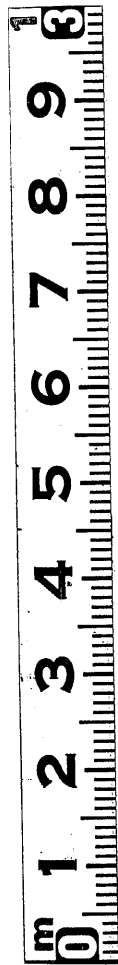


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0168

THE
MANNER
OF HOLDING
PARLIAMENTS
IN
ENGLAND.

0169

THE
MANNER
OF HOLDING
PARLIAMENTS
IN
ENGLAND.

BY HENRY ELSYNGE,
CLER. PARL.

Corrected and Enlarged from the AUTHOR'S
Original Manuscript.

L O N D O N :

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FOR THO. PAYNE, AT THE MEWS GATE.

M DCC LXVIII.

P R E F A C E.

*T*HE following treatise was first printed in 1660, several years after the death of the author, and evidently from a very incorrect copy. However, such as it was, the Public received it so favourably, that it has since been reprinted more than once; and to say the truth, with all its faults and defects, it had a merit, which very few books upon the Constitution and forms of Parliament have, that it appeared to be written with a knowledge of the subject.

*The plan, as far as it goes, is regular and well disposed; the materials the best *, chiefly the records of Parliament; and the arguments and conclusions drawn from them are, in general, clear and judicious. The misfortune has only hitherto been, that, in all the editions, the records which are quoted, are so wretchedly mangled as to be unintelligible, and the references to those which are not quoted in terms, are for the most part so erroneous, that no reliance can be had upon any of them; besides that*

* I must except the "old MS. Modus tenendi Parliamentum," which is quoted much too often. It is true that Sir *Edward Coke* was fond of quoting the same treatise as the highest authority; but Mr. *Prynne*, in his animadversions on the first chapter of the fourth Institute, has demonstrated it to be a forgery, and of no authority at all. Mr. *Selden* had before declared the same opinion, *Titles of Honor*, p. 610—614.

the

the whole reasoning of the author is frequently obscured and destroyed, by a wrong punctuation, mistakes of one word for another, omissions of words, and often of sentences.

*It is not long since, accidentally looking over the catalogue of the Harleian manuscripts, I discovered that the * original work, in Mr. Elfynges own handwriting,*

* HARL. MSS. n. 1342. It is plainly the author's original draught, with numberless erasements and interlineations made by himself; and there are directions throughout, in the margin, to the clerk who was to copy it fair. By a date in the first page it appears to have been begun in "December 1624;" and at the end is the following note: "Here I will end this eight and last chapter of this first Booke of Modus tenendi Parliamentum, which I collected for mine owne instruction and learninge, with noe intent to publishe the same unto any. 3 Maii 1625. H. ELSYNGE, Cler. Parl." There follows in the manuscript a rough

writing, was in the British Museum; and I soon after took an opportunity of examining it. The comparison of a few of the most corrupted passages convinced me, that a collation of the whole would not only correct, but considerably improve and enlarge, the printed book. The task was not a heavy one, and therefore I under-
took

sketch of *the contents of the second Book*, with this marginal note — “ Begunn. but God knows when I shall finish this booke. *Sept. 1625.*” The title of Chap. I. of this intended second book stands thus — “ Warre and Peace — begun by me, enlarged by Sir *Rob. Cotton.*” Where, I presume, he refers to a treatise which is printed among *Cottoni Posthuma*, under this title, “ That the kings of *England* have been pleased usually to consult with their peers in the great council, and commons in Parliament, of marriage, peace, and war.” I have found no reason to think that Mr. *Elfyng*e made any further progress in this second book.

From

took it for my own satisfaction, at first; though, as I advanced, I could not help feeling for the hard fate of a man of sense and learning so injuriously traduced to posterity by the negligence of copyists, and wishing that, some time or other, his fame might be vindicated by a new

From what has been said it is clear, that A. WOOD, and his transcriber in the *Biographia Britannica*, Art. *ELSYNGE*, are mistaken in attributing the printed treatise to Mr. *Elfyng*e's son, who was clerk of the house of commons in the time of *Charles the First*. The whole was certainly written by the father. Nor do I believe they have any better foundation for attributing to the same Mr. *Elfyng*e, the younger, “ A tract concerning proceedings in Parliament,” which, they say, was never published, but bequeathed in manuscript by Sir *Matthew Hale* to the library of *Lincoln's Inn*. The only manuscript, in the catalogue of that library, with the name of *Elfyng*e, is n. 85, and that, upon inspection, I found to be a copy of this work of the father.

a 3 *edition.*

x P R E F A C E.

edition. However I doubt whether I should myself, at that time, have undertaken an edition, if, upon shewing the collated copy to some very respectable persons, (too respectable to be named upon so slight an occasion) they had not expressed a wish, which I considered as a command, that the publication should not be unnecessarily delayed.

I must take notice, that the " proceedings in the case of the earl of " Arundel, 1 Car. 1." (page 192 to 242.) are not in the Harleian manuscript. Indeed the case did not happen till the year after the manuscript appears (by the note above-mentioned at the end of it) to have been finished. There can be no doubt, however, that this case was added by Mr. Elfyng himself, and, though it breaks in a little upon his method, it makes a valuable accession to his book.

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book. It has now been compared with a copy of the Journal of the House of Lords, from which it is almost wholly extracted, and by that means a great number of very considerable errors, which are in all the former editions, has been corrected in this.

9 May 1768.

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MODUS

MODUS

TENENDI

PARLIAMENTUM.

BOOK I.

A

MODUS TENENDI
PARLIAMENTUM.

CHAP. I.
OF SUMMONS.

§ 1. *Who were antiently summoned to
Parliament.*

ARCHBISHOPS and bishops, *ra-
tione episcopalis dignitatis & te-
nuræ.*

All abbots and priors, which held by earl-
dom or a barony, *ratione tenuræ.*

All earls and barons, by reason of their
inheritable nobility and tenure; and their
peers also, *ratione tenuræ.*

The judges, the barons of the exchequer, the king's privy counsellors, and his learned council, were summoned also, but *neque tenuræ, neque dignitatis ratione*; and if these could not appear, they made no proxies, for they had no voice.

The knights of the shire, the barons of the Cinque Ports, the citizens and burghesses, were ever elected and sent to the Parliament.

The officers, as the clerk of the crown, the clerk of the Parliament, and the gentleman-usher, attended *ratione officii* without any summons.

§ 2. *Whether the summons were antiently by one general writ or particular writs.*

It appears in that antient manuscript, *Modus tenendi Parliamentum*, that archbishops, abbots, and priors, which hold *per comitivam vel baroniam, summoneri debent*: and that all earls, barons, and their peers, *summoneri debent.*

Minores

Minores clerici, nec minores laici, non summoneri debent; sed si eorum presentia necessaria fuerit, rex solebat talibus brevia sua mittere, rogando quod Parliamentum suum interessent.

From hence it may be gathered, that in those times, *viz.* before the Conquest, the lords spiritual and temporal, and the peers, were summoned to Parliament by one general summons; and that the others, who were neither lords nor peers, had particular writs. But it is unlikely that *William* the Conqueror did send out such a general summons to the lords; for how could the antient baronage, who were translated by his conquest to the *Normans*, take notice thereof, their lands and honours being seized by the king? It is probable that he did first institute particular writs of summons to his *Norman* (new created) lords, and to such *English* (if any) as he continued in that degree of honour. *Vide Mat. Paris, p. 247, in charta regis Johannis. Submoneri faciemus omnes archiepiscopos, episcopos, &c. comites*

tes & majores barones regni nostri singulatim per literas nostras, &c.

But as touching the *peers*, the summons in his time unto them continued as before; for it follows in the same charter, *Et præterea faciemus summoneri in generali per vicecomites & ballivos nostros omnes alios, qui in capite tenent de nobis, &c.*

By these tenants *in capite* of the king, I understand those only who held land *in capite* of the king *ad valentiam unius comitatus, vel baroniæ integræ*, as it is in that ancient manuscript, *Modus tenendi Parliamentum*; and they are there named *peers*.

Divers learned heralds, not knowing any difference between the *lords* and their *peers*, have run into these errors, *viz.*

First, That all heretofore came to Parliament who had lands of an intire county or barony; and that *Henry* the Third, having smarted by such a confused company of barons, did (after the battle of *Evesham*) first ordain, that those earls and barons, to whom he directed his writs, should only come to
Parlia-

Parliament; for which they vouch no record, but only the first writ of summons (extant) *an. 49 H. 3. 14 Decembris*, and affirm the same to be after the battle of *Evesham*, and that this was the first time that barons were called by writ:

Secondly, That the writ of summons did create a baron:

Thirdly, That the first writ did ennoble the person only so created; and if the son was also summoned, then the blood was ennobled:

Not observing the difference between peers and barons; the one being omitted *ad libitum regis*; the other never (if once created) being of full age, within the land, and *rectus in curia*; as shall be declared hereafter in this chapter.

The first of these is easily refuted and falsified, for the practice appears to be otherwise (touching the earls and barons) in the time of king *John*, as by the aforefaid charter of *Matthew Paris*;

And the very date of the writs which are vouched proves, that the practice was so also in *H. 3d's* time, who began his reign the 19th of *October*, and the writs of summons bear date in *December*, and the battle of *Evesham* was fought in *August*. So the lords had particular writs of summons before that battle of *Evesham*. Happely this king did first ordain that no *peer* should come to Parliament, unless such as had particular writs of summons; and therefore the heralds are to be excused; for the peers once summoned have been reputed lords of Parliament, and the peers have been antiently stiled barons. *Vide Mr. Selden* in his *Titles of Honour*: that *Matthew Paris* saith, that *Hen. 3.* did number 250 of his barons, who were, as I conceive, *barones minores*, or peers, and not those who were barons by inheritance, whom *Matthew Paris* in the other place stiles *barones majores*; for they never attained to that number. Also by this word (*peers*) are understood all the lords spiritual and temporal in the two Parliaments

ments of 15 *E. 2.* & 1 *E. 3.* touching the banishment of the *Spencers*; so that the heralds might easily be deceived therein; especially, the writs unto barons and peers being all one, and they all ranked together promiscuously in the roll of summons, and some peers placed there above antient barons.

But of this, *viz.* that *peers* were summoned, and omitted again *ad libitum regis*; and that barons were ever created by investiture of robes; and that the writ only did not create a baron; and that the first writ did ennoble both the person and blood of him that was created; more shall be said hereafter in this chapter, in the title *Of omissions*.

Here I will only remember that this word (*baron*) was antiently a general name to all those that had power of judicature, as well as to the Parliament barons. The freeholders in a court baron were antiently named *barones*; and that court stiled *curia baronum J. S.* in respect of them, and not *curia baronis J. S.*

as

as now, in respect of the lord of the manor; and the aldermen of *London* were anciently so named; and they of the *Cinque Ports* retain it to this day, and so do the barons of the Exchequer, who were first called *sagi barones*, for that they were *sages ad compotos recipiendos & allocandos*.

§ 3. *The antient form of the writ.*

The first writ of summons extant upon record is that of 49 *H. 3.* viz.

Henricus, Dei gratia, rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ, venerabili in Christo patri, R. eadem gratiâ episcopo Dunelm. salutem. Cum post graviaurbationum discrimina dudum habita in regno nostro, charissimus filius Edwardus primo-genitus noster, pro pace in regno nostro assicuranda, & firmanda, obses traditus extitisset, & jam, sedata (benedictus Deus)urbatione prædicta, super deliberatione ejusdem salubriter providenda, & plena securitate & tranquillitate
pacis,

pacis, ad honorem Dei, & utilitatem totius regni nostri firmanda, & totaliter complenda, ac super quibusdam aliis regni nostri negotiis, quæ sine consilio vestro, & aliorum prælatorum & magnatum nostrorum nolumus expediri, cum iisdem tractatum habere nos oportet: vobis mandamus, rogantes in fide & dilectione quibus nobis tenemini, quod omni occasione postposita & negotiis aliis prætermisissis, sitis ad nos London' in octabis sancti Hillarii proxime futuris; nobiscum, & cum prædictis prælatis, & magnatibus nostris, quos ibidem vocari fecimus, super præmissis tractaturi & concilium impensuri: & hoc sicut nos & honorem nostrum & vestrum, nec non & communem regni nostri tranquillitatem diligitis, nullatenus omitatis. Teste meipso 14 Decemb. an. regni nostri 49.

Eodem modo mandatum est episc. Carl. &c. sub data 14 Decemb.

In forma prædicta scribitur abbatibus & prioribus subscriptis, &c. sub data apud Woodstock 24 Decemb.

