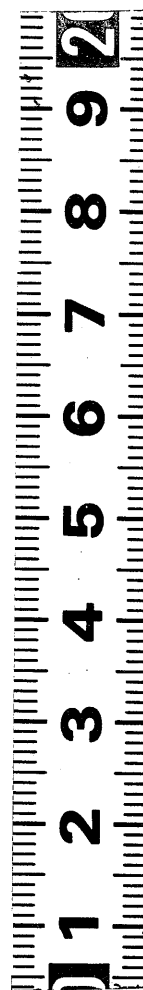


44-5



0139

JOHN SELDEN,
OF THE
JUDICATURE
IN
Parliaments,
A
Posthumous TREATISE:
WHEREIN,
The *Controversies* and Pre-
cedents belonging to that
Title, are Methodically
handled.

LONDON,
Printed for Joseph Lamson Bookfeller in
the Bail of *Lincoln*; And Sold by
the Bookfellers in *London*.



A Scheme of the *Method* and *Contents*.

CHAP. I.

P Eers to render Judgment of Peers,	pag. 1
Qu. Whether the Spiritual Lords de jure are triable by their Peers,	p. 4
Touching the Nature of the Offences tria- ble in this High Court.	6

CHAP. II.

In what Cases Judicature belongs to the Par- liament,	8
Of Judgment on Delinquents,	10
¶ I. 1. Their Accusation by the Commons,	11
Four manner of Accusations in Parl. ib.	
Precedents of their Complaints.	
1. By Petition,	12
2. By Demand,	16
3. By Impeachment,	17
A 2	¶ II.

The Contents.

¶. II. 2. <i>Accusation ex parte Domini Regis,</i>	P. 33
<i>Some Delinquents accused in Parliament upon Common Fame, without proof of Witnesses,</i>	37
<i>The Judgment Repealed.</i>	38
<i>No Peer can be Indicted in Parliament,</i>	39
<i>He may be Indicted out of Parliament, and proceeded against in the next Parliament upon the said Indictment.</i>	40
¶. III. Qu. <i>Whether S. R. Ferrars (4 R. 2.) was Legally brought to his Answer in Parliament by Commandment of the D. of L.</i>	44.
<i>Whether he being no Peer nor Baron, could be Legally Arraigned in Parliament by Information ex parte Regis,</i>	Ib.
<i>Question Resolved,</i>	45
<i>How the Earl of Bristol's Cause could be heard in the House of Lords, notwithstanding (35 H. 8.)</i>	46
<i>The Usage in such Cases and Precedents,</i>	48
<i>Whether in a Trial before Lords and Commons, the Commons are to Sit with their Speaker?</i>	54
¶. IV. <i>Accusation ex Mandato Domini Regis.</i>	ib.
<i>The Earl of Northumberland's Case,</i>	5 H. 4. ib.
<i>The Lords Impeach not any to themselves, because they are Judges,</i>	63
<i>The</i>	

The Contents.

<i>The Manner of proceeding against a Delinquent that absents,</i>	ib.
¶. V. <i>Of Accusation by Complaint of private persons,</i>	66
<i>The Fishmongers Complaint against the Lord Chancellor, 7 R. 2.</i>	72
<i>The Lord Chancellor his Defence,</i>	74
<i>Of the Complaint against Bishop Williams Lord Keeper,</i>	80
<i>The History of the Appeal, 11 R. 2.</i>	81
<i>The Lords proceed not against a Commoner, but upon the Complaint of the House of Commons,</i>	84
<i>Appeals abolished, 1 H. 4. c. 14.</i>	87.

CHAP. III.

<i>The Parties Answer.</i>	89
<i>The Party accused to be brought to his Answer,</i>	95
<i>An Answer required from the D. of Gloucester, to certain Accusations, though he were dead, and Judgment given upon him.</i>	91
<i>Another Delinquent found guilty long after he was dead,</i>	95
<i>In what Cases the Party is to answer as a Freeman, in what as a Prisoner,</i>	97
<i>Things to be considered in the Answer.</i>	97
<i>Variation from the Ancient Course,</i>	100
<i>A 3</i>	Touch-

The Contents.

<i>Touching Council allowed him,</i>	102
§. 2. <i>When Council shall be allowed him, and when not,</i>	ib.
<i>In Misdemeanors the Party may have Council to Answer.</i>	103
<i>But the Earl of Middlesex was denied it,</i>	103
21 Jac.	103
<i>The Parliament hath compelled a present Answer in Misdemeanors, and without Council,</i>	107
<i>The Mayor, &c. accused by the Scholars of Cambridge,</i>	ib.
§. 3. <i>The Replication,</i>	109
<i>Where the Articles against the Delinquent are ex parte Regis, there the Commons do not reply, nor demand Judgment,</i>	ib.
<i>Impeachment of the Lord Latimer,</i>	111
<i>William Ellis Impeached,</i>	114
<i>Lord Nevile Impeached by the Commons,</i>	ib.

CHAP. IV.

The Proof.

<i>By Examination of Witnesses,</i>	120
<i>Witnesses produced by the Commons,</i>	ib.
<i>A Committee for Trial of Alice Pierce,</i>	123
<i>A Furie in Parliament for Misdemeanors,</i>	125
<i>G. D. of Clarence Arraigned,</i>	127

CHAP.

The Contents.

CHAP. V.

<i>The Judgment,</i>	132
§. 1. <i>It belongeth to the Lords only,</i>	133
<i>The Commons have no Right to it,</i>	ib.
§. 2. <i>In what Cases the King's Assent is necessarily required,</i>	136
<i>Necessary in Capital Judgment,</i>	143
<i>In Judgment on Misdemeanors the King's Assent is not required,</i>	144
§. 3. <i>The King's Presence in Parliament,</i>	39
§. 4. <i>The Presence of the Lords Spir.</i>	ib.
<i>In Cases of</i>	
<i>Misdemeanor, aff.</i>	ib.
<i>Capital, neg.</i>	ib.
<i>The Protestation of the Bishops for ever,</i>	150
<i>Whether they can be present & not Vote,</i>	152
<i>A Bishop being Lord Chancellor, was present at the giving Sentence in Case of Treason.</i>	156
§. 5. <i>Of the Presence of the Commons in Cases Capital,</i>	158
<i>The Precedents,</i>	149
<i>Their Presence not necessary unless when they impeach,</i>	160
<i>Whether they Sit if they are present,</i>	161
<i>Of the Presence of the Judges,</i>	162
§. 6. <i>The manner how the Lords resolve on their Judgment,</i>	167
<i>Whether</i>	

The Contents.

<i>Whether it be ultra Legem,</i>	168
<i>Judgments for satisfaction,</i>	173
<i>References to the Common Law,</i>	175
<i>By whom to be demanded,</i>	176
<i>By whom to be rendered,</i>	ib.

CHAP. VI.

<i>The Precedents for Life and Death,</i>	178
---	-----

CHAP. VII.

<i>The Execution of the Judgment,</i>	182
<i>In Capital Offences,</i>	
<i>In Misdemeanors.</i>	

CHAP. VIII.

<i>The Recovery of Damages, or Restitution to the Party aggrieved.</i>	187.
--	------

JUDICA-

JUDICATURE

IN

Parliament.

CHAP. I.

Peers to render Judgment on Peers.

THE Execution of all our Laws hath been long since distributed by *Parliament* out of inferiour Courts, in such sort as the Subjects were directed where to complain, and the Justice how to redress wrongs and punish offences: And this may be the reason of the Judges opinion in *Thorps Case*, 31. Hen. 6. Num. 37.

B

That

Judicature in Parliament.

That Actions at Common-Law are not determined in this High Court of *Parliament*, yet complaints have ever been received in *Parliaments* as well of private wrongs as publick offences. And according to the quality of the Person, and nature of the offence, they have been retained or referred to the Common-Law.

Touching the quality of the Person the Lords of the *Parliament* did not anciently try any Offenders how great soever the offence was, unless he were their Peer. As by that of 4 E. 3. N. 2. where when the King commanded the Lords to give Judgment on *Simon de Bereford*, and divers others also, who were not their Peers, for the murther of E. 2. and the destruction of the Earl of *Kent*, Son of E. the first. A proviso and agreement was made and recorded in these words, *Et est assensu & accord, &c.* And it is assented and accorded by our Lord the King, and all the Grandees in full *Parliament*. That albeit the Peers as Judges of the *Parliament* have took upon them, and rendred the said Judgment, &c. That yet the said Peers who now are, or shall be in time to come be not bound or charged to render Judgments

Peers to
render
Judgment
on Peers.

Judicature in Parliament.

ments upon others than Peers. Nor that the Peers of the Land have power to do this, but thereof ever to be discharged and acquitted; And that the aforesaid Judgment rendred be not drawn to example or consequence in time to come, whereby the said Peers shall do contrary to the Laws of the Land if the like Case happen, which God forbid. 4 E 3. N. 6. This Proviso and agreement was made by the Lords and Commons, and it had these respects. First to satisfy the Commons, that the Lords by these Judgments intended not to alter the course of the Common-Law, and therefore they disclaimed that they had power to do this, and confess it was contrary to the Law of the Land.

Quite contrary to the Law of the Land.

Secondly to preserve their own Right, to Judge none but the Peers, in Case of Life and Death. For then the Kings Steward is to sit in the Chancellors place and the Lords are to be Tryers and Judges: And so by judging others then their Peers descended below their degrees, For none but Peers are so to be Tryed and Judged. It is otherwise in Cases of misdemeanors, then the Chancellor keeps his Place, and the Lords are only Judges and not Tryers, they

Judicature in Parliament.

may command a Jury to be Impannelled.

For Tryal of the Facts, if the truth appear not by the Parties answer, the Testimonies are Exhibited as 1 R. 2. in the Case of *Alice Peirce*. Here ariseth a Question.

How Bishops are tryable.

Whether the Spiritual Lords de Jure, are tryable by their Peers or no?

Out of *Parliament* they are not to be Tryed by the Peers; But the doubt is, whether in time of *Parliament* they are to be so Tryed or no? To me it seems they may, if the matter be moved against them in time of *Parliament*. For as it is in the *Parliament* at *York*, 15 E. 2. in the Act for the Repeal of the *Spencers* banishment, they are Peers in *Parliament*. Note, that the Petition for the Repeal saith that the Bishops are Peers in *Parliament*. The Bishops name themselves Peers of the Land: And the Chancellor to the King. And the Act stile them Peers of the Land in *Parliament*.

There be divers Presidents also of the Tryal of Bishops by their Peers in *Parliament*, as well for Capital offences as mis-

Judicature in Parliament.

misdemeanors, whereof they have been accused in *Parliament*. As the Archbishop of *Canterbury*, 15 E. 3. N. 6, 7, 8. *Et ibid. postea*, 44 & 39. *Et ibid.* 17 E. 3. 22. And the Bishop of *Norwich*. 7. R. 2. for misdemeanors: So were the Bishops of *York* and *Chichester*, Tryed for Treason by their Peers in *Parliament*, upon the Appeal of the Lords Appellants, 11 R. 2.

Anno 21 R. 2. The Commons accused the Archbishop of *Canterbury* of Treason, and the temporal Lords judged him a Traytor, and banished him: But if the Bishop be accused out of *Parliament*, he is to be tryed by an Ordinary Jury of Free-holders; for his honour is not inheritable, as is the temporal Peers out of *Parliament*, save that only of their Tryal. As no day of Grace to be granted against them in any Suit. A Knight to be returned upon the Pannel where a Bishop is party, and no Process in a civil action to be awarded against his body, and the like. And by this it appeareth what Persons are *de Jure*, tryable by the Lords in *Parliament*, viz. their Peers only.

The nature
of the
offence.

Touching the nature of the Offence.

Herein the complaint and accusation as well of the Party delinquent as offence is to be considered. For upon the Information of the King at his Commandment, or upon complaint of private Persons, the Lords may not by the Law try any but their Peers for Capital offences. And the Lords have ever referred offences of other nature complained of by private Persons to the Common-Law, if there be remedy, unless some special cause appear fit for their own Judgment.

But upon complaints and accusations of the Commons, the Lords may proceed in Judgment against the Delinquent of what degree soever, and what nature soever the offence be. For where the Commons complain, the Lords do not assume to themselves tryal at Common-Law. Neither do the Lords at the tryal of a Common Impeachment by the Commons, *decedere de jure suo*: For the Commons are then in stead of a Jury, and the Parties answer, and examination of witnesses, are to be in their Presence, or they to have Copies thereof:

thereof: And the Judgment is not to be given but upon their demand, which is in stead of a verdict, so the Lords do only judg not try the Delinquent. In the Lords proceedings in Judicature is observed also a certain form, which varieth according to the nature of the complaint, and the matter complained of; so that no general Rules can be given therein, though many Judgments have been reversed for errors, whereof there be many Precedents. And the Execution upon life and death, hath been stayed at the Request of the Commons, the proceedings being illegal, whereof I have seen only one Precedent, touching the Duke of *Clarence*, *tempore E. 4.* Wherefore for our better understanding of the Form of Judicature, let us first consider the severall causes wherein Judicature belongs to the *Parliament*, and then the ancient way of proceedings in each Cause.

C H A P. II.

In what Cases, &c. *In what Cases Judicature belongs to the Parliament.*

Judicature belongs to the *Parliament* in these six Cases.

1. In Judgments against Delinquents as well for Capital crimes as misdemeanors, wherein is to be considered,

1. *The Accusation.*
2. *The Parties Answer.*
3. *The Replication.*
4. *The proof by Examination of witnesses, or otherwise.*
5. *The Judgment.*
6. *The Execution.*

2. In the Reversing erroneous Judgments in *Parliament* are to be considered,

1. *The Petition.*
2. *The bringing in the Record.*
3. *The Assignment of Errors.*
4. *The Reversal thereof.*

3. In

3. In the Reversing of erroneous Judgments given in the Kings Bench are to be considered

1. *The Petition.*
2. *The Writ of Error.*
3. *The bringing in the Record.*
4. *The Assignment of Errors.*
5. *The Writ of Scire facias.*
6. *The Defendants answer.*
7. *The Reversal of the Judgment.*

4. In deciding of Suits long depending either for difficulty or delay, wherein is to be considered

1. *The Petition.*
2. *The advice with the Judges.*
3. *The determination of the Lords.*

5. In hearing complaints of particular Persons on Petitions, wherein is to be considered,

1. *The Petition.*
2. *The Defendants answer.*
3. *The Proof.*
4. *The Orders of the Lords.*

6. In

Judicature in Parliament.

6. In setting at Liberty any of their own Members or Servants imprisoned, and in staying the proceedings at the Common-Law during the Privilege of Parliament, wherein consider,

1. *The Quality of the Person Imprisoned.*
2. *The Parties Answer at whose Suit he is imprisoned.*
3. *The manner of his Charge.*

In certifying the Elections and Returns of Knights and Citizens for the Parliament. But now the Commons alone determine of this: Wherefore I will only shew that the Commons did heretofore Petition to the Lords for redress herein, and what course was then taken. I leave it to the Clerk of that House to shew how the Commons proceed herein at this day. Of the rest in Order; And first,

Of Judgments on Delinquents.

Of Judgments on Delinquents.

§ 1. In Judgment against Delinquents, is first to be considered, *the Accusation.* For as in the Kings Bench the

Judicature in Parliament.

the Justices proceed not to the Arraignment of any Offender without an Indictment, So the Lords have not proceeded to Judgment, unless the Crimes have first been presented to them by way of *Accusation*: If otherwise their Judgments have been reputed erroneous, as that against the *Spencers* was in 15 E. 2. Rot. 2. claus. lit. penden. For the same Persons cannot be both Accusers and Judges.

I have observed four manner of *Accusations in Parliament.*

Four manner of Accusations in Parliament.

1. *First by the Commons, either by their Complaints, or their Impeachments.*
2. *Secondly by Information. Ex. parte. Dom. Regis.*
3. *Thirdly by Complaint of private Persons.*
4. *Fourthly by Appeal of some of the Lords in Parliament, which was abolished, p. Stat. 1. H. 4. c. 14.*

The Accusation of the Commons.

The manner of Accusation ought to be by the Commons alone, and not by the Lords and them together, for so, Earls,

Judicature in Parliament.

Earls, Prelates, Barons, and other Peers of the Land, and Commons of the Realm, did accuse *Hugh de le Spencer*, 15 E. 2. and one of the Errors assigned for the Reversal was, that the Lords had no Record before them of the Causes contained in their Award, *vis. Rot. claus. 15 E. 3.* in the *Parliament* at York. The Reasons may be, because the Lords joyn-
ing in the Accusation with the Commons, have declared their opinion of the Fact, and there needs no further Tryal thereof. Wherefore the Lords who are only Judges may neither accuse any to themselves, nor joyn in the Accusations with others.

The complaint of the Commons is either by Petition or demand in general, or by Impeachment in particular which is their Declaration against the party accused.

Complaints
by Peti-
tions.

Precedents of their Complaints by Petition are.

Anno 21 E. 3. n. 38. The Commons complain of Extortion used by certain Merchants, who were Farmers of the Kings Customs of Wools, not naming the Parties, for which they pray remedy and

Judicature in Parliament.

and that the said Merchants may be put their answer in this *Parliament* for such outrage and distress done to the people. Which Petition is thus answered.

Let the Merchants be called into the *Parliament*, *Et oient leur Respons, In modern Parl. n. 49.* The Commons in another Petition complain: That where-
as diverse aids have been granted to the King for his Wars, certain Merchants by confederacy between them, and in manner of usury have bargained for the same, to the Kings great loss, and the grievance of the Commons, &c. His people pray these Particulars may be examined, in presence of some by the said Commons deputed by good wise and Loyal men during the *Parliament*.

Petition.

The King shall assign some of the Sages of his Council to hear, and determine the things contained in this Article. And if any of the Commons can inform the King, for his profit of any of the Points herein contained, let him put it in certain, and he shall be heard, to the end that Right and reason may be done.

Respons.

And the Justices which shall be assigned to enquire of false Mony, shall have

Judicature in Parliament.

have power to enquire of the excess of such Ministers. Though these complaints were general, yet they pointed so directly to the Parties accused, that *John de Worsenham*, and *Walter de Chairton*, did exhibit their Petitions also in their own defence, desiring to come to their Answers. What further proceedings were herein is not recorded; The Commons were directed to impeach the Parties whom they accused. *If any of the Commons can inform, &c. Let him inform in certain, and he shall be heard, &c.* So that although the Commons accusation by complaint be general, yet if the complaint be received, and the Parties brought to answer, the Commons may then impeach the said Parties, viz. declare against them in special; and then the Suit is theirs, *prout. Anno 50 E. 3.* against *Lyons*, *Ellis*, the Lord *Latimer*, the Lord *Nevile*, *Peecher* and others.

But if the Commons do only accuse by any way of complaint whatsoever, and do not declare in special against the Party accused, then the Suit is the Kings, and the Party is to be arraigned, or otherwise proceeded against by commandment, *Ex parte Dom. Regis, prout*

Gom-

Judicature in Parliament.

Gomeniz Weston, and *Alice Peirce.*
1 R. 2.

Anno 1 H. 4. The Commons pray the Lords Apellants in the 21 R. 2. may be put to their answer, and so they were 10 *Placit. Coron.* of that *Parl. n.* 1. 2. 3. &c.

Anno 29 H. 6. The Commons pray that the Duke of *Somerset*, the Dutcheis of *Suffolk*, the Bishop of *London*, and many others may be abandoned from the Kings Presence during their lives, and not come within twelve Miles of the Court, for that the people spoke evil of them.

The King of his own meer motion *Answer.* is contented that all shall depart, unless they be Lords, and a few of them whom he may not spare from his presence, and so to continue one year, to see if any man can misprove them. *n. 6. inter Petitiones Communium.* For this was no Accusation, for the Commons did not require they might be banished the Court.

Anno 38 H. 6. The Commons among their Petitions accuse the Lord *Stanley* of sundry Particulars, as to be of confederacy with the Duke of *York*, and pray he may be committed to Prison.

The

Answer.

The King will be advised.

Primo. Jac. 26 Maii. The Commons by message accuse the Bishop of *London*, for words spoken of them in the upper House. Of the other kind of complaint by way of demand, I have seen these two Precedents only.

Anno 1 R. 2. The Subsidy to be treated upon between the Lords and Commons, as the manner then was; The Commons delivered to the Lords a Schedule of their demands to be dispatched before Treaty should proceed. Amongst which one was, That all such who without Cause have lost or given up any Castle, Town, or Fortress, to the dishonour of the King, and damage of the People, may be put to their Answer before the Lords and Commons in this present *Parliament*.

The Complaint herein is general, They accuse such as had delivered up Castles, &c. if it be an Accusation: But they name not the Parties, yet two Delinquents hereupon who were Imprisoned in the Tower, for delivery of Castles, &c. were put to their Answer, viz. *Gomeniz* and *Weston*, *Anno 7 R. 2.*

The

The Commons grant a Subsidy, according to the Tenor of a Schedule indented delivered in Parliament, requiring it may be enrolled in the Parliament Roll *verbatim*; in which Schedule is this Protestation, That it is not their meaning to grant the said Subsidy, without the Conditions ensuing.

Inprimis, That the Clergy make the like Grant.

Item, That the Bishop of *Norwich*, and others, be compelled to answer such Sums, as they have received for Service by them undertaken, and not performed, &c. *Numb. 13.*

Here the Commons name one of the Parties, against whom they complain, but they impeach him not; and yet he, and divers others, were censured on that general demand.

Of the Impeachments of the Commons, ^{Impeachments of the Commons.} there be these Precedents: *Anno 50. E. 3.* The Commons having granted the Subsidy, they protested their good will, and firm purpose, to aid the King; and said, That it seemed to them for truth, that if the King had always about him Loyal Subjects, good Councillors, and faithful Officers, he had been rich in Treasure, and

C

Judicature in Parliament.

and needed not have charged his *Commons* with Subsidies, &c. Then they desired that three things might be enquired of.

1. First, the withdrawing the Staple from *Callis*, by the Council and Procurement of some Privy Councillors about the King.

2. Secondly, of Loans to the King by way of Usury, receiving again greater Sums than they disbursed, wherein some Privy Councillors have been Partners.

3. Thirdly, of buying the King's Debts by way of Bargain, some for the 10th Penny, some for the 20th, or 100th Penny, and procuring the King to pay the entire Debt; to the King's loss, and profit of some Privy Councillors, and others of their Covyn: Of which three Articles, and their Dependencies, the *Commons* said, They would make farther Declaration in special, whensoever it shall please the King to hear them, *Numb.* 15, 16. Then follows their particular Impeachments and Accusations.

First,

Judicature in Parliament.

First, *Richard Lyons*, Merchant of *London*, is impeached and accused by the Commons of many Deceits, Extortions, and many other ill deeds by him done to our Lord the King, and his People, as well during the time he was retaining to the King's House, and to the King's Council, as otherwise, whilst he was Farmer of the Subsidy and Customs of the King. And in special of this, that the said *Richard*, by Covyn made between him, and some of the Privy-Council of our Lord the King, for their private Profit and Advantage, hath procured many Patents, and Writs of License, to transport great quantities of Wools, and Wool-fells, and other Merchandize beyond the Seas, to other places than the Staple at *Callis*, contrary to the Ordinances, &c. And so they declare of many other Villanies in great deceit of the King, and of his Court. Whereunto the said *Richard* being then present in Parliament, said, &c.

