, it seems that they must have power to commit for any crime. When the House of Commons adjudge any thing to be a Contempt or a Breach of Privilege, their adjudication is a conviction, and their commitment in consequence an execution; and no Court can discharge or bail a person that is in execution by the judgment of any other Court.”

And he concluded his judgment in these words:

“I am perfectly satisfied that if Lord Holt himself were to have determined it, the Lord Mayor would have been remanded. In the case of Mr. Murray, the Judges could not hesitate concerning the contempt by a man who refused to receive his sentence in a proper posture; all the Judges agreed, that he must be remanded, because he was committed by a Court having competent jurisdiction. Courts of Justice have no cognizance of the acts of the Houses of Parliament, because they belong ad aliud examen. I have the most perfect satisfaction in my own mind in that determination. Sir Martin Wright, {310} who felt a generous and distinguished warmth for the liberty of the subject; Mr. Justice Denison, who was so free from connections and ambition of every kind; and Mr. Justice Foster, who may be truly called the Magna Charta of liberty, of persons as well as fortune; all these revered Judges concurred in this point. I am therefore clearly and with full satisfaction of opinion, that the Lord Mayor must be remanded.”

Gould, Justice.—“I entirely concur in opinion with my Lord Chief Justice, that this Court hath no cognizance of Contempts or breach of Privilege of the House of Commons; they are the only Judges of their own Privileges; and that they may be properly called Judges, appears in 4 Inst. 47, where my Lord Coke says, an alien cannot be elected of the Parliament, because such a person can hold no place of judicature. Much stress has been laid upon an objection, that the Warrant of the Speaker is

not conformable to the Order of the House; and yet no such thing appears upon the Return, as has been pretended. The Order says, that the Lord Mayor shall be taken into the custody of the Serjeant or his Deputy; it does not say, by the Serjeant or his Deputy. This Court cannot know the nature and power of the proceedings of the House of Commons: it is founded on a different law; the *lex et consuetudo Parlamenti*, is known to Parliament men only. Trewynnard's case, Dier, 59, 60. When matters of Privilege come incidentally before the Court, it is obliged to determine them, to prevent a failure of justice. //310-1// It is true this Court did, in the instance alluded to by the Counsel at the Bar, determine upon the Privilege of Parliament in the case of a Libel: but then that Privilege was promulged and known; it existed in records and law books, and was allowed by Parliament itself. But even in that case, we now know that we were mistaken; for the House of Commons have since determined, that Privilege does not extend to matters of Libel. The cases produced respecting the High Commission Court, &c. are not to the present purpose, because those Courts had not a legal authority. The Resolution of the House of Commons is an adjudication, and every Court must judge of its own contempts."

Blackstone, Justice.—“I concur in opinion, that we cannot discharge the Lord Mayor. The present case is of great importance, because the liberty of the Subject is materially concerned. The House of Commons is a Supreme Court, and they are judges of their own Privileges and Contempts, more especially with respect to their own Members.—Here is a Member committed in execution by the judgment of his own House. All Courts, by which I mean to include the two Houses of Parliament and the Courts of Westminster Hall, can have no control in matters of contempt. The sole adjudication of contempts, and the punishment thereof, in any manner, belongs exclusively, and without interfering, to each respective Court. {311} Infinite confusion and disorder would follow, if Courts could by Writ of Habeas Corpus examine and determine the contempts of others. This power to commit results from the first principles of justice; for if they have power to decide, they ought to have power to punish. No other Court shall scan the judgment of a superior Court, or the principal Seat of Justice. As I said before, it would occasion the utmost confusion, if every Court of this Hall should have power to examine the commitments of the other Courts of the Hall for contempts; so that the judgment and commitment of each respective Court as to contempts must be final and without control. It is a confidence that may, with perfect safety and security, be reposed in the Judges and the Houses of Parliament. The Legislature since the Revolution (see 9 & 10 W. III. c. 15,) have created many new contempts. The objections which are brought, of abusive consequences, prove too

much, because they are applicable to all Courts of dernier resort: et ab abusu ad usum non valent consequential, is a maxim of law as well as of logic. General convenience must always outweigh partial inconvenience; even supposing (which in my conscience, I am far from supposing) that in the present case the House has abused its power. I know, and am sure that the House of Commons are both able and well inclined to do justice. How preposterous is the present murmur and complaint! The House of Commons have this power only in common with all the Courts of Westminster Hall: and if any persons may be safely trusted with this power, they must surely be the Commons, who are chosen by the people; for their privileges and powers are the privileges and powers of the people. There is a great fallacy in my brother Glynn's whole argument, when he makes the question to be, Whether the House have acted according to their right or not; Can any good man think of involving the Judges in a contest with either House of Parliament, or with one another? And yet this manner of putting the question would produce such a contest. The House of Commons is the only Judge of its own proceedings: Holt differed from the other Judges in this point, but we must be governed by the eleven, and not by the single one. It is a right inherent in all supreme Courts; the House of Commons have always exercised it. Little nice objections of particular words, and forms and ceremonies of execution, are not to be regarded in the acts of the House of Commons; it is our duty to presume the Orders of that House, and their execution, are according to law. The Habeas Corpus in Murray's case was at Common Law. I concur entirely with my Lord Chief Justice."

1771.—Oliver's Case.

And in Mr. Alderman Oliver's case, argued in the Court of Exchequer on the 27th of April, 1771, the four Judges, Chief Baron Parker, Mr. Baron Smythe, Mr. Baron Adams, and Mr. Baron Perrot, unanimously acknowledged in like manner the right of the House of Commons to commit.

{312}

1779.—Durnford and East's Reports, K.B. Book 8. P. 314.
Flower's Case.

In the case of Flower, omitted by the House of Lords, for a libel on the Bishop of Landaff, on his being brought up to the King's Bench upon Habeas Corpus, Lord Kenyon, Chief Justice, said,—“If we entertain any doubts upon this subject, it would be unbecoming in us to rush to a speedy decision

without looking through all the cases cited by the Defendant's Counsel; but not having any doubts, I think it best to dispose of the case at once. The cases that have been referred to are all collected in Lord Hale's Treatise on the Jurisdiction of the Lords House of Parliament, and that valuable Preface to it published by Mr. Hargrave; but in the whole of that publication the Defendant's Counsel has not found one case applicable to the present. This is one of the plainest questions that ever was discussed in a Court of Law. Some things, however, have dropped from the learned Counsel, that require an answer:—First, it is said that the House of Lords is not a Court of Record. That the House of Lords when exercising a legislative capacity is not a Court of Record, is undoubtedly true; but when sitting in a judicial capacity, as in the present case, it is a Court of Record. Then it was objected, that the Defendant was condemned without being heard in his defence: but the warrant of commitment furnishes an answer to that: by that it appears, that 'he was informed of the complaint made against him,' &c. and having been heard as to what he had to say in answer to the said complaint, &c. he was adjudged 'guilty of a high breach of the Privileges of the House,' &c. so that it clearly appears that he was heard in his defence, and had the same opportunity of calling Witnesses that every other Defendant has in a Court of Justice. Then insinuations are thrown out against the encroachments by the House of Lords on the liberties of the Subject: but the good subjects of this country feel themselves protected in their liberties by both Houses of Parliament. Government rests in a great degree on public opinion; and if ever the time shall come, when factious men will overturn the Government of the Country, they will begin their work by calumniating the Courts of Justice and both Houses of Parliament.

“The ground of this proceeding is, that the Defendant has been guilty of a breach of Privileges of the House, and a contempt of the House. This claim of right to punish by fine and imprisonment for such an offence, is not peculiar to the House of Lords; it is frequently exercised by this and other Courts of Record, and that not merely for contempts committed in the presence of the Court: One instance of which was that of Mr. Beardmore, //312-1// {313} Under Sheriff of Middlesex, for a contempt of the Court in not executing part of the sentence pronounced on Dr. Shebbeare. And that case answers another objection, strongly insisted on by the Defendant's Counsel here, that if the party accused can be punished in any other manner, this mode of trial cannot be resorted to; for there Mr. Beardmore might have been indicted, but yet he was attached, examined upon interrogatories, and fined and imprisoned. Again it is objected, that the House of Lords cannot impose a fine for such an offence: but this and other Courts of Record have the power of

fining in this summary manner; and why should not the House of Lords have the same power of imposing a fine for a contempt of their privileges? Then several instances were alluded to, where the House did not choose to exercise this privilege, but directed prosecutions to be instituted in the Courts of Law. The same observations might equally be made on the proceedings of this Court, who have sometimes directed indictments to be preferred. We are not therefore to conclude that the House of Lords has not the power of inflicting this punishment, from the circumstance of its not exercising it on all occasions. When Lord Shaftesbury's case came on, there were some persons who wished to abridge the Privileges of the House of Lords: but Mr. Serjeant Maynard was one of those who argued in support of their Privileges; and he surely was not capable of concurring in any attempt to infringe the liberties of the people. It has been said, however, that though many instances are to be found in which the House of Lords has in point of fact exercised this power, whenever that power has been resisted it has been resisted with effect; from whence it is inferred, that the House of Lords has not the authority which it assumes: but in this case I may avail myself of the same argument in favour of its Jurisdiction, for no case has been found where it has been holden to be illegal in the House of Lords to fine and imprison a person guilty of a breach of Privilege. We were bound to grant this Habeas Corpus; but having seen the Return to it, we are bound to remand the Defendant to prison, because the subject belongs to 'aliud examen.' There is nothing unconstitutional in the House of Lords proceeding in this mode for a breach of Privilege; and unless we wish to assist in the attempt that is made to upset the Law of Parliament and the Constitution, we must remand the Defendant.