*In forma prædicta mandatum est comitibus
& aliis subscriptis sub data apud Woodstock,
viz.*

Comiti Leicestr'.

Comiti Glocestr'.

Comiti Norf'.

Et mareschal. Angl.

Comiti Oxon.

Comiti Derby.

Rad. de Camois.

Rogero de sanct. Johanne.

Hugoni le Despenser justic. Angliæ.

Johanni filio Johannis.

Will. de Munchensf.

Nich. de Segrave.

Johanni de Vescy.

Rad. Basset de Drayton.

Henrico de Hastings.

Galfrido de Lucie.

Roberto de Ros.

Johanni de Eyvil.

Adæ de Novo Mercato.

Waltero de Colevil.

Willielmo

Willielmo Marmyon.

Rogero Bertram.

Roberto Basset de Sapcote.

Gilberto de Gaunt.

*Item mandatum est singulis vicecomitibus
per Angliam, quod venire faciant duos milites
de legalioribus & discretioribus militibus sin-
gularum comitatum ad regem, London', in
octabis prædictis, in forma prædicta.*

*Item in forma prædicta scribitur civibus
Ebor. civibus Lincoln. & cæteris burgis An-
gliæ, quod mittant, &c.*

*Item in forma prædicta mandatum est ba-
ronibus, & probis hominibus Quinque Por-
tuum, &c.*

The differences between this writ and the writ at this day are, that this is special, declaring the cause of the summons; and so were divers others of *Edw. 1. Edw. 2. Edw. 3. and Rich. 2.* But for the most part they were general, as at this day, and none special after the seventh year of *Rich. 2.* But *vide Matthew Paris, p. 247. in charta*

charta regis Johannis. In omnibus litteris submonitionis causam submonitionis illius exponemus, &c.

And also, this writ is alike unto the lords and judges; for such were *Johannes de Eyvil* and they that follow; and so the writs were alike in divers years of *Edw. 1.* in most of *Edw. 2.* and in many of *Edw. 3.*

§ 4. *Of the title of the party summoned.*

The bishops christian names were ever mentioned, and stiled antiently *venerabilis in Christo pater, &c.*

But now the archbishops are stiled *reverendissimi*, and all other bishops *reverendi in Christo patres.*

The christian names of the abbots and priors were never mentioned. They were stiled thus. *Dilecto in Christo abbati sancti Augustini, &c.*

I find no other attribute to the prince than *charissimus* in the time of *Edw. 1.*

Edw. 2. Edw. 3. and Hen. 4. And that is omitted in 24 *Edw. 3.* And in the 26 *Edw. 3.* it is thus, *Rex dilecto & fideli Edwardo, principi Walliæ, duci Cornubiæ, & comiti Cestriæ, salutem.*

A duke, an earl, a baron, were stiled all alike. *Prout, an. 29 E. 3. dilecto & fideli suo Henrico, duci Lancast. salutem.* Neither had any of the king's brethren, nephews, or uncles, any other title in the time of *Edw. 1. Edw. 2. and Edw. 3.*

But when *Edw. 3.* had created his own children dukes and earls, then they were stiled *fili sui charissimi*; and *Rich. 2.* named them *avunculos, or consanguineos suos charissimos*; but none other had that attribute of *charissimus* in the title of his writ, although he were the king's kinsman; *prout an. 16 R. 2. dilecto & fideli consanguineo Ricardo comiti Arundel & Surrey.*

Barons and peers: they never had any other title than *dilectus & fidelis*, save that after the French wars some of them had the addition of *chivaler*. The first so stiled were

were *Willielmus de Morley* and *Willielmus de Aldeburgh*, *an. 49 E. 3.* I remember no other in the time of *Edw. 3.* but *Wells*, *eodem anno 49 E. 3.* in the prorogation of that Parliament; and he was summoned without that addition *an. 50 E. 3.* and after during his life.

And some had that addition, *annis R. 2. H. 4. & H. 5.* but after *3 H. 6.* they all had that title of *chivaler*; but it was not antiently a note of honour, for *an. 1, 2, & 3 R. 2.* some of the judges had the same; *viz. John Knyvet* and *Robert de Ashton.*

Some had the title *baro* and *dominus* in their writs.

The lords *Stafford* and *Greystocke* were usually summoned by the title of their barony, *prout an. 27 E. 1. Edw. baroni de Stafford; an. 23 E. 1. Jobanni, baroni de Greystocke;* omitting their surnames of *Bagott* and ———.

And I find others in the time of *Hen. 6.* who had the title of *dominus.* Happely they were but then created; which I leave

to

to the search of others; I will only recite their names.

An. 25 H. 6. 14 Dec. Edwardo de Grey, chivaler, domino de Ferrariis de Grobye. Henrico de Percy, chivaler, domino de Poynings.

An. 27 H. 6. 20 Jan. Johanni de Beauchamp, militi, domino de Beauchamp. Jacobo Fiennes, militi, domino de Saye & de Sele.

Eodem an. 27 H. 6. Roberto Hungerford, militi, domino de Moleyns; Willielmo Bourchier, militi, domino Fitzwarryn; Willielmo Beauchamp, domino de sancto Amando. Teste R. apud Westminst. 22 die Maii.

Eodem an. 27 H. 6. R. dilecto & fideli suo Henrico Bromflet, militi; baroni de Vessy, salutem, quia, &c. Volumus enim vos, & hæredes vestros masculos, de corpore vestro legitime exeuntes barones de Vessy existere. Teste rege apud Westminster 24 Januarii.

R. dilecto & fideli suo Willielmo Bonevyle, militi, domino Bonevyle de Chuton, salutem. quia, &c. sicut in aliis brevibus T. R. apud

B

West-

Westminster 10 Martii.—*Per ipsum regem.*

Johanni Sturton, militi, domino Sturton;
an. 28 H. 6.—*Per ipsum regem.*

Edwardo Nevil, militi, domino de Bergaveny; Thomæ, domino de Roos; Thomæ Grey, militi, domino de Richemond; Thomæ Percy, militi, domino de Egremond; Willielmo Fines, militi, domino de Say; an. 29 H. 6.
T. R. 23 April.—*Per ipsum regem.*

An. 33 H. 6. 26 Maii. *Johanni, domino de Clinton.*

An. 34 H. 6. *Thomæ Stanley, militi, domino de Stanley,* T. R. 15 Januarii.—*Per ipsum regem & consilium in Parlamento.*
Summoned to the Parliament of the 33 H. 6.

An. 38 H. 6. 30 Jul. *per ipsum regem.*
Richardo Fenys, domino de Daere, militi;
Richardo Wells, domino Willoughby, militi;
Johanni Clifford, domino de Clifford, militi.

Eodem anno. *Johanni Nevil, domino de Nevil,* T. R. *apud Coventry 20 Novemb. per breve de privato sigillo.*

An. 1 E. 4. *Johanni Nevil, domino de Mountagu, chivaler, &c.*

And in all these times the summons to the lord *Greystock* are, *Rad. Greystock, Cbr.* omitting *baroni*, which he had in his antient writs.

And these lords who in the time of *H. 6.* (barons being then most usually created by patent) were stiled *domini*, had their summons in *Edw. 4.* with the word *chivaler* only, since when they all have no other addition.

The judges ever had the title of *dilecti & fideles* in their writs, and retain the same to this day.

§ 5. *The form of the mandamus.*

Next to the title is considerable the form of the *mandamus*; how it is to the lords spiritual, and how to the lords temporal, and the judges, and others of the king's learned council.

And then, what the lords, and what the judges and others were commanded to do by their writs of summons.

The *mandamus* to the *bishops*, an. 49 H. 3. was thus :

Vobis mandamus in fide & dilectione quibus nobis tenemini, quod, &c.

An. 27 E. 1. *Vos effectuose requirimus, & rogamus, quod, &c.*

An. 32 E. 1. & 5 E. 2. *Vobis mandamus quod, &c.*

An. 2 E. 2. *Vobis mandamus firmiter injungentes quod, &c.*

An. 1 E. 3. and in all other Parliaments, thus : *Vobis mandamus in fide & dilectione quibus nobis tenemini, firmiter injungentes, quod, &c.*

And so it continues unto this day.

The like to the *abbots* and *priors*.

As to the *temporal lords*;

An. 49 H. 3. after the writ to the *bishops*, which is entered at large, it followeth in the roll :

Item, in forma prædicta mandatum est comitibus, &c.

And I find the *mandamus* to the *lords temporal*, an. 23 E. 1. *bis*, & an. 24 E. 1. & an.

an. 2 E. 2. to be, *In fide & dilectione*, as to the *bishops*; and an. 6 R. 2. *Consimile* to the duke of *Lancaster*.

But in all other summons *In fide & homagio*; until 22 *Edw.* 3. and 25 *Edw.* 3. and then the summons to the king of *Scots* and prince of *Wales* were, *In fide & legiantia*: and an. 45 E. 3. *Consimile* to them all, and so it continues to this day,

Vobis mandamus in fide & legiantia quibus nobis tenemini, firmiter injungentes, quod, &c.

§ 6. *What they are commanded to do.*

The *lords spiritual* and *temporal* are, *Tractare cum rege, & cum cæteris prælatibus, magnatibus, & proceribus, & concilium suum impendere.* But the forms hereof in the antient writs of *Ed.* 1. are divers, *prout*,

To the *bishops*, an. 23 E. 1. *Super quibusdam arduis negotiis nos & regnum nostrum & vos ceterosq; prælatos de eodem regno tangentibus,*

gentibus, quæ sine vestra & eorum præsentia nolumus expediri, vobis mandamus, &c. quod sitis, &c. super dictis negotiis tractaturi, & vestrum consilium impensuri, 23 Junii.

To the *temporal lords*, eodem anno 23 Junii. *Super quibusdam, &c. Nos & regnum nostrum & vos cæterosq; proceres & magnates de eodem regno tangentibus, quæ sine, &c. ut supra.*

To the *judges*, eodem an. *Super quibusdam arduis negotiis nos & regnum nostrum ac vos cæterosq; de consilio nostro tangentibus quæ sine, &c. ut supra in mandat. episc.*

An. 23 E. 1. 30 Sept. The writ to the *bishops* recites the wrongs done by the *French king in Gascony*, and his army prepared to invade *England* itself; and then thus,

Quia prævisa jacula minus lædunt & res vestra maxime sicut cæterorum regni concivium agitur in hac parte, vobis mandamus in fide & dilectione quibus nobis tenemini firmiter injungentes, quod die dominica proxima post festum sancti Martini in hieme proxime futurum apud Westminster personaliter interfitis;

præmu-

præmunientes priorem & capitulum, &c. ad tractandum, ordinandum & faciendum nobiscum & cum cæteris prælatis & proceribus & aliis incolis regni nostri qualiter sit hujusmodi periculis, & excogitatis malitiis obviandum, T. R. &c.

Consimile to the *earls and barons, &c.* omitting only the clause *præmunientes*.

By these words *aliis incolis regni* are understood the commons; but the lords have no such command in any other writ (this only excepted); neither had the clergy any such command in any other writ than this.

Memorand. The king obtained a great subsidy at this time.

To conclude this point, the lord summoned is *to treat with the king and the other lords, and to give his counsel.*

Only in this last recited writ is omitted, *to give counsel.*

The *judges* and others of the *king's council* are, *tractare cum rege & cum cæteris de consilio regis & consilium suum impendere, &c.*

Prout,

B 4

An.

An. 28 E. 1. *Nobiscum, & cum cæteris de consilio nostro super dictis negotiis tractaturi vestrumq; consilium impensuri, &c.*

Confmile in most years of *Edw. 1.* Yet their writs were oftentimes all one with those to the lords, *prout*, an. 23 *Edw. 1.* and 27 *Edw. 1.* and in most years of *Edw. 2.*

The first Parliaments of *Edw. 3.* agree with that of 28 *Edw. 1.* *viz. Tractare nobiscum & cum cæteris de consilio nostro vestrumque consilium impendere, prout* an. 4 E. 3. & 5, 6, 7, &c. *usq;* 20 E. 3.