Then follows his Answer in particular to what was particularly alledged against him, and in general to what was generally charged upon him.

The Lords reassured him for that which was particularly objected against him,

Judicature in Parliament.

him, and granted Commissions to enquire of the Extortions wherewith he was charged in general.

Then the Commissioners in like manner accused and impeached *William* Lord *Latimer* of divers Extortions, Grievances, Deceits, and ill Deeds, viz. of divers Oppressions, when he served the King in *Britain*, for being Partner with *Richard Lyons*, &c. and for loss of Towns and Forts beyond the Seas. Numb. 21.

Item, *William Ellis* of Great Yarmouth was impeached in this present Parliament in divers manners.

First, by Surmise of the Commons, &c. Numb. 11.

And afterwards *John Bothel*, and *William Cooper*, exhibited their two Bills in form which followeth:

To their thrice redoubted Lord the King, and to the said Council shewn, &c. complaining of the Oppressions of the said *William Ellis*, unto them, and others, &c. and their Oath was taken against him. Numb. 32.

Item, *John Peecher* of London, Merchant, was accused and impeached by the

Judicature in Parliament.

the said Commons, That he, by the assent and aid of *Richard Lyons*, and of other Privy Councillors, for their private profit and advantage, have purchased a Patent under the Great Seal of our Lord the King, containing that none shall sell sweet Wines within the Franchises of the City of *London*, but only the said *John*. Numb. 38.

Item, *John Nevill* was likewise impeached, &c. for buying the King's Debts, &c. and for loss of Towns beyond the Seas.

Here I observe, that though the Commons complained, 50 E. 3. but of three Grievances, viz. of the withdrawing the Staple from *Callis*; of Loans to the King upon excessive Usury; and of buying the King's Debts; yet when they who were accused appeared, they declared against them for other matters also: As against *Lyons*, for new Impositions upon Wools, without assent in Parliament; and against the Lord *Latimer*, for his misgovernment beyond the Seas, and loss of Forts there; and against *Peecher*, for a Monopoly of sweet Wines, &c.

I observe also, that their Declaration is not made according to the strict forms of

Judicature in Parliament.

of Law, as you may perceive by that against *Lyons*, wherein so many Extortions are so generally set down against him, that he made no answer to them, neither could, &c. Which Impeachment the Lords notwithstanding did not reject, but supplied the defects thereof, by granting Commissions to enquire thereof. *Ibid. Numb. 20. in fine.*

Item, In this Parliament of 50 E. 3. an Ordinance was made against Women's pursuing businesses in the King's Court, and especially against *Alice Peirce*, *Numb. 45.* I find no Accusation against *Alice Peirce*; I only conjecture that the Commons complained of her, though it be not entred, for she is in the number of them whom in the next Parliament of 50 E. 3. *Numb. 87.* the Speaker of the Commons names to be unjustly convicted in this Parliament: And none were there convicted, but those whom the Commons complained of.

Item, *Adam de Bury*, Citizen of *London*, was impeached by the clamor of the Commons in this Parliament of many Deceits, and other ill things done to the King, and to his People, whilest he

Judicature in Parliament.

he was Mayor of *Callis*, and Captain of *Bullingham*, and other ways, as more at large appears in one great Bill, delivered in Parliament the last day of this Parliament at *Eltham*. And thereupon the said *Adam* was sent for to come to answer in Parliament, and he came not, neither could be found. Wherefore it was awarded, that all his Goods and Chattels should be put in Arrest; and so it was done by Writs sent to the Sheriffs of *London* and *Kent*: And the said Bill is on File with the special Petitions of Parliament, 50 E. 3. *Numb. 11.*

Out of this last Precedent, concerning *Adam de Bury*, I observe two things:

1. First, whom they complained of: The Lords sent for him only to appear before them; they sent not to apprehend him as a Delinquent, until he contemn'd their Demand, whereof more hereafter in the Title of the Parties Answer.

2. Secondly, that the Commons delivered not their Impeachment (that is, their Declaration) against the Party accused, until he appeared before the Lords, and then they kept it untill the last day of the Parliament, in hope that

Judicature in Parliament.

he would be brought before the Lords; and when they saw he could not be found, they then delivered their Impeachment against him, to the end (as I conceive) the particulars of their Accusation might remain upon Record against them hereafter.

Here I also observe an Error of the Clerk, that he hath omitted the Proceedings against *Alice Peirce*, *John de Leycester*, and *Walter Spooner*, who were all convicted in this Parliament, as appeareth by the Speaker's motion to the King for their Pardons in the next Parliament. 50 E. 3. Numb. 87.

Thus much touching the Commons Accusations and Impeachments.

The next Precedent is in 11 R. 2. in which Parliament the whole Commons with one assent assembled, came before the King, Prelates, and Lords, in the Parliament Chamber, complaining grievously of *Michael de la Poole*, Earl of *Suffolk*, Chancellor of *England*, there present, accusing him openly by word of Mouth:

1. First, that whereas he being Chancellor, was bound by Oath to further the King's Profit and Commodity in all things:

Judicature in Parliament.

things: He notwithstanding contrary to the said Oath, and not regarding the King's great necessity, had purchased of the King Lands and Tenements to a great value, procuring the same, by reason of his Office, to be Surveyed at an under value.

2. *Item*, Whereas at the last Parliament, nine Lords were appointed to see and examine the State of the King and Realm; which being done, and their Advice delivered to the King, as well by word as writing, by what means the same might best be remedied: The Chancellor promised in open Parliament, that the same should be put in Execution, which was not done, through his default, he being a Principal Officer,

3. *Item*, Whereas the Subsidy, granted the last Parliament, was appointed by the assent of the King and Lords, in what sort it should be expended, and not other ways employed; in this was his default, he being Principal Officer.

4. *Item*, Whereas *John Tidman* had a certain Annuity from E. 3. which he had since forfeited, and the payment thereof was

Judicature in Parliament.

was discontinued for the space of 20 or 30 years: The said Chancellor knowing this, purchased his Interest, and procured the King to confirm the same unto him, &c.

5. *Item*, That whereas the great Master of St. *Antony* being a Schismatic, had thereby forfeited to the King all his Revenue within this Realm, the same Chancellor had taken the same to Farm of the King for 20 Marks. And whereas the Master should have livery thereof again, he could in no wise get the same, until he had bound himself to pay 100 *l.* yearly to the Chancellor and his Son.

6. *Item*, That during the time of his Chancellorship, there had passed divers Charters of Pardon, as well for Murders, Treasons, and Felonies, as also for raising of Rolls, and imbezelling of Laws and Records; and especially since the beginning of this Parliament, a Charter of *Franchises* was granted to the Castle of *Dover*, to the disinherittance of the Crown, and to the Subversion of all the Places and Courts of the King, and his Laws.

7. *Item*,

Judicature in Parliament.

7. *Item*, That at the last Parliament divers Sums were allotted for the defence of the Town of *Gant*, notwithstanding the same Money was lost, &c. by his default, &c.

Of all which Articles, the Commons demand Judgment of the Parliament, &c.

I have been long upon this, considering all the Precedents follow at large. These are the most formally set down of all the Accusations hitherto of the Commons, yet most of these are very general and uncertain: Howbeit the Chancellor took no exceptions to the insufficiency thereof, but answered to every particular.

The next Accusation of the Commons is 11 R. 2. in the 21. of the King, they accused divers of those whom the Lords had first appealed; whereof, when we speak of all Appeals. Anno 21 R. 2. the Commons accused and impeached of Treason the Archbishop of *Canterbury*, Numb. 15. and demanded Judgment against him, and had it. Numb. 16.

Eodem Parl. The Commons accused Mortymer and impeached of Treason *Tho. Mortymer* and *Cobham*, and *John de Cobham*, a Baron of Parlia-

Judicature in Parliament.

Parliament, and had Judgment against them both.

William de la Pool Duke of Suffolk impeached. Anno 28 H. 6. *William de la Pool*, Earl Marshal, and Duke of *Suffolk*, was accused and impeached by the Commons in manner following, viz. The Duke being the great Favorite of the King and Queen, the common People laid all the fault of the evil Government on him, and made Ballads thereof, (which I have seen) taxing his Loyalty to the King.

The Parliament of 28 H. 6. begun the 6th of November, and held to the 6th of December, and was then Prorogued to the 22th of January.

The Duke of *Suffolk*, whether provoked by the Ballads then made on him, or by some Speech in the House of Commons, whereof nothing is recorded, did require of the King that he might be specially accused, and be heard to answer, for that many reported him to be an untrue man; and he made a solemn Protestation of his Loyalty, wherein he sheweth, that his Father, and three of his Brethren, died in the Service of the King, and of his Father and Grandfather. That he himself had served 34 years in the Wars, being then but a Knight. That he had been taken Prisoner, and paid

20000

Judicature in Parliament.

20000 Marks for his Ransom. That he had been 30 years of the Order of the Garter; Chancellor to the King 15 years; and had been 17 years in the King's Wars, without returning home. And he prayed God so to pardon him, as he had been true to the King; and required his Purgation. Numb. 14, 15.

Whether this was sent to the Commons, or what notice they had of it, appears not; but on the 26th of January, the Commons required the Duke might be committed to Ward for his own Confession, for that, as I conceive, he himself confessed, That the general Fame ^{General Fame.} went of him: And the Lords, on Consultation of the Justices, thought the same to be no good Cause of Commitment, unless some special Matters were objected against him. Numb. 16.

On the 28th of January, the Speaker declared to the Lords, how the Duke of *Suffolk*, as it was said, had sold this Realm to the *French*, who prepared to come hither. And that the said Duke, for his own defence, had furnished *Wallingford* Castle with all Warlike Munition. And then on request, the Duke was committed to the Tower.

On

Judicature in Parliament.

On the 7th of *February*, the Chancellor, and some other Lords, were sent by the King to the Commons, (a thing not usual) but wherefore they were sent is not expressed, happily to be informed what they could say against the Duke, or to reconcile the business. But the Commons delivered to this Chancellor, and those other Lords, a Bill of Articles against the Duke, wherein they accused him of divers Treasons, *viz.* For intending to marry his Son to the Heir of the Duke of *Somerset*, and thereby for want of Issue of the King, to claim the Crown. For practising with the *French*, &c. *Numb.* 18, 19. and they require Prosecution against him. *Numb.* 17.

March 19. The Commons delivered another Bill of less Offences against him, *Numb.* 28, 29, 30, &c. requiring those Articles also to be inrolled, and the Duke put to his answer.

These before recited are all the ancient Precedents I find recorded; the following are of later times.

Anno 1 *Jac.* The Commons accused and impeached by word of Mouth Sir *Giles Mompeyson*, and Sir *Fr. Michell*, Knights; for many Oppressions done to the People: They impeached them to the
Lords

Judicature in Parliament.

Lords at a Conference, and afterwards delivered their Declaration against them.

First, Concerning a Patent for Inns and Osteries.

Secondly, A Monopoly for Gold and Silver Thread.

Thirdly, Concerning a Patent of Concealments.

Eodem Parl. They accused *Francis Lord* Lord Visc. St. Alban, Chancellor, who was Sir Francis Bacon. *Viscount St. Alban* (at a Conference) of Bribery, and Corruption, in his Office of Chancellor. They delivered no Writing, but a Committee of the Lords having considered the Proofs, and drawn up the Particulars in form of a Charge, they were sent to the Lord Chancellor, and his answer required to each particular.

In the same manner in the same Parliament, they accused *John Bennet*, Judge of the *Prerogative Court*, of Bribery and Corruption in his Office.

In the same manner they accused and impeached *Lyonel Earl of Middlesex*, and Lord Treasurer of *England*, of Bribery and Extortion, and Impositions on *French* Wines and Grocery, which being reported to the House, a Committee was appointed to consider of the Commons
com-

Judicature in Parliament.

complaint, and also of a Committee, who had reported to the House a great want of Powder in the Stores, through the Lord Treasurer's negligence.

A Committee appointed to consider thereof, did, after many Examinations taken, draw up out of the whole Complaint of the Commons, a Charge against him; as also out of the Report of the Committee for Munition touching the want of Powder; and of a Complaint made to the House by Sir *Thomas Daltson*, and of some Misdemeanors whereof they are informed in the great Wardrobe, and Court of Wards: Which Charge the House sent unto the Treasurer, and required his Answer. 21 Jac.

In eodem Parl. 21 Jac. The Commons at a Conference, accused and impeached by word of Mouth the Bishop of *Norwich* of some Misdemeanors, which being reported to the House, the said Bishop made a present Answer thereunto, as it was.

In the Parliament 1 Car. 1. Febr. 6. The Commons at a Conference accused and impeached *George Duke of Buckingham*, of many Misdemeanors, and delivered their Declaration in Writing, that the said Duke might be put to his Answer.

§ 2. The

Judicature in Parliament.

§ 2. *The second manner of Accusation is* Accusation
Ex parte Domini Regis, which is Ex parte
threefold. Domini
Regis.

The two first are immediately from the King, and the third from the Commandment of the Lords, by a formal Information exhibited in Parliament by the King's Attorney, or Council learned, as was that of E. 3. against *Roger Mortimer Earl of March*, and divers others; and 4 R. 2. against *Sir Ralph Ferrers, K^t*; and 1 Car. 1. against the Earl of *Bristol*.

By the King's Commandment, either upon the Petition of the Delinquent, and upon the return and view of any the Proceedings taken elsewhere, as against the Earl of *Northumberland*, and Lord *Bar-dolph*, upon former Proceedings against them in the Court of *Chancery*. And 2 H. 6. upon request of the Commons against *Sir John Mortimer, Knight*, indicted in *London*. In these Cases no Articles are exhibited *Ex parte Domini Regis*, as in the former.

By Articles exhibited *Ex parte Domini Regis*, *Ex parte Dominorum* against such as the Complaint is made upon in general by the Commons, prout 1 R. 2. against

D

Gome-

Judicature in Parliament.

Gomeniz, Weston, and Alice Peirce; 7 R. 2. against the Bishop of Norwich, and divers others. Which Articles, though drawn and exhibited Per mandatum Dominorum, yet were the Parties charged therewith Ex parte Domini Regis.

Of Accusation by Information Ex parte Domini Regis.

*Of Accu-
sation by
Informa-
tion Ex
parte Do-
mini Re-
gis.*

In *Rot. claus. 4 E. 3.* There is a Proclamation of the death of *Edmond Earl of Kent*, where it is said, certain Letters of his containing Treason, were shewed to the King; wherefore he was Arrested, and freely acknowledged the same before the Earls, Barons, and other Grandees and Nobles of the Realm, in the Parliament at *Winchester, 4 E. 3.*

Here appears plainly, that Articles of Treason are exhibited in Parliament against the Earl of *Kent*.

In the next Parliament in the same year, *Edmond*, Son and Heir of the said *Edmond*, exhibited his Petition, praying the King, that the Record and Procels whereupon the said Earl was put to death, might be brought before him in Parliament, and if Errors be found, that Right be done. *Numb. 11.* The which
being

Judicature in Parliament.

being read before the King, Prelates, Earls, Barons, and other Grandees in the said Parliament, the King by his Royal Power and Dignity by assent in Parliament, repealed the said Judgment. *Numb. 12.*

Note, That in this Repeal no Error was alledged, nor any Exceptions taken for this, that the Lords proceeded upon the Articles only, which were objected against him the said Earl.

This is out of the Close Roll.

The first Precedents recorded in our Parliament Rolls of Accusations in this kind, are these of *4 E. 3.* in the Parliament at *Westminster*, which are added at large amongst divers others, at the end of this Discourse, the effect whereof doth follow, *viz.* These are the Treasons, Felonies, and ill Deeds done to our Lord the King, and to his People, by *Roger de Mortimer*, and others of his Covin, reciting them all, and concludeth thus: Whereas our Lord the King doth charge you the Earls, Barons, and other Peers of this Realm, that for as much as these things touch him principally, and you, and all the People of this Realm, That
D 2 you

Judicature in Parliament.

you do unto the said *Roger* right and lawful Judgment, as is fit for such an one to have who is very guilty of all the crimes above written, for that he believed the said things are notorious, and known for truth unto you, and to all the People of the Realm, *Numb. 1.*

Then followeth the Judgment against him.

Item, In the said manner our Lord the King charged the said Earls, Barons, and Peeres, to give right and lawful Judgment on *Simon de Bereford* Knight, who was ayding and counselling unto the said *Roger de Mortimer* in all treasons and ill deeds, for which the said *Roger* was so awarded, and done to death, as the thing that is known, and notorious to the said Peers, as the King believeth.

Then followeth the Judgment against him also.

Then followeth the Judgment against *John Matrevers*, *Thomas de Gurney*, and *William de Ogle*, *Numb. 5.* But no particular accusations are recorded against any of them, unless they were comprised in those general words of that against *Mortimer*,

Judicature in Parliament.

Mortimer, viz. And other of his Coyn. For some of the same Crimes are mentioned in the Judgments, yet no doubt but the Kings Attourney did exhibit Articles against every of them, upon which the Lords proceeded to Judgment. Here I do ingenuously confess my own Error, when I said that this Judgment against *Roger de Mortimer* was afterwards reversed; for that he was put to death without any Accusation, which I conceived to be so upon first view of the Repeal thereof.

Anno 21. E. 3. Numb. 10. Where the Petitioners *Roger de Mortimer*, the Grandchild assigneth for that the said Earl was put to death, and he disinherited: *Sans Accusament, Et sans estre mäsone in Judgment ou en Respons.*

By which words (*sans accusament*) I gave you to understand that the Articles were no accusation, whereas now upon better Consideration I do find that these words do intend no accusation by witnesses or otherwise to prove the said Articles objected against him. For these Articles are a legal accusation in Parliament, and frequently used, as appears by many Precedents of the like nature. But there was no other proof offered

Judicature in Parliament.

by the Lords to prove the same, then that the King believeth them, and that they are notorious and known for truth unto the Lords, and all the People of the Realm.

And the Lords also having examined these Articles, said all these things contained therein are notorious and known. They speak not a word of any one witness examined, or any other proof then the common fame: For this Cause and for that the said Earl was not brought to Judgment nor to answer, but condemned unseen and unheard upon common Fame only without any legal Proof.

The Judgment, defective in all points.

The whole Parliament did very justly Repeal the said Judgment and Record, declaring it to be erroneous and defective in all points. And the Lords were willing to damn the whole Record in all points, least haply it might be alledged against themselves another time for Precedent.

Anno 15. E. 2. The Lords and Commons joyned in the Accusations against the *Spencers*, and for that the Lords had no Record in their own pursuit upon the Cause contained in their award, and they ought not to be their own Judges, &c. having been Accusors no exceptions were taken

Judicature in Parliament.

taken to the Articles but other Errors assigned, *quod vide* where it is said to be *sans Accusament*, so that they repealed it not for that there was no Accusation but for that he was not brought to his Answer.

Again, That those words *Sans accusament* should simply signify no Accusation, is only the Averment of the Petition. The Judgment doth not say, that there was no accusation, but that it was erroneous in all points. And so it was, no proof being produced but common Fame to prove the Answer. And this first error bred a second. I do not well understand the meaning of these words (*Sans accusament*.) That a Peer ought to be Indicted for Capital offences in Parliament. But having perused all the Judgments I do not find any one Peer indicted in Parliament. In 11. R. 2. Numb. 7. All the Lords Spiritual and Temporal claimed as their liberty and franchise, that the great matters moved in this Parliament, and to be moved in other Parliaments in time to come touching the Peers of the Land, ought to be admeasured adjudged and discussed by the course of the Parliament, and not by the Civil-Law, nor by the Law

Judicature in Parliament.

of the Land, used in the more base Courts of the Realm, which the King granted in full Parliament, *eodem Anno Rot. Appeal 290.*

This is said to be their ancient custom, *viz.* To be adjudged according to the use of the Parliament only.

Then no Peer can be indicted in Parliament, for that it is contrary to the use of Parliament. Let this suffice for the confession and rectifying mine own former Error herein.

But a Lord of Parliament may be indicted out of Parliament, and by the Kings command proceeded against in the next Parliament, upon the same indictment as in these Subsequent.

The Lord Berkley arraigned waived his Peerage.

In the same Parliament, the Lord Berkley was arraigned, for the death of *Ed. 2.* and whether out of his humility or otherwise, he waived his Peerage, and put himself on the Tryal of his Country. The Articles against him though not expressed, but by the Inference out of his Arraignment are for the murder of King *Ed. 2.* at Berkley Castle in the County of Gloucester, unto which he answered, that he was then sick at Bradley in Worcester-shire, and pleaded not guilty of the death of the said King, *Et de hoc*
de

Judicature in Parliament.

de bono & malo ponit se super Patriam: The Precedent shall hereafter be added at large.

It begins thus.

Placita Coronæ tenta coram Dom. Rege, Ed. 3. post conquestum Angliæ in pleno Parlamento suo predicto. Et allocutus de hoc quod cum Dominus, Edwardus nuper Rex Angliæ Pater Dom. Regis nunc, in custodiam Thomæ & cujusdam Johannis Matrevers extitit deliberatus, ad salvo custodiendum Castro ipsius Thomæ de Berkley in Com. Gloucester, & in eodem Castro in custodia ipsorum murderatus extitit, & interfectus, qualiter se velit de morte ipsius Regis acquietare: dicit, &c. Numb. 16.

Then follows his Answer.

Here the cause why the Lord Berkley was tryed is mentioned, but the Articles objected against him, and by whom he was accused, who questioned him, whether the Chancellor or Steward of England, or who else; All these circumstances are omitted. It appears not I say in what manner this crime of the Lord Berkley was presented to the Lords, whether

Judicature in Parliament.

ther by the former general Information against *Mortimer*, & *autres de la Covyn*, or by some such Particular Information against him alone, which I rather believe.

Some such Information there must be of necessity, else how could he be questioned for his crime in Parliament? But here it appeareth that the Lords brought him to his Answer, which they omitted to *Mortimer*, and in that Point their Proceedings against *Mortimer* were erroneous. And had his manner of Accusation been erroneous also, No doubt but the Lords would have avoyded that error now against *Berkley*.

The manner how *Berkley* was arraigned here, *in pleno Parlamento*, is explained in the Precedent of, 1 R. 2. *Gomeniz* and *Weston*, who were brought Prisoners by the Constable of the *Tower*, before the Lords in full Parliament sitting in the white Chamber, where they were arraigned at the commandment of the said Lords in full Parliament, by Sir *Richard le Scroop* Knight, Steward of the Kings House. The words *full Parliament* signify the Lords and Commons. For that Record saith, the Commons prayed that all

Judicature in Parliament.

all such that have surrendred any Forts, &c. might be put to their Answer before the Lords and Commons, &c. Whereupon they were brought to their Answers in full Parliament for that Offence. So here I conceive the Lord *Berkley* being accused by the King, for the murder of King E. 2. was brought before the Lords and Commons: For the Commons are to be present at such arraignment as shall be shewn hereafter, and the Clerk of the Crown having read the Accusation against him, *Allocutus fuit*: That is the Lord Steward of *England* recited the Fact, whereof he was accused and demanded of him how he could acquit himself.