Grose, J.—“This question is not new; it has frequently been considered in Courts of Law; and the principles discussed to-day, and the Cases cited, were examined not many years ago; and the result is very ably stated by Lord Ch. Just. De Grey, in 3 Wils. 199, ‘When the House of Commons (and the same may be said of the House of Lords) adjudge any thing to be a Contempt or a breach of Privilege, their adjudication is a conviction, and their commitment in consequence, is execution; and no Court can discharge or bail a person that is in execution by the judgment of any other Court.’ {314} In another passage he said, ‘Every Court must be sole judge of its own contempts.’ And again, ‘The Counsel at the Bar have not cited one case where any Court of this Hall ever determined a matter of Privilege which did not come immediately before them.’”

“Having stated this, I think I need not add more in the present case.”

Per Curiam. //314-1//

Let the Defendant be remanded.

APPENDIX (E.)

Cases of Commitments for Contempt by Courts of Justice.

ANALOGY.

In Michaelmas Term, 18 Edward III.

John De Northampton, an Attorney of the Court of King's Bench, confessing himself guilty of writing a letter respecting the Judges and Court of King's Bench, which letter was adjudged by the Court to contain no truth in it, and to be calculated to excite the King's indignation against the Court and the Judges, to the scandal of the said Court and Judges, was committed to the Marshal, and ordered to find securities for his good behaviour.—3 Inst. 174.

Hilary Term, 11 Ann.

A Writ of Attachment was issued against *Thomas Lawson*, for speaking disrespectful words of the Court of Queen's Bench, upon his being served with a Rule of that Court.

Hilary Term, 12 Ann.

A Writ of Attachment was granted against *Edward Hendale*, for speaking disrespectful words of the Lord Chief Justice of the Court of Queen's Bench, and his Warrant.

Trinity Term, 5 Geo. I.

A Writ of Attachment against — *Jones*, for treating the Process of the Court of King's Bench contemptuously; and there being an intimation {315} that he relied on the assistance of his fellow-workmen to rescue him, the Court sent for the Sheriff of Middlesex into Court, and ordered him to take a sufficient force.—1 Strange, 185.

Michaelmas Term, 6 Geo. I.

A writ of Attachment was granted to *Richard Lamb*, for contemptuous words concerning a Warrant from a Judge of the Court of King's Bench.

Easter Term, 6 Geo. I.

— *Wilkins* having confessed himself guilty of publishing a Libel upon the Court of King's Bench, the Court made a rule committing him to the Marshal.

The next Term Wilkins having made an affidavit charging Doctor Colebatch with being the author of the Libel, was sentenced to pay a fine of £5, and to give security for his good behaviour for a year.

Hilary Term, 7 Geo. I.

An Attachment was granted against *John Barber*, esquire, for contemptuous Words of the Court of King's Bench, in a speech to the Common Council of London.—1 Strange, 443.

Hilary Term, 9 Geo. I.

Doctor Colebatch having been examined upon interrogatories, for contempt in publishing a Libel, the interrogatories and answers were referred to the King's Coroner and Attorney; and

In Easter Term, 9 Geo. I.

Doctor Colebatch, being in the custody of the Marshal, was brought into Court, and was sentenced to pay a fine of £.50, and to give security for his good behaviour for a year, and was committed to the Marshal in execution.

Michaelmas Term, 9 Geo. I.

A Writ of Attachment was granted against *John Bolton*, Clerk, for contemptuous words respecting the Warrants of the Lord Chief Justice of the Court of King's Bench, at a meeting of his parishioners in the Church-yard.

Easter Term, 9 Geo. I.

John Wyatt, a bookseller in St. Paul's Church-yard, published a pamphlet, written by Dr. Conyers Middleton, in the dedication of which to the Vice-Chancellor of Cambridge, were some passages reflecting upon a proceeding of the Court of King's Bench; the Court granted a Rule against Wyatt, to show cause why a Writ of Attachment should not issue against him for his contempt; and Wyatt, having made an affidavit that *Cornelius Crownfield* had employed {316} him to sell the pamphlet, and he having charged Dr. Conyers Middleton with being the author of it, Crownfield was discharged upon payment of the costs, and a Writ of Attachment was granted against Dr. Conyers Middleton, who, in the next Term, gave bail to answer the contempt; he as afterwards examined upon interrogatories, and upon the report of the King's Coroner and Attorney he was adjudged to be in contempt, and was committed to the Marshal in execution quousque, &c. and it was referred to the Master to tax the Prosecutor's costs.

It is stated in Fortescue's Reports, that Dr. Middleton was sentence to pay a fine of £.50, and to give security for a year; but no Rule for such sentence has at present been found; and Dr. Colebatch having received such a sentence, for a similar offence, in the preceding Term, it is *possible* that this sentence may, by mistake, have been applied to Dr. Middleton.

Michaelmas Term, 5 Geo. II.

The Court granted a Writ of Attachment against Lady Lawley, for a contempt in publishing a paper reflecting upon the proceedings of the Court; and she having been examined upon interrogatories, was in Easter Term following reported by the Officer of the Court to be in contempt, and was committed to the Marshal.

And in Trinity Term, 6 Geo. II. she was brought into Court, and a Rule made, stating that "fecit submissionem suam petivit veniam de curiâ;" and thereupon she was fined five marks and discharged.

Mark Halpenn, the husband of Lady Lawley, was also examined upon interrogatories, for publishing the same Libel.—2 Barnardiston, K.'s B. 43.

Extract from Atkyns's Reports, Book 2, p. 469.

First Seal after Michaelmas Term, December 3d, 1742.

A motion against the printer of *The Champion*, and the printer of *The Saint James's Evening Post*; that the former, who is already in the Fleet, may be committed close prisoner, and that the other, who is at large, may be committed to the Fleet, for publishing a Libel against Mr. Hall and Mr. Garden (executors of John Roach, esquire, late Major of the garrison of Fort Saint George in the East Indies), and for reflecting likewise upon governor Mackay, governor Pitt, and others, taxing them with turning affidavit-men, &c. in the Cause now depending in this Court; and insisting that the publishing such a paper is a high contempt of this Court, for which they ought to be committed.

Lord Hardwicke, Lord Chancellor.

Nothing is more incumbent upon Courts of Justice than to preserve their proceedings from being misrepresented; nor is there any thing of more pernicious {317} consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard. //317-1// It has always been my opinion, as well as the opinion of those who have sat here before me, that such a proceeding ought to be discountenanced.

But to be sure Mr. Solicitor General has put it upon the right footing, that notwithstanding this should be a Libel, yet unless it is a contempt of the Court, I have no cognizance of it; for whether it is a Libel against the public, or private persons, the only method is to proceed at law.

The Defendants Counsel have endeavoured two things—1st, to show this paper does not contain defamatory matter; 2dly, if it does, yet there is no abuse upon the proceedings of this Court: And therefore there is no room for me to interpose.

Now take the whole together, though the letter is artfully penned, there can remain no doubt in every common reader at a coffee-house but this is a defamatory libel.

It is plain therefore who is meant; and as a Jury, if this fact was before them, could make no doubt, so, as I am a Judge of facts as well as law, I can make none.

I might mention several strong cases, where even feigned names have been construed a libel upon those persons who were really meant to be libelled.

Upon the whole, as to the libellous part, if so far there should remain any doubt whether the executors are meant, it is clear beyond all contradiction upon the last paragraph, in which re these words: “This case ought to be a warning to all fathers to take care with whom they trust their children and their fortunes, lest their own characters, their widows and their children, be aspersed, and their fortunes squandered away in law-suits.”

And likewise, though not in so strong a degree, the words “turned Affidavit-men,” is a libel against those Gentlemen who have made them.

There are three different sorts of Contempt:

One kind of Contempt is, scandalizing the Court itself.

There may be likewise a Contempt of this Court, in abusing parties who are concerned in causes here.

There may also be a Contempt of this Court, in prejudicing mankind against persons before the cause is heard.

There cannot be any thing of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.

The case of Raikes, the Printer of the Gloucester Journal, who published a libel in one of the Journals against the Commissioners of Charitable Uses at Burford, calling his advertisement A Hue and Cry after a Commission of Charitable Uses, was of the same kind as this, and the Court in that case committed him.