From the 20th year of *Edw. 3.* until the 46th, their writ agrees with the lords in this clause, *viz. Nobiscum & cum dictis prælati, magnatibus, & proceribus dicti regni nostri tractaturi, vestrumq; consilium impensuri.*

And in two Parliaments of *Edw. 3.* *viz.* an. 1 E. 3. 11 Decemb. & 2 E. 3. it is *Nobiscum tractare, &c.* omitting *& cum cæteris de consilio.*

And an. 27 E. 1. it is *Nobiscum & cum prælati, magnatibus, & proceribus & aliis de consilio nostro, &c.*

But

But from 46 of *Edw. 3.* to this day, it agrees with that of 28 *Edw. 1.* *viz. Nobiscum & cum cæteris de consilio nostro, &c.*

The *clergy.* The bishops were summoned to appear themselves in person, and to warn the *clergy* of their diocese to appear in this manner, *viz.*

The *dean* or *prior* of their church, and the *arch-deacons* of every deanery of the diocese to appear in person;

The *chapter* of the church to send one *proctor*, and the *clergy* of the diocese two; *Plenam & sufficientem potestatem ab ipsis capitulo & clero habentes, ad faciendum & consentiendum iis quæ tunc ibidem de communi consilio (divina favente clementia) ordinari contigerint, &c.* an. 4 E. 3.

In the first summons an. 23 E. 1. where this clause is recorded in the bishops writs, it is,

Ad tractandum, ordinandum, & faciendum nobiscum & cum cæteris prælati, & proceribus, & aliis incolis regni nostri, &c.

2

But

But this cannot be alleged for a precedent, for it is not to be found in any of the former or subsequent writs, they all agreeing with this of 4 *Edw.* 3.

Here may be a question, whether the clergy did antiently come to the Parliament. Without the king's command they could not come; and they are omitted in the first summons which we have recorded; viz. an. 49 *H.* 3. and in the first Parliament of 23 *Edw.* 1. and in divers other following Parliaments, *prout* an. 27 *E.* 1. Feb. 6. an. 28 *E.* 1. Septemb. 26. an. 3 *E.* 2. Octob. 26. an. 16 *E.* 2. Septemb. 18. & an. 6 *E.* 3. 26 July; but never after the 6th year of *Edw.* 3. *quære rationem.*

The *commons* were not summoned, but elected upon the king's writs to the sheriffs, &c. as shall be declared in the end of this chapter, and were commanded to come to the Parliament; *Plenam & sufficientem potestatem habentes ad faciendum & consentiendum hiis quæ de communi consilio (favente Domino) ordinari contigerint, &c.* an. 4 *E.* 3.

With

With this agree all the former and subsequent writs; divers additions have been by statute touching the election, but this clause never altered.

Corollarium. The lords, spiritual and temporal, are *to treat with the king and the other lords present; and to give their counsel.*

The judges are *to treat with the king and the rest of his council; and to give their counsel.*

The clergy and commons are *to come with power to do and consent unto that which shall be ordained by the common council of the land, i. e. the Parliament.*

And this is the cause that all judgments in Parliament were given by the lords, and not by the commons; yet the commons are parties to the reversal of judgments given in Parliament.

All petitions directed to the king and his council were handled by the judges as by the king's council, and by them prepared for the lords (if need were) but never by the commons.

All

All ordinances made *in Parliament* were made by the lords alone, and not by the commons.

All ordinances made *per commune concilium*, or *in pleno Parlamento*, were made by the lords and commons. But the commons alone can make no ordinance. Neither do these words (*en plein Parlement*) always include the commons. *Vide an. 6 E. 3. post festum sancti Gregorii, n. 12.* an act done *en plein Parlement* two days after the commons were gone. So *an. 14 E. 3.* the answer to *Geffrey Stanton's* petition, *en plein Parlement*, must be understood to mean only before all the lords, in open Parliament, and not a committee. But of this more in the second book.

§ 7. *By what warrant the writs of summons were made.*

It doth not appear by the first record of summons now extant, *an. 49 H. 3.* by what warrant

warrant the lord chancellor caused the writs of summons to be made. The king was then prisoner unto *Mountford*, his sometime minion.

But surely none but the king can summon the Parliament; and this is the reason that *Hen. 4.* having taken his liege lord, king *Rich. 2.* prisoner on the 20th day of *August*, *an. 23*, did cause the writs of summons for the Parliament, wherein he obtained the crown, to bear date the 19th day of the same month, and the warrant to be *per ipsum regem & consilium*, and himself to be summoned by the name of *Henry* duke of *Lancaster*.

The warrant hath been divers; sometimes *per breve de privato sigillo*; but most commonly *per ipsum regem*, or *per ipsum regem & consilium*.

If the king hath been absent out of the land, and a *custos* appointed (as the manner is) the writ bears *teste* by the *custos*, and the warrant is *per ipsum regem, & dominum custodem, & consilium*, prout *an. 13 E. 3. Teste Edwardo*

Edwardo duce Cornubiæ, &c. custode Angliæ.

Per ipsum regem, & dominum custodem, & consilium.

An. 20 E. 3. *Consimile.*

An. 9 H. 5. *Teste Johanne duce Bedford, custode Angliæ.*

Per ipsum regem & consilium.

An. 9 H. 6. the king being in *Paris, Teste Humfrido duce Glocestriæ, custode Angliæ. Per breve de privato sigillo.*

But if the king be within the land, (though within age and a protector appointed him) he alone is *testis* to the writ, and the warrant is *per ipsum regem; prout,* an. 1 H. 6. and sometimes *per ipsum regem, & consilium, &c.*

But for many summons, the warrant is not recorded.

The form of the warrant is as followeth:

James, by the grace of God, king of England, Scotland, France, and Ireland, defender of the faith, &c. To our right trusty and right well-beloved counsellor Thomas Egerton,

Egerton, chancellor of England, greeting: Whereas we, by our council, for certain great and urgent causes concerning us, the good estate and common wealth of this our realm, and of the church of *England,* and for the good order and continuance of the same, have appointed and ordained a Parliament to be holden at our city of *Westminster* the first day of *April* next coming; in which case divers and fundry writs are to be directed forth under our great seal of *England,* as well for the prelates, bishops, and nobility of this our realm, as also for the election of knights, citizens, and burgessees of the severall counties, cities, and borough towns of the same, to be present at the said Parliament at the day and place aforesaid;

Wherefore we will and command you forthwith upon the receipt hereof, and by warrant of the same, to cause such and so many writs to be made and sealed under our great seal for the accomplishment of the same, as in like cases hath been heretofore used and accustomed: and this bill,
signed

signed with our hand, shall be as well unto you, as to every such clark and clarks as shall make or passe the same, a sufficient warrant in that behalf. Given, &c.

The warrant is general, and directs not the lord chancellor unto whom he shall direct the writs of summons, nor to omit any that were summoned the Parliament before; and yet it is apparent, that many lords (though living) have been omitted, and that, the father, who hath been often summoned in his life-time, being dead, his son, nor none of his posterity, have ever been after summoned.

This gives me occasion to shew what right the nobility have had to be summoned, and upon what occasions they have been omitted.

§ 8.

§ 8. *Of the right of the nobility to be summoned.*

First, for their Right. The king at this day inserts into the patent of creation of a baron, that he shall be summoned to Parliament; so that the question doth rest only upon those barons who had no patent of creation; for the earls had charters, and no doubt was ever made of them. The doubt ariseth out of this, that divers lords have been called by writ (the only thing left us recorded to know them; for antiently they had no patents) and yet their sons and posterity wholly omitted; so that it may seem it rested merely in the king's will to call them again, or wholly omit them; and that they had no right to be called by their creation.

To satisfy this, let us consider of the creation of earls (of whom there never was doubt) and of the creation of barons.

C

It

It cannot be denied, but that earls were ever created by an actual ceremony, and that antiently they had no charter, *Mandevile*, earl of *Essex*, being the first that had any; as the common opinion is, there being none extant before his time. Now the question is, Whether the honour passed by creation, without the charter, or no? And I suppose it did; and that the charter was to convey the jurisdiction antiently, and, of latter times, the third penny of the county, rather than for the honour. And for this cause, happely, divers earls used to renew their charters at the change of the prince, not to renew their honour, but to confirm the grant of the third penny of the county from the crown; wherefore I may affirm that the ceremony of investiture, &c. created the earl, and the charter gave the earldom.

Mandevile, earl of *Essex*, was created by king *Stephen*; his charter was granted to him again by *Maud* the empress; and again by her son *Hen. 2.*

Milo,

Milo, earl of *Hereford*, created by *Maud* the empress, and his charter was granted to him again by her son king *Hen. 2.*

These are extant with Sir *Robert Cotton*, an. 1626. And if charters had been usually inrolled in those times, when the jurisdiction of the county was granted unto the earl, we should have had many more precedents.

Of the creation of barons, I know there are divers opinions; *viz.*

1. *That there are barons by creation.*
2. *Barons by writ.*
3. *Barons by tenure.*

The two latter are erroneous.

1. Touching *barons by creation*, I do here intend those only who had no patent (as now they have) but were antiently created by an actual ceremony; even as earls antiently were.

C 2

No

No antient record can be produced, that any degree of honour did pass (no not among the barbarous nations) without an actual ceremony. Knighthood did ever require it, which is the lowest. And therefore I cannot conceive, but that the antient barons were ever created first, before they had their writs; and then having once been called by writ, they had as good right, for them and their posterity, to be summoned ever after as the earls had, so they kept their land.

To prove that barons were created by ceremony, examine the patent of 11 R. 2. to the lord *John Beauchamp* of *Holt*, which some antiquaries affirm to be the first patent of the creation of a baron. The words are, *Ipsum Johannem in unum parium & baronum regni nostri Angliæ præfecimus, volentes quod idem Johannes, & hæredes masculi de suo corpore exeuntes statum baronis obtineant, ac domini de Beauchamp & barones de Kidderminster nuncupentur: in cujus rei testimonium, &c.*

Teste

Teste rege apud Woodstocke, 10 die Octobris.

It is strange to me that any should think that this patent did create the lord *Beauchamp* a baron.

It wants the very words of creation; it saith (*præfecimus*) we have created, and not (*per præsentem præfecimus*) we do now create him; so that out of all doubt he was created before, and the king by this patent only limited the honour to his heirs males, as *Hen. 6.* did in the first writ of summons to *Bromflet*, baron of *Vessey*, an. 27 H. 6. Rot. Cl. m. 24. dorf.

But if *Beauchamp* were created before this patent, the question is, how he was created? I answer, neither by patent, nor by writ; for the patent is dated the 10th of *October*, and created him not: and his first writ was in *December* following; which is a good conclusion, in my opinion, that he was created a baron, by investiture of robes, before he had either patent or writ.

C 3

2. Ba-

2. *Barons by writ.* How can it be imagined that a writ can create a baron? the ground alleged for it is the great slaughter of the rebellious barons at the battle of *Evesham*, an. 49 H. 3. And that therefore others were suddenly created by writ to convict the remainder of those rebels. The foundation of this error is built upon a false ground; for that Parliament of 49 *Hen. 3.* was summoned before the battle of *Evesham*, to consider of the deliverance of the king's eldest son, who was then a prisoner; and *Mountford*, earl of *Leicester* (the chief rebel) had his summons also, and divers others who were slain at that battle on his part.

If the writ, without investiture of robes, did ennoble the party, then were all the judges, the king's serjeants at law, the masters of the chancery, divers deans and archdeacons (being treasurers or keepers of the privy seal, or otherwise of the king's council) ennobled, in divers Parliaments of *Edw. 1.* almost in all Parliaments of *Edw. 2.* and
in

in many of *Edw. 3.* For they had then one and the self-same writ as the earls and barons had. The king's two escheators have had the same writ, an. 12 & 14 E. 2. I grant that divers have been called by writ, and had the same writ the barons had, yea, and were ranked in the close rolls (by the chancery clerk) above divers antient barons, and afterwards omitted; and it may be they subscribed among the lords; but I deny that such were *barons*; they were but *peers*: for such were also antiently summoned to Parliament. Among the rest I will cite one, *viz. Mounthermer*; who having married the widow of the earl of *Gloucester*, and having a great part of the earldom as her jointure, was summoned as an earl, during the minority of her son, by *Edw. 1.* And when the son came of age, *Mounthermer* was summoned as a baron, but his son and posterity omitted.

It may be objected, how these *peers* could be discerned from the *barons*, their writs being all one?

C 4

I answer,

I answer, by their manner of appearance : for the *barons* appeared in their robes, such as they had at their creation ; the *peers* did not ; for they had none, or such as were far different from the barons robes. For can it be thought that *Mounthermer* appeared first in earls robes ? surely no ; for it had been a disgrace to him afterwards to appear in barons robes, when he came but as baron. It plainly appears that he was summoned *ratione tenuræ tantum, & non nobilitatis ergo* ; and so had no robes.