This I conceive to be the manner thereof, *Vide* the Appeals 21 R. 2. for the form thereof.

I marvel the Lords permitted the Lord *Berkley* to wave his Peerage, and put himself *super Patriam*.

Anno 4 R. 2. Sir *Ra. Ferrers* Knight, was brought into Parliament under the guard of the Marshal of *England*, and there arraigned on the Kings behalf, for suspicion of Treason, &c. Numb. 21. In the Process against him is recorded that

Judicature in Parliament.

that for suspicion of Treason surmised against him, he was arrested in the Marches of *Scotland*, by *Monsieur de Lancaster*, and other Lords Temporal there being in the said Marches, and that he was brought under the said Arrest by commandment of the Lords to Answer in this Parliament, to that which shall be surmised against him, in special concerning certain Letters, which were found and sent to the King and his Council. The Letters were also recorded, and read in Parliament, *Numb.* 17. 18, 19, 20. but the Information exhibited against him, whereupon he was arraigned is not recorded. It is only said, He was arraigned, *Ex parte Domini Regis*.

Quest. §. 3. Here might be two Questions.

1. First, Whether was this Sir *Ra. Ferrers* legally brought to his Answer in Parliament by the commandment of the Duke of *Lancaster*, and those other Lords who were then with him in the Marches of *Scotland*.
2. Secondly, Whether he being no Baron or Lord of Parliament (for he never had Summons) might be legally arraigned

Judicature in Parliament.

arraigned in Parliament for life and death, upon an Information, *Ex parte Dom. Regis*, which is contrary to the Law, as was resolved in Parliament, 4 *E. 3. Numb.* 2. and 6.

For resolutions of these doubts, I am *Resolv.* of opinion that the Duke of *Lancaster* might send Sir *Ra. Ferrers* to the Parliament, because it was then sitting, and might examine the Treason whereof he was suspected, though they could not proceed to Judgment against him, without the Commons, he being a Commoner, and not their Peer: And it fell out in the Examination of this business, they found the Letters to be counterfeited, and so he was acquitted thereof: And so far their proceeding was not illegal. For the Parliament may entertain and examine any Cause, and then direct the Judgment thereof to its own proper Court if it belong not unto them as, they did in, 5 *R. 2. Numb.* 43. & 44.

Here Sir *William Cogan* Knight, being accused by Sir *Richard Clurdon* of matter sounding to Treason. After the Lords *Observ.* had heard the Cause, they remitted both the parties to the Common-Law. And in this Case of Sir *Ra. Ferrers* (if they had found he had been guilty) they might

Judicature in Parliament.

might have proceeded to Judgment against him according to the Precedent of Sir *Tho. Mortimer* in 2 *H. 4.* who was indicted in *London*, and the Indictment returned into the Chancery, and thence brought into the *Parliament*, where the Commons affirmed the same, and prayed Judgment against him.

Anno 2 H. 4. The Lords Temporal gave Judgment on one *Tho. Holland* Earl of *Kent*, *John Holland* late Earl of *Huntington*, *John Mountague* late Earl of *Salisbury*, the late Lord *de Spencer*, and *Ralph Lumley* who were beheaded in a War they had Trayterously raised against the King. This Judgment is entred but not the Information, *Ex parte Dom. Regis*, which is necessary to be understood, for had it been omitted, his Son *Thomas* would without doubt have assigned that for one of the errors in his Petition to reverse the said Judgment, 2 *H. 5. apud Leicester*, which he did not, though he assigned for an Error, That his Father was put to death without an accusation.

The Earl of
Bristol
charged
with Treason.

In the *Parliament* begun at *Westminster* Feb. 6. 1 *Car. 1.* and continued until June 25. *Anno 2. ejusdem Regis*, *John* Earl of *Bristol* was charged with High Treason

Judicature in Parliament.

Treason in this manner, viz. *Primo die Maii.* The said Earl of *Bristol* being brought to the Bar, and kneeling till the Lord Keeper wished him to stand up; The Lord Keeper told him, he was sent for to hear his Charge of High Treason, And Mr. Attorney General being at the Clerks Table, began to open his Charge, but being interrupted by the said Earl, who with much importunity exhibited Articles against the Duke of *Buckingham* Articles against the Duke of *Buckingham* then present, which as he said he conceived to be Treason, and required of the Lords that his Testimony against the Duke, and the Lord *Conway*, against whom he then also delivered Articles, might not be made invalid no more then the Charge against himself, which he affirms was procured by the said Duke: yet notwithstanding the heads of the Kings Charge were opened against him by Mr. Attorney, and then the said Articles against the said Duke, and against the Lord *Conway* were read. And it was ordered by the Lords of the *Parliament* that the Kings Charge against the said Earl, should be first heard, and afterwards the Earls Charge against the Duke, &c. But yet so, as the Earls Testimony against the said Duke be not

Judicature in Parliament.

not prevented, prejudiced, hindred or impeached.

Secundo die Maii. The House was moved that the Earl of *Buckingham*, might be indicted according to the, *Stat.* of 35 *H. 8.* the Treasons committed being beyond the Seas as was objected, and that being certified to both Houses, they to proceed against him by Tryal of *Peers*. But their Lordships did not resolve on the manner of proceeding. Then the Houses were moved that Mr. Attorney might provide an Indictment, against the said Earl to be returned to the House on *Saturday* next, *Maii 6.* And if he doubt of the Form, to confer thereof with the Judges. And if any great difficulty, appear to resort to their Lordships and acquaint them with it. And it was ordered that Mr. Attorney proceed with the preparation, but the Houses not to be concluded at their next meeting on Thursday. And the Sub-Committee for Priviledges, &c. to search for Precedents in the mean time. *Die Jovis Maii 4.* The Sub-Committee for Priviledges reported one onely President, viz. the Tryal of the Earl of *Northumberland*, 5 *H. 4.* which the Clark read unto them out of the *Parliament* Roll of that year.

Where-

Judicature in Parliament.

Whereupon after long debate, It was ordered first that Mr. Attorney prepare the heads of the Charge, against the Earl of *Bristol*, and to bring them in on *Saturday* next.

Secondly, The Earl then to receive his Charge at the Bar.

Thirdly, That when the Earl hath heard his Charge, the Lords will determine when he shall Answer, But he is not to be inhibited if he will Answer presently.

Fourthly, The Cause of the Earl of *Bristol* is to be retained wholly in this House.

After the Earls Charge is brought in and his Answer, then their Lordships to proceed to hear Mr. Attornies proofs amongst themselves, and then to put the Cause into a way of Proceeding in this House.

Die Sabati Maii 6. The Lord Keeper shewed how Mr. Atturney desired that in regard the House, hath already heard the nature of the crimes objected against the said Earl of *Bristol*.

That the Clark of the Crown in the Kings Bench, may attend the reading of the Charge here according to a Precedent of former times, which was
E denied

denyed in regard the Clark of the Crown in the Kings bench, is no Minister of this Court, And also for that it was ordered *May 4.* that this Cause was wholly to be retained within this House. The said Order being read, the Earl was brought to the Bar, and the Lord Keeper commanded Mr. Attorney to read the Charge against him, who read the same out of a Parchment ingrossed in Court-hand, and signed by himself, *Ro. Heath.*

It containeth diverse Articles of High Treason, and other great Enormities, Crimes, Offences, and contempts committed by the said Earl, &c. *prout postea.* Thus much touching the Charge against the said Earl by Information in the Kings behalf.

Quest. A Question was demanded of me and others in private, the last Parliament: Thar seeing by Order of the Lords House *May 4.* the Earl of *Bristols* cause should be wholly retained in this House, how that might now be done in respect of the *Stat.* of 35 *H. 8.* By which it was enacted, That all Treasons committed beyond the Seas, as this Earls were, shall be tryed in the Kings Bench, or before Commissioners Assigned by the King; And an Order of the upper House can-

not

not avoid the *Statute.* Some were of opinion, that the Earl was first to be indicted before Commissioners, appointed by the King, and that Indictment being returned into the Parliament to be tryed thereon by his Peers, and vouched that Precedent of 2 *H. 6.* Of Sir *John Mortimers* Indictment returned into the Parliament.

But then the Cause cannot be wholly retained in the Parliament, neither can it be inferred out of the Precedent of Sir *John Mortimer*, that the Parliament can try any of Treason unless he be Indicted elsewhere. For then the Parliament should not have so much power, as hath the Kings Bench and other inferiour Courts, wherein Capital Offences may be both enquired of and determined. Neither can Sir *John Mortimers* Indictment thus returned be a leading Case, for Tryal of Peers in Parliament for he was but a Commoner, and therefore not to have been judged by the Lords, unless they had first accused him, and the Commons did so by Informing the Indictment to be true, before the Lords gave Judgment upon him. But their can be no Precedent shewn, that a Peer of Parliament hath been

E 2

Judicature in Parliament.

been tryed in Parliament on an Indictment taken elsewhere.

To resolve this Question two things are Considerable.

Resolve. 1. First, The *Statute* of 35 *H. 8.* Whether the meaning thereof were to limit the Tryal of a Peer in the time of the Parliament (for Forreign Treasons assigned) taken in the Kings Bench, or before Commissioners Assigned by the King, and not elsewhere. But I conceive the *Statute* hath no such meaning. The Preamble saith, it was doubted whether such Treasons might by the Common-Law of the Land be enquired into, heard, and determined within this Realm of *England.* For a plain remedy Order, and Declaration herein to be had and made, Be it enacted, &c. So that if such Treasons have not been heretofore enquirable by the Common-Law, then this *Statute* provides a Remedy and Order for the same hereafter. But this *Statute* doth not abridg the Parliament of the power it had to enquire of, and determine such Treasons in time of Parliament. Whereof there are diverse Precedents, viz. 1 *R. 2.* *Weston* and *Gomeniz*, 50 *E. 3.* for *William Latimer*, and *John Nevil*, 7 *R. 2.* for the Bishop of

Judicature in Parliament.

of *Norwich*, & *ibid.* Numb. 17. for *Cressingham* and *Shipworth*, & *ibid.* Numb. 24. for Sir *William Elsingham*, Sir *Thomas Trevet*, and Sir *Henry de Ferrers*, all Tryed in Parliament for matters done beyond the Seas.

The second thing to be considered is, The Order it self which I conceive to be of force notwithstanding the *Statute*, of 35 *H. 8.* for that it is neither directly contrary to the *Statute*, nor repugnant to the Common-Law, otherwise the Act of one House alone cannot alter a former *Statute* made by consent of both Houses. And this is to be remembred, that the *Observ.* Proceeding against a Peer in Parliament is not necessary.

But thus it was used to be, viz.

The Peer accused to be brought before the Lords and Commons, and then the Lord Steward to sit in the Chancellors place, on the *Woolfack* and the Articles to be read against him by the Clark of the Crown, and upon his Answer the Lords do determine of their Judgment, which is afterwards pronounced by the same Lord Steward.

Judicature in Parliament.

A Question might be whether the Commons have used to sit with their Speaker at these Tryals. If they have then the Court of Requests, or some such place may be provided for the purpose. And thus that whole Cause might be retained in Parliament notwithstanding the *Stat.* of 35 *H.* 8. Thus much touching the Accusation, *ex parte Dom. Regis*, exhibited in a formal Accusation by the Kings Atturney.

The Duke of *Clarence* was arraigned in Parliament, 18 *E.* 4. upon the like Information, but the Precedent is not in the Parliament Rolls; Therefore I omit it.

¶ 4. *The second kind of Accusation on the Kings behalf is, ex mandato Dom. Regis, upon the Roll and view of any proceedings elsewhere against the Delinquent, or upon his Petition; The Precedents thereof are these.*

Anno 5 H. 4. The Earl of *Northumberland* was Tryed in Parliament, *ex mandato Dom. Regis*, upon his own Petition. The Accusation and manner was thus. The said Earl had raised Forces to have joyned with his Son *Hotspur*,
in

Judicature in Parliament.

in Rebellion against the King: *Hotspur* was slain in the Battel of *Shrewsbury*, 21 *July* 4. *H.* 4. before the said Earl could joyn with him. Whereupon he dismissed his Forces, and retired to *Worksworth* Castle. The King after the Battel came to *York*, and sent for the said Earl, and being come pardoned him for his life but abridged him of his Liberty. The next Parliament was summoned the 20 of *October* to begin at *Coventry* the 3. of *December*. And the Earl had his writ of Summons. This Parliament was prorogued till the 23. of *November* by new Writs (as the manner then was) returnable *Craftino Hillarii* then following. But the Earl had no new Summons thither.

But thither he comes a Petitioner.

Speed saith he was abridg'd of his liberty, but the Record saith, he came before the King and Lords. And not that he was a Prisoner as *Gomeniz*, and *Weston*, 1 *R.* 2. Nor that he was caused to be brought as a Delinquent, sent for as *Alice Peirce*, 1 *R.* 2. But that he came before the King, Lords, and Commons of Parliament. And then the Chancellor
E 4 told

Judicature in Parliament.

told him that upon *Wednesday* last past, he had been before the King and Lords, and Commons in the same Parliament; and besought the King as he had done before, at his coming before him at *York*. That the King would do him grace for his misprisions against him, in not keeping his Laws and Statutes, as by one Petition delivered by him in Parliament written in *English*, The tenor whereof followeth.

To my most dreadful and Sovereign
Leige Lord.

A Petition. I your humble Subject beseech your Highness, to have in remembrance my coming into your Gracious Presence at *York*, of your free will by your goodly Letters.

The which Petition per Commandment du Roy, was examined by the Justices to have their Counsel and Advice therein.

But the Lords by Protestation made claimed the Judgment, to belong unto them only in such Cases, &c.

And so the Lords Tryed him, and acquitted him of Treason and Felony, but found him guilty of a Trespass only which

Judicature in Parliament.

which the King pardoned. Here no Information was exhibited against the said Earl, yet the Kings Counsel opened his Offences to the Lords, else how could they appear.

Anno 7 H. 4. The King commanded the Lords Temporal in Parliament, to advise what manner of Process should be made against *Henry* late Earl of *Northumberland*, and *Tho. Bardolph* late Lord Baron, for certain ill deeds which they had lately committed contrary to their Allegiance. At their meeting the Constable of *England*, shewed them the Process made in the Court of *Chivalry*, against *Henry de Peirce* upon the Articles of Treason committed by him and others of his Covyn.

In which Articles are named the Arch-Bishop of *York*: *Tho. Newberry* Earl Marshal, the said Earl of *Northumberland*, the said Lord *Bardolph* and many others, and their several Treasons are therein contained. The Lords having advised therein, and considered the proofs delivered their opinion to the King touching the said Earl of *Northumberland*, and the said Lord *Bardolph* only, and proceeded to Judgment against them. Then the King caused to be demanded

demanded of the Lords Temporal, Peers of the Realm what they would say touching the Act of the said late Archbishop of *York*, and of the said Earl Marshal, who lately with a great multitude of people were armed, and trained in the field within the Realm of *England* with Banners displayed, &c.

Unto which demand the said Lords Temporal said, That according to the Information to them given by the said Constable. It seemeth unto them to be Treason: yet notwithstanding the Lords desired that with good deliberation, when they next returned to the Parliament they might speak thereof, unto our Lord the King as no error might be found in their doings in time to come. This was done on that day the Parliament was adjourned. Here the Lords had no other Accusation against those two Peers but the Kings commandment, upon view of former Process against them in the Court of *Chivalry*.

And the Lords declared their opinion touching the Archbishop of *York*, and the Earl Marshal (though their Treasons were contained in the same Process also) least Error might be found in their doings hereafter. But whether they thought

thought their Error to be, that the King had not commanded them first to advise thereon, touching the said Archbishop, and the Earl Marshal as he had done touching the others. Let the Reader Judge; For my part I think that would have been error: Could the Lords proceed upon Process elsewhere unless the King commands them?

2 H. 6. The Judgment against *John Mortimer*, is drawn up very briefly by *John Hales* one of the Justices of the Kings Bench, wherein he first shews that the said Sir *John Mortimer* was Indicted in *London* sitting the Parliament before the Lord Mayor of *London*, and other Commissioners appointed by the King. For that the said Sir *John* being committed to the Tower, for suspicion of Treason, corrupted his keeper and broke Prison: That the said Indictment was returned into Chancery, *Ex mandato Dom. Regis*, and by the Chancery brought into the Parliament before the Duke of *Gloucester* the Kings Protector, and the Lords Temporal, the King being then an Infant.

And the Protector being Authorized by Commission to hold the Parliament,
de

Judicature in Parliament.

de Precepto Dom. Regis. That the said Sir John Mortymer by Vertue of the Writs was brought before the said Duke, and Lords, and Commons. That the said Commons affirmed the said Indictment to be true, and desired Judgment against him, as convict of Treason and Felony.

And lastly, That he was thereupon adjudged. In this is set down all the essential parts of the Lords proceedings against Mortymer. The Ceremonious or formal parts thereof are omitted, as, who complained of or accused Mortymer to the Parliament.

The King or the Commons did not, for then there needed no Indictment: And therefore it must move for the King either before the Indictment, or rather upon the Return thereof unto the House. For had the Accusation been before the Indictment, it had been a shorter way to Arraign him also before the Commissioners in London, (he being no Member nor Peer of Parliament) then to return the Indictment into the Chancery, and then be brought into the Parliament.

Here

Judicature in Parliament.

Here is also omitted the Conference before hand, between the Lords and Commons touching this matter: For it is very unlikely that the Lords did suddenly send for the Commons, and then abruptly read the Information before them, and they as suddenly affirm the same, all these are necessarily understood. That the Commons affirmed the Indictment, &c.

It appears that the Lords cannot of themselves Judge a Common Person, for an Offence for he is no Peer according to that of, 4 E. 3. Numb. 26.

The manner of Accusation by Information, *Ex parte Dom. Regis*, is when the Commons as any other private Person accuse any man unto the Lords in general, but do not declare the Offences in particular, other then by the Commandment of the King. Articles are drawn up against the Delinquent, *Ex parte Dom. Regis*.

The Precedents are these.

2 R. 2. The Constable of the Tower, was commanded to bring Gomeniz and Weston, (whose Offences were complained of in general by the Commons that

that they named) before the Lords in Parliament, to Answer to the Articles objected against them on the behalf of the King, and they were severally arraigned at the Commandment of the Lords, &c.

Eodem anno, Alice Pierce being complained of by the Commons was accused, and commanded to come before the Lords in Parliament, to Answer to certain things objected against her on the Kings behalf.

And here upon Sir Richard le Scroope, Chief Steward of the Kings House by Comandment of the Lords, reherfed in Parliment in the presence of the said Alice, a certain Ordinance, &c. Made in the Parliament of 50 E. 3. against her.

And this Reherfal being made, the said Steward furnished unto the said Alice. That it seemed to the Lords of the Parliament that she had incurred the pain comprised in the said Ordinance in certain points, and especially in two, That is to say, &c.

By these two Precedents it appears plain enough that the Lords commanded the Articles to be drawn, and exhibited though *ex parte Dom. Regis*, for all these
are

are said to be done by their Commandment, And the practise at this day is, that out of the Complaints of the Commons, as of *Mompesson*, The Lord Chancellor, and the Lord Tresurer, and a Committee of the Lords did draw up the Charges. But they wanted the words *Ex parte Dom. Regis*.

The reason why in this Cause the Articles are, Ex parte Dom. Regis, seemed to be this :

The Commons complain but impeach not, Notwithstanding the Impeachment the Lords cannot proceed neither can they Impeach any to themselves: So it rests that the party is to be Impeached at the Kings Suit.

The Lords cannot impeach any to themselves.

It may be lawful for me to examine the proceedings of the Lords in the Complaint against *Mompesson*, and to compare them with ancient Proceedings in like Cases, And they will appear to differ much.

And touching *Mompesson* the Commons did not only complain but accuse him: He fled, in his absence they ought to have proceeded to Judgment against him, before Proclamation first made for him

him to appear before the King, and then at a day, the ancient use in such Cases was this.

The Lords considered of the Complaint, and examined the Proofs produced by the Commons: Then agreed on their Judgment and caused Proclamation to be made throughout *England* for the party to appear at a day, else Judgment shall be pronounced against him, with which the Commons are to be acquainted before the Proclamations are sent for. Then the Return of the Proclamations to be reviewed and examined, and if any Errors be therein, new Proclamations are to be made in the next Shire only for the party to appear at a short day: If they find no Errors in the Return, then Judgment is to be pronounced and not before. Thus it was in 21 R. 2. in *Thomas Mortymors Case*, &c. In 7 H. 4. in the *Earl of Northumberlands Case*. But there needed no Articles to be drawn up, *Ex parte Dom. Regis*, out of the Impeachment of the Commons for the Suit is theirs and not the Kings.

Touching the Lord Treasurer, First the Commons did swerve from the Ancient Course in this, they delivered not their

their Accusation in writing (he being absent;) Had it been in the open House, an Impeachment by word of mouth had been sufficient, and the Suit had been theirs: but it being at a Committee, how could the Lord Treasurer take notice of their Impeachment? wherefore the Lords of necessity did draw up a Charge against him out of their Accusation, and then it became the Kings Suit, and they were abridged of their power to reply, or demand Judgment, *Prout in Weston & Gomeniz, Case 1. R. 2.*

And *Alice Peirce, ibid.* Neither was it now necessary for the Commons to be acquainted with the Delinquent's Answer, or any of the Proceedings, for that they neither demanded he might be put to his Answer before the Lords and them, nor impeached by word in open House, nor in Writing, One of which is required in an Impeachment.

And the Lords they varied in this, that they did mingle other Complaints with these of the Commons, when each should have been apart of it self, *prout 43 E. 3. Sir Joh. at Lees Case.* Neither did the Lords anciently use to omit any part of the Commons Complaint and

Judicature in Parliament.

Accusation, as they did the Imposition on the *French-Wines*: And the Articles of the Charge they sent to the *Lord Treasurer* ought to have been examined *ex parte Domini Regis* prout in the former Precedents of 1 R. 2. The next Precedent is 7 R. 2. upon the Demand of the Commons against the Bishop of *Norwich* and others.

§. 5. Of Accusation by Complaint of private Persons.

I do not remember any Precedent of this manner of Accusation for publick Offences unless the Parties Complainant be particularly interested therein; yet I doubt not but such Complaints have been, and may be received, and the Parties proceeded against in Parliament, or else that High Court should not have so much Authority to receive Information *pro Domino Rege* from private persons, as the Inferiour Courts have: But what hath been done shall appear; I will omit all Complaints of particular wrongs, except it be of *Bribery*, *Extortion* or *Oppression*, in Men of Authority.