There are several other cases of this kind; one strong instance, where there was nothing reflecting upon the Court, in the case of Captain Perry, who printed his brief before the cause came on; the offence did not consist in the printing, for any man may give a printed brief, as well as a written one to Counsel; but the Contempt of this Court was, prejudicing the world with regard to the merits of the cause before it was heard.

Upon the whole, there is no doubt but this is a Contempt of the Court. With regard to Mrs. Read, the Publisher of Saint James's Evening Post, by way of alleviation, it is said, that she did not know the nature of the paper; and that printing papers and pamphlets is a trade, and what she gets her livelihood by.

But though it is true this is a trade, yet they must take care to do it with prudence and caution; for if they print any thing that is libellous, it is no excuse to say that the printer had no knowledge of the contents, and was entirely ignorant of its being libellous: and so is the rule of Law, and I will always adhere to the strict rules of Law in these cases.

Therefore Mrs. Reed [\so](#) in text\ must be committed to the Fleet, according to the common order of the Court upon Contempts.

But as to Mr. Huggonson, who is already a prisoner in the Fleet, I do not think this any motive for compassion; because these persons generally take the advantage of their being prisoners to print any libellous or defamatory matter which is brought to them, without scruple or hesitation.

If these printers had disclosed the name of the person who brought this paper to them, there might have been something said in mitigation of their offence; but as they think proper to conceal it, I must order Mrs. Read to be committed to the Fleet, and Huggonson to be taken into close custody of the Warden of the Fleet.

13th Vesey, jun. page 237.

Ex parte Jones.

The object of this Petition was to remove the Committee of a Lunatic, and to bring before the Lord Chancellor an alleged Contempt by the Committee and his Wife, and other persons, as the authors, printers and publishers of a Pamphlet, with an Address to the Lord Chancellor by way of dedication, reflecting upon the conduct of the Petitioner, and others acting in the management of the affairs of the Lunatic, under orders made in pursuance of the Trusts of a Will, the Affidavit representing the conduct of the Committee and his Wife, intruding into the Master's Office, and interrupting him, not only in the business of this particular Lunacy, but all other business. The Wife of the Committee avowed

herself to be the author of the Pamphlet, alleging the innocence of her husband.

The Solicitor-general (Sir Samuel Romilly) and Mr. Hart, in support of the Petition, were stopped by the Lord Chancellor, who called on the Counsel against it.

{319}

Mr. Plowden resisted the Petition, contending that the Petitioners had a remedy at Law.

Lord Erskine, Lord Chancellor.

As to *remedy at Law*, the subject of this application is not the libel against the Petitioner.—The case of *Roach v. Garvan*, //319-1// and another there mentioned, were cases of constructive contempt, depending upon the inference of an intention to obstruct the course of justice. In this instance that is not left to conjecture; and whatever may be said as to a constructive contempt through the medium of a libel against persons engaged in controversy in the Court, it never has been nor can be denied, that a publication not only with an obvious tendency, but with the design to obstruct the ordinary course of justice, is a very high contempt.—Lord Hardwicke considered persons concerned in the business of the Court as being under the protection of the Court, and not to be driven to other remedies against libels upon them in that respect.—But without considering whether this is or is not a libel upon the Petitioner, what excuse can be alleged for the whole tenor of this book, and introduced by this declaration of the purpose which the author intended it to answer? It might be sufficient to say of the book itself, stripped of the dedication, that it could be published with no other intention than to obstruct the duties cast upon the Petitioner, and to bring into contempt the orders that had been made. But upon the dedication this is not a constructive Contempt. It is not left to inference. In this dedication the object is avowed, by defaming the proceedings of the Court standing upon its Rules and Orders, and interesting the public, prejudiced in favour of the author by her own partial representation, to procure a different species of judgment from that which would be administered in the ordinary course, and by flattering the Judge to taint the source of justice.—This Pamphlet has been sent to me.

As to the printers, Lord Hardwicke observes, it is no excuse that the printer was ignorant of the contents. Their intention may have been innocent; but, as Lord Mansfield has said, the fact whence the illegal motive is inferred must be traversed, and the party admitting the act cannot deny the motive.—The maxim “*Actus non facit reum, nisi mens sit rea*,” cannot be made applicable to this subject in the ordinary administrations of justice, as the effect would be that the ends of justice

would be defeated by contrivance.—But upon the satisfactory account given by three of these printers, though undoubtedly under a criminal proceeding, they would be in mercy in a case of contempt. Though I have the jurisdiction, I shall not use it.—The other printer appears upon the affidavits under different circumstances. Having made the observation, that this Pamphlet ought not to be printed, being totally uninteresting to the public, yet he does print it; and though the locus penitentiae was afforded to him, and he was called upon not to print any more, he proceeded until he had notice of this Petition.

{320}

Let the Committee, and his Wife, and the Printer to whom I have last alluded, be committed to the Fleet Prison. Dismiss the Committee from that office; and direct a reference to the Master, as to the appointment of another Committee.

Extracts from Sir Eardley Wilmot's Opinions and Judgments; p. 253.
Hilary Term, 5 Geo. III.—1765.
The KING against ALMON.

“It has been argued that the mode of proceeding by Attachment is an invasion upon the ancient simplicity of the Law; that it took its rise from the Statute of Westminster, ch. 2; and Gilbert's History of the practice of the Court of Common Pleas, p. 20, in the first edition, is cited to prove that position. And it is said, that Act only applies to persons resisting process; and though this mode of proceeding is very proper to remove obstructions to the execution of process, or to any contumelious treatment of it, or to any contempt to the authority of the Court, yet that papers reflecting merely upon the qualities of Judges themselves are not the proper objects of an attachment; that Judges have proper remedies to recover a satisfaction for such reflections, by actions of “*Scandalum Magnatum*,” and that in the case of a Peer, the House of Lords may be applied to for a breach of Privilege: That such Libellers may be brought to punishment by indictment or information; that there are but few instances of this sort upon Libels on Courts or Judges; that the Common Pleas lately refused to do it; that Libels of this kind have been prosecuted by Actions and Indictment; and that Attachments ought not to be extended to Libels of this nature, because Judges would be determining in their own cause; and that it is more proper for a Jury to determine “*quo animo*” such Libels were published.

“As to the origin of Attachments, I think they did not take their rise from the Statute of Westminster, ch. 2; the passage out of Gilbert does not prove it, but he only says, “the origin of commitments for contempt, ‘seems’ to be derived from this Statute;” but read the paragraph through,

the end contradicts the 'seeming' mentioned in the beginning of it; and shows that it was a part of the Law of the Land to commit for contempt, confirmed by this Statute. And indeed when that Act of Parliament is read, it is impossible to draw the commencement of such a proceeding out of it; it empowers the Sheriff to imprison persons resisting process, but has no more to do with giving Courts of Justice a power to vindicate their own dignity than any other chapter in that Act of Parliament.

"The power which the Courts in Westminster Hall have of vindicating their own authority, is coeval with their first foundation and institution; it is a necessary incident to every Court of Justice, whether of Record or not, to fine and imprison for a contempt to the Court, acted in the face of it, 1 Vent. 1, {321} and the issuing of Attachments by the supreme Courts of Justice in Westminster Hall, for contempts out of Court, stands upon the same immemorial usage as supports the whole fabric of the Common law; it is as much the "Lex Terrae," and within the exception of Magna Charta, as the issuing any other legal process whatever.

"I have examined very carefully to see if I could find out any vestiges or traces of its introduction, but can find none; it is as ancient as any other part of the Common Law; there is no priority or posteriority to be discovered about it, and therefore cannot be said to invade the Common Law, but to act in alliance and friendly conjunction with every other provision which the wisdom of our ancestors has established for the general good of society. And though I do not mean to compare and contrast Attachments with Trials by Jury, yet truth compels me to say, that the mode of proceeding by Attachment stands upon the very same foundation and basis as Trials by Jury do, immemorial usage and practice; it is a constitutional remedy in particular cases; and the Judges in those cases are as much bound to give an activity to this part of the Law, as to any other part of it. Indeed it is admitted, that Attachments are very properly granted for resistance of process, or a contumelious treatment of it, or any violence or abuse of the Ministers or others employed to execute it. But it is said that the course of Justice in those cases is obstructed, and the obstruction must be instantly removed; that there is no such necessity in the case of Libels upon Courts or Judges, which may wait for the ordinary method of prosecution, without any inconvenience whatsoever. But where the nature of the offence of libelling Judges for what they do in their judicial capacities, either in Court or out of Court, comes to be considered, it does, in my opinion, become more proper for an Attachment than any other case whatsoever.

"By our Constitution, the King is the fountain of every species of Justice which is administered in this Kingdom, 12 Co. 25. The King is "de jure" to distribute justice to all his subjects; and because he cannot do it himself to all persons, he delegates his power to his Judges, who have the

custody and guard of the King's oath, and sit in the seat of the King "concerning his justice."