As touching the opinion that the father being summoned, his person was ennobled ; and if his son be also summoned, his blood is ennobled ; I have observed, that three descents have been summoned, and yet they were no barons, *viz.* an. 49 H. 3. *Radulphus de Camois* was summoned, and ranked in the roll above all barons ; and *Ralph Camois* his son was summoned, an. 7 E. 2. and ever after, during his life, by *Edw. 2.* and *Edw. 3.* and yet 7 R. 2. Cl. m. 32. dorso, *Tho. Camois*, the grandchild (if I mistake

not the pedigree) being chosen one of the knights for *Surrey*, was discharged by the king's writ, *Quia ipse, & quam plures antecessorum suorum banneretti fuerunt.* And king *Rich. 2.* summoned him to that very Parliament of an. 7. and he was summoned ever after during his life.

I doubt not but the heralds will affirm, that *Ralph Camois* the father and son, yea, and this *Thomas Camois*, were barons ; but how will they then answer the record of 7 R. 2. who saith they were *bannerets*, a title given to the *peers* of that age, as that of *milites* was in the time of *Edw. 1.* and the king's *tenants in capite* in the time of king *John*, as shall be shewed hereafter. If they can prove that *Thomas Camois* enjoyed the precedency of place which his grandfather had an. 49 H. 3. I am satisfied ; till then I conceive, leaving others to their own better judgments, that *Camois* was called to Parliament three descents, yet, not being created a baron by investiture of robes, but only called by writ, he was but a baron's
peer,

peer, and no baron. And it seems to me, that those claims of privilege not to be impannelled of a jury, which occur in our year-books, were made by *peers*, and not by barons; for the trial was by the Parliament-record, whether summoned or not; and not by the heralds for their creation. For it is impossible but a sheriff of a county should know a baron of the same shire: his creation (if he were the first); his appearance in the Parliament in robes; and the hatchments at his father's funeral, if the barony descended unto him, would be so notorious, that the sheriff of the same shire could not so mistake as to impanel him of a jury, and the bailiff dwelling in the same hundred warn him to appear.

I know that the word *peers* in two Parliaments of 15 *Edw.* 2. did signify the lords spiritual and temporal, and all that had voice in Parliament, according to the signification of the word; and in the 4 *Edw.* 3. all that were to be tried by *peers*, i. e. the temporal lords only; but in all the antient statutes

statutes (penned by the judges and the king's serjeants) the earls and barons are named, or else *magnates*; and this word, *peers*, is not found in any of them, save in those of 15 *Edw.* 2. and 1 *Edw.* 3. touching the banishment of the *Spencers*. Neither did any of those lords, who were impannelled of a jury, challenge the name or title of a baron. *Vide Brook's Abridgement, tit. Challenge, n. 18.* the cause alleged is, *for that he was banneret and lord of Parliament, and had place there, and so ought not to be of a jury.*

And may it not be, that he who was summoned to the Parliament as a baron (though but a *peer*) had the same privilege as a baron during his life only? He had voice in Parliament, why not privilege out of Parliament? why may not so much be granted unto him, as to a banneret, not to be chosen a knight of the shire? The banneret might be summoned to the upper house, and therefore (in my opinion) ought not to serve in the lower; why not the other privilege upon
the

the same reason? The very trial of such challenges was, whether summoned or not; not, whether a baron, or no baron; which satisfies me that they were no barons, but *peers*; and, being summoned, had the privileges of barons, both for that, and to be tried by peers; but were not so honourable.

Here may be a doubt, whether the barons and peers took place in the Parliament-house as they were ranked in the lists of summons; then did *Radulphus de Camoys*, being but a *peer*, take place, an. 49 H. 3. above all *barons*: and so *Thomas Camoys*, the grandchild, was ranked an. 17 R. 2. and after, for divers Parliaments, above all *barons*. If you peruse those antient summons, you shall not find any one of them ranked aright.

Vide an. 12 E. 3. where *Thomas* earl of *Norfolk*, marshal of *England*, and the king's uncle, and the earls of *Gloucester* and *Angus*, are placed in the middle of the *barons*; and the lord *Stafford*, an antient *baron*, ranked lowest save one.

Vide an. 27 E. 1. where *Eustacius de Hache*, *John de Havering*, and *Henry de Pinkney*, and others, are ranked before *Henry*, the earl of *Lancaster's* son and the king's nephew. And 1 H. 6. where the earl marshal, the earl of *March*, the duke of *Exon*, and the earl *Warren*, are ranked after divers barons. An. 3 H. 6. *Humphrey* duke of *Gloucester*, the king's uncle, and the earl marshal, are ranked together lowest of the barons save one. *Vide Consimil.* an. 13 & 20 H. 6.

Neither shall you find all the lords placed alike in any two summons. And the said *Thomas de Camoys* in divers Parliaments before 17 R. 2. and in all Parliaments after 3 H. 4. was ranked sometimes the lowest, and sometimes near the lowest of all the lords.

To prove that *peers* were summoned as well as earls and barons, *vide* the antient manuscript of *Modus tenendi Parliamentum*, cap. de *Laicis*. *Summoneri debent omnes & singuli, comites, barones, & eorum pares.*

Et

Et vide chartam *Johannis R.* in *M. Paris*, p. 247, where, after the summons of the archbishops, bishops, earls, & *barones majores*, he saith, *Item summoneri faciemus, &c. omnes alios qui in capite tenent de nobis, &c.* It sets not down the quantity of their tenure; but it is expressed, in that other antient manuscript, to be thirteen knights fees for a baron's peer, and twenty knights fees for an earl's peer.

Et vide Rot. Cl. an. 27 E. 1. after the writs to the earls; *Consimiles litteræ diriguntur baronibus & militibus subscriptis, &c.* *Vide* a list of the names of such as were beheaded with the earl of *Lancaster* at *Boroughbridge*, an. 15 E. 2. where many, who were formerly summoned to Parliament as lords, are named *bannerets*; prout, *Sir Henry Tyeys*, *Sir John Giffard*, *Sir Bartholomew de Badlesmere*, *Sir John Mowbray*, &c.

Vide etiam summons to *Thomas de Bradeston*, an. E. 3. who was a *banneret*, as appears by the patent, an. E. 3. And *Ralph Camoys* the father and son were summoned,
temp.

temp. H. 3. E. 2. & E. 3. and yet an. 7 R. 2. Cl. 32. the record saith, that *Thomas Camoys* and very many of his ancestors were *bannerets*; and therefore he was exempted from being knight of the shire; happily, for that the king might summon him also to Parliament, as he did his ancestor *Ralph Camoys*.

Vide etiam Rot. Parl. an. 18 E. 3. n. 35. The cause of summons was declared in the presence of the king and divers lords there named, & *autres barons & banerettes, chevaliers de countyes, citeyns & burgeis des burghs summons audit Parliament.*

Et an. 46 E. 3. n. 7. The dukes, earls, barons, and *bannerets*. And in divers Parliament-rolls of *Edw. 3.* often occurs, *by the prelates, earls, barons, and other grands.*

An. 13 E. 3. octab. Hill. n. 8. *The earls and barons being in Parlement, have graunted for themselves, and for their peeres of the lande which holde by baronye, the tenth shee, &c.* In this Parliament the commons granted a subsidy by themselves, and
the

the lords granted another by themselves, amongst whom were reckoned their *peers*, *les prelatz*, *countes*, *barons*, & autres grantz. An. 17 E. 3. n. 60. *Per les countes*, *barons*, & autres nobles. These *autres grands* and *autres nobles* could be none other than the *peers*, all other degrees of honour being named.

An. 5 R. 2. c. 4. The statute saith, If any person, which from henceforth shall receive summons of Parliament (be he archbishop, bishop, abbot, prior, duke, earl, baron, *banneret*, knight of the shire, citizen of city, burghers of burgh, or other singular person or commonalty) do absent himself, &c. he shall be amerced, &c.

These reasons give me satisfaction that *peers* were summoned in the times of *Hen. 3.* *Edw. 1.* *Edw. 2.* *Edw. 3.* and *Rich. 2.* &c. as well as barons, and they and their posterity omitted *ad libitum regis*; and divers painful antiquaries observing this omission, and not knowing that they were but *peers*, have been firm of opinion, that the writ did

did create a baron, but it was *ad libitum regis* to call his son, or to omit his whole posterity.

3. Touching the third kind of *barons by tenure*, it is erroneous as that by writ.

I have perused all the precedents that are alleged for it, and they are of the land conveyed by the king's licence to the heir male, or the second son of the ancestor that was created by writ. The same may be said of an earldom also; for the lord *Matrevers*, being heir male, and having the castle of *Arundel* by entail, was adjudged in Parliament, an. 11 H. 6. to be earl of *Arundel* by force of the entail.

Among the other precedents may be added one in our time, of *Edward Nevill*, heir male to the lord *Abergavenny*, having the land entailed on him, and the king summoning him by writ, his lordship took his antient place. For the ancestor being created by the ceremony of investiture, the same needs not be renewed in any of his

D posterity;

posterity; there the writ alone is sufficient; for such honour is inheritable, and hath been disposed of with the land, which is a good proof of the baron's right to come to Parliament (whereof more hereafter); but not that the land made the honour or carried the honour; for they can allege no precedent of a mere stranger in blood, and purchaser of the lands of a barony, tho' with the king's licence (otherwise the sale of no land held *in capite*, as all baronies are, can be good against the king) who hath by virtue of the land been called to Parliament. Only one comes near it; and that is of the barony of *Latimer of Danby*; whose daughter and heir being married unto *John lord Nevill*, and he called by writ in her right, and had issue by her, *John and Elizabeth*; *John* the son died without issue, having first sold the lordship of *Danby* unto *George Nevill* the son of *Ralph*, the son of the said *John* the father by his first wife: and afterwards (the heir general making no claim unto the honour)

nour) the said *George Nevill* was summoned by *Hen. 6.* to the Parliament.

But *Brook lord Willoughby*, the heir general, petitioned *Hen. 7.* for the said honour; and in my opinion (had it not been for his ancestors non-claim, together with *Nevill's* possession for three descents) he shewed the best right for it.

But if you please to peruse the inquiries *post mortem*, remaining in the *Tower*, you shall find very much land held *per baroniam*, even in antient times, in the hands of private men, who were not then reputed barons.

So that I am satisfied that no barons have been summoned to Parliament *ratione tenuræ* only. *Peers* have.

§ 9. Of omissions in the summons.

It resteth to speak of omissions in the summons, *viz.* of the temporal lords of Parliament; not of the clergy, who never lost their right; nor of the peers, who

had none but for life, save *ad libitum regis*.

If the bishop were dead, and the see void, yet summons were directed, *Custodi spiritualitatis archiepiscopatus Cantuariensis, sede vacante, &c.* an. 7 E. 3. & alibi.

If the bishop were beyond the seas, yet summons were directed to him, *prout* an. 13 E. 3. *R. Dunelm. episcopo, vel ejus vicario generali, ipso episcopo in remotis agente.* & alibi.

The reason is, they are *præmunire clericum, &c.*

So that bishops, dead or alive, are ever summoned, *ratione episcopalis dignitatis & tenuræ.* And can the same right be denied unto earls and barons? surely no. The Parliament is *commune consilium*: the whole land hath interest therein. The commons appear there by their general procurators, the knights, citizens, and burgessees; and the lords in person, or by their particular procurators; and the presence of the lords and commons is so necessary, that no law can
be

be made, altered, or revoked without them.

If a peer was summoned, he was not omitted during his life, as appears by all the summons; for the king would not dishonour him, whom he had honoured.

The same right which a peer had for life, a baron had of inheritance. The very creation by investiture of robes made it inheritable, even to the heirs general; otherwise, what needed *Rich.* 2. an. 11, to limit by his letters patents, before the first writ of summons, the barony of *Kiderminster* to the heirs males of the lord *Beauchamp* of *Holt*, who was created by investiture of robes, as I have shewed before? or *Hen.* 6. an. 27, to limit, by the first writ of summons, the barony of *Vessy* unto the heirs male of the lord *Bromflet*?

I do not affirm that the husband, or son, of an heir female ought to be called to Parliament, but they have usually been called. And if such husband, after he had issue male, or such son, after the barony was de-

scended on him, were called (before they had no right) they took place according to the antiquity of their ancestors, and were not new created, which shews the honour is inheritable.

Nay, if the chief feat had been conveyed to the heir male, and he summoned to Parliament, he took place according to the antiquity of the barony.

And as the barons honour is inheritable, so their coming to Parliament hath ever been reckoned an essential point of inheritable honour, as given them by the king at their first creation (though not mentioned, as now in their late charters). And to deny that unto any one that is due unto them all, is to dishonour him whom the majesty of a king hath formerly honoured, whereof our kings have ever been very religious; witness the precedent of *Roger de Quency*, second son to *Sayer* earl of *Winchester*, whom *Hen. 3.* summoned to the Parliament, supposing that *Robert* his
elder

elder brother, then in the holy land, had been dead, and would not afterwards displace him, when his elder brother returned, and petitioned for his right, because he had been lawfully summoned to Parliament, and there, and in other places had had place and voice, *whereby* (saith the precedent) *the title of honour was settled as an inheritance in him, and could not be taken from him.* It was unjust, but yet to preserve the honour which the king had given him.