Anno 43. E. 3. *William Latimer* exhibited

Judicature in Parliament.

bited his Petition in Parliament unto our Lord the King, and to his Council, shewing that he had the Wardship and Marriage of the Heir of *Robert Latimer*, by mean Grant from the King, and held the same until Monsieur *John at Lee*, then Steward of the King's House, sent a Serjeant at Arms to bring them to *London*, and commanded him, being come, not to depart without his leave, upon payment of 1000 l. and afterwards would not give him leave to depart until he had surrendred the Body of the said Heir, and the King's Patent unto him the said Monsieur *John at Lee*; and thereupon the said *John* was put to reason before the Lords, &c. no. 20, 21. and also the said *John* was put to reason before them for this; When he was Steward of the King's House, he caused divers to be attached by their Bodies, some by Serjeants at Arms, and some otherwise, as *W. Latimer* and others to be brought before the King's Council, &c. n. 22. and also for executing the Authority of Steward out of the Verge, n. 23. and also for discharging out of *Newgate*, by his own Authority, and against the Judges Commandment, *Hugh Levenham*, an * Approver, who had

A great
Oppression.

*Promoter.

Judicature in Parliament.

had appealed several men of Felonies, &c. n. 24. and also, that he being sworn by the King's Council, did bargain with *Nicholas Levayn* for the Manor of *Cainham* in *Kent*, which the said *Nicholas* claimed to hold during the Minority of *John Staynton*, whereas the said *John at Lee* knew the same was never holden of the King in Chief of the Castle of *Dover*, n. 25.

These be the Particulars wherewith the said *John at Lee* was Charged. It appeareth *W. Latymer* accused him at the first, but not the rest; and I imagine that the Commons accused him of the Second and other Particulars, for that they are said somewhat generally, and are offences against the Liberties of the Commons; and also for that divers of the Commons were present at the hearing; And for the Fourth and Fifth Particulars, I conceive the King's Council accused him thereof, for that one is an Offence against the legal Proceedings of Justice, which then was that of the Approver, viz. *He which accuseth any one of Felony, &c. should remain in Prison as well as the accused until Trial.* Of later times the Accuser puts in Sureties to prosecute; and the other Offence is a particular

Judicature in Parliament.

ticular wrong done unto the King in his Revenues: And had any private person accused him of this, their Petitions would have been recorded as well as *Latymer's*: But the Lords proceeded against him upon *Latimer's* Accusation, and then upon the rest severally, and they did not mingle one with another.

Anno 50 E. 3. The Commons accused and impeached *W. Ellis*, n. 31. and afterwards *John Botheil* and *W. Cooper* exhibited their Bills against him, to this effect;

To their Thrice Redoubted King, and to his Sage Council, sheweth John Botheil of London, That the Monday next after the Ascension, in the Fortieth Year of our Lord the King, that now is, a Ship of Scotland in Pruse, was chased by Tempest into Likebread (whereof the Master's Name is Henry Luce) Charged with divers Merchandizes, &c. and that the same day one William Savage, Clerk, and Servant to William Ellis, by Command of the said William, took of the said Ship for the Merchandizes not discharged there, 17 Nobles and a Last of, &c. and because that W. Ellis knew that W. Cooper was to

Judicature in Parliament.

come to the Parliament, and shew these and other Grievances in aid of the Merchants, and also to shew how the great Prices of Herrings might be amended in aid of the whole Realm, the said W. Ellis, by false suggestion, caused the said W. Cooper to be Arrested and put in Prison in the Tower for three Weeks.

May it please you, &c.

Here I observe that the Accusation of a private person ought to be legal and certain, as that was.

This Accusation consists of two parts; The unjust taking of 17 Nobles, &c. from the Merchant of *Pruse*, and the Imprisonment of the Petitioner by false suggestion to the King.

Upon hearing of the Matter, the Lords Ordered, That as for the Complaint touching the 17 Nobles, it should be sent to the *Kings-Bench* to be tried there; but the Lords themselves determined the Imprisonment upon the false suggestion to the King, and awarded *Ellis* to prison, to pay Fine and Ransom to the King, and Damages to the Accusers.

The Lords received the latter part of this Complaint for two Causes; The one,

Judicature in Parliament.

one, for the false Suggestion to the King, limited by the Statute of 31 E. 3. to be punished by the Chancellor, L. Treasurer, and the Council if he be untrue; all which were present in the Parliament.

The other, For a Scruple which might arise out of the Words of the Statute, which provides for false Suggestions only to the King himself. *Whereas Ellis his false Suggestion was by a Letter written to one of the Kings Servants, which being shewed to the King, his Majesty caused the Petitioner to be imprisoned.* And this the Lords expounded to be in *Ellis* a Suggestion unto the King himself. And had this Point been truly triable at the *Common Law*, the Lords had referred it thither; *This is but my own Concept.*

Anno 5 R. 2. Numb. 4. Richard Clevedon Esquire, by his Bill exhibited to the King in Parliament, accuseth Sir William Cogan Knight.

Anno 5 R. 2. Numb. 45. The Mayor, Bayliffs and Commonalty of Cambridge were accused, &c.

The next of this kind is a very slanderous Accusation of the Chancellor, which I will briefly declare, and the

Judicature in Parliament.

whole proceedings therein, for that it differs in some points from the rest.

The Parliament of 7 R. 2. at *Salisbury* began the *Friday* after the Feast of St. *Mark* the Evangelist, *April 29*. On the 24th of *May* next, *John Cavendish* Fishmonger, complained in this Parliament:

The Fish-
monger
contra L.
Chancellor.

First, Before the Commons of *England* in that Assembly, in presence of some Prelates and Temporal Lords, and afterwards before all the Prelates and Temporal Lords in full Parliament.

In the beginning of this Complaint, he desired the Lords (for God's sake) to grant sure and speedy protection for the safety of his Life, and that he might have sufficient Surety of the Peace against those of whom he would complain; and especially he demanded Surety of Monsieur *Michael de la Poole*, Chancellor of *England*; and accordingly the Chancellor did (at the Commandment of the King) find Sureties, viz. Two Earls, &c. Then the Fishmonger rehearsed, how that all the last Parliament which was held at *Westminster*, at *Allhallontide* in the same year, he did sue by his Bill to have restitution of certain Merchandizes of great value,
(from

Judicature in Parliament.

(from *Geo. Mansfield* and three others) which was lost upon the Seas by them at such time as they had undertaken the Safeguard of the Seas, and of the Merchandizes passing and coming in the mean time, against all Enemies except Royal Power. The which was endorsed, faith he, and committed to the Chancery, to discuss and determine the Matters therein comprized, according to Law and Reason. Whereupon he dealt with one *John Otrey*, a Clerk, and Household-Servant to the said Chancellor, for his Master's Favour and Furtherance in the Business. The Clerk, after he had viewed a Copy of the Bill, and considered of the Business, promised, that for Forty Pounds to his Lord's use, and Four Pounds to his own use, he should have speed: That he gave his Bond for 44 l. to be paid at a Day to come, and afterwards delivered unto the said *Otre* certain Herrings and Sturgeon, to the value of 9 or 10 Marks, to the use of the said Chancellor in part, and three yards of Scarlet, which cost him 32 s. unto *Otre*, for his own use, in part of the said 4 l. Notwithstanding all which, he found no Favour from the Chancellor in his Suit, but was de-
laied,

Judicature in Parliament.

laied, and still is, and cannot have Justice therefore.

That the said *Otre* told him, that he could have had more Money of his Adversaries to have been against him; which made him suspect the worst. But, said he, whether the *Chancellor* shall be reputed privy to this, God knoweth; judge you My Lords; for the *Chancellor* hath paid him for his *Herrings* and other Fish, and sent him his Bond cancelled; but whether he did it out of Conscience, or to avoid Slander and Reproach, he knew not; Judge you, My Lords: but he was not paid for his three yards of *Scarlet*.

The Chan-
cellors
Answer.

Unto this the *Chancellor* made his Answer, not presently, but at another time; for the Record saith, He Answered first before the Prelates and Lords, and afterwards before the Lords and Commons; whereas the Commons were present when the Complaint was made, it being *in pleno Parlamento*.

And in the Judges Award, to whom this Matter was afterwards referred, it is said to be *coram Magnatibus & Communitat' in Parlamento*. So that the Answer was made some other way.

First,

Judicature in Parliament.

First, He protested his Innocency touching the Delay of Justice, and shewed how the Delay was through the Difficulty of the Cause, and vouched the Justices and the Serjeants, who had often heard the Pleadings.

Touching the *Bribery*, he swore by the Sacrament he had no knowledge thereof, until upon Accompt with his Officers, he found those Fishes not paid for; and then he presently caused them to be paid for, and the Bond cancelled, and sent him. He denied that his Clerk moved him in that Business; all which he offered to prove in such manner as the King and the Lords should ordain, and demanded Justice against the *Fishmonger* for the Slander. Unto which the *Fishmonger* presently answered, and said, He did not accuse the *Chancellor* himself, but his Clerk only. The Lords examined the *Fishmonger* and the Clerk about the Bond, and his Adversaries on their Allegiance, whether they had given any thing, or promised to give? And finding the *Chancellor* free from *Bribery*, the Lords acquitted him of his Accusation afore said; then at the *Chancellor's* Request, the *Fishmonger* was committed until he found Sureties to appear *de die in diem*.

Judicature in Parliament.

diem before the Lords, and before any Judges who should be assigned. The Lords committed the *Clerk* also; and afterwards the Parliament growing to an end, the Complaint was referred wholly to the Judges to hear and determine the same, as well for the King, as for the Parties. *Auxi avant come les Peres de Parlamento*, might have done, if the Plaint had been fully treated in their presence, and in the Parliament.

The Proceedings before the Judges were in a Schedule, annexed to the Parliament-Roll, and were thus;

A Commission was granted in Parliament unto *Tressilian*, Chief Justice of the *King's Bench*, and *Bellknap*, Chief Justice of the *Common Pleas*, to hear and determine.

They met at *Westminster* June 19. and were assisted by the *Lord Treasurer*, *Lord Keeper*, *Lord Privy Seal*, the *Master of the Rolls*, and the King's two *Serjeants*, &c. and they called the *Fishmonger* before them, and cause to be recited the said Accusation, and the *Chancellor's* Answer; and then demanded of him what he could say why he should not undergo the

Judicature in Parliament.

the Penalty of the Statute against such Scandals, especially when as the *Chancellor* hath acquitted himself in Parliament, and is yet ready to acquit himself by any way possible?

The *Fishmonger* denied that he slandered the *Chancellor*, but the *Clerk* only, &c.

The Commissioners considering the Accusation and Answer in Parliament, and especially that the *Fishmonger* said he could not have Justice in his Cause before the *Chancellor*, the contrary whereof was expressed and proved out of the Records of the *Chancery*, They ^{The Fishmonger} adjudged him guilty of Defamation, ^{guilty of} and to pay one hundred Marks to the ^{the Defamation.} *Chancellor*, and to be imprisoned until he could pay the same, and a competent Fine due to the King.

It should seem the Lords could find no time to examine the Injustice he complained of, and therefore referred it to the Judges. *Anno 6. R. 2. Octab. Mich. Numb. 59.* Divers Bills were exhibited this Parliament by the Mayor, Aldermen and Citizens of *London*, concerning the *Fishmongers*, and the said Mayor, and Aldermen, and *Fishmongers* were present at the reading thereof; where *Nicholas Exton*, who spake for the *Fishmongers*,

Judicature in Parliament.

mongers prayed the King to receive him and his Company into his Majesties protection, *Numb.* 59. which was granted, *Numb.* 60. Then one *Walter Sybil*, a *Fishmonger*, craved Audience, and said, These Bills were not exhibited for any good zeal to the Commonweal, but for meer Malice to the *Fishmongers*, for that the chief Exhibitors of these Bills being commanded to prison for sundry Misdemeanors in the time of *E. 3.* were then imprisoned by certain of the *Fishmongers*, who then were chief Officers in *London*, for which cause Malice was born at that time, *Numb.* 60.

To that, one *John Moore* a Mercer answered, The Citizens of *London* went to keep the Peace towards them, unless they went about to let into the said City the Rebels of *Kent* and *Essex*, as the said *Walter*, and others did. *Numb.* 60.

The said *Walter Sybil* took advantage of those words, and desired the Lords to bear witness.

John Moore thereupon expounded his words, saying (as the Report then went) and prayed the Lords that the Truth thereof might be further enquired of in the City.

There is one only Precedent of a Complaint

Judicature in Parliament.

plaint made by a private person in the House of Commons, and of the Commons proceeding therein, against a Lord of the Parliament; which was thus:

Anno 15. *H. 6.* *Tho. Philips* exhibited unto the Commons his *Bill of Complaint* against *John Bishop of London*, for his long Imprisonment upon suspicion of Heresie.

The Commons sent up the Bill, being written in Paper, amongst other, to the Lords, without any Message, for ought appeareth upon Record. On Monday following the Bill was read, and the Lords *Excogitabant*, That it did not belong to their House *de talibus frivolis rebus consultare*, and returned it to the Commons.

Hereupon the Commons sent—to the Bishop for his Answer in writing unto this Complaint; which yet the Bishop did forbear to do, until he knew the Opinion of the Lords herein, and acquainted their Lordships therewith. The next day the Lords answered all with one voyce, *Quod non consentaneum fuit aliquem Procerum alieni in eo loco responsurum, Luna 2. Martii.* In the Parliament begun at *Westminster*, An. 16. *Jac.* Sir *John Bowser* Knight, complained of

Bish. Williams Lord Keeper.

of the Bishop of *Lincoln*, the then Lord Keeper; but he was not compellable to answer before the Commons.

10 R. 2. The Commons accused *de la Poole* openly in Parliament before the King and Lords; unto which the Counsellors made a good Answer (in the Opinion of this Age) yet upon the many Replications of the Commons, and the enforcement of his Oath strictly against him, he was Fined and Imprisoned, &c. In this Parliament also the Lords and Commons procured Commission unto certain of the Lords to enquire of the Enormities of the Realm, and to redress them.

The King was so highly displeased with these Proceedings, that on the last day of this Parliament, being the 25th of *November*, he himself protested that nothing done therein should turn to the Prejudice of him or his Crown. Afterwards he sought all means to overthrow those Lords who procured that Commission, viz. the Duke of *Gloucester*, the Earls of *Danby*, *Arundel*, *Warwick*, and Earl *Marshal*. And at a Consultation thereupon, he sent for the Chief Justice *Tressilian*, and some other Judges, and his Serjeants at Law unto *Nottingham*,

ham, where, on *August 25*. Anno 11. he propounded certain Questions containing all the points of Advantage against the Proceedings of the last Parliament, which the Judges affirmed to be Treason under their Hands and Seals. Then the King thought to proceed judicially against those Lords, but they kept together with the Duke of *Gloucester*, at *Heringby* with a strong Guard: And the King sent for them, and all doubts of danger to their Persons, being first removed, they came *Novemb. 3*. Anno 11. and kneeling before the King's Majesty, he demanded why they were Assembled at *Heringby-Park* in warlike manner? They answered, for the good of the King and Kingdom, and to remove certain Traytors from about him, meaning the Lord of *Ireland*, the Archbishop of *York*, *Michael de la Poole*, Sir *Robert Tresilian*, and Sir *Nich. Brembre*. And with that they threw down their Gloves and Gages of the Challenging to prove the same. Unto which the King replied, This shall not be done so; but at the next Parliament, which shall be the Morrow after *Candlemas* Day, and then all parties shall receive according as they deserve.

G

In

The History of the Appeal of 11 R. 2.

Judicature in Parliament.

In the mean time he conveys away the parties accused, and acquits them by Proclamation; then summoned a Parliament at *Westminster*, *Craft. Purification. 11 R. 2.*

Where these few Lords Appellants came well Armed, which made the King unwilling to come amongst them; yet at last he came. *Hæc ex Ep. fol. 603.*

On the first Day of this Parliament, the Duke of *Gloucester* (one of the said Appellants) kneeling before the King, shewed, That whereas he understood his Majesty was informed, that he intended the Deposing of him, and Advancing himself to the Crown, he was ready to declare his Innocency herein, in such sort as the Lords would ordain. Whereupon the King answered, He held him thereof acquitted.

On the second Day of this Parliament, the said Appellants exhibited their Petition to the King concerning several Articles against divers Lords and Commons, whom they appealed of Treason. The said Articles being read in presence of the King and Lords in Parliament, the said Appellants offering to make Proofs thereof, required that

Judicature in Parliament.

that the said Appellees might be called to Answer; and for default of their Appearance; demanded Judgment against them. Hereupon the King and Lords deliberated. The Judges of the Common Law, and the Sages of the Civil Law were charged by the King to give their best Counsel to the Lords of the Parliament how to proceed in their Appeal rightly. Who, after long Consultation, answered the Lords, That the Appeal is in no point made and declared according to the Order of the Common or Civil Law.

The Lords after long Debate, declared by the Assent of the King, that the Offences being committed by the Peers, the Cause should be determined in Parliament only, and that by the Law and Order of Parliament only, and adjudged the said Appeal with the Process thereon depending, to be good, according to the Laws and Course of Parliaments.

And the Default of Appearance was Recorded; and Judgment given, &c. against those who made their default.

After which Sir *Nicholas Brembre*, a Commoner, was brought Prisoner before the King and the Lords at the request

Judicature in Parliament.

quest of the said Appellants: And the said Articles being read, he pleaded *Not Guilty*; which he was ready to defend with his Body. Whereupon, the Commons of the Parliament said, that they had seen and considered all the said Articles, which they found to be true, and that they likewise as much as in them lay, did also accuse the said Appellees, which they would have done, and it appertained to them to have done, had not the aforesaid Appellants pursued the said Appeals. Whereupon was answered by the Lords of Parliament, That the Battel doth not lie in this Case; but that they upon examination of the Articles, would proceed to Judgment.

The Lords cannot proceed against a Commoner but upon complaint of the Commons.

Here I note, That the Lords cannot proceed against a Commoner, but upon a Complaint of the Commons: But here is not expressed how the Commons came daily to have a sight of these Articles. I deny not, but after they were read in their presence, (for their presence is always understood in Judicature upon Life and Death *prout postea*) they demanded a sight of the Articles, and considered of them apart, and then supplied the Defects thereof. And this also

Judicature in Parliament.

also is to be observed, that the Commons accuse Commoners, as the Lords do their own Peers. I suppose that *Brambre* was denied the Battel, because the Commons accused him also; otherwise he ought to have it granted upon an Appeal.

Afterwards the Commons themselves accused and impeached divers Commoners, *prout 2 Mar.* Sir Rob. Belknap, L. Chief Justice of the *Common Pleas*, Sir John Carey, late Chief Baron, and other Justices, &c. The Records were brought into the Parliament, at the Demand of the Commons, and the Commons accused the Justices for their untrue Answer made unto sundry Questions before the King at *Nottingham*, to the emboldning of the aforesaid Offenders in their traiterous Designs and Attempts, &c. Unto which they answered, &c. were adjudged, &c.

And then follows another Impeachment of the Commons; thus:

The Accusements and Impeachments made by the Commons of the Realm, against *Simon de Burle*, Sir John Beauchamp, Sir John Salisbury, and Sir James Berners,

Judicature in Parliament.

Berners, Knights, do ensue underwritten, whereof the Commons pray Judgment in this present Parliament.

Thus much touching the Appeal of 11 R. 2. But this begot another Appeal in the 21th. of the said K. R. 2. in the Parliament begun Sept. 14. being the Feast of St. Oswald.

Edmond Earl of *Rutland*, *Tho.* Earl of *Kent*, *John* Earl of *Hunt.* *Tho.* Earl of *Nottingh.* *Joh.* Earl of *Somerset*, *Jo.* Earl of *Salisbury*, the Lord *Despencer*, and *William Scroop* Chancellor unto our Lord the King, in their proper persons delivered unto our Lord the King, then sitting in the great Hall within the Castle at *Nottingh.* in his Royal Estate, with a Crown on his Head, a Bill of Appeal against *Tho.* Duke of *Gloucester*, *Richard* Earl of *Arundel*, and *Tho.* Earl of *Warwick*. The which Bill of Appeal is recited in that Parliament, and as it seems *per Copiam verborum inde*, was penned by the Advice of some Civil Lawyer. It seems also they were very careful herein to avoid all Errors of the former Appeals.

For in that of 11 R. 2. they appealed divers Commoners, but here the Lords appealed none but Peers; then it was done

Judicature in Parliament.

done by word of mouth, they being called to the King upon some other occasion, but now it was done solemnly in writing, and was delivered to the King sitting in his Throne of State. There they offer'd to prove their Accusation by Battel (a thing not meet for the Parliament) or in what course his Majesty would ordain it; but here the Bill was read in Parliament, and they said, they have been, and are ready to prove, &c. as you our thrice Redoubted King, and this Honourable Court of Parliament should ordain. Nor were they less careful in their proceeding to Judgment, to avoid the Errors in the former, *prout* in the Answer. But these Appeals are now abolished by 1 H. 4. c. 14. and not without cause; for as this Accusation was extraordinary, so were the Proceedings carried with a strong hand; the former by the Lords, this by the King *prout ex Chroniculis in quinto comparet cum Codice* 1 Maij, A Brief whereof, so much as concerns this Appeal, follows hereafter at large, with the Precedents of 21 R. 2.

Ad quod Parliamentum convenire jussit Rex omnes Dominos sibi adherentes, cum Sagittariis & viris armatis, tanquam ad bellum, & contra hostes omnino progressuri fuissent.

Ipse vero Rex ut efficacius proficere possit, nequam conceptus malefactores de Comit' Cestr' congregari fecit ad velandum locum stramine, &c. Erexerat autem Rex quandam domum amplissimam in Palatio Westmonaster' quae pene totum Palatii spatium occupavit; in qua sibi Thronus parabatur altissimus, & pro cunctis Regni Statibus locus largus; & pro Appellantibus, in uno latere locus specialiter deputatus, & in alio latere locus largus pro Responsu assignatus; seorsim vero pro Nobilitatibus Parliamenti, & qui non fuerunt electi per Communitatem. Et Forale nuncupatur Parliamentum.

Appeals abolished per Stat. 1 H. 4. c. 14.

Thus much of Accusation by Appeal, (which when any of the Lords accused others out of Parliament) was summoned; but God be thanked, they are abolished, 1 H. 4. c. 14.

CHAP.

CHAP. III.

The Parties Answer.

THE Party accused is to be brought to his Answer, otherwise the whole Judgment will be erroneous, as was *Mortym. 23 E. 3. Numb. 10.* and *Spencer's, 15 E. 2.* and *John Matrevers, 21 E. 3. Numb. 65. dorf.* Although the Party be absent, yet the Parliament hath used all means possible to have his Answer, prout 21 R. 2. where the Lords Appellants, and the Commons also accused *Tho. Mortymer* of Treason; and the Commons said, That it was notoriously known unto them, that the King had sent his Mandate by *W. D.* a Serjeant at Arms, unto the said *Mortymer* in *Ireland*, commanding him upon his Allegiance to come before the King in all haste, to answer, &c. And that the said *Mortymer* having notice thereof, withdrew himself among the wild *Irish*, where the same Serjeant, nor any other Officer of the King's durst come, for fear of Death: Wherefore, and for that his Offences are notoriously known both to the Lords and them, they prayed Judgment, &c. The

The King, the Lords, and the Procurators of the Clergy considered of the Request of the Commons with good deliberation; and then the Lords, with the said Procurators, by the assent of the King and Commons, did award that Proclamation should be made through *England* and *Ireland*, commanding the said *Tho. Mortymer* to render himself in proper Person to the King in what place soever it shall be in *England*, within three Months after the 23th. Day of *December* next coming, to be at his Answer; and they farther awarded, That if he came not, &c. that then he shall be judged Traytor, and Convict of of all Treasons whereof he is accused, and shall forfeit, &c.