"The arraignment of the justice of the Judges is arraignment of the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the mind of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the Laws is so fundamentally shaken, it is the most fatal and the most dangerous obstruction of justice, and in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open and uninterrupted current, which has for many {322} ages found all over this kingdom, and which so eminently distinguishes and exalts it above all nations upon the earth.

"In the moral estimation of the offence, and in every public consequence arising from it, what an infinite disproportion is there between speaking contumelious words of the rules of the Court, for which Attachments are granted constantly, and coolly and deliberately printing the most virulent and malignant scandal which fancy could suggest upon the Judges themselves. It seems to be material to fix the ideas of the words "Authority" and "Contempt of the Court," to speak with precision upon the question.

"The Trial by Jury is one part of that system, the punishing Contempts of the Court by Attachment is another: we must not confound the modes of proceeding, and try Contempts by Juries, and murders by Attachment; we must give that energy to each, which the Constitution prescribes. In many cases, we may not see the correspondence and dependence which one part of the system has and bears to another; but we must pay that deference to the wisdom of many ages as to presume it. And I am sure it wants no great intuition to see, that Trials by Juries will be buried in the same grave with the Authority of the Courts who are to preside over them."

Trinity Term, 8 Geo. III.

Writs of Attachment were granted against *Staples Steare*, *John Williams*, and *John Pridden*, for Contempt, in publishing the North Briton Extraordinary, No. 4, containing a Letter addressed to Lord Mansfield, Lord Chief Justice, containing gross reflections on his Lordship.

They were all examined upon interrogatories, and reported in Contempt.

And in Michas. Term, 9 Geo. III. Steare was sentenced to be imprisoned three calendar months.

ZZZ

FOOTNOTES TO 1776_HATSELL_1 PRIVILEGE OF PARLIAMENT

//2-1// Sir Henry Spelman in his Glossary, under Title *Gemotum*, which he explains to be *Conventus Publicus*, cites a Law of King Canute, ch. 107, “Omnis Homo pacem habeat, eundo ad Gemotum, et redeundo a Gemoto.”

//3-1// Rotul. Parl. 18 Edw. I. page 61. N^o 192. 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.—Wherever in this Work, reference is made to the Rolls of Parliament, the Cases will be found in the Six Volumes of the Rotuli Parliamentorum, printed by direction of the House of Lords.

//4-1// See Rotul. Parl. 18 Ed. I. p. 17. N^o 4.

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

//6-1// It has been very properly suggested, 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 just, I leave to abler lawyers to determine.

//11-1// Qu. Whether this Marginal Note is Sir Edward Coke's or some subsequent Editor's?—See, in the Journal of the 14th May 1621, a

precedent, cited by Sir Edward Coke, of the 10th year of Edward III. “where the Clerk of this House had a subpoena served upon him and had Privilege.”—See in this Volume the case, Chap. 3, N^o 13, under the head of “Summoning Members of their Servants.”

//13-1// Elsynge’s “Manner of holding Parliaments,” p. 186.

//13-2// Vol. III. Page 541. N^o 71.

//14-1// Elsynge, p. 187.

//18-1// Vol. IV. page 357.

//20-1// It seems difficult to ascertain precisely 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// Vol. IV. Page 404.

//24-1// Vol. IV. page 453.

//26-1// The 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* //note to 26-1// 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.”

//note to 26-1// This should be *John Salage*; the names are right in the text.

//27-2// Vol. V. page 111.

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

//28-2// Vol. V. page 239 and 240.

//34-1// Commons Journals, Vol. I. p. 546.

//34-2// Vol. V. p. 374.

//40-1// 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.

//40-2// See the arguments of the Counsel and Lord Hardwicke's opinion upon this question, in giving judgment in Colonel Pitt's Case, which is reported in Strange's Reports, page 985.—On the 14th December 1621 the Lord Privy Seal reports in the House of Lords, from the Committee of Privileges, their opinion, "(1) That the Privilege of the Nobility doth clearly extend to all their Menial Servants and those of their family, as also to those employed necessarily and properly about their estates as well as their persons." (2) "That the Freedom from Arrests doth continue *twenty* days before and after every session; in which time the Lords may conveniently go home to their houses in the most remote parts of this kingdom." These Resolutions were ordered to be entered, as the opinion of some of the Lords of the Committee of Privileges, but suspended by the House, to be entered as an Order, till further consideration.—And on the 28th May 1624, these Resolutions are read again, and ordered to be observed accordingly, with this alteration, "This Freedom to begin with the date of the Writ of Summons; and to continue *twenty* days after every Session of Parliament."

//44-1// Vol. VI. 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 comment on and settle the law which arises out of them.

//48-1// Vol. VI. p. 191.

//50-1// See the Note, page 47.

//51-1// Prynne's Fourth Register, p. 776.

//56-1// This Lord Chancellor was Baron Audley de Walden. He had been Speaker of the House of Commons in 1529; and was the immediate successor to Sir Thomas More, in both the offices of Speaker and Chancellor.

//57-1// In Carte's History of England, Vol. 3. pp. 164, 541, it is said, "That the whole Case of Ferrers, related by Hollingshead, and copied by Grafton and Speed, is untrue."—Carte supposes the Case to be a mere Fable, which the Puritans and Calvinists had prevailed on Hollingshead to insert into his History, to serve some political purpose.

//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, 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."

//59-1// Page 859.

//60-1// Prynne's Fourth Register, p. 780.

//62-1// Page 789.

//62-2// Page 61.

//62-3// Page 59.

//65-1// After the Resolutions of the Lords on the 28th May 1624, which are entered before in the Note, pp. 40, 41, there is the following entry, “It is desired, That all the Lords, after the end of this session, be very careful in these points, and remember the ground of these Privileges, which was only in respect they should not be distracted, by the trouble of their servants, from attending the serious affairs of the kingdom; and that therefore they will not pervert this Privilege to the public injustice of the kingdom; so that every one ought rather to go far within, than any way exceed, the due limits.”

//66-1// In a Resolution of the House of Lords, of the 18th April 1626, their Privilege is thus expressed: “Resolved, *nemine dissentiente*, That no Lord of Parliament, sitting 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 give surety for the peace*.” See Lord Arundel’s Case, in this Vol. Ch. 3, under the head of “Commitment of Members by the Privy Council,” No. 8.—See also page 152 of this Volume.

//69-1// See page 58.

//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.

//73-1// It has sometimes been matter of inquiry, what number of Members is necessary to carry a Message to the Lords.

//75-1// This Gentleman was probably father to Sir Walter Rawleigh, who lived at this time in Devonshire. Sir Walter was born in 1552.

//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, &c.” This must probably have been in his answer to the Speaker’s petition; and if so, this observation of Elsynge is not accurately true.

//77-2// See more upon this subject in the Second Volume of this Work, under title “Speaker’s Duty in praying the Privileges of the Commons.”— See also the Appendix to this Volume (N^o 1.) The Apology of the Commons in 1604.

//77-3// See Vol. I. Commons Journal, p. 667.

//77-4// 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.

//82-1// Fourth Register, p. 1209.

//83-1// 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 in Carte, any thing relating to this transaction. Hume indeed mentions the Case, but with this extraordinary introduction:—“The Parliament were so little jealous of their privileges, (which indeed were scarce worth preserving) that there is an instance of one Strode, &c.” He then recites the account of the prosecution, and concludes, “Yet all the notice which the Parliament took of this enormity, even in such an inferior Court, was, to enact, That no Man could be questioned *afterwards* for his conduct in Parliament.” History Tudors, Vol. I. ch. 7. p. 282. This, if compared with the Statute, appears (like many other matters in Mr. Hume’s Work) not to be accurately stated.

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

//86-3// See the Commons Journal, 12th November 1667; and the Lords Journal, 11th December, 1667.

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

//88-1// Page 314.

//89-1// See the 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 may 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.

//92-1// This Book, intituled "An Admonition by the Father of F. A. to him, being a Burgess of the Parliament, for his better behaviour therein," was re-printed by Triphook, St. James's Street, 1815, as part of a Series of Antiquarian Publications, (called *Miscellanea Antiqua Anglicana*) and is very curious.

//93-1// Infra, p. 127.

//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.

//94-2// Nothing, however, of this sort appears in the printed Pamphlet referred to in Note p. 92, which is wholly on the subject of the modern growth of Parliament, with some censures upon the modes of conducting business there, and advice of honesty and independence, &c., written with much quaintness of expression, and frequent allusions to ancient Greek and Roman History.

//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.—This Chancellor was Sir Thomas Bromley, Knight.

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

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

//101-1// But see before Note, pp. 40, 41, which is laid down by the Lords Committee of Privileges upon the 14th December 1621, on this subject, and agreed to by the House on the 28th May 1624.

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

//104-1// 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.

//105-1// Vide Dewes's Journal, page 431. et seq.