There is another more pleasing precedent of *Mountbermer*, whom *Edw. 1.* called to Parliament as earl of *Gloucester*, for that he had married the widow, and had a great part of the land; but when *Gilbert*, the heir, came to age, and petitioned for his right, *Edw. 2.* granted it, yet summoned *Mountbermer* ever after as a baron; so unwilling the king was to dishonour him. Out of these precedents, and my observation of all the summons in general, which I have carefully perused, it appears plainly to me, that the lords have a double right to be

summoned to the Parliament; one gotten by long continuance and use, and another given by the king with their honour at their creation; neither can I find, having made diligent search, that any baron hath been omitted, if he were of full age, stood *rectus in curia*, and were within the land; unless he had so diminished his revenues, as that he could not maintain the state of his honour, whereof there are some few unpleasing precedents, which I will not recite. But the like precedents cannot be produced of any earl; for at his creation the king gave him, for his maintenance, the third penny of the county, which could not be aliened.

To proceed in the *omissions*. Earls and barons have been usually omitted, if they have been out of the land, *prout* an. 10 E. 3. 29 Nov. summons were directed

Roberto de Ufford, com. Suff.

Gilberto de Umfrevil, com. de Angus,

Ranulpho de Dacre.

Bartho. de Burgbersh.

Job. de Seagrave.

Egidio

Egidio de Badlesmere.

Radulpho de Nevil.

Job. de Tiptoft.

Richardo Talbott.

Henrico de Percy.

Radulpho de Stafford.

Thomæ de Berkeley.

Antonio de Lucey.

Et memorandum quod brevia istis magnatibus immediate præscriptis directa de essendo ad Parliamentum prædictum remissa fuerunt cancellario regis, pro eo quod quidam ex eis in partibus Scotiæ, & quidam ex eis in partibus transmarinis in obsequio regis existant, annullanda. An. 46 Edw. 3. and in divers years of Hen. 5. few earls and barons were summoned, the king then being in his French wars; and such omission was thought to be no disparagement to their honour.

But now, since the opinion that omission to be summoned did lose their right, hath been broached, by the not discerning of peers from barons, every lord is careful

to

to be summoned, though he know he cannot appear, being beyond the seas. As when the lord *Mountjoye* was deputy in *Ireland*, an. 43 *Eliz.* he had his writ, and sent his proxy.

Others have been omitted because they did not stand *rectus in curia*. Either their title was *litigious*; as was the earl of *Arundel's*, an. 11 H. 6. and the late lord of *Abergavenny's*; or they were restrained of their liberty, being in the king's displeasure; as was the earl of *Northumberland*, an. 18 Jac. For then the writ of summons is an enlargement by law, as was resolved by the judges.

But I do not find by any antient precedent, that any had their writs denied them, for that they were in the king's displeasure only.

For an. 15 E. 3. the king was highly displeased with the archbishop of *Canterbury*, yet he had his writ, and was present in Parliament, and humbled himself unto the king, desiring to be tried by his peers.

An.

An. 5 H. 4. the earl of *Northumberland* was summoned to the Parliament to be held at *Coventry* 3 *December*, notwithstanding he was suspected to be privy to the treason of *Hotspur* his son.

This Parliament was prorogued to *craft Hill*. at *Westminster*. The prorogations were then by new writs, and the earl of *Northumberland* had none; yet he came to the Parliament, exhibited his petition, wherein he acknowledged that he had done against his allegiance, and, namely, for gathering of power and giving of liveries against the statute; was tried by his peers, who adjudged his action to be neither felony nor treason, but only a trespass finable at the king's will; which the king pardoned.

Now of late, they which are in the king's displeasure, have had their summons, but with a letter from the lord chancellor, or lord keeper, not to come, but to send a proxy.

But in the Parliament of the sixth of *February*, an. 1 *Caroli R.* the earl of *Bristol* being

being first denied his writ of summons, petitioned the Parliament for it. Then he had his writ without any intercession of the Parliament; but withall, a letter from the lord keeper signifying his majesty's pleasure, that he forbear to come, and send his proxy. Whereupon the earl petitioned the Parliament again, shewing that that letter could not discharge him for not coming, the writ commanding him to come upon his allegiance: but this point was not then decided, for the earl was presently sent for as a delinquent, and charged with treason. Whereas antiently, if the king's pleasure were, that the party, who had his summons, should notwithstanding stay, and send his proxy, the same was expressed in his writ; *prout*, an. 6 E. 2. Cl. m. 11. The bishops of *Durham* and *Carlisle* were commanded to stay upon the defence of the marches of *Scotland*, and to send their proxies. But none were commanded antiently to forbear to come, and to send proxies, upon the king's displeasure.

Omissions

Omissions ob minoritatem. There be many precedents for it, as of young *Gilbert de Clare*, earl of *Gloucester*, in the last years of *Edw. 1*: But the king hath sent his writ of summons unto such, before they were fully twenty-one, being of years of discretion, as the lord *de la Ware*, an. 20 Jacobi.

An. 3 H. 6. *John* lord *Roos*, being then under age, is named to be present in Parliament amongst other lords, n. 10. but his summons is not entered.

An. 11 H. 6. All the lords are sworn to the statute of retainers, made an. 8 H. 6. and there it appears, that the duke of *Norfolk* and the earl of *Devonshire* (though under age) were in Parliament in their places, and did take the said oath, n. 15. yet neither of their summons is entered that year.

As the king hath not used to omit any lord, that hath been within the land, *rectus in curia*, and of full age, so no lord hath been used to come to Parliament, until he hath received his writ of summons; but in such case he may send to the lord chancellor
for

for his writ, as the earl marshal delivered his opinion in the case between *Nevill* and *Fane*, anno Eliz. The reason may be, for that the lord chancellor's warrant is general. *Vide* the journal an. 49 Eliz. The Parliament began the 24th of *October*, and the earl of *Essex* came not, for that he received not his writ (through the negligence of the messenger, saith the journal) until the 18th of *November*. His lordship was then sick, and appeared not until the 11th of *January* following.

And in the Parliament an. 18 Jacobi, the old earl of *Hertford* died, and his grandchild and heir came not to the Parliament, because he had not then received his writ.

§ 10. *Of omissions in the summons to the great council.*

Although the kings of *England* have not omitted the earls and barons in the summons to Parliament, unless for the causes

5

aforesaid,

aforesaid, yet they have usually omitted divers of them in the summons to the great council, *prout* in the summons, an. 9 E. 3. 23 *Feb.* the king summoned but five earls and eleven barons.

An. 14 E. 3. 14 *Oct.* but twenty-four, bishops, abbots, earls, barons, and others.

An. 15 E. 3. 12 *Jun.* but twenty-six of all forts.

An. 16 E. 3. 12 *Sept.* & eodem anno 20 *Nov.* were summoned but a very few.

An. 21 E. 3. but twenty-two of all forts.

An. 45 E. 3. but thirteen earls and barons; and so in divers years of *Edw.* 3.

Neither did *Edw.* 2. summon them all.

After *Edw.* 3. the summons to the great council was under the privy seal, and so not recorded.

The reason of these omissions may be, for that the great council not being *commune consilium*, as the Parliament is, the chancellor was appointed whom he should summon, and had not a general warrant; *prout* an. 15 E. 3. the 12 *Junii*, the writs being sealed

sealed of that date, others were made, and this note underwritten; viz. *Memorandum, quod ista brevia consignata fuerunt 3 die Julii.*

Vide with Sir Robert Cotton a warrant for summons to the great council, an. 36 & 38 H. 6. on this manner. First, the form of the writ; then the names of such lords who were to be summoned; and underneath thus: *Rex de avisamento consilii sui voluit & mandavit custodi privati sigilli sui quod literas separales sub eodem sigillo faceret dominis supradictis dirigendas, in forma predicta.*

Signed by the clerk,

Tho: Kent.

§ 11. *Of omissions of sons of peers.*

There rests one doubt yet to be satisfied, viz. the king's warrant to the chancellor being general, how came it to pass that the *sons of peers* were omitted?

I answer, the words of the warrant are to make such writs *as are usual*, and the use

use was to omit the *sons of peers*, without special direction from the king.

§ 12. *Omission of the husband of an heir female.*

Where the barony descends unto an heir female, the husband of such hath been omitted, until he hath issue male by her, and be admitted upon his petition of right unto the king, *quia*, the use hath been so: yet, being admitted and summoned, he taketh place according to the antiquity of that barony. I speak of barons by creation of investiture and writ only, without any patent: and this shews plainly, that a baron so created and summoned, his honour is inheritable.

It may be objected, that some baronies have descended unto an heir female, and her husband and posterity ever after omitted. And some baronies have descended unto two sisters or more, and the husband

E

of

of the elder sister wholly omitted, and the husband of the younger summoned; *ergo*, such honour is not inheritable, but during the issue male.

I answer, this may happen upon divers occasions: for, first, besides the descent of honour, a certain number of knights fees ought to descend also for the maintenance thereof.

2dly, The husband cannot be summoned *de jure*, until he hath issue male, and petitioned for it.

3dly, If the husband neglect his petition, the issue male is to make his claim by petition to the king.

If any of these fail, the omission is just; and yet the honour is inheritable to the heir female; otherwise, how could Sir *Humphrey Bourchier*, who married the younger daughter of the lord *Cromwell*, be admitted unto the antient place of that barony?

§ 13.

§ 13. *The form of the several writs of summons at this day.*

An. 18 Jac. *Jacobus, Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ rex, fidei defensor, &c. Præcharissimo filio nostro Carolo, natu secundo, modo unico & primogenito, principi Walliæ, duci Cornubiæ & Ebor. & comiti Cestriæ, salutem. Quia de avisamento & assensu consilii nostri pro quibusdam arduis negotiis, nos, statum, defensionem regni nostri Angliæ & ecclesiæ Anglicanæ concernent. quoddam Parliamentum nostrum apud civitatem nostram Westminster sexto decimo die Januarii prox. futur. teneri ordinavimus, & ibidem cum vobis ac cum prælatis, magnatibus, & proceribus dicti regni nostri colloquium habere & tractatum: vobis in fide & legiantia quibus nobis tenemini firmiter injungendo mandamus, quod consideratis dictorum negotiorum arduitate, & periculis imminentibus, cessante excusatione quacunque, dict. die & loco personaliter intersitis nobisc. & cum prælatis,*

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magna-

magnatibus, & proceribus prædict. super dictis negotiis tractaturi vestrumq; consilium impensuri. Et hoc, sicut nos & honorem nostrum, ac salvationem & defensionem regni nostri & ecclesie prædict. expeditionemq; dictor. negotior. diligitis, nullatenus omitatis. Teste meipso. apud Westminst. 13 die Novemb. anno regni nostri Angliæ, Franciæ, & Hiberniæ decimo octavo, & Scotiæ quinquagesimo quarto.

Jacob. Dei gratia, &c. Præcharissimo consanguineo suo, Georgio, marchioni Bucking. magn. admiral. Angliæ, salutem. Quia de avisamento, &c.

Jacobus, Dei gratia, &c. Charissimo consanguineo suo Carolo, comiti Nottingb. salutem. Quia de avisamento, &c.

** An. 19 Jac. Jacobus, Dei gratia, &c. Prædilecto & fideli nostro Lionello Cranfield, de Cranfield, Chr. &c. Cum nuper de avisamento, & assensu consilii nostri, pro quibusd. arduis & urgentib. negotiis, nos, statum & defensionem regni nostri Angl. & ecclesie An-*

** This summons was sent during the Parliament.
glican.*

glican. concernent. præsens Parliamen. nostrum apud civitatem nostram Westminst. sexto decimo die Januarii ultimo præterito teneri ordinavim. & ibid. cum prælatis, magnatib. & procerib. dicti regni nostri colloqu. haber. & tractat. vobis sub fide & legiantia, quibus nobis tenemini, firmiter injungendo mandamus, quod consideratis dictor. negotior. arduitate & periculis imminentib. cessante excusatione quacunq; quarto decimo die instantis mensis Novemb. ad præsens Parl. nostrum personaliter interfitis, &c.

R. prædilect. & fideli nost. Edwardo Mountague de Boughton, Chr. salutem. Consimile.

An. 18 Jac. Jacob. Dei grat. &c. Henrico Grey de Groby, Chr. salutem. Quia de avisamento & assensu, &c.