Then the King adjourned the Parliament, and the Appellants to the 15th. of *Hilary* next at *Shrewsbury*; on which Day the said Appellants declared to the King, That it was awarded that Proclamation should be made, &c. *ut supra*. The Commons did the like. And for that the said *Tho. Mortymer* came not, they had Judgment.

In 7 *H.4.* The Lords agreed this Judgment against the E. of *North.* and the Lord *Bardolph*, who were fled to the Rebels

Rebels in *Wales*, and Proclamation *ut supra*, throughout *England*. At the day prefixed they examined the Returns of the Proclamations in the presence of the Commons, and so the Judgment was agreed on in their presence also; and so it ought to be in all Cases of Life and Death. And finding a small Error, they awarded new Proclamations in *London* only; and the Return thereof was again viewed and considered in the presence of the Commons, and then on the next day Judgment was given.

Eodem Anno 21 R. 2. The Lords Appellants accused also the Duke of *Gloucester* of Treason; and although they knew he was dead, they prayed the King that he might be brought to his Answer. Whereupon the King sent his Writ to the Council of *Calice* (unto whose Custody he committed the said Duke) to bring him into the Parliament to his Answer. The Captain returned his Writ, That the Duke is dead; the which Writ and Return being read, the said Appellants prayed Judgment; and the Commons shewed, That the Dukes Levying War against the King's Person, is notoriously known to all the States of Parliament,

An Answer required, though the Duke was known to be dead.

Judicature in Parliament.

liament, and therefore they desired Judgment also, and had it.

And what may not the whole Parliament do when they joyn in one? Yet notwithstanding the King fearing some Error (as it seems) the Lords Appellants besought the King, that if there were any thing on Record, be it by Confession or otherwise which concerned their Appeal, that it might be openly known, and shewn in full Parliament. Whereupon, by the King's Commandment, was read a Commission granted unto *William Richal* Justice of the Common-Pleas, and a Confession of the Duke of *Gloucester*, made before him, by vertue of the said Commission; yea and *Richal* himself, being commanded, did justify that the Duke did write the Confession with his own hand, in his absence, and afterwards read it unto him: so careful they were to have something to supply an Answer, I marvel that *Richal* was acquitted of his Proceedings herein at the next Parliament of 1 *H. 4.* where he affirmed that much of this Dukes Confession was altered after he had returned his Commission. He well deserved to die, in that he spake not of it.

Yet

Judicature in Parliament.

Yet there is one Precedent directly contrary to all this, viz. 11 *R. 2.* in that Appeal which happened on this occasion.

The aforementioned Duke of *Gloucester*, and four other Lords went to the King, and accused the Duke of *Ireland*, the Archbishop of *York*, *Michael de la Poole*, and others of Treason; the King adjourned them to the next Parliament, promising them Justice there, and in the meantime conveyed away the Parties accused, and then by Proclamation, *Part 8. fol. 603.* in the next Parliament, 11 *R. 2.* the Articles of the Appeal being read, the Duke and other Appellants offered to make proof thereof, and required that the Parties appealed might be brought to their Answers; and for default of Appearance, demanded Judgment. Whereupon the King did deliberate with the Lords, and commanded the Justices, and other Sages of the Law to give their best Counsel to the Lords how to proceed rightly in this Matter of Appeal; who after Consultation therein had, answered the Lords, That they had seen and considered the Tenor of this Appeal, which they said was in no point made and declared according to the Order of the

Judicature in Parliament.

the Common or Civil Law. But they gave no Answer touching the Demand of Judgment for default of Appearance; whereupon the Lords deliberated, and after by the Lords assent declared that this Cause committed by the Peers against the Person of the King and State of the Realm, shall be determined in the Parliament only, and by no other Law than by the Law and Course of the Parliament: And that it belongs to the Lords only to judge in such Cases. And with the assent of the King they did judge the same Appeal, and the Process thereupon depending, to be good, according to the Law and Course of Parliament.

Then the Lords Appellants proceeded, and desired to have the fault of Appearance recorded, and Judgment given, and so it was. So likewise 21 R. 2. After the King had given the full power of Parliament to determine all Matters begun into the Hands of twelve Lords or six, and six Commoners, or any three. He adjourned the Parliament from Westminster to Shrewsbury in 15 Hil. and there on March 22. It was shewed to the King how that Robert Possington was impeached at the Parliament at Westminster, for being

Judicature in Parliament.

being with the Duke of Gloucester in levy at Herring, An. 11 R. 2. For which the said Duke was adjudged as Traytor, and therefore they brought the King to ordain the like Judgment against Robert Possington, though he was dead: Whereupon our Lord the King, by the assent of the Lords and Knights of Counties, having power, &c. awarded the said Robert guilty, &c. And that he shall forfeit, &c. Found guilty long time after he was dead, so forfeited his Estate.

But these extraordinary Precedents cannot lead us into the ordinary course of Proceedings; and I alledge them only so, as their Errors may be avoided.

To conclude, it is the just and constant Course of Parliament, to bring the Party accused to his Answer; yet, though he fly Justice, yet to send out Proclamations into the Countries, that he appear at a Day, or else such and such Judgments shall be given against him. I confess, this Course was omitted in the Judgment against Mompesson, 18 Jac. and haply it was not then thought upon; the Judicature of Parliament being so long out of use; and therefore that cannot be alledged as a leading Precedent.

And

Judicature in Parliament.

And in that Judgment 21 H. 6. against Sir Jo. Mortymer, upon an Indictment of Escape out of Prison, being committed upon suspicion of Treason, the said Mortymer's Answer is not recorded; yet it is said he was brought before the Lords, and the said Indictment read in his presence, that he made an Answer unto it, though not mentioned. And this proves that the Party is to be brought to his Answer; else Mortymer's presence had not been necessary.

Anno 7 R. 2. Numb. 2. The Duke of Lancaster and Gloucester complained to the King, That Sir Tho. Talbot, with others, conspired the Death of the said two Dukes, and prayed the Parliament to judge thereof. The Fact is judged High Treason, and Writs sent to divers Sheriffs to apprehend him, which Writs were retornable into the King's-Bench: And upon Proclamation made in Westminster-Hall, That upon the Sheriffs Return, and the not-Appearance of the said Thomas, he should be convicted of Treason, and forfeit, &c.

This was extraordinary *in terrorem*: But what may not the whole Parliament do? They may alter Law much easier than Form.

Judicature in Parliament.

In the Answer is to be considered,

First, In what Causes the Party is to answer as a Prisoner; and in what as a Freeman.

Secondly, When Counsel shall be allowed him, and when not.

Touching the First.

The Parliament hath guided their Proceedings therein *secundum Legem terræ, & Judicium Parium*. According to the 26th. Chapter of Magna Charta, *Nullus liber homo capiatur vel imprisonetur, &c. nisi per legale iudicium Parium suorum, vel per legem Terræ*. And therefore in Causes Capital, whether the Party accused be a Lord of the Parliament, or a Commoner, he is brought a Prisoner to his Answer *secundum legem terræ, prout*, 4 E. 3, Numb. 1. &c.

The Lord Berkley accused by the King for Murder of E. 2. Anno 1 R. 1. Jo. Lo. Gomeniz and W. Weston. Upon the Demand of the Commons for surrendering Forts beyond the Seas, An. 4. R. 2.

'H

Sir

Judicature in Parliament.

Sir *Ra. Ferrers* Knight, was apprehended for suspicion of Treason.

Anno 28 H. 6. Although the Lords refused to commit the Duke of *Suffolk* upon the Commons complaint of him of a common Fame of Treason; yet when they accused him of particular Treason, he was Committed, and brought Prisoner to his Answer. But in Cases of Misdemeanors it is otherwise; then the Party accused, whether Lord or Commoner, answers as a Freeman.

The Lord within his Place, the Commoner at the Bar; and they are not committed till Judgment, unless upon the Answer of a Commoner, the Lords find cause to commit him, till he find Sureties to attend, &c. lest he should fly; *prout Jo. Cavendish* upon the Lord Chancellor's Demand of Justice against him for his false Accusation, was Committed after his Answer, until he put in Bail, *Anno 7 R. 2.* And before Judgment.

And so *Michael de la Poole*, the said Chancellor, *10 R. 2.* after his Answer, and many Replies of the Commons, was Committed, and presently Bayled.

Anno 50 E. 3. *William Lord Latimer*, and *John Lord Nevill*, being impeached by

Judicature in Parliament.

by the Commons, answered in their Place: so did the Bishop of *Normich* and the Lord Chancellor, *7 R. 2.* And the said Lord Chancellor too, *10 R. 2.* answered in his Place, though afterwards he was committed before Judgment, upon Request of the Commons.

The Bishop of *Bristol*, *1 Jac.* and the Duke of *Buck.* *1 Car. 1.* All these answered as Freeman in their Places, their Offences not being Capital. And the like Precedents there are of Commoners.

Anno 50 E. 3. *Richard Lyons*, *William Ellis* and *John Beecher* did answer as Freeman, being impeached by the Commons. And whereas the Commons did that year also accuse *Adam de Bury*, who was absent; the Lords sent for him to come; but he contemned their Authority, and came not. Then the Lords, as it seemeth by the Record, sent to apprehend him, and he could not be found; wherefore they awarded that all his Goods should be put in Arrest, *Ibid. N. 17.* It is briefly entred, *Adam* was sent unto to come and answer in Parliament; he came not, nor could be found: Wherefore it was awarded, &c. Which is sufficient to prove, A Commoner is not to be brought a Prisoner to his Answer for

Judicature in Parliament.

a Misdemeanor, if he will appear.

5 R. 2. The Mayor and Bayliffs by name, and the Townsmen of *Cambridge* were complained of in Parliament, for many Outrages against the Scholars there; and the Lords sent one Writ to the Mayor and Bayliffs that then were, and to the Commonalty, to appear and answer; and another Writ to the Mayor and Bayliffs that did the Outrage; and they appeared in person, and the Commonalty by their Attorney.

This was the Ancient Course.

Yet even in these Days, viz. 15 R. 2. the Peer of *Holland* complained of a great Riot committed by *Henry Tibb*, and divers others, in the Parsonage-House of one *Williams*. Whereupon a *Sergeant at Arms*, by vertue of a Commission to him made, brought up the said *Tibb*, and one more only (the principal doers therein) before the Lords in Parliament; who, upon the Return of the Examination, confessed the whole Matter, and were committed. But I suppose the *Sergeant at Arms* was sent, for haply they would have obeyed no Writ: and yet he was sent for two of the principal Offenders

ers

Judicature in Parliament.

ers only. At this Day, if the Commons accuse a Commoner of Misdemeanors in such a state of Liberty or restraint as he is in, when the Commons complain of him, in such he is to answer, *prout* 18 Jac.

Sir *Francis Michell*, and Sir *John Bennet* were both committed by the Commons before their complaint to the Lords, and so they answered as Prisoners: But that in a sort may be called *Judicium Parium suorum*.

18 Jac. The Earl of *Middlesex* being then *Lord Treasurer*, and accused of Misdemeanors only, absented himself from the House: His Charge was sent to him in writing, and he answered in writing. At the Day prefixed for his Trial, he was summoned by the great Usher to appear. He came without his Staff, and kneeled, until the Lord *Keeper* willed him to stand up. There he protested, That he ought not to answer in that Place, and desired others might not be prejudiced thereby: And I hope they will not.

The Earl did himself the first wrong, by absenting himself from the House; for he might have stayed there until Judgment, unless when his own Cause came in agitation.

H 3

ϕ. 2.

§. 2. Touching Council.

Touching
Council.

In all Causes of Felony, Treason, &c. Council antiently was denied to the Party accused, prout *Anno 4 R. 2. Numb. 21.* Sir *Ralph Ferrers* was brought to the Parliament under the Guard of the Marshal of *England*, and arraigned at the King's behalf for suspicion of Treason, who prayed to the King and to the Lords to have Council in that Case. Unto whom it was said, That in all Matters wherein Council ought to be granted by the Law of the Land, the King or Lords would allow it. And it was further said unto the said Sir *Ralph*, That forasmuch as the Matter stands so much upon Treason, That by the Law he ought not to have Council in this Case, of no earthly Creature, but obliged himself to answer at his peril.

This last Answer was given upon deliberation. And *5 R. 2. Numb. 44.* Sir *Richard Cogan* Knight, being accused by *Richard Clevedon* Esquire, for extorting *200 l.* from the Prior of *St. John's of Jerusalem* in a riotous manner, required Council, which was denied him, for that the Cause touched Treason.

28 H. 6. The Duke of *Suffolk* being accused of Treason, by the Commons, desired Copies of the Articles, but no Council, and he answered without Council.

Primo Car. 1. In the Parliament begun *Febr. 6.* The King's Attorney exhibited Articles of Treason and misdemeanor against *John* Earl of *Bristol*, and he had no Council allowed him; which was on this occasion:

Anno 21 Jac. The Earl of *Middlesex* was denied to answer by Council touching Misdemeanors only, that Precedent of *10 R. 2.* of *Michael de la Poole* being mistaken, as I conceive. And afterwards the Lords considering the Inconveniences that might happen thereby, did order that Council should be allowed to all Delinquents in all Cases generally. At the Voting of which Order, the King and Prince were present, and I did expect some Reply thereunto on the King's behalf, and especially observed whether the Prince would any ways dislike of it, either in Words or Countenance; and he shewed none: which made me verily believe that he had been acquainted therewith beforehand; but he was not, as I shall make it appear.

Judicature in Parliament.

In this present Parliament, upon reading the Articles of Treason and Misdemeanors against the said Earl 6 *May*, and upon the Earl's Answer to them on the sudden, The Journal is, The Lords did answer that he should have Council allowed him to plead his Cause. But on *Monday* the 8th. of *May*, the King sent a Messenger to them, That he not suing for a Default in Cases of Treason and Felony: It is an ancient fundamental Law of this Kingdom, and desired the Lords to proceed with that Caution, that ancient fundamental Laws may receive no blemish nor prejudice.

On the 15th. of *May*, the Lords answered this Message, That by an Order Dated *May* 24. 21 *Jac. Anno* 1624. Counsel was then present, and they had allowed the Earl of *Bristol* Council before the Message came *May* 14.

His Majesty is content the Earl of *Bristol* to have Council, although his Majesty knew that by the Law he ought to have none; but takes Exceptions to that Order of the 24th. of *May* 1624. That it was occasioned by the Earl of *Middlesex*, whose Cause was only Criminal, which never till now extended to Cases Capital.

And

Judicature in Parliament.

And that the Judges were neither advised with therein, nor the King's Council heard for his Majesty; and therefore his Majesty is not satisfied about the general Order, but will advise, &c. The Lords thereupon allowed him Council to plead, &c. This Parliament of 6 *Feb.* 1 *Car.* 1. was dissolved before the Cause of the Earl of *Bristol* was heard and determined, and that the said Earl was sued in the *Star-Chamber* for the very same Matter contained in the Articles against him in Parliament: All which were but Misdemeanors. And if it be lawful for me to speak freely, I believe the Lords thought they were but Misdemeanors, when they allowed him Council in Parliament: But in Cases of Misdemeanors only the Party accused was never denied Council.

Anno 10 *R.* 2. The Commons accused *Michael de la Poole* of many Misdemeanors in open Parliament before the King. In Misdemeanor the Party may have Council to answer. Afterwards in the King's Absence, the Chancellor said first to the Lords, That he was Chancellor of *England*, and for the time represented the King's Person in his absence; and demanded whether he ought to answer in the Presence of the King, since he was impeached of Acts

Judicature in Parliament.

Acts done whilst he was Chancellor.

This received no Answer.

Secondly, He said, That he had appointed by the Advice of his Council Monsieur *Richard le Scroope*, his Brother-in-Law should have the words of his Answer to the first Impeachment. Whereunto the Lords said, That it was Honest for him to speak by his own mouth. And thereupon he made Protestation that he might add to and take from that which should be honourable and profitable for him. The which things unto him were granted. And the said Chancellor declared as well by himself, as by the mouth of the said *L. Scroop*, That &c.

I note here that Council was not denied him, but that it was only told him, It was honest for him to answer by his own mouth.

Anno 7 R. 2. The Bishop of *Normich*, for Misdemeanors in general, *Numb. 15.* was particularly charged by the Chancellor, *Numb. 18.* The Bishop said, That albeit in this Case he ought to have Counsel, yet making Protestation, That at all times he might amend his Answer, he would answer in person, and so he did, *Numb. 19.*

Anno

Judicature in Parliament.

Anno 1 Car. 1. The Duke of *Buckingham* being accused by the Commons of Misdemeanors, and Copies of the Impeachments, and Answered by Council in this manner, *viz. Die, &c.*

The Duke being in his Place, and standing, his Council came to the Bar, and then read the Dukes Answer, as it was penned in writing. Yet sometimes in Cases of Misdemeanors, when the Party accused hath demanded the Copies of the Articles, and Council, and Time to answer, the Parliament hath compelled them to make a present Answer without Council; but this is rare, and I have seen but one Precedent of it.

Anno 5. R. 2. Die Animarum, Numb. 45. The Mayor, Bayliffs and Commonalty of *Cambridge* were accused by &c. For that they in the late Tumults and Wars confederated with other Misdoers, did break up the Treasury of the University, and compelled the Chancellor and Schollars to release to the Mayor all their Liberties, and all Actions, &c. In *Numb. 46 & 47.* Several Writs were sent to command them to appear. They appearing at the Day, and answering to such Articles as were objected by the King's Council, and delivering in the two Releases

The Mayor and Commonalty of Cambr. accused.

The Parl. hath compelled a present Answer in Misdemeanors, and without Council.

Judicature in Parliament.

leafes which were cancell'd *Numb.* 48. Then the Chancellor and Scholars exhibited divers Articles against them by way of Petition. Upon the reading whereof, it was demanded of the said Mayor and Burgeses what they would say, why their Liberties should not be seized into the Kings hands as forfeited? And they required Copies of the Articles, and Councel, and Respite to answer, *Numb.* 54, 55.

To the Copy of the Articles, it was answered, That inasmuch as they had heard them read, it should suffice; for by the Law they ought to have no Copy. And touching Councel, it was said, That wherein Councel was to be had, they should have it; and therefore they were then to answer to no Crime nor Offence, but only touching their Liberties, *Numb.* 56.

After many dilatory Shifts, the said Burgeses submitted themselves to the King's Mercy, touching their Liberties, only saving their Answers to all other matters, *Numb.* 57.

And the King by assent of the whole Parliament, granted the assize of Bread, and all weights, Measures, &c. to the Scholars, and to the rest of the Burgeses, yield-

Judicature in Parliament.

yielding an increase of Rent, 59. 6. And there is no farther proceeding against them for other Crimes; yet this also proves Counsel ought to be allowed in Cases of Misdemeanor.

¶ Next to the Answer follows the Repli- ^{*The Re-*}
cation; and that in my opinion belongs ^{*plication*}
to the Party whose Suit it is. If the ^{*next which*}
Commons impeach any man, it belongs to ^{*belongs to*}
them, if they will reply. And to this ^{*him or*}
end, either they are all, or some of them ^{*them that*}
to be present when the Party makes his ^{*sue.*}
Answer, and to consider thereof apart by
themselves, and to reply if they see cause.
Or else a Copy of an Answer is to be sent
them; and their Replication expected be-
fore any other Proceedings be. If they do
not reply, the Lords may: But if the Ar-
ticles against the Party be so drawn ex
parte Domini Regis, then it belongs to
the King and the Lords alone: And the
Commons can neither reply, nor de Jure
demand the Party to be put to his Answer.
All this will appear in the ancient Prece-
dents which follow.

Anno 50 E. 3. They impeached Rich.
Lyons for procuring Patents and Licenses,
&c. to carry, &c. to other places than to
Calice.

Judicature in Parliament.

Calice. For divers other new Impositions upon Wools, &c. For levying the same to his own use, without view of a Comptroller, for 20000 Marks in London, for the King, and causing the King to repay 30000 Marks: For buying of Debts of the King at the 20th. penny and less, and causing the King to pay the whole Debt. In general words, *For many Extortions, &c.*

His Answer is,

First, to the third part, and pleads *Not Guilty*; which he is ready to prove: To which nothing is replied.

To the several Impositions, He confessed he levied 12 d. on every Sack of Wool licensed, to his own use, but by expresse Commandment of the King, and Assent of the Merchants. And for other several Impositions, That he had paid them wholly to the King's Chamber, and fully accompted for the whole year.

Unto this part of his Answer also there is no Replication recorded, it is drawn up so briefly; yet these which follow shew somewhat of what was replied, *viz.* And it was said unto the said *Richard*, that he should bring forth his Warrant by what Authority he did these things.

Judicature in Parliament.

things. But he shewed no Warrant in Parliament under the King's Seal, nor otherwise; but only he said he had Command from the King himself and his Council to do it. Now whether the Lords willed *Lyons* to shew forth his Warrant upon the Reply of the Commons, or otherwise, it appears not by conjecture out of other Precedents.

Eodem Anno, The Commons impeach the Lord *Latymer*, That contrary to the Proclamation upon the last Truce with the *French*, he and his Lieutenants and Officers have taken divers Victuals by force, without paying for the same, and that he extorted great Fines and Ransoms of divers Persons and Parishes of *Betherel* in *Brittany*, whilst he was Captain there, for which he hath answered nothing to the King. And for the Loan of 20000 Marks made to the King by him, and *Richard Lyons*, to transport Wool, &c. And also through his ill Government, the Fort of St. *Saviours* in *Normandy*, and the said Fort in *Normandy*, called *Betherel*, and many more are lost. And also that he, of his own Authority, discharged Spies and Fellows imprisoned by the King, wherein he encroached to himself Power Royal.

This

His Answer. *This is the Effect of the Impeachment ; the Answer follows.*

First, He said, That saving to himself so much as ought to be saved unto him, as one of the Peers of the Realm, as well in giving Judgment, as otherwise in time to come. And if it please the King and Lords here Assembled, he will willingly give his Answer unto him who will in special object any other thing against him.

It should seem that the Commons advised hereon ; for it followeth, *Et puis presentes*. Forasmuch as no person would in special openly accuse the said Lord, vouching the said things in Parliament, but that the Commons would maintain the said Judgment in common, he answered to each Particular.

His Answer to each Particular.

1. Touching the Ransoms that he hath been before impeached for, and the Sums of Money he received, it appeareth that he owed the King 2000*l.* which he confessed, and submitted himself to the King's Grace for the same. And soon after this, the Commons having heard this Answer of Submission, prayed the Lords that

that Execution might be had of the said 2000*l.* presently against the said L. *Lattimer*, as a thing past by the said Submission being made by him as aforesaid ; for it shews not any agreement made with the King, nor any Pardon, or other Discharge.

And the Lords answered, That his Answer should be reported to the King, and thereupon Right shall be done for the King.