//106-1// See Dewes, p. 436.

//107-1// 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.

//111-1// 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.

//111-2// See Dewes, pp. 518, 519, 520.

//112-1// Dewes, p. 560.

//112-2// Dewes, p. 564.

//113-1// Dewes, p. 593.

//113-2// Dewes, pp. 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.

//116-1// See the Lords Journals, Vol. II. p. 69.

//116-2// See the Lords Journals, Vol. II p. 201, et seq.

//116-3// “Of the House of Commons,” as the proceedings relating to Ferrers occurred there.

//116-4// See before N° 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.

//119-1// See other cases of the like nature in Dewes, pp. 647, 651, 655, 656.

//119-2// See also another Case, on the 14th of December, 1601.—Dewes, p. 642, 643, 685, 686.—See in the Lords Journal of the 28th May, 1624, a report from their Committee of Privileges, “That freedom from arrests, extends to all their menial servants, and those of *their families; and that this freedom continues twenty days before and after every Session; in which time, the Lords may conveniently go home to their houses, in the most remote parts of the kingdom.*”

//119-3// Dewes, pp. 656, 657.

//121-1// See this Case at length, and the debates upon it, in Dewes, pp. 610, 614, 666, et subs. to p. 688; and Lords Journals, Vol. II. p. 247.

//122-1// See before N^o 22.

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

//125-1// Pages 685, 686.

//126-1// See Vol. IV. of Parliamentary History, from pp. 452 to 482.

//127-1// See the 4th of Henry VIII. Ch. 8.—Commons Journal, 12th of November 1667.—Lords Journal, 11th of December, 1667.

//128-1// It has however been very common, particularly since the Revolution, for the House of Commons, in cases of Libels, and several other offences against the House, either to order the Attorney General to prosecute the offenders, or to address the King, That he will give directions for that purpose. This mode of proceeding has been generally confined to such cases, as, from the nature of them, would deserve a punishment different from what the House of Commons have power to inflict. The House of Lords have also adopted this mode; on the 18th May 1716, Lord Clarendon reports from a Committee appointed to consider of a proper way of proceeding against certain offenders, and in what manner orders have been made for prosecutions by the Attorney General, "That where offences have been committed against the Honour and Dignity of the House in general, or any Member thereof, the House have proceeded, both by way of Fine and Corporal Punishment upon such offenders. But in other Cases, the Attorney General has been ordered to prosecute the offenders according to Law. And the Committee, on perusal of the several orders directing Prosecutions by the Attorney General, do not find, That, at any time, addresses have been made to the King, for such Prosecutions."

//128-2// 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 Chapter the 4th (N^o 11.) a Committee appointed to inquire into a printed book, Who printed it, and by what allowance?—(3.) Though it is not immediately applicable to this point, I beg to refer 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 26th of May, 1604, to the end of the Session.

//134-1// By my worthy and learned Predecessor, Mr. Tyrwhitt.

//134-2// 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 regalis assensus aut responsio, per nos, praestita fuit.’ Parliamentary History, Vol. V. p. 303.—See in the 2d Vol. of this Work, under title, “King calls the Parliament,” what is there said respecting the question, “what constitutes a Session?”

//135-1// Vide Journal the 5th, 12th, and 15th of February, 1620.—Debates, Vol. I. pp. 14, 32, and 47, and Vol. II. in the Appendix.

//135-2// Vol. V. p. 320.

//135-3// In p. 305 of the 5th volume.

//135-4// Vol. I. p. 15, et seq.

//136-1// 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.

//136-2// See Sir Edwyn Sandys’s Examinations, as preserved in the British Museum, and printed in the Appendix to the debates of 1621.

//137-1// Vol. II. p. 200.

//138-1// See in the Appendix to this Volume, N^o 1. a very curious Paper, intitled, “The Apology and Satisfaction of the Commons to be presented to His Majesty,” which, though reported from a Committee on the 20th June, 1604, is not entered in the Journals, nor is to be found in the Parliamentary History, but is printed in Petyt’s *Jus Parliament^m*, ch. 10 p. 227, in which this Privilege of freedom of speech, with many other of the rights and privileges of the Commons, is very ably asserted and defended, against some attacks that had been made against them, by his Majesty’s servants and advisers.—To shew that James the 1st throughout his whole reign was attentive to this object, and desirous of abridging the Members of the House of Commons of this Privilege, an attempt was again made in 1610, first by Message from the King, and afterwards in a

Speech, to restrain the Commons from debating in Parliament the right of the Crown to impose duties on goods imported and exported; on which occasion, the Commons reply by Petition, and amongst other things, state, "That we hold it an antient, general, and undoubted right of Parliament, to debate freely all matters which do properly concern the subject, and his right or state: which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved." See this Petition at length in the Journal of 23d May, 1610.

No notice is taken of any part of this proceeding in the Parliamentary History.

//139-1// See this protestation before in p. 78.

//140-1// Mr. Pym, who appears so early to have been an object of the resentment of the Crown for his parliamentary conduct, continued a Member of the subsequent Parliaments, till his death, which happened towards the end of the year 1643. Lord Clarendon says, "That in the short Parliament of 1640, he spoke much, and appeared to be the most leading man; for, besides the exact knowledge of the forms and orders of that Council, which few men had, he had a very comely and grave way of expressing himself, with great volubility of words, natural and proper; and understood the temper and affections of the kingdom as well as any man; and had observed the errors and mistakes in Government, and knew well how to make them appear greater than they were. At the first opening of the Parliament of the 3d of November, 1640, though in private designing he was much governed by Mr. Hampden and Mr. St. John, yet he seemed to all men, to have the greatest influence upon the House of Commons of any man; and in truth, I think, he was at that time, and some months after, the most popular man, and the most able to do hurt, that hath lived in any time. Upon the first design of softening and obliging the powerful persons in both Houses, when it was resolved to make the Earl of Bedford Lord High Treasurer, the King likewise intended to make Mr. Pym Chancellor of the Exchequer; for which he received his Majesty's promise, and made a return of a suitable profession of his service and devotion; and thereupon, (the other being no secret), somewhat declined from that sharpness in the House, which was more popular than any man's; and made some overtures to provide for the glory and splendor of the Crown; in which he had so ill success, that his interest and reputation there visibly abated; and he found, that he was much better able to do hurt than good. In the end, (whether, upon the death of the Earl of Bedford, he despaired of that preferment; or, whether he was guilty of any thing, which, upon his conversion to the Court, he thought might be discovered to his damage; or, for pure want

of courage), he suffered himself to be carried by those, who would not follow him, and so continued at the head of those, who made the most desperate propositions. From the time of his being accused of high treason by the King, with the Lord Kimbolton, and other Members, he never entertained thoughts of moderation, but always opposed all overtures of peace and accommodation. He died towards the end of December, 1643, and was buried with wonderful pomp and magnificence, in that place, where the bones of our English Kings and Princes are committed to rest.” *Hist. of the Reb. Vol. II p. 354, Book the 7th.*

//141-1// In the commencement of the troubles in the following reign, when it was proposed to remove the Lord Keeper Littleton, King Charles the First consulted Lord Falkland and Mr. Hyde, whether he should not deliver the Seals to Mr. Selden—upon which Lord Clarendon observes, “That though they did not doubt of Mr. Selden’s affection to the King, yet they knew him so well, that they concluded he would absolutely refuse the office, if it was offered to him.—He was in years, and of a tender constitution; he had for many years enjoyed his ease, which he loved; was rich; and would not have made a journey to York, or have lain out of his own bed, for any preferment, which he had never affected.” *Hist. of the Reb. Vol. I. p. 445, Book the 5th.*

//143-1// 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.

//144-1// See the Resolution of the House of Commons of the 20th of May, 1675, upon this subject.

//148-1// The real cause of this commitment, was, That Lord Arundel’s eldest son, Henry Lord Maltravers, had married the Lady Elizabeth Stuart, eldest daughter of the Duke of Lenox, without the King’s consent or knowledge; his Majesty having designed her for Lord Lorne. *Life of Thomas E. of Arundel, by Sir Edward Walker.*

//150-1// “Sir Dudley Carleton understood all that related to foreign employments, and the condition of other princes and nations very well; but was unacquainted with the government, laws, and customs of his own country, and the nature of the people.” *Clarendon’s Hist. of the Rebell. Vol. I. p. 50, Book the 1st.*

//151-1// The entry in the Journal is, “Sir John Eliot of himself withdrew, the House refusing to order his withdrawing.”

//151-2// Vol. VII. p. 168.

//152-1// Lord Littleton’s Persian Letters, Letter 58th.

//152-2// Fourth Register, p. 714.

//152-3// Page 716.

//157-1// Which is very well worth the Reader’s perusal.

//157-2// Page 113.

//160-1// See Note, pp. 47 and 59.

//163-1// Page 146.