An. 21 Jac. R. prædilect. & fideli suo Francisco Russell, bar. de le Thornboughe, Chr. salutem.

Jacob. Dei gratia, &c. Reverendissimo in Christo patri, Tobie, archiepisc. Ebor. Angliæ primat. & metropolitano, salut. Quia de avisamento, &c.

Jacob. Dei gratia, &c. Reverendo in Christo patri, Jo. episc. Sarum, salutem. Cum nuper de avisamento, &c.

§ 14. *The form of the antient writ for the election of the knights, citizens, and burgeses.*

An. 5 E. 3. 18 Feb. Rex vicecomiti Ebor. salutem. Quia propter quædam magna & ardua negotia nos & ducatum nostrum Aquitaniæ ac alias terras nostras in partibus transmarinis, pro quibus ad easdem partes nuper solemnes nuncios nostros destinaverimus, contingentia, quæ in ultimo Parliam. nostro ob aliquas certas causas terminari non potuerunt, Parliament. nostrum apud Westminst. die lunæ in crast. quindenæ Paschæ prox. futur. tenere, & cum prælatis, magnatib. & procerib. dicti nost. regni ordinavimus habere colloq; & tractat. tibi præcipimus, firmiter injungentes, quod de dicto com. duos milites & de qualib. civitate com. illius duos cives, & de quolibet burgo duos burgeses, de discretio-
ribu.

ribus & ad laborandum potentiorib. eligi, & eos ad dictum diem & locum venire faciatis. Ita quod milites plenam & sufficientem potestatem pro se & communitat. com. prædict. & dicti cives & burgeses pro se & communitat. civitat. & burgorum divisim, ab ipsis habeant, ad faciend. & consentiend. iis quæ tunc de communi consilio (favente Deo) ordinari contigerint super negotiis ante dictis. Ita quod pro defect. hujusmodi potestatis dicta negotia infecta non remaneant quovis modo; & habeas ibid. nomina prædictorum militum, civium, & burgesum, & hoc breve, & hoc sicut nos & honorem nostrum & tranquillitatem & quietem dicti regni diligitis, nullatenus omittatis, &c. Teste, &c. Per ipsum regem.

I have recited this writ at large, as it may appear, that the writ for the commons was sometimes special, declaring the cause of summons, as well as the summons to the lords. Therein the writs did agree; but the commons had not any power of themselves, but from the county, city, or borough that sent them.

The like writ was sent, *Constabulario Dover & custodi Quinq; Portuum*, for the election of two barons out of every port, &c.

An. 49 H. 3. a writ went to every sheriff to cause two knights to be chosen out of every county; and other writs went to each city and borough-town; not to the mayor or bailiff, but *civibus & burgiensibus*, to send two citizens, &c.

And other writs went *baronibus & probis hominibus Quinq; Portuum*.

It is worth the labour to search when, and upon what occasions, the writs altered.

§ 15. *Additions to the antient writ of election.*

An. 13 E. 3. 25 Aug. The writ of election agreed with that of 5 Edw. 3.

But when the commons gave their answer touching the subsidy demanded for the wars, they desired leave to return into the country to confer with their neighbours, promising their endeavours for the same at the
next

next Parliament: and withall, desired that the writ to the sheriffs for election of the knights might have this clause, *viz. Que deux mieulz vauex chivalers de countez soient esluz & envoiez al prochein Parlement par la commune, si que nul de eux ne soit viscount ne autre minister*, n. 8.

Which was thus far agreed on; *viz. Item, que soit compris en les briefes du summons du dit Parlement, diretz as viscounts, que deux chivalers ceynēt des espees de chescun countie soient esluz pur estre en mesme le Parl.* n. 22.

And thereupon the next writ had this clause; *viz. Tibi præcipimus, &c. quod de dicto comitatu duos milites gladiis cinctos, &c.* which continues to this day.

An. 46 E. 3. An ordinance was made, that neither lawyers nor sheriffs should be returned knights of the shire, but knights and serjeants of the best worth in the county, and chosen in full county; yet the writ received an addition touching the sheriffs only, which continues unto this day; *viz.*

Nolumus

Nolumus autem quod tu, nec aliquis alius vicecomes, &c.

An. 5 H. 4. 25 Aug. the writ had this clause; viz.

Nolumus autem quod tu, seu aliquis alius vicecomes regni nostri prædicti, aut apprentitius, seu aliquis alius homo ad legem aliquaviter sit electus, &c.

Whence it was called (merrily) the layman's Parliament.

An. 7 & 8 H. 4. n. 139. it was enacted, at the petition of the commons, that proclamation be first made in the next county-court after the sheriff hath received the writ of election to be made, &c. That the election be in full county, wherein they shall proceed freely and indifferently, notwithstanding any prayer or commandment to the contrary;

That the names of the knights chosen, whether present or absent, be set down in indenture under the seals of all them that did elect them.

And

And this clause was added to the writ; *Et electionem tuam in pleno comitatu tuo factam distincte & aperte sub sigillo tuo & sigillis eorum qui electioni illi interfuerint, nobis in cancellaria nostra ad diem & locum in brevi contentum certifies indilate, n. 14.*

An. 11 H. 4. n. 59. At the petition of the commons, it was enacted, that all sheriffs that shall make returns contrary to the statute of 7 Hen. 4. shall forfeit 100*l.* to the king, and the knight so chosen shall lose his wages, *cap. 1.* Note, the statute doth not say that the return shall be void, and the sheriff, upon a new writ, proceed to a new election, as the practice is now with the commons.

An. 1 H. 5. At the petition of the commons, it was enacted, that none shall be chosen knight, citizen, or burgeses, but such as shall be resiant, and shall be chosen by such as are resiant also, *n. 20. cap. 1.*

An. 8 H. 6. it is likewise enacted, that none but resiants shall be chosen, by resiants that can dispend 40*s.* per annum freehold;

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That

That the sheriff may examine the freeholder upon oath, how much he may dispend by the year. The justices of peace shall have power to inquire hereof. If the sheriff be attainted for doing otherwise, he shall forfeit 100*l.* and be imprisoned; and the knights returned otherwise shall lose their wages. *Note*, it doth not say the election shall be void. And mention shall be made of this ordinance in every writ hereafter, *n. 39. cap. 7.*

An. 10 H. 6. n. 33. The statute of 8 H. 6. cap. 7. is confirmed and explained, that the election shall be by resiants of 40*s. per ann.* freehold at the least, *cap. 2.* But mention is not made in the writs of the ordinance an. 8 H. 6.

An. 23 H. 6. n. 48. The statute of the 1 H. 5. & 8 H. 6. are confirmed, and it is enacted, that the sheriff, when he hath received the writ, shall direct a precept under his seal to the mayor and bailiffs of cities and boroughs, commanding them to choose citizens and burgeses of the same cities and burghs;

burghs; That the mayor and bailiffs return the said precepts executed to the sheriff by indenture between them and the said sheriff to be made. And the sheriff shall make return of the writ, and of the said returns of the mayors and bailiffs, upon pain contained in the statute of the 8th of *Hen. 6. cap. 7.* And moreover the sheriff shall pay to every knight, citizen, and burgeses so chosen, and not returned by him, 100*l.* And if the mayors and bailiffs shall return others than are so chosen, they shall forfeit to the king 40*l.* and to the party chosen, and not returned, 40*l.* *Note*, it doth not say the return shall be void. And every sheriff shall make due elections of the knights in full county between eight and nine in the forenoon without collusion, and make true returns, upon pain to forfeit 100*l.* to the king, and another 100*l.* to the party that will sue for the same; provided that the knights, citizens, and burgeses sue within three months for their forfeitures: and if any knight, citizen, or burgeses, duly returned

turned by the sheriff, be afterwards put out, and another put in his place, if he that is put in his place take it upon him, he shall forfeit to the king 100*l.* and to the party so put out another 100*l.* provided it be sued for within three months. *Note*, it doth not say there shall be a new election. The knights shall be notable knights of the same county, or such esquires, or gentlemen of the same county, as are able to be knights. No man to be knight of the shire which standeth in the degree of a yeoman.

This is the last statute for the election of the commons.

§ 16. *Who are not to be chosen.*

An. 46 E. 3. n. 13. It was ordained by Parliament, *that no sheriffs shall be returned nor accepted for knights of the shires*, which ordinance hath been constantly observed ever since; and by the same statute it was ordained also, *that no lawyers, who solicited*
sutes

sutes for other men, should be returned, or accepted for knights of the shires; but the king willeth, that knights and serjeants of the best esteem in the country be hereafter returned knights in the Parliament.

An. 23 H. 6. cap. 15. It is enacted, *that none shall be chosen knight of the shire which standeth in the degree of a yeoman.*

§ 17. *Who are to be exempted (if they please) from serving in the house of commons.*

Knights bannerets (which name is sometimes given to the peers) used not antiently to serve in the house of commons, for that the king might, and did often, summon such to the Parliament as a lord's peer, and so had his service in the upper house.

That they were usually summoned, it is declared before. That they were exempted to serve in the house of commons, appears by the king's writ directed to the sheriff of Surrey for a new election *in loco Thomæ Camoys,*

moys, Chr. banneretti. The reason is there set down; *Nos animadvertentes quod hujusmodi banneretti ante hæc tempora in milites comitat. eligi ratione alicujus Parliamenti minime consueverunt.* 8 Octob. an. 7 R. 2. Cl. m. 32. dorso.

And *Rich. 2.* did afterwards summon the said *Tho. Camoys* to Parliament.

The king's servants have had the same privilege of exemption.

This appears by the like writ for a new election in the place of *James Berners*, whom the king commanded to be discharged, *Quia est de retinentia regis, & familiaris & unus militum cameræ regis.* Ib. an. 7 R. 2. 18 October.

The prince's servants, and the queen's servants, might claim the like privileges,

And no doubt but they had the like privilege; as may be gathered out of another writ of the same 7th year of *Rich. 2.* dated the 16th of *Octob.* for the discharge of *Thomas Morwell*; *Quia est de retinentia, charissimæ dominæ & matris nostræ Johannæ principissæ*

cipissæ Walliæ. But this was in those antient times, when men thought it a burden to come and serve in Parliament. Even divers of the lords themselves obtained licence to be absent, and not to serve during their lives. *Prout an. 1 E. 4. pat. 1. m. 15. Rex concessit H. Bromflet, domino Vessy, quod ipse, durante vita, sit exoneratus de veniendo ad Parliamenta & consilia regis, quodque si aliqua sinistra informatio regi aut consilio suo fuerit exhibita versus præfatum H. tunc ipse per consilium suum responsioni suæ inde admitti valeat, aliquo brevi seu mandato regis in contrarium facto non obstante, &c. Consimile, pro domino Beauchamp, an. 2 E. 4. pat. 2. m. 10. Consimilia, pro Johanne de Warrene, comite Surrey, an. 20 E. 3. pat. 1. & pro Jacobo de Audle de Helegb, an. 27 E. 3. pat. 1. m. 13.*

And the *king's tenants in antient demesne* ever enjoyed this privilege, *prout Fitzbert, tit. Parliamentum, n. 99 & 101.*

But now they claim no such exemption: neither do the king's servants enjoy their

F antient

antient privileges therein, being now usually chosen for knights and burgesſes, ever ſince cardinal *Woolſey* had the great ſeal; ſince which time the commons do enjoy more privileges than they claimed before.

Yet there are precedents, that if any, being firſt choſen into the houſe of commons, become afterwards the king's ſervant during the ſame Parliament, and ſummoned by writ to ſerve in the upper houſe, that he ought to be remanded back again to the commons houſe, *prout*,

Mr. *Rich. Onflow*, being of the lower houſe, an. 5 Eliz. and the Parliament being often prorogued until an. 8 Eliz. he was in the interim made the queen's ſollicitor, and by writ called to ſerve in the upper houſe. The ſpeaker alſo died in the interim. The commons petitioning for leave to chooſe a new ſpeaker, Mr. *Onflow*, being ſent to them by two of the upper houſe (I ſuppoſe, by two of the attendants) was choſen their ſpeaker; but the houſe was divided in opinion.

An.

An. 18 Eliz. Mr. Serjeant *Jeffery* (being choſen knight for *Suffex*) was in the interim of a prorogation made the queen's ſerjeant, and called into the upper houſe by writ. Reſolved by the commons the 7th of *Feb.* That according to former precedents he ought to ſerve in the houſe of commons.