2. Touching the Acts done by his Lieutenants, he said, That he is altogether innocent, &c. For he was then in *England*, by the King's Command, and he had no part thereof, &c. And the Commons thereunto replying, said, That although he be innocent, yet his Lieutenants receiv'd it in his Name ; and therefore prayed he might answer to the King for his Lieutenants, if they be not able, &c.

3. Touching the Loans of 20000 Marks, he absolutely denied he had any share or advice therein, he made in a manner a Negative Answer to all the rest ; offering Proofs : whereupon witnesses were examined, but no other

I

Repli-

Judicature in Parliament.

Replications of the Commons mentioned.

W. Ellis impeach'd.

Eodem Anno 50 E. 3. *W. Ellis* was impeached by the Commons, for that he being Farmer to the King of the Petty Customs in *Yarmouth*, and Deputy-Farmer to *Rich. Lyons*, of Tonnage and Poundage, &c. he extorted several Sums of Money from the Merchants, and particularly 33 l. from a *Scottish* Merchant at *Kirkbread*, who was driven in thither by a Tempest, but unladed no Merchandize there.

His Answer.

The said *Ellis* answered in general, He had never taken any thing of the said Merchants by way of extortion; which he was ready to prove.

The Reply.

The Commons brought in four Witnesses, who justified the Extortion upon Oath, and then demanded Judgment. And *W. Ellis* rejoyn'd to this Replication, confessed the Receipt of the 33 l. and avoided the Extortion.

The Lord Nevile impeach'd.

Eodem Anno, *John Nevile* was impeached by the Commons, for that he, as Officer to the King, and one of his Privy Council, had brought divers Tallies of Assignments made by our Lord the

Judicature in Parliament.

the King, unto divers persons unto whom he was Debtor, and had thereof due allowances in the Exchequer; but the Parties had of him little or nothing; and especially of the Lady *Rovensholme*, who is deceased, and of *Reignald Love*.

And after he was impeached, for that in this late Voyage into *Britayn*, in the King's Wages in great number of Men at Arms and Archers, for which he accorded with the King, and those he carried with him were not sufficient, *come Garcone & autres lienz*: And yet he received full payment in deceit of the King, and that by his default many Forts were lost in *Britayn*.

And also at his passing at *Southampton*, his Men did much Mischiefe to the Country, as if they had been Enemies.

To the First, Touching the Buying of a Debt due by the King to the Lady *Ravensholme*, he made a very good Answer, and denied that he bought any Debt of *Reignald Love* for gain. And the Commons being present, desired that *Love* might be examined therein: and he was examined, and cleared the Lord *Nevil* thereof. And thereupon *Michael de la Poole*, and *W. de Winged* being present,

I 2 did

Judicature in Parliament.

did expressly affirm, That the said *Love* had acknowledged before him and many others, the Day before, That the said Lord *Nevile* had bought the said Debt for gain, &c.

And the said *Reignald Love* replying to their Affirmation, said, That he never spake any such Words to them or any other. *Et tant est autres apres*, &c. And soon after the said Knights and Commons affirming that the said *Reignald* did not only speak those Words, but also prayed that it might be shewed in open Parliament, the said *Reignald* confessed, That, &c. and was therefore Committed, &c.

Touching the Second Point; The L. *Nevile* shewed, That he made full Muster of his Men, &c.

Touching the Third, The Pillaging of Souldiers, he said, That he did none; and if any were done, let the Malefactors answer. And unto this it was said by the said Lords of the Parliament, That it was reason, sith the King paid the Souldiers their Wages, that the Souldiers should answer for their ill Deeds, and the Captains should answer for themselves. And

Judicature in Parliament.

And thereupon the Commons prayed Judgment against the Lord *Nevile*, and that he might be put out of his Office about the King.

Touching the Articles of the Lady *Ravesholm*, It was awarded in Parliament, That the Lord *Nevile* should make Restitution unto her Executors. *Quare hoc.*

That he be banished according to the quality of his Offence, as others have been, &c.

I have translated this of the Lord *Nevil* almost *ad verbum*; it needs no Exposition.

The Commons were present at the L. *Nevil's* Answer, and desired that one Witness whom he had brought with him, and who gave them Information of the Complaint touching the buying of the King's Debts, might be examined. And examined he was in the presence of two Knights of the Parliament, and they did contrary his false Answer; and afterwards all the Commons came and testified against the Witness.

This is sufficient to prove, That the Commons may Reply, and are to be present at the Answer, or have a Copy there-

of sent them: But the Commons did not Reply unto the Lord Nevil's Answer.

Touching the Pillaging of his Souldiers, for ought appears, the Lords Replied to that part.

Primo Car. 1. 6 Febr. The Commons impeached the Duke of Bucks, and Declared against him in writing. The Commons demanded a Copy of his Answer, that they might Reply unto it, and it was debated at a Committe, whether the Commons might Reply or no? which was resolved in the Affirmative, upon view of Precedents, and reported to the House; and then a Copy was sent to the Commons.

Thus much touching Replication by the Commons.

Where the Articles against the Delinquents are *ex parte Dom. Regis*, there the Commons cannot Reply, nor Demand Judgment; for the Suit is the King's, and not theirs.

Anno

0203

Anno 10. R. 2. Upon Complaint of the Commons, Jo. Lord Comeniz and W. Weston were put to their Answers; but the Articles were exhibited *de part le Roy*. The Complaint of the Commons was general; and though the Commons be there present at their Answer and Judgment, yet they did neither Reply nor Demand Judgment.

The King's Steward before whom they were Arraigned, Replied, as shall appear by the Precedent at large.

In like manner the Commons demanded that the Bishop of *Norwich* and others might be put to their Answer, and the Articles were drawn *de part le Roy*. And the Chancellor replied to their Answer, the Commons not once interposing therein.

5 R. 2. The Chancellor and Scholars of *Cambridge* accuse the Mayor, Bayliffs, and Commonalty of *Cambridge*, of many Outrages and Misdemeanors. They appeared and answered. The King's Counsel replied, *Numb. 49.*

CHAP. IV.

The next Considerable Part in Judicature after the Answer and Replication, is the Proof by Examination,

First, Of Witnesses.

Witnesses.

THe Practice at this Day is to swear the Witnesses in open House, and then to examine them there, or at a Committee, either upon Interrogatories agreed upon in the House, or such as the Committee in their discretion shall demand.

Thus it was in Ancient Times, as shall appear by the Precedents, so many as they are; They being very sparing to Record those Ceremonies, which I shall briefly recite, and then add those of later times.

*Witnesses
by the
Commons.*

Witnesses produced by the Commons.

Anno 15 R. 2. The Lord *Latimer* having answered to one of the Commons Complaints touching a Loan of 20000 Marks for 30000 Marks to be repaid, where-

whereof he said he was innocent. It followeth thus immediately, &c. And thereupon it was certified in Parliament by Monsieur *Rich. le Scroop*, the late Lord Treasurer to our Lord the King, and by *W. Wallworth* of *London*, That when the said Loan was made, the said *Walworth* offered in the Name of the *Staplers*, to lend the same, and be repaid without Usury, out of the Customs of Wool to *Calice*. Whereto the Lord *Latimer* answered, He never heard of that Proffer; and others swore the said *William Walworth* did make the said Proffer to them.

Anno 15 R. 2. The Commons produced four Witnesses to prove their Complaints against *Ellis*, *Les queux Examinees in Parlement*, said, &c. And there I observe that two of those Witnesses had exhibited a particular Complaint against *Ellis*, concerning a particular wrong done unto Merchants, whereof the Commons complained, and *Ellis* took no exception against them.

And afterwards being put to his Answer upon their particular Complaints for wrong Imprisonment, &c. *Ellis* said, That they betrayed him as he was coming to *London*, and so he caused them to be

Judicature in Parliament.

be committed, and the said Complainants affirmed the contrary upon Oath, and it was testified expressly by divers sufficient men, That, &c. agreeing with their Oath.

Eodem Anno John Peecher being accused for Extortion, affirmed, he retained it by the assent of the Mayor, Recorder, and of the greater part of the Aldermen, and being examined in Parliament, affirmed there, That, &c. to the contrary, and then Judgment was given.

Eodem Anno, The Commons accuse Jo. Lord Nevil for buying the King's Debts of Reignald Love; which the said Lord denied: and the Commons desired that the said Reignald might be examined. And the said Reignald being charged upon his Allegiance to tell openly before them the full Truth, saith, clearing the Lord Nevil; but afterwards he confessed against him. He was examined in presence of two of the House of Commons.

Many Complaints were made against Richard Love and William Ellis in the Parliament, and a Commission sent to enquire of the behaving themselves in their Offices.

1 R. 2.

Judicature in Parliament.

1 R. 2. Alice Peirce Not Guilty, and that she would prove by Testimony of the late King's Household, whom she named. The Offence being for procuring E. 3. privately to revoke an Ordination of his Council.

The Lords gave her Day, and in the mean time named a Committee to examine Witnesses.

The Committee were the Duke of Lancaster, Earls of Arundel, Cambridge, Northampton and of March. And divers Witnesses who are named, were sworn upon the Holy Evangelists, and diligently examined upon the Articles objected against her.

A Committee for Trial of Alice Peirce.

The Lord Beauchamp was sworn and examined; and the Duke of Lancaster being one of the Committee, was diligently examined before the rest of the said Committee, but not sworn *ad testificandum*. Earls and Dukes are not sworn.

A Jury of the Household was impanelled for her Trial before the said Committee.

The Order made by the Lords for the Examination and Trial. *Per l'assent Prelat & des Seigneurs du dit Parlement ordeint fuit que testes Articles serount trious per*

Judicature in Parliament.

per testimonies, & per enquest d'eux que seront de Hostel, de dit Appeale & que le verite purroit mieux estre conus.

By vertue of this Order, the said Committee did take the Examination of the Witnesses, and after their Examinations, it follows thus :

Et nient minus seroit venire devant le Duc & les dits Commissioners Monsieur K. B. &c. And so names eight Knights, and nine Esquires, queux fuerint jures a dire le verite si le dit Alice fuit culpable de les Articles avant dits, ou nemy.

Note, This is the only Jury I find Recorded for Misdemeanors in Parliament. I make no doubt but if the Delinquent doth put himself upou the Trial of his Country, That a Jury ought to be impannelled therefore.

But if the Commons impeach any man, they are *in loco proprio*, and there no Jury ought to be; only Witnesses are to be examined in their Presence, or they to have Copies thereof: And the Judgment not to be given until the Commons demand it.

For Proof that the Witnesses ought to be examined in their Presence, *vide* 50 E. 3. The Impeachment of the Lord Neville, where Richard Love was examin'd

in

Judicature in Parliament.

in presence of two Knights of the House of Commons, who contraried his Testimony, Numb. 44.

The Proof that a Delinquent may put himself *super Patriam*, *vide* 4 E. 3. Where the Lord Berkley, who waved his Peerage, was tried by a Jury of Gloucestershire and Warwickshire, for that he was Arraigned for the Murder of E. 2. at Berkley-Castle in Com. Glouc. And he answered, That he was sick at that time at Bewdley in Com. Wigorn.

But he was Arraigned upon an Information *ex parte Dom. Regis*, and not upon the Impeachment of the Commons; for then they had been *Patria sua*. And as the Party may put himself *super Patriam*, so he may demand Battel: But not when he is accused *ex parte Domini Regis*, *prout* Clarence, Anno 18 E. 4. Nor when he is accused by the Commons, *prout* Brembre, 11 R. 2.

When the Earl of Arundel was brought to answer the Appeals, the Lords Appellants threw down their Gloves by way of a Challenge. The Earl answered, *Si essem liber, non resurgeram*.

Note, That the Commons had accused them — also. *Vide a Herald Parl. lib.*

lib. Mayleress. And thereupon it was testified openly in Parliament, That our Lord the King had expressly said that day, before the same Lord then present in Parliament, *That he knew not how nor in what manner the said Richard was come into such an Office about him;* and which is more, *he did not know him to be his Officer.*

Anno 21 R. 2. The Lord Cobham being brought to his Answer, for procuring a Commission to himself and others, in derogation of the King's Prerogative, *11 R. 2.* and for executing the said Commission.

He denied the procuring thereof, and that he would not have used the said Commission without the King's Commandment, and that he told the King so much, and that the King commanded him not to intermeddle therein. Whereunto our Lord the King answered and said, That he was in such Governance at that time, that he could not otherwise say, because of them that were then about him. And that the Lord Cobham knew well that the said Commission was made at his Will. The which thing *Jo. de Cobham* did not gainsay at his Trial; and so Judgment passed on him for the same,

same, and he adjudged a Traytor. *Et qui non vult.*

Anno 18 E. 4. George Duke of Clarence was Arraigned in Full Parliament. There is no mention thereof in the Roll, but in a Manuscript of that time, written by a Frier of Croyland. *Tam testis est vera, & disceptatio ea habita inter duos tantæ humanitatis Germanos. Nam nemo arguit contra Ducem nisi Rex; nemo respondet Regi nisi Dux. Introducti autem erant nonnulli de quibus à multis valde dubitatur, an Accusatorum an Testium officiis sunt functi utraque enim officia in eadem causa eisdem personis non congruunt. Delevit enim objecta Dux ille per Justificationem, asseruit, si exaudiri possit, manuali defensione teneri causam suam. Quid multis numeror. Parliament les reputantes auditas Informationes sufficere formarunt in eam sententiam damnationis quæ ab Henrico Duce Buck. pro tempore noviter creato Anglorum Seneschallo prolata est, postea dilata est executio, quo ad usque Prolocutor Communitatis in superiorem Cameram cum sociis suis adveniens, novam ejus conficiendæ rei requisitionem fecerat, & consequenter infra paucos dies factum est id qualecunque genus Supplicii secreti infra Turrim London. utinam*

George
Duke of
Clarence
arraigned.

No man
questions
the Duke
but the K.
none an-
swers the
King but
the Duke.

Judicature in Parliament.

utinam sine malo, Anno Dom. 1418. Regni vero Regis E. 4. 18. per Anonimum libris Cotton.

Against
Law that
the King
should en-
force Te-
stimony a-
gainst a
Delin-
quent.

Here let us examine for what illegal proceedings the Commons desired to have the Cause tried again. The Author saith, *Nemo arguit contra Ducem nisi Rex.* This the Commons held to be against Law, That the King himself should enforce either Article or Testimony against a Delinquent in a Capital Cause: For it is inconvenient, That he who hath the Forfeiture of Life, Lands and Goods, shall be Accuser, Witness or Judge. The Commons were present at this Trial, and considering the Inconveniences thereof, they returned, and made the Request *ut supra.*

Primo Car. 1. In the Parliament of 6 Febr. John Earl of Bristol was accused by the King's Attorney of Treason beyond the Seas, 8 May 1626. The said Earl petitioned the Lords, That seeing several points of that Charge are grounded upon private Conferences, wherein his Majesty by Testimony becometh a Witness, and in case the Earl should be convicted, his Commission cometh to the Crown, &c. he desired their Lordships

Judicature in Parliament.

ships to put his Majesty in mind thereof, for the declining his Accusation and Testimony-

9 Maij, These Questions were proposed to the Judges.

1. Whether in Treason or Felony the King's Testimony is to be admitted, or not?

2. Whether Words spoken to the Prince, who afterwards is King, make any alteration in the Case?

And the Judges were to deliver their Opinion therein on the 13th. Day of the said Month of May.

And on Saturday Morning, being the said 13th. Day, the Judges were desired to deliver their Opinions.

The Lord Chief Justice said, They appointed to meet and to consider thereof; and Mr. Attorney desired to know the time of their Meeting; and before that time he brought them a Message from the King, *viz.* That his Majesty was so sensible of his Honour, that he would not suffer the Right of his Crown (which may justly be preserved) to be dampned in his time. That they might deliver their opinion in any particular Questions

A Royal
wise An-
swer.

Judicature in Parliament.

sions concerning the Earl of *Bristol*, but not in the general Questions whereof his Majesty could not discern the consequence which might happen to the prejudice of the Crown. Every particular Case varying according to the circumstances.

4 E. 3. The Articles were read against *Roger Mortimer*; and it followeth thus; Wherefore our Lord the King doth charge our Earls and Barons, Peers of this Realm, That forasmuch as these touch him principally, and all the People of this Realm, That you do unto the said *Roger Mortimer* right and lawful Judgment, such as appertaineth to such an one to have, who of all the faults abovesaid, is very guilty, as he believeth. And for that the said things are notorious and known to be true unto you, and to all the People of the Realm.

This was all the Proof produced against *Roger Mortimer*. The Lords hereupon judged him. But afterwards, Anno 28 E. 3. Numb. 10. they reversed it as erroneous: so that although the King's Testimony, confirmed by the common Fame, was 4 E. 3. received against *Roger Mortimer*, yet it was afterwards adjudged

Judicature in Parliament.

judged *Nul Accusament* in the 28th. of the said King E. 3.

In that Parliament of 18 Jac. divers Witnesses were examined in open House in the Causes of *Mompesson* and the Lord Chancellor, upon Interrogatories agreed on beforehand, and divers at a Committee. And it was resolved, That none might be examined upon any thing that might accuse. Whereupon the Earl of *Southampton*, one of the said Committee, signified, That a Scruple did arise, Whether Sir *Ralph Horsey* should be examined what Bribe he gave to the Lord Chancellor; and upon the Vote, it was agreed, he should, *dissentiente Comite Dorset*.

Eodem Anno, The Lords did find that the Testimony of divers of the House of Commons was necessary, touching the Complaint against *Mompesson*, and therefore sent a Message to this effect.

The House of Commons, before their Complaint exhibited against the Lord *Cobham* and Doctor *Feild*, for a Bribe concerning *Egerton's* Case, 18 Jac. examined one *Davenport*, but not upon Oath. The Lords, when they had examined *Davenport*,

port, found that the Case was not so foul as he related it unto the Commons, and therefore sent his Examination again unto them, and then punished him for his false Relation.

CHAP. V.

The Judgment.

First, Unto whom the Judgment belongeth, and the King's Assent and of the Presence of the Spiritual Lords, the Commons and the Judges.

Secondly, The Judgment it self, and by whom it was demanded, and by whom rendred.

In making of our Antient Laws, the Commons did *Petere* the Lords *Assentire*, and the King *Concludere*.

The Commons accuse & petere.

So in Judgments on Delinquents in Parliament, the Commons might *accusare & petere Judicium*, the King *assentire*, and the Lords only did *judicare*.

q. r.

1. That the Judgment belongeth only to the Lords, appeareth by all the old Records that I have seen; prout 4 E. 3. against Mortymer, The Earls, Barons, and Peers did Award and Judge by assent of the King, &c.

7 H. 4. In the Case of the Earl of Northumberland, Protestation was made by the Lords, That the Judgment belonged unto them only.

For the clearing of this Point, That the Judgment belongeth to the Lords only, *vide* the Protestation of the Commons 1 H. 7. which excludes the Commons from any Right thereunto, *viz.*

On Monday, Novemb. 3. The Commons made their Protestation in manner as they did in the beginning of this Parliament and then further declared to the King, That no Record in Parliament be made against the Commons, That they are or shall be Parties to any Judgment given, or hereafter to be given in Parliament. Unto which it was then answered by the Archbishop of Canterbury, by Command of the King, That the Commons are Petitioners, and not Demanders; and that the King and the

K 3 Lords

Lords have ever had, and of Right shall have the Judgment in Parliament in manner as the Commons themselves have declared, saving in Statutes to be made, and in Grants of Subsidies, and the like, though to be done for the common profit of the Realm, the King will have especially their Advice and Assent: And that this Order be held and kept at all times to come.

This excludes the Commons from all Right to Judgment: But whereas it saith, the Judgments in Parliament belong only to the King and Lords, That is to be understood touching the King's Assent only, as appeareth by the Replication of the Parliament in this Point in 2 H. 5. which was thus:

In the Parliament at Leicester, 2 H. 5. Numb. 11. Tho. Earl of Salisbury Petitioneth to reverse a Judgment in Parliament against John Earl of Salisbury, his Father, in 2 H. 4. and one of the Errors assigned was, for that the Judgment was not given by the King, but by the Lords Temporal only: whereupon the Earls of the Parliament, at the King's Commandment, gave Copies of the said Judgment of 2 H. 4. and of the said Errors assigned unto the Kings Serjeants at Law then
pre

present. *Ad sequentem solutionem Juris Regni in hac parte avisarentur: Super quod Servientes ad Legem crastino die, Domino Regi, ac Dominis Spiritualibus & Temporalibus predictis hoc in Parlamento petierunt scrutinium pro Domino Rege in hac parte. Quibus dictum erat ex parte Domini Regis, Quod ipsi procederent ulterius absque aliquo scrutinio habendo quoad declarationem & judicium super supradicta, &c.* And afterwards Day was given at the next Parliament which was held at Westminster, eodem Anno 2 H. 5. In which Parliament the said Judgment of 2 H. 4. being examined and discussed at full, videbatur tam dicto Domino nostro Regi, quam etiam Dominis suis antedictis, &c. quod idem Judicium & Declaratio predicta versus eundem Johannem, &c. sunt & fuerunt bona & legalia. Declaratio & Judicium. Per quod consideratum fuit in presenti Parlamento per predictos Dominos tunc ibidem existentes, de assensu dicti Domini Regis, quod prefatus nunc Comes nihil capiat per Petitionem aut Prosecutionem suam predictam; Et ulterius tam Domini Spirituales, quam Temporales predicti, Judicium & Declarationem predictam versus dictum Johannem quondam Comitem Sarum, ut premittitur habita sive reddita de assensu ipsius Domini Regis,
K 4

Judicature in Parliament.

Regis, asserunt fore & esse bona & justa & legalia: Et ea pro hujusmodi ex abundantia decreverunt & adjudicaverunt.

Out of the last recited Precedent of 2 H. 5. may be observed, That the Temporal Lords by Assent of the King, may give Judgment on Offenders for capital Crimes; and therefore, Whereas it is said, 2 H. 4. That the Judgment belongs only to the King and Lords, that is herein explained.

observe.

The King's Assent ought to be to Capital Judgments, and the Lords Temporal to be only Judges therein, and not the Lords Spiritual: But in Misdemeanors, the Lords Spiritual and Temporal are equal Judges, and the King's Assent is not necessary, as shall appear.

Q. 2. *In what Cases the King's Assent is necessarily required.*

In what Cases the King's Assent is necessarily required.

Touching the King's Assent, it is expressed in divers Judgments on Capital Offences, 4 E. 3. against Mortimer.

Anno eodem against Simon de Beresford. And there be divers other Judgments that year of this Nature, wherein the King's Assent is not expressed; but against John Matrevers Les Juides Peeres de

Peeres de la terre.

Judicature in Parliament.

de la terre, & Judges de Parlement adjudg-ent & agardant que le dit John be drawn, hanged, &c. not mentioning the King's Assent. And there are two other Precedents of the same Nature briefly Recorded; *Estre ou tiel Judgmeent est accorde que soit fait de Burges de Bayons & John De-ver.* And *Item ou tiel Judgmeent est accorde de Tho. de Gurney & W. de Ogle,* not mentioning by whom the said Judgments of — Death were given.