//163-2// When Charles the II^d. intended to prorogue the Parliament from the 27th July, 1663 to the 16th March following, a space of eight months, he says in his speech to both Houses of Parliament upon this occasion, “I think it necessary to make this a Session, that so the current of justice may run the two next Terms, without any obstruction by Privilege of Parliament, and therefore I shall prorogue you to the 16th day of March.” *Lords Journal*.

//164-1// See page 108.

//165-1// Vol. II. p. 164.

//167-1// On this question, touching the mode of proceeding in the case of delivering a privileged person from custody, see the Case of Mr. Petrie, and the Report of Precedents from the Committee then appointed, in the Journal of 20th March 1793. The modern course has been, only to make an order for the discharge of the person amoved. But see 10th December 1711, Boteler’s Case, a Member imprisoned sent for by the Serjeant at Arms. Mr. Onslow in his MS. Collection, says, “This was right, although Bromley, (the Speaker) said at first it ought to have been referred to a Committee to inquire.”

//168-1// See the Parliamentary History, Vol. VIII. p. 105.

//168-2// It appears from a copy of one of these Bills, which is preserved in the Paper Office of the House of Commons, that this Bill was to enable the Lord Chancellor “*during the time of Parliament*, or within the days of Privilege before the beginning or next after the dissolution of any Parliament, or in the time of any adjournment, to deliver any person entitled to the Privilege of Parliament, and to save to the creditor the right of arrest.”—*Perhaps* the giving to the Chancellor a right “*to exercise during the time of Parliament*,” which the House of Commons could exercise by their own authority, might be the reason for the Common not taking any notice of either of these Bills.

//169-1// See before pages 96 and 97.

//169-2// See the 15th of May, 1604, and 11th of February, 1605.

//172-1// See before, pages 9 and 11, the case of Thoresby, who was probably the person alluded to in this precedent cited by Sir Edward Coke, and whom he there calls “Clerk of the Parliament.”

//173-1// See this commission, intitled, “*Assignatio personarum loco Regis ad inchoandum concilium suum.*” Edw. III. was proclaimed the 25th January 1327.—On the 12th March 1337, a Parliament was holden at Westminster, at which the Prince of Wales was declared Duke of Cornwall, and sundry other honours were conferred on him. The commission referred to, “for opening this Parliament,” which was summoned in the 10th Edw. III. but did not meet for dispatch of business till the beginning of his 11th year.

//174-1// Fourth Register, p. 843.

//175-1// 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 *jurors* and *witnesses*; or whether it is only a *notice of trial*; especially in the proceedings of the Star Chamber, where, even in civil cases, the Court exercised a sort of criminal jurisdiction.

//177-1// It appears from the Journals, that the House had adjourned from the 18th of December, to the 10th of February.

//180-1// Upon the 2d of June, 1621, the Lords consulted the Judges upon this question; and they having answered on the 4th of June, that they could not satisfy their Lordships of any Precedents of the

continuance of their Privileges during all the time of the long cessation; The Lords notwithstanding resolve, “That they do know, that the Privileges of themselves, their servants, and followers, do continue notwithstanding the adjournment of the Parliament; and they order and adjudge the same to be observed in all points accordingly.”

//181-1// Though this order is inserted before, I have repeated it here: ‘That in case of 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.’

//182-1// This venerable old patriot was at this time upwards of seventy years of age.

//182-2// See the Journal of the 4th of June, 1621, and the second volume of the printed debates of this Parliament.

//182-3// There are two separate Journals preserved of this Session; which are both in the first volume of the printed Journals.

//183-1// See before, page 48, N^o 17.

//184-1// See the further proceedings in this Case, in the Journal of the 29th of April, and 3d of May.

//184-2// See these Cases before, pages 3 and 6, and N^o 2 and 3.

//184-3// See the Note, p. 6.

//185-1// Pages 15, 48, and 150.

//185-2// Page 83.

//187-1// See these Cases in the first Chapter of this Volume.

//189-1// The entries in the Journals for several days begin, *Absente Prolocutore*.—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. It is

remarkable, that notwithstanding the inconveniency which must attend the public business, in the necessary absence of the Speaker, from personal indisposition, or any other cause, no measure has yet been adopted for the appointment of a Speaker *pro tempore*.

//189-2// In the eighth volume of the Parliamentary History, pp. 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.

//190-1// The Parliament had been prorogued from the 26th of June, to the 20th of October, and then further prorogued to the 20th of January.

//190-2// It was during this Session, in 1628, though not upon this question, but on the subject of Religion, that Oliver Cromwell first appears to have taken part in the debates. Rushworth, in the 1st Vol. p. 655, has given us the substance of the first speech, supposed to be made by this very extraordinary person.—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 clothes), I came one morning into the House well clad, and perceived a Gentleman speaking (whom I knew not) very ordinarily apparelled, for it was 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 hat-band; his statute 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 successes, 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.’—And in Bulstrode's Memoirs, p. 192.—“This conference puts me in mind of what Mr. Hampden said to the Lord Digby, in the beginning of the war. As they were going down the Parliament stairs, Cromwell going just before them, the Lord Digby (who was then a great man in the House of Commons) asked Hampden, Who that man was? for I see, saith the Lord Digby, he is of our side, by his speaking so warmly this day. Upon which Mr. Hampden replied, That slovenly fellow which you see before us, if we should ever come to have a breach with the King, (which God forbid) I say that sloven, in such case

will be one of the greatest men of England—which was a prophetic speech. But Hampden knew him well, and was intimately acquainted with him.’—Some years after this, about December, 1644, Charles I. sent for Archbishop Williams to Oxford, to take his opinion upon the situation of his affairs at that time; in the course of their conversation, speaking of Cromwell, the Archbishop said, “That Cromwell, taken into the rebels army by his cousin Hampden, is the most dangerous enemy your Majesty has; for though he is, at this time, of mean rank and use amongst them, yet he will climb higher. I knew him at Bugden, but never knew his religion.—He was then a common spokesman for sectaries; and maintained their post with stubbornness.—He never discoursed, as if he were pleased with your Majesty and your great offices; and indeed he loves none that are more than his equals.—Your Majesty did him but justice, in repulsing a petition put up by him, against Sir Thomas Stewart of the Isle of Ely; but he takes all those for his enemies, that would not let him undo his best friend; and above all that live, I think he is the most mindful of an injury.—His fortunes are broken, that it is impossible for him to subsist, much less to be what he aspires to, but by your Majesty’s bounty, or by the ruin of us all, and a common confusion.—In short, every beast hath some evil properties; but Cromwell hath the properties of all evil beasts.—My humble motion to your Majesty therefore is, That either you would win him to you by promises of fair treatment, or catch him by some stratagem; *and then cut him short.*” All which the King received with a smile, and said nothing. *Philips’s \\so in text\\ Life of Archbp. Williams, p. 290.*

//192-1// The following description of Cromwell by John Maidstone, who was a Member of one of his Parliaments, is also curious.—“Before I pass further, pardon me in troubling you with the character of his person; which, by reason of my nearness to him, I had opportunity well to observe.—His body was well compact and strong; his stature under six foot (I believe about two inches); his head so shaped, as you might see it a storehouse, and shop both, of a vast treasury of natural parts. His temper exceedingly fiery, as I have known; but the flame of it kept down for the most part, or soon allayed with those moral endowments he had.—He was naturally compassionate towards objects in distress, even to an effeminate measure; though God had made him a heart, wherein was left little room for any fear, but what was due to himself, of which there was a large proportion; yet did he exceed in tenderness towards sufferers.—A larger soul, I think, hath seldom dwelt in a house of clay, than his was.” *Lett. in the App. to 1st Vol. Thurloe’s St. Pap. p. 766.*