An. 23 Eliz. The houſe of commons being met the 16th of *January* (unto which day the Parliament was prorogued) Sir *Robert Bell* their late ſpeaker being dead, the commons petitioned for leave to chooſe a new ſpeaker; and receiving answer for the ſame in the upper houſe, at their return Mr. *Treasurer* reported, that he had ſeen a member of their houſe with the lords; *viz.* Mr. *Popbam* (who had ſerved in the beginning of that Parliament as citizen for *Bristol*, and in the interim was choſen the queen's ſollicitor, and called by writ to the upper houſe) and moved, that he might be remanded; which ſome thought not needful before he be choſen: (it ſhould ſeem they knew he was to be choſen their ſpeaker) yet

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upon

upon reading of the precedent of Mr. *Onslow*, an. 8 Eliz. the said Mr. Treasurer and others were sent up to the lords to demand Mr. *Popham*. Answered, *That the lords had resolved he should be sent down, the rather because he was a member of the house of commons, and they possessed of him before he was solicitor, or had any place of attendance in the higher house.*

And Mr. *Anderson*, the queen's serjeant at law, and Sir *Gilbert Gerrard*, the queen's attorney general, brought him the said Mr. *Popham*, and restored him to the house of commons.

Here I have recited three precedents. You may easily see the reason why these were remanded; *viz.* The queen had resolved to have them chosen speakers, and not for that the commons had any right otherwise to demand them. If *Bell* their speaker had lived, being made lord chief baron in the interim of the prorogation, I doubt whether they would have demanded him or no. If it should hold for a rule,

a rule, that the king cannot summon a member of the house of commons unto the upper house, then those lords who were burgessees an. 18 Jacobi, and created barons in the interim of the prorogation, *viz.* the lord *Brook* and *Cranfield*, might have been demanded also: compare these three precedents with those three of 7 Rich. 2. and note, that *volenti non fit injuria.*

C H A P. II.
OF APPEARANCE.

§ 1. *The appearance the first day of the Parliament.*

FIRST, let us consider which is the first day of the Parliament; then their manner of appearance.

The writ shews the day whereon the Parliament is to begin: and antiently, though the king and but a few of the lords appeared there, and the Parliament was adjourned in expectance of the rest, yet that was reckoned the first day of the Parliament, if his majesty were present, *prout* 6 E. 3. *octabis sancti Hillarii*; 14 E. 3. in Lent; 15 E. 3. 15 *Pasch.* and divers other Parliaments of his time and his successor's. R. 2.

2

If

If the Parliament be prorogued, for that the king cannot intend it the same day, new writs of summons were sent out antiently, and another day appointed, *prout*,

An. 23 E. 1. 2 *Novemb.* an. 33 E. 1. 13 *Julii*, an. 11 E. 2. 3 *Martii*, an. 6 E. 3. 11 *Decemb.* &c.

At this day, if the Parliament be summoned, the day is appointed in the writs; but if the same be prorogued by writ patent (as the manner is now) and another day appointed, that is reckoned the first day when the king is present, and the cause of summons declared.

Of this the precedents happen so daily, I need not recite any.

This may be a rule; that that is the first day of the Parliament, when the king himself is first present; and this agrees both with the antient and modern times.

No records speak of such solemnity as is used at this day; neither could it be with that state, the king lying in the same house,

F 4

and

and his lodgings near the same rooms where the Parliament was kept.

And it plainly appears by many records of *Edw. 3.* that on the first day of the Parliament a proclamation was made in *Westminster-hall* (the record says, *feust crie fait*) by the king's commandment, That all they who were summoned to Parliament should repair to the painted chamber; and so the Parliament began; that being reckoned the first day, though so few appeared that it was adjourned to another day in expectation of the rest, *prout an. 37, 38. 40. 43. 45. 47 & 50 E. 3.* Here could be no solemn procession to the Parliament in such state as is now used.

But here may be a question, how it should be known who were summoned? by which word was antiently understood the commons as well as the lords and peers.

I answer, the commons were called by the returns of the sheriffs; the lords were admitted in appearing in their robes, and,
as

as I guess, delivering their writs; the peers delivering their writs only, for they had not any robes, not being created by investiture as the earls and barons were; (*prout*, in the former chapter) and then they were all called in the house by the clerk's roll before the king came. That the lords were called, may be inferred by this, that the Parliaments have been often adjourned the first day, because they were not all come, which could not otherwise be known but by the call; so that they were called before it was adjourned: and it appears they were called the first day before the king came, by the Parliament of 18 *Edw. 3. n. 5.* which Parliament was adjourned also the first day for lack of appearance; and after the adjournment, and after the names of the receivers and triers of petitions, there is entered this memorandum, *viz.*

Item, *Let the names of the lords who are summoned to Parliament be viewed, read, and examined before the king in Parliament this day, to see what lords are come, and what not;*

not; and of them that are not come, let their names be delivered to the king in writing to ordain such punishment as he shall please; which shews plainly, that the king was not present before when the lords were called, for then this had been needless.

The next doubt is, in what place the commons were called. The record of 7 Rich. 2. saith, that *the knights and burgessees were called in, by name, in presence of the king*; which shews they staid without till then.

An. 2 H. 4. *They were called, by name, in the chancery in Westminster-hall, before the chancellor and steward of the king's house.*

An. 4 H. 4. *Consimile.*

An. 13 H. 4. *The knights and burgessees were called at the doore of the painted chamber, in the presence of the steward of the king's house, as the manner is.*

And, at this day, they are called by their names by the clerk of the crown, in the presence of the lord steward, in the court
of

of requests, whereof there are many precedents in queen *Elizabeth's* time.

Only one precedent differs from all the latter, *viz.* that of the 33d of Hen. 8. *primo die Parliamenti*, where the duke of *Suffolk*, then lord steward, commanded the clerk of the Parliament to read the names of the commons, unto which every one answered, they being all in the upper house below the bar; and then the king came.

Now since the fifth year of queen *Elizabeth* the commons take the oath of supremacy; and since the third year of king *James* they take the oath of allegiance also, which the lord steward administers unto some, and appoints certain of them his deputies to give the same unto the rest.

The lords are not now called the first day, but have used to deliver their writs only to the clerk; and the third day of the Parliament (the summons being declared the first, and the speaker presented by the commons the second day) the lords are called by the clerk, beginning with the lowest baron,
ron,

ron, and so ascending to the highest, and the proxies or other excuses (if any) of the absent lords registered. Here I must confess one of my own *errata*: for being suddenly commanded to call the house, an. 21 Jac. and unprovided of a catalogue of their names, I made use of one then delivered me by the earl marshal, and began at the upper end with the prince, and so descended. I quickly found mine own error, but none else perceiving it, I proceeded; which I observe here, lest my successors mistake also by that precedent.

§ 2. *When the lords appear in their robes.*

The heralds can give the best satisfaction when the king and the lords did first go to the Parliament in such solemn manner as now. I have a precedent thereof in my uncle *Boyer's* collections of honour and arms. I doubt not but the lords did ever appear in their robes the first day; whereof
we

we have no Parliament records before the journal books of *Hen. 8.* all the former being lost.

The lords appear in their robes also whenever the king is present (if their lordships have notice thereof) and when their lordships give judgment; and when the king gives the royal assent to any one bill or more by his letters patents, or sends a commission to adjourn, prorogue, or dissolve the Parliament.

And in those cases the lords sit all in their due places until the commission be read, and then the lords commissioners are to sit on forms, overthwart the upper end of the house, to execute their commission.

Note, this is to be understood of such adjournments, &c. by commission, as the king himself hath used to be present at in person, *viz.* of adjournments, prorogations, or dissolutions of Parliament, *sedente curia*. But if the Parliament be adjourned or prorogued, *sedente curia*, and afterwards the king by proclamation prorogue the same

to

to a further day (which happens often) in those cases the lords commissioners appear not in their robes, for that the king himself never used to be present at such adjournment in person.

If a lord of Parliament, either by the misprision of the clerk or otherwise, be not ranked in his due place, and complains thereof, the house appoints a committee to search the records for his due place, whereunto he is admitted without any other ceremony, for that he is in the house already;
prout

The earl of *Surrey*, an. 6 H. 8. 15 Feb.

The lord *Merley*, an. 25 H. 8. 24 Martii.

The lord *Clinton* and *Stafford*, an. 4 & 5 Ph. & M. 12 Feb.

But if the lord that is summoned doth forbear to come, because he is not ranked in his right place; his claim is first to be decided by the house, upon his petition to the king; and then his lordship is to be brought in his robes between two lords in their robes also, the king of arms going
before,

before, *prout* the lord *de la War*, an. 39 Eliz. 24 Octob. 15 & 24 Novemb.

If a lord of Parliament dies in the interim of a prorogation, and his son receives his writ to appear at the next session, his lordship appeareth not in his robes (for that ceremony was performed by his father the first day of the Parliament); only he delivers his writ to the clerk, who enters it the same day; *prout*, an. 7 Jac. *Richardus com. Dorset*. And there be very many precedents of this nature; viz. that the writ is only recorded in such cases, and not a word of their appearance in robes.

And it were very fit the lords did continue this order to deliver their first writs to the clerk to be entered; for it records their pedigree as well as the time of their first coming to Parliament.

If a lord of Parliament dies, *sedente curia*, and his heir be summoned, he appears also without any ceremony; only his first writ is entered, the day of his appearance,
prout, an. 27 Eliz. 9 Feb. *Tho. dom. Darcy*
de

de Cbiche; and there be many precedents of this nature also.

And I remember well, that the lord *Stanhop* of *Harrington* dying, *sedente curia*, in the Parliament of 18 Jacob. his son *Charles*, lord *Stanhop*, came and took his due place without any other ceremony:

So did *Edward* earl of *Dorset* after the death of his brother *Richard*, who died without issue male in the Parliament 21 Jac.

And I have observed, that a bishop hath often been summoned after the Parliament is begun, in place of another bishop who was dead, and only delivered his writ to the clerk to be entered, without any other ceremony; which was observed also in former time, *prout* an. 27 Eliz. 23 and 26 *March*, *Episc. Petriburgi*.

If the eldest son of an earl be summoned as a baron, after the Parliament is begun, he is to be brought in his robes between those two lords between whom he is to sit, garter going with his coat half way on upon his left arm; and his lordship is to present
his

his writ to the lord chancellor, and to stay by his woolfack, until the clerk hath read the same, and then to be placed by those two lords in his due place.

Vide a precedent of this, an. 7 Jac. the lord *Clinton*, the eldest son of the earl of *Lincoln*, who delivered his writ kneeling to the lord chancellor, and stood by him until it was read.

And I remember well, that the old earl his father was very careful, both for the right place of his son and the antient ceremonies to be used at his first appearance.

Eodem an. 7 Jac. *Consimile* the lord *Walden*.

The reason why garter is to wear his coat but half way on is, for that his lordship is in expectance of an earldom, when garter is to do him further service, and to wear his coat wholly on.

If a lord be newly created during the Parliament, he is brought in by any two lords of the same form in their robes, garter going before with his coat wholly on; and

G

his

his lordship is to present his writ to the lord chancellor, which being read, he is conducted to his place by those two lords who brought him, garter going before, *prout*,

The lord *Denny*, an. 2 Jac. 7 Febr.

And the lord *Knyvet*, an. 4 Jac. 4 Julii.

Yet in the Parliament an. 18 Jac. 20 Nov. the viscount *Colchester* being newly created in the interim of the adjournment of that Parliament, and brought in at the next access, garter king at arms carried the letters patents, and presented the same to the lord keeper, and his lordship delivered them to the viscount, and so immediately he was placed.

So was the lord viscount *Rockford* brought in the same day; and so also were the lords *Brook*, *Mountague*, and *Cranfield*, being all new-created barons.

Quære ration. why they presented not the writs, according to the antient manner?

3

An.

An. 21 Jac. 25 Feb. divers lords who were newly created, and others who were in by descent, and were then first summoned, they all having appeared the first day of the Parliament in their robes, were notwithstanding brought in the fifth day of the Parliament with the same ceremonies as belong to a lord, newly created after the Parliament is begun, when he first appears; the earl marshal being present, and directing the same.

The names of the said lords, *viz.*

George, duke of *Buckingham*, created a duke before the Parliament began.

Henry, earl of *Kent*, came in by descent.

James, earl of *Carlisle*, by new creation.

Lyonell, earl of *Middlesex*, by new creation.

Christopher, earl of *Anglesey*, by new creation.

William, earl of *Denbigh*, by new creation.

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Thomas.

Thomas, viscount *Andover*, by new creation.

Henry, lord *de la Ware*, by descent.

Lord *Barkley*, by descent.

Robert, lord *Cary* of *Lepington*, by new creation.

And *William*, lord *Grey* of *Warke*, by new creation.

CHAP.

CHAP. III.

LOCUS ET MODUS SEDENDI.

IT follows to shew in what place they meet, and the manner of their sitting.