2 H. 4. The Judgment against the Earl of Salisbury and others, for Treason, is by the King's Assent; and so is the Judgment of H. 4. against the Earl of Northumberland, and 11 & 21 R. 2. upon those several Appeals. In all which the King's Assent is recorded. And so the Articles objected against Simon de Burley, without the King's Assent, and against his will, which I shall here recite.

Item, The aforesaid Dukes, Earls of Arundel and Warwick.

Anno 50 E. 3. Richard Lyons pleading a Warrant from the King, which he could not shew, followeth thus, &c.

And *Tho. Mortimer* continueth his traiterous purpose, and by force of men took and imprisoned divers men your Liege,

Judicature in Parliament.

Liege, &c. Amongst others, *Simon de Burley* Knight, and him they carried in the Parliament at *Westminster*, held the Morrow after the *Purification* of our Lady, in the 11th. year of your Reign, and there were furnished against him divers points of Crime and Treason, and thereupon was demanded of every Lord there present in Parliament, his Advice of the said *Simon*, touching the said Crime. And afterwards the said Dukes and Earls of *Arundel* and *Warwick* would know your Advice Thrice Redoubted Lord. You answer plainly, That the said *Simon de Burley* was not guilty of any the said Points, and then they took upon them traiterously to have constrained you to have given your Assent to the Judgment which they have purchased against the said *Simon* upon the Points aforesaid. And you Thrice Redoubted Lord would not consent to any Judgment to be given against the said *Simon*. And yet notwithstanding the aforesaid Dukes and Earls took upon them Royal Power in prejudice of you, and derogation of your Crown; and without your Assent, and against your Will, and in your Absence, and in the Absence of many other Peers of Parliament, and without their Assent

Judicature in Parliament.

Assent, and against their Will, awarded that the said *Simon* should be drawn, &c. and thereupon caused him to be beheaded, but traiterously against your Crown, Peace and Dignity.

This I have recited at large: Unto which the Duke of *Gloucester* made no Answer, being dead before the said Earl of *Arundel* pleaded the King's Pardon, which was not allowed him.

The said Earl of *Warwick* confessed all the Articles in the said Appeal, and put himself upon the King's Grace, and the said *Tho. Mortimer* could not be found.

This Parliament begun at *Westminster* Die Luna post Festum Exaltationis Sanctæ Crucis, and was adjourned to *Shrewsbury*. And on Tuesday 28 January, the Parliament there shewed unto the King how that they in the said Parliament at *Westminster* had accused and impeached *John de Cobham* in the 11th. year of the King's Reign, with others convicted in this Parliament, accroaching to himself Royal Power in Judgment. Awarded that the Lieges of the King, *Simon de Burley* and *James de Barners* Knights, should be Drawn, Hanged and Beheaded without Assent of the King, and against his will, and in his absence, and in the absence of many

Judicature in Parliament.

many other Peers of Parliament, who withheld themselves, and would not sit in such Judgment; and against their will, traiterously against the Peace of the King, his Crown and Dignity.

And prayed our Lord the King to cause the said *John de Cobham* to joyn in this present Parliament to answer to the things aforesaid, and to ordain such Judgment against the said *John de Cobham* as the Cause demands. The said *Jo. de Cobham* was brought, &c. And touching the said Judgment awarded against the said *Simon* and *James*, the said *Joh. de Cobham* said, That it was told him by them who were present then, That it was the King's Will to make such Judgment against the said *Simon* and *James* convicted of the said Judgment and Award which he had so given against the said *Simon* and *James*, notwithstanding his Answer; Whereupon, &c. Judgment was given against him, and he adjudged a Traytor.

Here is objected, That the Judgment against *Simon de Burley*, was given by the Lords without the King's consent. Secondly, Against his Will. Thirdly, In the King's Absence. Fourthly, In the Absence of many of the Peers, and against their wills.

Touch-

Judicature in Parliament.

Touching the First, viz. The King's not Assenting.

It may be Objected, That the Lords gave Judgment against *Weston*, 1 R. 2. without the King's Assent, but yet not against the King's Will; for they respited the Execution until the King might be informed thereof. And the Reason then given for the said Respite, was, For that the King is not yet informed of the manner of this Judgment. But whether the Lords proceeded to that Judgment against *Weston*, before they informed the King, because the King's Assent is not necessary, or for that it being the last Day of the Parliament, they had no leisure to inform his Majesty thereof, let the Reader judge: yet it seemeth to me that the King's Assent is necessarily required in Capital Causes and Judgments, for these two Reasons:

First, For that all Precedents mention the King's Assent in Capital Judgments, except that one against *Matrevers*, 4 E. 3. which might be the omission of the Clerks, who drew up the Roll; for it is said directly afterwards in the said Bill,

Numb.

Judicature in Parliament.

Numb. 6. That the Peers gave those Judgments in the presence of our Lord the King and by his Assent: And except that of 1 R. 2. against *Weston*, in the last Day of the Parliament, and it was 3. in the Afternoon that Day before the Lords had determined what to do in that Business; so that it may be the Lords were prevented of time herein, to have which, they respited Execution, for that the King was not informed of the manner thereof.

*A bold
Saying.
This Duke
of Glouc.
was many
years after
imprisoned
for this at
Calice, &
there died
in his Bed.*

Secondly, For that the Lords Appellants 11 R. 2. who had then great Forces about them, were so earnest with the King for his Assent to the Judgment against *Burley*, That the Duke of *Gloucester* told him, as appeareth by his own Confession, 21 R. 2. *That if he would be King, he should not intreat for Simon de Burley, to save him from Death.* And in the end, when his Majesty would not assent to their Judgment, yet they wrought so, that Messengers were sent unto him, and brought word (not before they gave Judgment against *Simon*) and the King's Assent is mentioned in the said Judgment. All which the said Lords would not have done, had not the King's Assent been necessary.

And

Judicature in Parliament.

And afterwards in the Parliament of 21 R. 2, The Lord *Cobham* being accused for giving Judgment without the King's Assent, answered, That the Messenger brought word, That his Majesty had assented: And yet because he did not gain-say that the King did deny his Assent, the Commons immediately demanded Judgment. All which seem to imply, That the King's Assent is necessary in Judgments upon Capital Offences.

Touching the Second, viz. Judgment against the King's Will.

It is all one with Judgment without the King's Assent.

Touching the Third, viz. In the Absence of the King.

The Judgments of this kind are good notwithstanding, so as the King doth assent; as that of *Simon de Burley*, 11 R. 2.

Touching the Absence of many of the Peers.

That is to say, of many of them, and against their will; This cannot invalidate their

Judicature in Parliament.

their Judgment, so as the greater number of the Lords be then present (accompting the Proxies of the absent Lords) for it is not material whether some Lords do absent themselves, or dissent. The chiefest Matter is the Assent of the Lords who are present either in Person or by Proxy. The others are to Answer for their Absence without a just Cause shewn, or a proper Assent.

In Judgment on
Misdemeanors
the King's
Assent is
not required.

¶ 2. In Judgment on Misdemeanors, the King's Assent is not required.

50 E. 3. The Lords judged divers Commoners for Misdemeanors, and the King's Assent not mentioned; as *Richard Lyons*, *William Lord Latymer*, a Privy Councillor, *John Lord Nevil*, a Privy Councillor, *Jo. Peecher*, and others. The King was then sick at his Mannor of *Eltham*, and on the last day of the Parliament, the Lords, Prelates and Commons came before him there, and he heard the Petitioners, and their Answers for most part read, and also Judgment given on the Privy Councillors and others, *dont ils se leyron franchement le respons de mesme nostre Seignior le Roy*, Numb. 15. Which shews that the King had not assented to them.

7 R. 2.

Judicature in Parliament.

7 R. 2. The Bishop of *Norwich* was accused of Misdemeanors, and judged in 10 R. 2.

The Lord Chancellor *Mich. de la Poole* was judged by the Lords for Misdemeanors, and *Speed fol.* saith, That the King was much displeased thereat; for it appeareth he gave not his consent. And it was one of the Questions demanded of *Tresilian* and others, 11 R. 2. Whether the Judgment were erroneous, or not? and resolved to be erroneous; yet it was not objected against any the Lords Appellors that the Judges proceeded without the King's Assent.

¶ 3. The King's Presence in Parliament.

In 4 E. 3. The King commanded the Lords to do right and lawful Judgment on *Mortimer*. The which Earls, Barons and Peers having examined the Articles, came again before the King, and said, &c. *Ibidem*. The King commanded them to give Judgment on *Simon de Bereford*. The which Earls, Barons and Peers came again before the King, and said, &c. And so the King was present at their Judgment, but not at their Consultations.

L

10 R. 2.

Judicature in Parliament.

10 R. 2. The King was present when the Commons accused the Lord Chancellor *William de la Poole* of Misdemeanors, but he was not present at his Trial; for he demanded if he ought to answer *sans presence de dit Roy*, being Chancellor? and in the end he answered notwithstanding.

21 R. 2. In the cruel Parliament of the Lords Appellants, the King was present at the Parlies: *Non constat* whether he was present at the Consultation of the Lords.

5 H. 4. The King was present when the Earl of *Northumberland* was to be tried upon his own Petition, and so were the Commons. And the King delivered the Petition to the Judges for their Opinion; but the Lords claimed their Right: But this was on the *Wednesday*, and the *Friday* following the King and Commons met there again, and the Chancellor rehearseth, First, What was done the first Day, and the Lords having had competent deliberation on the said Petition, and having heard and considered the Statute, They adjudged, &c.

It is plain the King was not present at this Consultation of the Lords, though at their Judgment.

7 H. 4.

Judicature in Parliament.

7 H. 4. He commanded the Lords to advise what manner of Process shall be made, and what Judgment shall be rendered against *Henry de Peirce* Earl of *Northumberland*; and a Week after the Lords declared their Opinion to the King. And it appeareth in that Roll very clearly, that all Evidences and Examinations were shewn and taken by the Lords in the absence of the King, and their Advice also agreed on in his Absence, but the Judgment reversed in his Presence.

To conclude, The King may be present if he please, at the Parties Answer, in Capital Causes, and at the Judgments given, *prout*, &c. But he was never present at other times of Proceeding against the Delinquent, nor at any Answer for Misdemeanors, for ought I have yet seen.

§. 4. *The Presence of the Lords Spiritual.* The Lords Spiritual.

In Cases of Misdemeanors, the Lords In Cases of Spiritual have ever been present, but Misdemeanors never in Offences Capital. This is so nor they may be present. generally received of all men, that it is not worth the Labour to prove it; yet I will vouch the Precedents: For it may

L 2

be.

Judicature in Parliament.

be, out of one or other of them somewhat may occur worthy the Observation.

In Misdemeanors.

In 1 R. 2. Alice Peirce was brought before the Prelates and Lords in Parliament, to Answer, and the Prelates and Lords did ordain.

42 E. 3. Numb. 20, &c. John at Lee was put to Reason before the Prelates, Lords, Dukes, Earls, Barons, and some of the Commons.

7 R. 2. Jo. Cavendish accused the Lord Chancellor of Bribery, before the Prelates and Lords in Parliament. The Chancellor Answered before the Prelates and Lords.

*In Cases
Capital
may not be
present,*

In Offences Capital.

In 4 E. 3. The Earl of Kent was brought before the Counts, Barons & autres Grandees and Nobles en mesme Parlement, &c. for Treason dors. Numb. 38.

Eodem Anno, The Articles of Treason being read against Mortimer, the King charged les Counts & Barons, les Peeres de son Realme, to give Judgment. And Judgment was given per les dits Counts, Barons

Judicature in Parliament.

Barons & Peeres come Judges del Parlement.

Item, The King commanded les dits Counts & Barons Assembled in Parliament, to give Judgment on, &c. and so were four others tried in the same Parliament, all for Treason, and not one word of the Prelates, either when the Articles were read, or at the Judgment.

6 E. 3. Numb. 11, 12. Post Festum Sancti Gregorii, The Parliament being commanded to consult of the keeping of the Peace, and Punishment for the breaking thereof, the Prelates departed, *pur ceo que aviz fuit dits Prelates, que ne attinet pas a eux consuler de guard de la Pees ne de chastisement de tiel*; yet afterwards, when they heard what was ordained touching those Malefactors, for the apprehension of them by Hue and Cry, &c. to bring them before certain Commissioners to be tried according to Law, the Prelates gave their Consents also to the Act, and added also Excommunication by the Assent of King, Lords and Commons.

Anno 10 R. 2. The Commons prayed That such as gave up Forts, *puissent estre a respons cest Parlement. Et selon leur desert puis per guard les Seigniors & Baronage.*

Judicature in Parliament.

And thereupon John Gomeniz & William Weston were brought before the Lords aforesaid in full Parliament, &c. It is to be understood before the Temporal Lords; for the Bishops are never comprized in the Word Baronage.

The Protestation of the Bishops for ever.

Anno 11 R. 2. Divers Lords and others being appealed of Treason, & other misdemeanors, the Prelates absented themselves, during the Tryal having first made Protestation saving their Right to be present in Parliament. *Regni more solito considerare, tractare, ordinare, statuerre, definire & cetera exercere, cum ceteris Paribus &c. Verum quia in presenti Parlamento de nonnullis materiis agitur, in quibus non licet nobis juxta Canonum Sacrorum instituta quomodo libet interesse, Eo propter pro nobis & nostrum quolibet Protestatur quod non intendimus nec volumus sicuti de jure non possumus nec debemus, nec intenditur nec vult aliquis nostrum in Parlamento dum de hujusmodi rebus agitur vel agitur, quomodo libet interesse, sed nos & nostrum quemlibet in ea parte penitus absentare: Jure Patrie nostre, & cujuslibet nostrum interessend. in dicto Parlamento, quoad omnia & singula ibidem exercenda juris, & eorum quilibet statu & Ordine in omnibus semper salvo.*

Judicature in Parliament.

salvo. *Ad hac insuper protestamur & nostrum quilibet protestatur, quod propter hujusmodi absentiam non intendimus nec volumus, nec nostrum aliquis intendit, nec vult, quod processus habiti, & habendi in presenti Parlamento super materiis antedictis, in quibus nec possumus nec debemus ut pramittitur interesse, quantum ad nos, & nostrum quem libet attinet, futuris temporibus quomodo libet impugnentur, infirmentur, seu etiam revertentur.*

This was read in full Parliament and enrolled at the Request of the Commons, I mean the Prelates by the Kings Command and assent of the Lords Temporal and Commons. Here the Protestation saith (*de jure, interesse non debemus*) but I think it intends that they could not be present by reason of the Common-Law, and by reason of an Ordinance made at the Councell at Westminster, in 21. H. 2. By which all Clergy-men were forbidden, *agitare Judicium sanguinis*, upon pain to be deprived both of Dignities and Orders. For surely as I think, they might otherwise have been present both by the Common-Law and by the Law of God. But by such their long constant absence, even from our first Parliaments upon Record. The Lords Temporal have only heard and

Judicature in Parliament.

determined all matters concerning Capital offences, which hath continued in them so long that it is become their Right, &c.

So that now it will be a wrong unto them the Lords Temporal, if the Bishops do any way meddle with such Judicatures, either touching the Answers, the Replies, the Proofs, or the Judgement. For where they may not adjudg, they may not do any thing as a Judge that doth conduce to judgment. And therefore as heretofore they would be absent, Now they cannot be present whilst the Matter is in hand, but are to be absent altogether *dum de hujusmodi materiis agitur*: For some or other matter may happen to be Voted in their presence concerning the Answer, Replication, &c. or concerning the Form of Judicature herein: And by the Voices of the Spiritual Lords that Vote may pass against the major part of the Temporal Lords, who should sustain wrong therein.

Can they be present, and not Vote?

I know that at all Assizes and Sessions divers of the Clergy are present till Judgment be given in such Cases; but their Presence

Judicature in Parliament.

Presence cannot prejudice the Judge at the Assizes by Vote, as in Parliament. And at Sessions the Lay and Clergy are equally in Authority to hear and determine.

Eodem Anno 11 R. 2. A Special Act passed at the Request of the Commons, to make good those Appeals and Judgments, notwithstanding that the Spiritual Lords *pur benefit & salvatioun de leur Estate*, Cap. 3. & in *Parl. Roll*, N. 28.

This Act, I conceive, was occasioned by the Clause in the said Protestation of the Prelates; *Ad hæc insuper Protestamur, &c. quod processus habiti & habendi in presenti Parlamento super Materiis predictis, in quibus nec possumus, nec debemus interesse, ut præmittitur, quantum ad nos attinet futuris temporibus non impugnentur*, &c. For there is no such Act to make good any former Judgment notwithstanding their Absence.

And 2 *H. 5.* Upon the Petition of the E. of *Salisbury*, the King & Lords Temporal adjudged the Judgment against his Father in Parliament, 2 *H. 4.* to be good, notwithstanding that it was rendred without the consent of the Lords Spiritual, which yet the said Earl alledged as Error in his Petition; so that by the Judgment

Judicature in Parliament.

Judgment of the whole House, neither the Presence nor Absence of the Spiritual Lords is necessary in such Judgments.

In 21. R. 2. The first Petition that the Commons offered was, That before this time many Judgments and Ordinances made in the time of the Kings Ancestors in Parliament, have been repealed because the Clergy was not present in Parliament at the making of the Judgments; and therefore they desired that the Clergy might make a Proctor with a sufficient Power to consent in their wants, unto all Things and Ordinances to be done in this Parliament, *Numb. 9.*

Whereupon the Prelates and Clergy being severally examined, deputed for them all *Tho. de Piercy.*

But in ancient times (*in libro Maillecefs*) *Numb. 9.* which hath written somewhat largely of this Parliament; It is said, The Pardons granted to the Earls of *Arundel*, were first repealed by the Assent of the Prelates; for which he blames them much, saying, *Dederunt ergo locum Pralati Judicio Sanguinis in hoc facto, ita quod dubitatur à pluribus, si incurrunt irregularitatem pro negotio memorato, unde contigit quod propter istud minus peccatum consequentur, nam exactum est ab*

is,

Judicature in Parliament.

is, vellent, nollent, ut Laicam Personam constituerent, ad Judicium Sanguinis dandum in dicto Parlamento, si necesse foret, & occasio emerisset.

I have perused all Judgments and Ordinances in Parliament, and do not yet find one, whereto any Exceptions were taken for the Absence of the Prelates and Clergy.

Observ.
No exceptions taken for the Absence of the Prelates.

I find an Exception to the Judgment of the Exile, in 15 E. 2. for that it was made without the Assent of the Prelates, who were present, and protested in writing against it. And one of the Errors whereupon it was repealed, is, for that it was made without the Assent of them, who were Peers of the Realm in Parliament.

But this Repeal was *per duress & force, &c. prout 1 E. 3. c. 2.* So as this cannot be alledged for a Legal Precedent.

5 H. 4. The Earl of *Northumberland* came before the King, the Lords and Commons in Parliament. The Lords made Protestation that the Judgment belonged to them only, &c.

The Petition being read before the King and the said Lords, as Peers of the Parlia-

Judicature in Parliament.

Parliament (unto whom such Judgments do of Right belong) considering, &c. adjudged that it was neither Treason nor Felony, &c.

Note especially.

Note, That all this Parliament, the Bishop of ——— was Chancellor, and he as Chancellor, delivered the Opinion of the Lords when they had acquitted the said Earl of Treason. Whereby it seems that He and the other Bishops were present at the Trial of Life and Death; wherefore though the Record doth here say the Lords indefinitely, we must understand the Lords Temporal only; especially since they claimed the said Judgment to belong to them.

In 4 E. 3. Judgment was given by the Earls, Barons and Peers, as Judges in Parliament, in point of Treason, where the Prelates are not named; and therefore understood of the Temporal Lords only. This will be explained by the next of 7 H. 4. *Rot. Proceſs coram Domino Rege, &c.*

The King commanded the Lords Temporal, Peers of this Realm, to advise what Proceſs to make, and what Judgment to render againſt the Earl of *Northumberland* and the Lord *Bardolph*. The Lords advised thereupon, and reported their

Judicature in Parliament.

their Opinions to the King. The said Lords, Peers of the Realm, by Assent of the King, Ordain, That Proclamation should be made for the said Earl and Lord *Bardolph* to appear, or else to be Convicted by Award of the Peers in Parliament.

The King did farther demand the Opinion of the said Lords Temporal touching the Archbishop of *York*; unto whom the said Lords Temporal said, &c.

The Commons prayed the King that they might have Cognizance, &c. Whereupon, by Advice of the Lords Temporal, the Returns of the former Proclamations were made at the Parliament-door for the said Earl and Lord to appear.

By Advice of the said Lords Temporal, the Returns of the former Proclamations were examined, the said Lords Temporal considered of the Errors therein.

By the said Lords Temporal, with the Assent of the King, by their Authority, New Proclamation is granted, the Return whereof is read in full Parliament before the King and the said Lords Temporal.

Whereupon, the said Lords Temporal

Judicature in Parliament.

ral then being in the said Parliament, by Advice and Assent of our Lord the King, by their Authority in Parliament, Awarded the said, &c. Convict of Treason.

Here all was done by the Lords Temporal from the first beginning of the Trial until the Judgment, and yet the Judgment is said to be in Full Parliament, notwithstanding the Spiritual Lords are not once mentioned, nor intended to be present at any time whilst the Matter of Treason was handled.

The Presence of the Commons in Cases Capital.

¶ 5. *Touching the Presence of the Commons in Cases Capital.*

I observe the Presence of the Commons to be necessary at the Parties Answer and Judgment in Cases Capital.

Now one Reason for the King's Assent, and the Commons presence in such Judgments, may be this; Both King and People are to be satisfied for the death of the Subject; therefore all Trials for Life and Death, are publick in the full Assembly of the Court: And how can it be said in Full Parliament, when the Commons, one of the States, are absent?

For

Judicature in Parliament.

For this purpose the Court of Requests (called *Camera Alba*) was prepared for such Trials, where both Lords and Commons might meet more conveniently; yet though the Commons were present at such times, they had no Voice there. But at their Return to their own Assembly, they considered among themselves, if the Proceedings were Legal; and might come again and shew it, and require a Rehearsing of that Cause: as they did at the Judgment of the Duke of Clarence, 18 E. 3.

Nor are the Commons to be present when the Lords do consider of the Delinquent's Answer, and the Proofs, and do determine of their Judgment.

The Precedents are these.

10 R. 2, Gomeniz and Weston were brought before the Lords and Commons *seaux a la blanche Chambre*, and Answered on Friday, 27 Novemb. and there they were delivered to the Constable of the Tower, who was commanded to bring them again the next Morning. In the mean time, the Earls, Barons and Baronets assembled, and advised from the time that the said Answers were given in

Judicature in Parliament.

in Parliament on *Friday* until part of *Saturday* to the hour of Three, of the things touching the Answer aforesaid, and then the Prisoners were brought in to the Parliament.

10 R. 2. Rot. de Pardonatione Haxeii, 7 Febr. Anno predicto, Predictus Tho. Haxeii coram Nobis & omnibus Dominis Parliamenti Nostri existentibus in Alba Camera adductus fuit, & Billa predicta coram prefato Thoma ibidem, per Præceptum Nostrum lecta fuit, & Quæsitum fuit per Charissimum Avunculum Nostrum Ducem Aquitain & Lanc. Seneschallum Angliæ, à prefato Thoma, si ipse dictum prefatum Communibus tradidit.