Lord Clarendon, who had been witness of his whole political course, describes him thus, “Cromwell, though the greatest dissembler

living, always made his hypocrisy of singular use and benefit to himself; and never did any thing, however ungracious or imprudent it seemed to be, but what was necessary to the design; even his roughness and unpolishedness, which, in the beginning of the Parliament, he affected, contrary to the smoothness and complacency which his cousin and bosom friend Mr. Hampden practised towards all men, was necessary; and his first public declaration, in the beginning of the war, to his troop when it was first mustered, ‘that he would not deceive or cozen them by the perplexed and involved expressions in his commission to fight for King and Parliament;’ and therefore told them, ‘That if the King chanced to be in the body of the enemy, that he was to charge, he would as soon discharge his pistol upon him, as any other private person; and if their conscience would not permit them to do the like, he advised them not to list themselves in his troop or under his command,’ which was generally looked upon as imprudent and malicious; and might, by the professions the Parliament then made, have proved dangerous to him; yet served his turn; and severed from others, and united among themselves, all the furious and incensed men against the government, whether ecclesiastical or civil, to look upon him as a man for their turn; upon whom they might depend, as one that would go through his work that he undertook. And his strict and unsociable humour, in not keeping company with the other officers of the army in their jollities and excesses, to which most of the superior officers under the Earl of Essex were inclined, and by which he often made himself ridiculous and contemptible, drew all those of the like sour or reserved natures to his society and conversation; and gave him opportunity to form their understandings, inclinations, and resolutions, to his own model. By this he grew to have a wonderful interest in the common soldiers; out of which, as his authority increased, he made all his officers well instructed how to live in the same manner with their soldiers, that they might be able to apply them to their own purposes.—Whilst he looked upon the Presbyterian humour as the best incentive to rebellion, no man more a Presbyterian; he sung all psalms with them to their tunes, and loved the longest Sermons, as much as they; but, when he discovered, that they would prescribe some limits and bounds to their rebellion, that it was not well breathed, and would expire, as soon as some particulars were granted to them in religion, which he cared not for, and that then the government must run still in the same channel, it concerned him to make it believed, ‘that the state had been more delinquent than the church; and that the people suffered more by the Civil, than by the Ecclesiastical power; and therefore, that the change of one would give them little ease if there was not as great an alteration in the other; and if the whole government in both were not reformed and altered,’ which, though it made him generally odious at

first, and irreconciled many of his old friends to him, yet it made those who remained more cordial and firm; he could better compute his own strength, and upon whom it might depend.—This discovery made him contrive the new model of the army; which was the most unpopular act, and disoblged all those who first contrived the rebellion, and who were the very soul of it; and yet, if he had not brought that to pass, and changed a General, (who, though not very sharp-sighted, but would never be governed, nor applied to any thing he did not like), for another who had no eyes, and so would be willing to be led, all his designs must have come to nothing, and he remained a private colonel of horse, not considerable enough to be in any figure upon an advantageous composition.” *Hist. of the Reb. Vol. III. p. 84, Book the 10th.*

//197-1// 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 after the former part of the Work was finished; and as it would have required more trouble, than such an alteration appears to deserve, I trust I shall be excused in giving them in the form in which they appear.

//199-1// Note, the Parliament was prorogued from the 9th of November, to the 21st of January.

//199-2// See a similar instance of the 13th of February, 1575, 23d of January, 1580, and many others.

//199-3// See also the Case of Bukeley, 14th of May, 1614.

//200-1// See this Case again in the 3d volume of this Work, under title, “Proceedings between Lords and Commons, where the Rights and Privileges of either House are concerned.”

//201-1// 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.

//203-1// Lord Digby having printed his speech on Lord Strafford’s Bill of Attainder, the House of Commons appointed a Committee to inquire into that subject, who make their report on the 13th July, 1641: And the House resolve, That no Member of this House shall give a copy, or publish in print, any thing that he shall speak here, without leave of the

House; and declare, that Lord Digby's speech was untrue, and scandalous to the proceedings of this House; and order it to be burnt.

On 1 April, 1679, Sir Francis Winnington, and on 25 April, 1679, Lord Cavendish, printed their speeches, and were complained of.

In 1693, Sir John Knight's printed speech was complained of.

It appears from the case of *Rex. v. Lord Abingdon*, that a Member of Parliament printing his own speech is amenable before the Courts of Law, if it contain libellous matter. So in the case of *King v. Creevey*, M. P. 1813, Mr. Creevey was convicted, and fined 100*l.*; and 25 June, 1813, the House refused to listen to his complaint against the Court of King's Bench for Breach of Privilege. So on 1 March, 1693, complaint was made with respect to the House of a printed libel, dispersed as a speech made in the House.

//203-2// See the 24th of June.

//204-1// On the 29th November, 1763, it was resolved, "That Privilege of Parliament does not extend to the case of writing or publishing 'Seditious Libels,' nor ought to be allowed to obstruct the ordinary course of the law, in the speedy and effectual prosecution of so heinous and dangerous an offence."

//206-1// On the 4th of June, 1614, the Lord Chancellor Ellesmere, in a case then before the House of Lords, declares, "That no Privilege of Parliament doth protect any man in case of breach of the peace." So on the 7th of February and 8th of June, 1757, on a complaint against Earl Ferrers, the Lords resolve, "That no Peer or Lord of Parliament hath Privilege of Peerage or of Parliament against being compelled, by process of the courts in Westminster Hall, to pay obedience to a Writ of Habeas Corpus directed to him."—In the year 1795, the Earl of Abingdon was committed to the King's Bench Prison, as part of the punishment inflicted on him, being convicted of publishing a libel.

//206-2// See Lord Cochrane's case, 21st and 22d March, 1815, Appendix to this volume, p. 283, N^o 5.

//206-3// 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 entry 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 less 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 Regis*. (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.’

//207-1// See the second Volume of Commons Journals, p. 374.

//208-1// For proof of these particulars, consult Lord Clarendon, Whitelocke, and other contemporary Writers; even those, who were professedly friends to the prerogatives of the Crown.

//208-2// Lord Clarendon’s History of the Rebellion, Vol. I. pp. 53 and 54.—To which he adds, ‘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 over activity of the Lawyers*; who should more carefully have preserved their profession, and its professors, from being profaned by those services, which have rendered both so obnoxious to reproach. The damage and mischief cannot be expressed, which the Crown and State sustained, by the deserved reproach and infamy that attended the Judges, by being made us of in these, and like acts of power; there being no possibility to preserve the dignity, reverence, and estimation of the Laws themselves, but by the integrity and innocency of the Judges.’ See in the 2d Vol. of this Work, the Note towards the end of the Observations on the title “King opens the Session.”

//209-1// Eighth Vol. p. 393.

//209-2// See the several Proceedings in Scotland upon this subject, in the year 1638, with a copy of the covenant, which was framed and signed at that time, Vol. II. Rushworth’s Colls, p. 730. See particularly the King’s letter of the 11th of June to the Marquis of Hamilton, p. 752, in which are these very remarkable expressions: “When I consider, that now not only my crown but my reputation for ever lies at stake, I must rather suffer the first, which time will help, than this last, which is irreparable.—This I have written to no other end than to show you, *I will rather die than*

yield to those impertinent and damnable demands (as you rightly call them), for it is all one as to yield to be no King in a very short time.”

//211-1// Clarendon’s Hist. of the Rebellion, Vol. I. p. 103, Book 2d.

//211-2// “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 hath now called this Parliament.”—Lord Keeper’s speech, eighth Volume of Parliamentary History, p. 403.

//212-1// See the Lords Journals, Vol. IV. p. 66.

//212-2// It appears from several circumstances in the History of Charles the First, that he was a man not without a considerable share of parts and understanding; but that he was unaccountably led away by others to commit several acts of violence and injustice, which his own disposition would not have prompted him to, and which were the means of bringing on the civil war. The Queen was the principal person, to whose counsels he listened; and it appears from a letter of Mr. Elliot’s to Lord Digby, of the 27th of May, 1642, before the King had set up his standard at Nottingham (which was on the 25th of August following, according to Clarendon, Vol. I. p. 557,—but Rushworth, Vol. IV. p. 783, says it was on the 22d of August) that, even then, perhaps the disputes between him and the Parliament might have been accommodated; and that the King himself seemed willing to come to some terms, but that he was prevented by the rashness and obstinacy of the Queen. The words are these, in a letter dated from York:—“For our affairs, they are now in so good a condition, *that if we are not undone by hearkening to the accommodation, there is nothing else can hurt us, which I fear the King is too much inclined to; but I hope what he shall receive from the Queen will make him so resolved*, that nothing but a satisfaction, equal to the injuries he hath received, will make him quit the advantage he now hath.” Rushworth’s Coll. Vol. IV. p. 719.—So, during the treaty at Oxford in 1643, Whitelocke (who was one of the Commissioners from the Parliament) says, “In this treaty the King manifested his great parts and abilities, strength of reason, and quickness of apprehension, with much patience in hearing what was objected against him; wherein he allowed all freedom, and would himself sum up the arguments, and give a most clear judgment upon them—His unhappiness was, that he had a better opinion of others judgments than of his own; and of this the Parliament

Commissioners had experience to their great trouble.” Whitelocke then mentions a very remarkable instance of the King’s weakness in this particular.—Memoirs, p. 75.—Lord Clarendon, who knew him well, says, “The most signal of his misfortunes proceeded chiefly from the modesty of his nature, which kept him from trusting himself enough, and made him believe, that others discerned better, who were much inferior to him in those faculties; and so to depart often from his own reason, to follow the opinions of more unskilful men, whose affections he believed to be unquestionable to his service.” History of the Rebellion, 2d Vol. p. 485, Book the 9th.—See also Lord Clarendon’s account of the King’s removing the Earls of Essex and Holland from their offices at a very critical juncture, and contrary to the opinion of those Counsellors, in whom he at that time confided, and whose advice he had promised to follow in all important matters; but the King was inexorable in the point; *he was obliged by promise to the Queen at parting*, which he would not break; and her Majesty had contracted so great an indignation against the Earl of Holland, whose ingratitude indeed towards her was very great, that she had declared, “She would never live in the Court, if he kept his place.”—History of the Rebellion, Vol. I. p. 374. Book 5th.—The King’s obstinate refusal to grant the commission of Lord High Admiral to the Earl of Northumberland, at the time of the Treaty at Oxford, in 1643, which Lord Clarendon thinks might have had a considerable effect in bringing about a peace, arose, not from his own judgment, nor from the advice of his counsellors (for Sir E. Hyde, then Chancellor of the Exchequer, pressed the King often to consent to this measure) but from a solemn promise made to the Queen, when they separated, “that he would never receive any person into favour or trust, who had disserved him, without her privity and consent.” “Indeed,” Lord Clarendon adds, “his Majesty’s affection to the Queen was of a very extraordinary alloy; a composition of conscience, and love, and generosity, and gratitude, and all those noble affections, which raise the passion to the greatest height; insomuch as he saw with her eyes, and determined by her judgment.”—Life of Lord Clarendon, Part 3d, pp. 78, 79.

//214-1// See what Lord Clarendon says upon this subject, Hist. Reb. Vol. I. p. 106, Book 2d.

//214-2// See Lords Journals, Vol. IV. p. 72. et subs.

//215-1// See Parliamentary History, Vol. VIII. pp. 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.

//216-1// See Commons Journals, 3d of July, 1678.

//216-2// See Vol. III. of this Work, under the title, *Supply*.

//216-3// See the Parliamentary History, Vol. VIII. p. 354.

//216-4// See these Proceedings in the King's Bench at length, in the State Trials, Vol. VII. p. 242.

//217-1// See Whitelocke's Memoirs, pp. 12, 13.

//217-2// See the Parliamentary History, Vol. VIII. pp. 354 to 389.

//218-1// See Rushworth, Vol. III. p. 1140.

//219-1// Vide Lords Journals.—See also this Report in the Appendix to this Vol. N^o 2.

//219-2// Parliamentary History, Vol. VIII. p. 425.

//219-3// 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, and which is published in the Appendix to this Vol. N^o 3, contains a complete answer to the Compilers of the Parliamentary History, to Hume, 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.

//220-1// "The sudden dissolution of this Parliament was perhaps that, which hastened the ruin of all things; and against which the Lord Keeper Coventry had cautioned his Majesty, the year before, with his dying breath, desiring, 'That his Majesty would take all distastes, from the

Parliament summoned against April, with patience, and suffer it to sit without an unkind dissolution.’” *Ambr. Philips’s Life of Archbp. Williams*, p. 220.

//220-2// Lord Clarendon’s History, Vol. I. p. 111.

//220-3// See Parliamentary History, Vol. VIII. p. 489.

//220-4// However much the nation had been provoked by the conduct of the King and his Ministers, it is acknowledged, “That the Parliament which met on the 3d of November 1640, was, during the first year of its sitting, distinguished for gravity and wisdom, though they afterwards became disorderly and unquiet.” See in the Lords Journal, 29th November, 1667, the Report of the Free Conference touching Lord Clarendon’s Impeachment.

//221-1// See the Sidney Papers, Vol. II. p. 623.

//221-2// I am very far from approving of this measure—it was certainly a violent breach in the Constitution of this Government; and, as Lord Clarendon expresses it, “was removing the landmarks, and destroying the foundation of the kingdom;” yet, if this Act had not been obtained, perhaps it would have been impossible to oppose the King’s attempts with effect.—The following anecdote on the subject of this Bill, is related by Sir Edward Walker, in his Historical Discourses, p. 359. “I have been told that Mr. Waller was the first that started this Bill, in discourse with some of the leading factious party; for they found that the Triennial Parliament would be rather for their disadvantage and the King’s advantage.—Hereupon they instantly drew up this Bill, inserting the plausible pretence of raising money for disbanding the army, as an inducement. Hereupon the Commons had a conference with the Lords (*where myself was present*). The Earl of Manchester, then Lord President, managing it for the Peers, and the Solicitor General St. John for the Commons, where the only difference was, about the indefiniteness of the time. The Lord Privy-Seal offering them to state it to three, five, or seven years. Hereupon St. John hypocritically answered, “*God forbid that we should be forced to sit one year*; for, as soon as the armies are disbanded, the necessity, we hope, will be at an end, and so there will be no need afterwards to insist on the act; but on the contrary, if it be not passed for an indefinite time we shall not have credit or interest to raise money to disband the army and satisfy our debts.” To this purpose, I well remember, St. John discoursed; and by this false

colour got the Lords to concur therewith; and so it was speedily drawn up, and passed both Houses.”

//222-1// See the very curious account of the whole of this extraordinary transaction, as related by Rushworth, who was at that time Clerk-Assistant, and present in the House of Commons,—in the Appendix to this Vol. N^o 4.—Amongst the papers of the late Lord Verney, were found, at his decease, some minutes of this proceeding, which were taken at the time *in pencil*, by Sir Edmund Verney, Knight Marshal.—These minutes are inserted in the 4th Vol. of this work, under the title *Impeachment*, Ch. 2. “What are sufficient grounds of accusation.”—It appears from Lord Clarendon, that Lord Digby was the sole adviser of this rash measure: “And all this was done without the least communication with any body, but the Lord Digby, who advised it.” *Hist. of the Reb. Vol. I. p. 282, Book 4.*

See also Lord Clarendon’s character of Lord Digby, in the Supplement to the third Volume of his State Papers, page 55.

//223-1// On Monday, the 10th of January 1641-2, about three o’clock in the afternoon, the King, with the Queen, and their royal offspring, left Whitehall and the whole Court: His Majesty being in his coach, called the Captain of the Guard of Train-bands, that attended at Whitehall, unto him, and said, “I thank you for your attendance, and for what you have done, and do now dismiss you.” So his Majesty went to Hampton-Court, and from thence afterwards by degrees to York.—Rushworth, Vol. IV. p. 484.

//223-2// The Act which passed in the 10th year of Geo. III. ch. 50, intituled, “*An Act for the further preventing Delays of Justice by reason of Privilege of Parliament*,” having provided, “That no action, suit, or any other process, or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or under colour or pretence of any Privilege of Parliament;” much of the matter which I had collected relating to this title of *Privilege*, is thereby rendered useless. Instead therefore of proceeding any farther on this title, I have thought it more expedient to select and publish those cases and precedents, in the Journals, that refer to the other Heads which compose the following Volumes.

//230-1// Queen Elizabeth died on that day, the 24th of March, 1603.

//233-1// Queen Elizabeth.

//236-1// Assart (as it is here properly to be understood) signifies where the subject within the limits and bounds of the King's forests, stubs the ground, making it fit for tillage, without the King's license.

//237-1// Brian Tash, the Yeoman of the Guard, keeping one of the doors of the Upper House, repulsed several Members of the Lower House, and shut the door upon them, with these uncivil and contemptible terms, "Goodmen Burgesses, you come not here." *Journ. Dom. Com.*

//239-1// In the memorable Case of Thorp, which happened 31 Henry VI. the Judges being asked their opinions by the Lords, answered in these words: "It hath not been used before-time, nor becomes it us to determine matters concerning the High Court of Parliament, which is so high and mighty in its nature, that it is judge of the law, and makes that to be law which is not law, and that to be no law which is; and the determination of its privileges belongs to the Lords in Parliament, and not to the Justices."—Rot. Parl. 31 Hen. VI. N^o 25, 26, &c.

//241-1// The Lords, for yielding satisfaction unto the Lower House concerning the Bishop's book, did all agree in opinion, that the same might best be done if he would voluntarily acknowledge himself to have committed an error in that behalf, and to be sorry for it; which I the end he did in these words following; viz.

1. I confess I have erred in presuming to deliver a private sentence in a matter so dealt in by the High Court of Parliament.

2. I am sorry for it.

3. If it were to do again, I would not do it.

4. But I protest it was done of ignorance, and not of malice towards either of the Houses of Parliament, or any particular Member; but only to declare my affection to the intended Union, which I doubt not but all your Lordships do allow of.

Journ. Dom. Procerum, 5 June. an. 1 Jac. 1.

//271-1// This Member was Mr. Pym.—See Sir Philip Warwick's Memoirs, p. 204.

//276-1// Mr. Edward Hyde (afterwards Lord Clarendon) was not appointed of this Committee.

//285-1// See an account of these Proceedings in the Appendix to this vol. N^o 2, p. 250.

//291-1// 4 Co. Inst. 24.

//292-1// Hodges v. Moor, Trin. 3 Car. I.

//310-1// Wilkes's Case 1 Wils. 152.

//312-1// Vide 2 Burr. 792.

//314-1// Mr. Justice Lawrence was not in Court, being indisposed; and Mr. Justice Le Blanc, having attended at the Guildhall Sittings for Lord Kenyon, and not returning till the argument was closed, gave no opinion.

//317-1// Vide Baker v. Hart, post. 488. Mrs. Farley's Case, 2 Ves. 520.

//319-1// 2 Atk. 469.