5 H. 4. The Earl of Northumberland was brought to his Trial on *Wednesday*; Then the Commons were present; but I do not find that they were present with the Lords between *Wednesday* and *Friday*, when the Lords advised on the Earl's Petition. This Record mentions not where the Assembly was, Numb. 7. H. 4. Quint. of his Reign.

After the Lords had Awarded Proclamation against the Earl of Northumberland, and the Lord Bardolph to appear at a Day,

Judicature in Parliament.

a Day, or Judgment to be given. The Commons not being acquainted therewith, they came and prayed the King, they might have cognizance what was done touching the said Rebellions of *Salop*, and elsewhere within the Realm: whereupon, New Proclamations were made, and the subsequent proceedings were done in full Parliament, in presence of the Commons; and the Record saith, upon the Request of the Commons. A Question hath been often asked, Whether the Commons did heretofore sit at Conference with the Lords? Which I cannot very well resolve; but verily believe, That at all these Arraignments the Commons did sit with the Lords.

10 R. 2. Gomeniz and Weston were brought before the Lords and Commons sitting in the *White Chamber*. The Words are, *Devant les Seigneurs avant dits en plein Parlement*, &c. But the Commons are here intended by the Words *en plein Parlement*. And so was the Commons Demand, that they may be tried before the Lords.

No other Records speak whether they did sit or stand.

M

In

The Presence of
the Commons not
necessary.

In Judgments on Misdemeanors,

The Presence of the Commons is not necessary, unless they impeach a Delinquent, *prout* 50 E. 3. And then they were present at all the Answers of those whom they Impeached, and demanded Judgment.

And when the Lords had rendred their Judgment against the Lord *Latimer*, to be prisoner with the Marshal, and to make Fine and Ransom to the King, the Commons prayed the King, he might also be put out of all his Offices, and especially from being Privy Councillor: Which the King granted.

And when the Lords had determined one part of the Complaint of the Commons against *William Ellis*, touching a wrong done to certain *Scottish* Merchants, the Commons prayed a general Enquiry might be made of the Residue whereof they complained; which the Lords granted.

And when the Lord *Nevil* Answered, They required that one *Richard Love* might be examined, to prove that which the said Lord denied, and they departed;

ed; but two of the Commons remained, and heard the Examination, and told the Lords, That the said *Richard* had related it to the Commons otherwise the day before; which the said *Richard* denied. Then all the Commons came and justified it again, and thereupon the said *Richard Love* confessed it, and on their Demands was committed.

This shews what Interest they have in their own Impeachments.

So in 10 R. 2. When the Commons had Impeached the Lord Chancellor, They were present at his Answer, and so often Replied, and enforced his Oath against him, and required him to be Committed, and so he was before Judgment, but Bayled presently.

But if the Commons do only complain, and do neither impeach the Party in Writing, nor by word of Mouth in open House, nor demand Trial to be in their Presence; In these Cases it is in the Election of the Lords whether the Commons shall be present or not.

And therefore when they complained of *Alice Peirce*, 10 R. 2. The Lords deferred her Trial until the Departure of the Parliament, that is, till the Commons

Judicature in Parliament.

mons had leave to depart. And if the Commons presence be not necessary in such Cases where they complain, much less is it wherein they complain not; yet they have been present when they did not complain; but that was upon an extraordinary Cause, *prout* 7 R. 2.

A Fishmonger exhibited his Complaint, first to the Commons against the Lord Chancellor, and afterwards to the Lords in Full Parliament, in presence of the Commons. But they were present no doubt at the Lord Chancellor's Request, That he might clear himself in Publick of the Slander, and so he did.

The Presence of the Judges.

The Presence of the Judges.

In Cases Capital, the Judges are to be present also, otherwise it is not a Full Court; but they have no Voyce. And though there be divers Precedents that complain of the Prelates, *prout* 21 R. 2. & 2 H. 5. and this last of the Commons, yet there is not one Precedent that finds fault with their Absence in these Cases; for they are not *tractare cum ceteris Magistratibus*, but *cum ceteris de Concilio*.

Here

Judicature in Parliament.

Here may be Objected that which *Tresilian* and other Judges answered to one of the King's Questions, 11 R. 2. touching the Judgment of *Michael de la Poole*, That the same Justices and Serjeants would not give the same Judgment, because it seemeth to them, that the same is irrevocable, as erroneous to every part. *Vid.* Print. Stat. 21 R. 2. *Tresilian* was much mistaken, as much as in the other Answers, whereby he determined that to be Treason; and so here he gave his Advice, not his Consent: And yet he saith, he gave his Consent. Read but a little further, and you shall find in the very same place, as followeth; Which Questions and Answers, as well before the King, as before the Lords and Commons, were read and perceived; and it was demanded of all the States of Parliament, how they thought of the Answer? And they said, They thought the Justices made and gave the Answers duly and lawfully, as good and liege People of the King ought to do.

And in the same manner Sir *Tho.* of *Shelton*, Learned in the Law, and *Wilk. Hawkford*, and *Will. Beechley*, the King's Serjeants, being demanded by the King, of

of their Advice, &c. and my Lord *Will. Thurning* of the Common Pleas, &c. That the Declaration of Treason not declared, belongeth to the Parliament: And if he had been demanded, he would have said in the same manner.

And in like manner my Lord *William Rickill*, Justice of the Common Bench, and after the coming of my Lord *William Clopton*, Chief Justice, he said thus; Wherefore the said Answers be judged good, and affirmed sufficient in the said Parliament.

Whereupon the King, by the Assent of the Lords Spiritual and Temporal, and the Procurators of the Clergy, and the said Commons, and by the Advice of the said Justices and Serjeants there being, It was Awarded and Adjudged, &c.

Here you see the Manner of the Judges Assent, viz. their Advice only. Nor shall you find their Assents to any Statute; yet the Judges have ever used to be present at the Trials in Parliament upon Life and Death, § *H. 4.*

The King delivered the Earl of *Northumberland's* Petition to them. And at the Trial of any Peer out of Parliament, the Judges are ever present on that Day; and

and their presence is necessary for their Counsel to the Lords; but their Assent is not necessary to the Judgment.

§. *The Manner how the Lords resolve on their Judgment.*

*How the
Lords re-
solve on
their
Judg-
ments.*

How this was Anciently, appears in the Appeals, 21 R. 2. Touching the Death of *Simon Burley*, viz. It was demanded of every Lord who was present at the said Parliament, his Advice of the said *Simon* touching his Crime.

Eodem Anno, in the Print. Stat. 21 R. 2. The Judges Opinions were demanded in the same manner; beginning with the Serjeants, &c. and so ascending to the Chief Justice.

And at this Day the Question is put by the Chancellor or Lord Keeper, and the puisne Baron answers first, Content, or not Content; and so the Lords in Order: But their Lordships do first debate the Judgment amongst themselves, and the Question is out of that which seemeth to be most generally agreed on.

Judicature in Parliament.

In the Judgment it self is to be considered,

First, Whether it be ultra Legem.

Secondly, By whom to be Demanded.

Thirdly, By whom to be Rendred.

Touching the First.

Judgments in Parliament for Death, have been strictly guided per Legem Terra; otherwise they would not have judged the Earl of Kent, the King's own Unkle, to be Hanged, Drawn and Beheaded, might it be left to their Discretion. Vide Literas E. 3. to the Pope, speaking of this Earls Judgment by the Parliament, for Treason; Cui Sententia subductis tamen quibusdam opprobriosis, & in detestatione tanti Sceleris, de Rigore Legis nostri Regni infligenda erat, Dolentes acquievimus, 4 E. 6. But the Roll is lost.

The Lords judged Mortimer to be Drawn and Hanged as a Traytor, 4 E. 3.

Simile pro Simone de Beresford, N. 2.

Ibidem,

Judicature in Parliament.

Ibidem, Numb. 3. They judged John Matrevers, to be Drawn, Hanged and Beheaded.

10 R. 2. Weston adjudged a Traytor for delivering up of Castles, Forts, &c.

And so Jo. Lord Gomeniz. a German, was adjudged to die; but because he was an Alien, and a Baronet, and was not the King's Liege-man, he should be Beheaded; That being the Death used in Germany to Gentlemen.

10 R. 2. Simon de Burley, the Earl of Arundel, and others were Adjudged to be Hang'd, Drawn and Beheaded for Treason. They differ something, yet herein they agree, That the opprobrious Death of a Traytor, is, to be Drawn and Hang'd; which the Parliament could not alter, no not in their Judgments against the King's own Unkle. It was per Legem Regni infligenda. The King might pardon all, and usually did, except Beheading of the Nobility of his own Blood, and of later Times, to all Noblemen.

As the Parliament could not dispence with,

Judicature in Parliament.

with, nor omit any part of the *Judgment* on Traytors, so they could not add more than the Law required. And this may appear by their Judgments of Forfeitures of the Parties Estate.

The Parliament, 4 E. 3. spoke nothing what *Mortimer* should forfeit to the King: He well knew the Law could give the King all his Lands, in Possession, Reversion, or Service. *Vide The Restitution of 28 E. 3. Numb. 10.*

The Ordinances in 50 E. 3. *Numb. 45.* against Women which shall make suit, &c. to the King; against *Alice Peirce* by Name, is, Upon pain of as much as she can forfeit, and to be banished. But had it not been for the former Ordinance, the Lords would not have given any such Judgment against her; Her Offence being only for procuring Favour to her Friends from the late King, contrary to a former Order of Council.

11 & 21 R. 2. The Lords Adjudged the Forfeitures to the King, of some **Convicted** on the Appeals, greater than the

Judicature in Parliament.

the Law will give; but they passed special Acts in each Parliament to Confirm both the *Judgments* and *Forfeitures*.

1 H. 4. The Lords Adjudged and Declared the Earls of *Kent*, *Salisbury*, and others to be Traytors, and to Forfeit, *Numb. 30.* as the Law of the Land willeth.

7 H. 4. They Adjudged the Earl of *Northumberland*, and Lord *Bardolph* to Forfeit for Treason, all their Lands in their own Demesne, or where others were seized to their Use.

And so in Fines and Amerciaments, the Judgments anciently were indefinite, *prout 42 E. 3. Numb. 26.* *John at Lee* is Committed to the Tower, there to remain till he hath paid Fine and Ransom to the King, and at the King's will and pleasure.

50 E. 3. He is Awarded to Prison at the King's Will, and to be put to his Fine and Ransom according to the quality of his Trespas; who being brought before the Lords, they told him, his ill **Deeds**

Judicature in Parliament.

Deeds were so great, that he had not wherewith to make satisfaction; and he submitted to the King's Grace: and the Lords Awarded all his Goods to be seized, and his Body to be in Prison at the King's Will.

Eodem Anno, The Lord *Latimer* to make Fine and Ransom at the King's Will, *Numb.* 28.

Item, *William Ellis* the like, *Num.* 28.

John Peecher the like, *Num.* 33.

Cavendish Awarded 7 R. 2. to pay Damages to the Chancellor, and to remain in Prison until, &c. and the King *de Fine suo competenti sibi inde debito*; but not set down how much to the King.

These Fines were not put in certain, for that the Law limits them to the King's Will: But no doubt but after the Judgment, the Lords did rate them; as may be gathered out of *Richard Lyons*; where, after Judgment, they called him before them, to consider, it seems, at what Rate to Tax the same. And they found it not sufficient.

And in Ancient Court-Barons, the Acknowledgments were ever offered after the Presentments.

Judicature in Parliament.

In the *Star-Chamber*, all Fines were usually mitigated after the Censure, and that Court had *Antiqua Vestigia Magni Consilii*.

I hold that anciently the Fines were often Rated or Taxed: And if the Lords may mitigate a Fine à *Majore*, they may Tax it after the Judgment, the Certainty not being then specified.

Judgments for Satisfaction.

Judgm.
for Satisfaction.

In Complaints of Extortion and Oppression, the Lords Awarded Satisfaction to the Parties wronged, which sometimes was certain, sometimes general, but always *secundum, non ultra Legem*.

42 E. 3. *Numb.* 18. Full Restitution was made unto *William Latimer* of the Wardship and Marriage of the Heir of Sir *R. Latimer*, whereof he was outed by Duress by *John at Lee*. But this was done by a great Council per *Commandment du Roy*, after the Judgment.

William Ellis, 50 E. 3. Awarded to pay to *Botheil* and *Cooper* 20 l. apiece, for their Damages, *Num.* 25.

John Peecher, *Num.* 23, Awarded *que il*

il face yeulx a les parties Compl. de lui pour les extortions issint prizes.

Jo. Nevile, Num. 34. is Awarded to make Restitution to the Lady *Raven-sholme* in Certainty for an Oppression done to her, whereof the Commons complained.

7 R. 2. The Parliament referred the base Accusation of *Cavendish* against the Lord Chancellor, to be heard and determined by the Justices, in such sort as if the Parliament had determined the same. And the Justices adjudged him convict of Slander; and that the Lord Chancellor should recover his Damages, which they Taxed at 1000 Marks, and that he be imprisoned until he had satisfied the Chancellor, and the King *pro Fine competenti sibi inde debito.*

The Iudgment against *Alice Peirce*, Anno 10 R. 2. was, That if she had purchased any Lands by Force or Duress, *soit il pur Fine, or Deed en pais*, or Deed enrolled, or otherwise, that her Purchase be held for none, and the parties

parties who hold themselves aggrieved, have their Proceſs against her in *Chancery*. By Advice of the Grand Council, Let Right be done to the Parties, and Restitution made according as the Case requireth, so as the Purchase made *bona fide*, be not undone or annulled any way.

References to the Common Law.

Nor could the Lords judge any Complaint of private persons, where the party might have his Remedy at the Common Law; *prout Botheil & Cooper Anno 50 E. 3.* accused *William Ellis* for extorting 17 Nobles from certain Merchants at *Pruse*; and also for their wrong Imprisonment, by the false Suggestion of *William Ellis* to the King. And the Lords referred the taking of the 17 Nobles to the Common Law. But upon the Examination of the Imprisonment, it was proved, That *Ellis* did write his Letters to one of the King's Bed-Chamber, falsely suggesting against *Botheil* and *Cooper*, which Letters were shewn to the King, his Majesty then commanded them to be Committed. This

Judicature in Parliament.

This the Lords expounded to be false Suggestion in *Ellis*. The King himself judged him for the same.

Had that Point been cleared in the Statute of *False Suggestions*, haply the Lords would have referred it to its proper place.

So also, *Anno 5. E. 2.* The Lords referred the Accusation of *Clingdon*, to be Tried at the Common Law.

Touching
the De-
mand.

Secondly, Touching the Demand.

That verily belongs to the Party at whose Suit it is; To the King's Council for the King, if the Articles were *de part le Roy*; and to the Commons, against an Impeached Delinquent.

By whom
Judgment
ought to be
rendred.

By whom Judgment ought to be Rendred.

It appeareth plainly by many Precedents, That all Judgments for Life and Death, are to be rendred by the Steward

Judicature in Parliament.

Steward of *England*, or by the Steward of the King's House; and this is the Reason why at every Parliament, the King makes a Lord Steward of his House, though he hath none out of Parliament. And at such Arraignment, the Steward is to sit in the Chancellor's place: And all Judgments for Misdemeanors by the Chancellor, or by him who supplies the Chancellor's place.

N CHAP.

CHAP. VI.

The Precedents for Life and Death.

The Pre-
cedents of
Life and
Death.

A *Anno 10 R. 2.* John Lord Gomenis, and William Weston were brought by the Constable of the Tower before the Lords in Full Parliament, sitting in the *White Chamber*; where they were severally Arraigned at the Commandment of the Lords, by *Richard le Scroop*, Chief Steward of the House of our Lord the King, in manner following:

Here the Lords commanded the Arraignment of certain Earls, Peers of the Realm: They did not appoint the Steward to do it: It belonged to his Office.

Anno 20 R. 2. Thomas Haxey was Arraigned of High Treason before the King, the Lords and Commons in full Parliament, in *Alba Camera*, by the Duke of Lancaster *Seneschallum Anglia*, and the Judgment rendred by him.

Anno

Anno 21 R. 2. All those Judgments on the Appeal were rendred *per Seneschallum Anglia*. The Records of *E. 3.* and *H. 4.* are silent herein, by whom the Judgment was rendred.

It may be Objected, That *Anno 5. H. Obj.* 4. The Lord Chancellor kept his place at the Trial of the Earl of *Northumberland*, because he did deliver the Opinion of the Lords.

That could not properly be called a Trial; for it was upon the Earl's own Petition. And if it were resolved whether it were Felony or Treason, it should have been done by the Steward, sitting in the Chancellor's place. Neither doth it appear by the Record, that the Chancellor kept his place, though he afterwards delivered the Opinion of the Lords.

So likewise, *Anno 1 Car. 1. Febr. 6.* The Lord Keeper kept his place when the Articles of Treason were read against the Earl of *Bristol*; but he did not Arraign him. Then they were read, and his Answer heard by the appointment of the House, and some Wit-

N 2

nesses

Judicature in Parliament.

nesses examined also, to the end they might understand the true Nature of his Offence, and then to declare how, and in what manner to proceed against him for the same.

The Spirituality did not deliver their Opinion therein.

To conclude, All Records that are (which mention by whom the Delinquents in Cases Capital were Arraigned) do say that it was by the Steward of *England*, or of the King's House. And in remembrance of this, a Lord Steward is appointed at every Trial of a Peer of Parliament.

Touching Judgment rendred by the Chancellor in Cases of Misdemeanors, it is needless to recite any Precedents: only this I will say, The Chancellor never gave Judgment on Life and Death, and the Steward never on Misdemeanors.

And though there be Precedents of Judgments given by the Steward of *England* in Parliament, *prout 20 & 21 R. 2.* yet I have seen none of the Judgments on the Peers rendred by the Stew-

Judicature in Parliament.

Steward of the King's House: And the reason may be, for that there was anciently a *Seneschallus Anglie*. *Quare tamen* whether the Steward of the King's House, being a Peer, may give Judgment on a Peer or not. I think he may, if there be no Steward of the House constantly made every Parliament, though but during the Sessions.

The last Considerable Thing in Judicature is,

N 3 CHAP.

CHAP. VII.

The Execution of the Judgment.

ANd first in Capital Offences, I have seen but two Precedents thereof in the Parliament-Rolls.

The First is, 4 E. 3. Which begun on *Monday* after the Feast of *S. Katherine*. There were long Articles exhibited against *Mortimer* for Treason, and he was adjudged to die for Treason; and thereupon, saith the Record, Commandment was given to the Earl Marshal to Execute the Judgment; and also to the Mayor, Aldermen and Sheriffs of the City of *London*, and to the Constable of the Tower, and likewise to them who had the Guard of the said *Mortimer*, to be aiding to the said Earl Marshal, to do the said Execution. The which Execution was done and performed upon *Thursday*, next after the first Day of the Parliament, which was the 29th. Day of *November*.

Ibid.

Ibidem Num. 2. Judgment was given on *Simon de Bereford*, to be Drawn and Hang'd: And thereupon it was Commanded that the Marshal should do Execution near the Tower of *London*. And the said Earl of *Arundel* was Beheaded on the same Day. The Earl of *Nottingham*, one of the Lords Appellants, was Lord Marshall at that time, and therefore his Deputy did Execution.

Item, The Earl of *Warwick* being adjudged to die, the King did pardon the Execution, and granted him his Life, viz. That he should remain in perpetual prison out of *England*, in the Isle of *Man*, &c. And that he be at Sea on his passage, before the end of one Month. And thereupon he was delivered to Monsieur *William le Scroope*, and to Monsieur *Stephen* his Brother, to bring him safely to the said Isle of *Man*, &c.

The Earl Marshal was Commanded to Execution on a Peer, and the Marshal on a Commoner.

The Command no doubt issued from the Lords, with the King's Assent herein.

N 4

Thus

Judicature in Parliament.

Thus much touching Execution *quondam*
Mortem.

In Misdemeanors, the greatest Corporal punishment hath been Imprisonment. I find no other in Ancient Parliament: But who was the Officer to carry the Delinquent to prison, is not Recorded, save he to whose Custody he was Committed, *prout* 42 E. 3. *John at Lee* was Committed to the Tower. *Et dit fuit al Monsieur Alley de Buxhill, Constable de la Tower, que il preist with the King.*

Anno 50 E. 3. Numb. 28, & 29. The Lord *Latimer* is Awarded to prison, *destre en guard du Marshal*; and afterwards upon Mainprise of diverse Earls, suffered to go at large. So it seemeth that first he was Committed, and delivered to the Earl Marshal immediately.

Primo R. 2. *William Fitz-Hugh* was Committed to the Tower, but it appeareth not who carried him thither. At this Day the Lords have used to impose some Corporal punishment on Misdemeanors, *prout Flood.*

And

Judicature in Parliament.

And at this Day if a Peer be Committed to prison, the Gentleman Usher hath the Charge of him thither, and the Serjeant attending on the Great Seal, *prout Anno* 18 Jac. 16 Febr. The Earl of *Berks* was sent to the *Fleet* by the Gentleman-Usher, for forcibly thrusting the Lord *Scroop* in open House.

Anno 21 Jac. 13 Maii. The Earl of *Middlesex* was Committed to the Tower, and a Warrant given to the Gentleman Usher to carry him thither.

Anno 1 Car. 1. In the Parliament begun 6 Febr. The Gentleman-Usher was commanded to bring the Earl of *Bristol*.

But if a Commoner be Committed, the Serjeant at Arms attending on the Great Seal doth usually carry him to prison, and he also hath the Charge of him, and to see any Corporal punishment inflicted on him.

Anno

Anno 18 Jac, Wright and two Serjeants at Mace, who had Arrested a Servant to the ——— were Censured to ride with Papers on their Heads, for their wilful Contempt and Scorn of the Priviledges of Parliament, And for that the Serjeant at Arms did not see the whole punishment Executed on them, he himself was Committed.

CHAP. VIII.

For Recovery of Damages, or Restitution of the Party aggrieved.

Anno 50 E. 3. Botheile and Cooper had each of them twenty pounds Awarded for their Damages; and it is not there declared how they should recover the same.

In the same year *John Lord Nevile*, upon Complaint of the Commons, is awarded to make Restitution to the Executors of the Lady *Ravenholme*; neither when the same is to be restored, nor the manner how the same shall be recovered, is declared.

Anno

In those two Cases, I conceive the Parties are to have their Remedy (the Parliament being ended) in the *Chancery*, and not in any other Inferior Court at the Common Law: But the Lords in Parliament may direct how it shall be Levied.

Anno

Judicature in Parliament.

Anno 1 R. 2. The Lords adjudged *Alice Peirce* to forfeit all her Lands and Goods to the King; and notwithstanding this Forfeiture, If she hath purchased any Lands by Force or Duress, it shall be void, and the Party grieved to have his Remedy by Process in the *Chancery*, and by Advice of the Lords of the Council, Let Right be done, and Restitution made.

Anno 7 R. 2. *John Cavendish* was awarded to pay 1000 Marks to the Lord Chancellor for his Damages, and to remain in Prison until he had paid it.

FINIS