§ 1. *Whether the lords and commons did antiently sit in one room together.*

Vide the antient manuscript *Modus tenendi Parliamentum*, cap. *de Cas. & Iud. difficilibus*.

Cum dubitatio & casus difficilis pacis vel guerræ emergat, &c. injungatur per regem, seu ex parte regis, si rex non intersit, cuilibet graduum parium, quod quilibet graduum se-deat per se; & liberetur casus ille clerico suo in scriptis, & in certo loco recitari faciant, ita quod ipsi considerent inter se qualiter melius & justius procedi poterit in casu illo, &c.

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With

With this agrees that of the 6 *Edw. 3.* at the Parliament held at *York, viz.*

The cause of summons being touching *Scotland*, the prelates, with the clergy, treated thereof by themselves; the earls and barons by themselves; and the commons by themselves; and afterwards they delivered their joint answer to the king.

In the former Parliament of that year at *Westminster, crastino Mariæ*, the cause was touching *Ireland*: the prelates consulted by themselves, the lords by themselves, and the commons by themselves; and after they gave a joint answer, and they all joined in one grant of a subsidy to the king.

An. 6 *E. 3. octabis Hillarii*, the prelates treated by themselves; so did the lords, and so did the commons; and afterwards their joint answer was reported to the king by the bishop of *Winchester*.

By these precedents it appears plainly, that the lords and commons did first meet together in one room, and yet had divers rooms to consult in, severally and apart.

But

But this doth not directly and plainly prove, that the lords and commons did sit together in one room.

But if we consider well the passages of the Parliament of 14 *Edw. 3.* in Lent, it will seem that the lords and commons did then sit together in one room, *viz.*

The cause of summons was declared to them all together, touching an aid for the king; they considered thereof, and joined in grant of the subsidy upon condition to have their petitions granted; a joint committee of the lords and commons are appointed to sit upon the said petitions, from day to day, until they be dispatched and reduced into the form of a statute; the committees are named, as well the lords as the commons.

Yet the two houses sat apart also that Parliament; for many things are recorded to be done by the lords, whereunto the commons are not parties: and many several committees were appointed of the lords alone

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that

that Parliament, in which the commons were not joined.

It is more of curiosity than of necessity to search for the truth of this matter.

An. 50 E. 3. The cause of summons ended, the commons were willed to withdraw themselves *to their antient place in the chapter-house of the abbot of Westminster, and there to treat and consult among themselves.*

This shews plainly, that they had a place assigned them of old to sit in apart.

And when the king pleaseth, he may have the lords and commons sit together in one place, as they did an. 7 Jacobi, in the court of requests, the lords sitting on the right-hand by themselves, and the commons on the left-hand by themselves, that day when the noble prince *Henry* was created prince of *Wales*.

§ 2.

§ 2. *Whether the commons did antiently sit at conference with the lords.*

I have heard it often questioned, whether the commons did sit antiently at conferences with the lords?

I will not resolve this doubt, for no record can be produced on the one side or on the other; so that the usage must direct us how it was in former times. And since the commons do in other matters enjoy more ample privileges at this day than the antient records mention, divers privy counsellors and others of the king's servants being now of that house, from whence they were formerly exempted (*prout* in the first chapter) it is not likely that such honourable personages would have waved this one privilege, and stood in a croud, if they might have claimed a seat for their ease; which they never did claim temp. *Hen.* 8. *Edw.* 6. *Ph.* & *M.* nor of queen *Eliz.*

It

It will be said, that heretofore a committee of the lords have come into the house of commons to confer with them, which was used even in an. 3 *H.* 8. and there, no doubt, the commons did sit, and the lords with them.

It is true, that this happened sometimes, but was not constantly observed; and the lords did *discedere de jure* to go thither, as it is resolved an. 2 *R.* 2. *post festum sancti Lucae.* Now this is out of use.

§ 3. *The manner of sitting in Parliament at this day.*

The king. His majesty sits in the chair of estate whensoever he is present: if represented by commission, either to begin or hold the Parliament, the commissioners (after the commission is read) do now sit on the right side of the chair of state beneath the steps.

An.

An. 51 *E.* 3. The prince represented the king by commission, and his highness did sit in the chair of estate.

No other antient Parliament record shews where such commissioners did sit; neither an. 20 & 25 *E.* 3. when *Lyonel* the king's son held the Parliament; nor an. 12 & 14 *E.* 3. when *Edward* duke of *Cornwall* held the same; nor those of *Hen.* 5. and *Hen.* 6. when the kings were in *France.* *Vide* the journal of 28 *Eliz.* where the lord archbishop of *Canterbury*, *Burleigh* lord treasurer, and *Darby* lord steward, represented the queen's person by commission, and the manner thereof described at large.

The prince. His highness's seat is on the left-hand of the chair of estate; that on the right-hand was antiently for the king of *Scots*, when he used to come to our Parliaments.

The king's children. It is enacted an. 31 *H.* 8. cap. 10. *That none but the king's children do presume to sit at any side of the cloath of state.*

The

The king's vicegerent in ecclesiastical jurisdiction. His seat is, by the said stat. of 31 Hen. 8. on the right side of the Parliament chamber, above the archbishop of *Canterbury*, upon the same form.

The other officers are thus placed by the said statute; *viz.* The lord *chancellor*, the lord *treasurer*, the lord *president of the king's council*, the lord *privy seal*; (being of the degrees of barons of Parliament) on the left side of the Parliament chamber, on the higher part of the form, of the same side, above all dukes, except only such as shall happen to be the king's son, the king's brother, the king's uncle, the king's nephew, or the king's brother's or sister's son.

The *great chamberlain*, the *constable*, the *marshal*, the lord *admiral*, the lord *steward*, the *king's chamberlain*; above all others of the same estates and degrees.

Vide an. 21 Jac. the duke of *Buckingham* was admiral, and placed next to the privy seal, and above the lord great chamberlain.

The

The king's chief *secretary* (being of the degree of a baron) above all barons, not having any of the offices above-mentioned; and if a bishop, then above all other bishops not having any of the offices above remembered.

I have heard it doubted, whether the king's chief *secretary*, being an earl, shall take place above all earls, not having any of the above-said offices; for this reason, that a statute law must be expounded strictly, according to the words. And I remember, that the lord viscount *Cranburn*, being to be made earl of *Salisbury*, demanded this question of my uncle *Bowyer*, who put this doubt unto his lordship: whereupon he procured the precedency of his elder brother, who was then to be made earl of *Exeter*, by priority of creation.

Vide 3. & 4 Jac. The earl of *Salisbury*, being principal *secretary*, sat on the earl's bench, in his due place, according to his creation.

It

110 *Locus & Modus Sedendi.*

It is also enacted by the said statute, that if either the lord *chancellor*, lord *treasurer*, *president of the king's council*, lord *privy seal*, or chief *secretary*, shall be under the degree of a baron of Parliament, then such of them as shall be under the said degree shall be placed at the uppermost part of the sack, in the midst of the said Parliament chamber, either there to sit upon one form, or upon the uppermost sack, the one of them above the other, in order as above rehearsed.

On the right side of the chair of state the bishops are thus ranked by the statute of 31 *Hen. 8. viz.* upon one form,

The lord archbishop of *Canterbury*,

The lord archbishop of *York*,

The bishop of *London*,

The bishop of *Durham*,

The bishop of *Winchester*;

Then all other bishops on the same side after their antienties, as it hath been accustomed. But at this day the two archbishops
fit

Locus & Modus Sedendi. 111

fit upon one form, and then the other bishops, in order, upon two forms, on the right-hand of the state.

The earls sit on the first form of the left-hand of the state; and on the first form of the clerks woolfacks sit the viscounts.

The barons sit on the second form on the left-hand of the state, and upon divers other forms across the lower end of the house.

The lord chancellor, or the lord keeper, when the king is present, stands behind the cloth of state on the right-hand; but when the king is not present, then his lordship sits on the woolfack thwart the house, the seal and mace by him. The lord treasurer, when the king is present, stands behind the chair of state on the left-hand.

The judges sit on the inner side of the woolfacks.

The king's learned council sit, on the outside of the woolfacks, next the earls.

The masters of the chancery sit two on the same side, and two on the other side, next the bishops.

The

The clerk of the crown, and the clerk of the Parliament, sit on the lower woolfack, and have a table before them.

And the clerk of the Parliament hath two clerks under him, who kneel behind the said woolfack.

When the king is present, none of the lords are covered; and the judges and attendants do stand up, until his majesty wills them to sit down.

When the king is absent, the lords do reverence to the state, and salute the rest at their entrance into the house, and then take their place.

The judges sit also, but are not covered until the lord chancellor signifies the lords pleasures.

The king's council and the masters of the chancery sit, but are never covered.

CHAP. IV.

PARLIAMENT DAYS.

§ 1. *On what days the Parliament may not sit.*

IN the antient manuscript, *de Modo tenendi Parliamentum*, cap. *de Diebus & Horis ad Parliamentum*.

Parliamentum non debet teneri diebus Dominicis; sed cunctis aliis, illo die excepto, & aliis tribus diebus, scilicet omnium Sanctorum, & Animarum, & nat. sancti Johannis Bapt. potest teneri.

Yet Parliaments have been summoned to be held on the *Sunday*; viz.

An. 23 E. 1. 30 Sept. *die Dominico prox. post festum sancti Martini in hieme*. And the same was prorogued by a new summons of

114 *Parliament Days.*

November following to be held *die Dominice prox. post festum beati Andreæ apost.*

An. 27 E. 1. 6 Feb. *die Dominico.*

An. 28 E. 1. 24 Decemb. *Consimile.*

Et an. 33 E. 1. 22 Januar. & 35 E. 1. 27 Febr. an. 1 E. 2. 19 Januar. & eodem an. 10 Martii; an. 2, 3, 4, 5, 6, 7 & 16 E. 2.

An. 1, 2 & 4 E. 3. but none after 4 E. 3. There are not any Parliament-rolls extant to shew what the Parliament did on *Sunday*.

Yet I find that subsequent Parliaments have sat on *Sunday*, *prout* an. 6 E. 3. n. 7. *Saturday* the house of commons had leave to depart, and the lords were commanded to attend unto the *next day*, on which the Parliament was dissolved.

An. 20 E. 3. n. 11, *in fine.* On *Friday* the commons delivered in their petitions, which were considered by the lords upon *Saturday*, *Sunday*, and *Monday* next following, and on that *Monday* they were answered.

5

*Vide**Parliament Days.* 115

Vide contrarium, an. 5 R. 2. The Parliament was summoned to be held *craft. omn. Anim.* which fell out to be on *Sunday*, and therefore it was adjourned unto *Monday*. n. 1.

I find no Parliament summoned to be held on *All Saints* day, *All Souls*, or *St. John Baptist's*.

Christmas-day. An. 3 E. 6. The Parliament did sit on *Christmas* day, and read two bills; and on *St. Stephen's* day, and read one bill; and on *St. John's* day, and read two bills; but this is singular, and occasioned through the troublesome business of the duke of *Somerset*.

Convocation-days. An. 1 H. 8. The temporal lords met in Parliament every convocation-day, though they did no other business than receive bills from the commons, and sometimes not so much: and on those days some one of the lords (though none of the great officers) *Ex mandato domini regis, quia domini spirituales absentes, & in convo-*

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catione

catione occupati sunt, continuavit Parliamentum usq; in diem crastinum. The lord chancellor was then a bishop, and absent also.

This continued until the 7th of *Hen. 8.* in which year the lord chancellor did, the day before the convocation-day, continue the Parliament until the day after, *prout,* an. 7 H. 8. 30 Novem. *Dominus cancellarius propterea quod domini spirituales in convocatione crastino die occupandi sunt, continuavit præsens Parliamentum usque in diem Lunæ.*

The next precedent for convocation-days is an. 25 H. 8. For from the 7th until then we have no journals; *viz.*

Memorand. Quod die Sabbati 17 Januarii, tertio die Parliam. decretum est, quod domini spirituales in convocatione diebus Martis, & Veneris proxim. sequent. & ex tunc die Veneris tantum (donec secus melius videtur) versari possent, & proceres cæteris diebus sine impedimento quotidie circa dimidietat. horæ octav. ante meridiem, in locis consuetis simul convenirent, ad tractandum & consultandum circa reipublicæ negotia.

After-

Afterwards in this Parliament, after the End of *Hillary* Term, this *Friday* was changed into *Wednesday* every Week, but no order is entered for it in the journal book.

An. 3 E. 6. 4 Novemb. *Hodie assignat. est dies Veneris pro convent. episc. & alior. ejusd. ordinis ecclesiast. in ecclesia Pauli.*

Star-chamber-days. An. 25 H. 8. Mercurii, 4 Februarii. *Hodie domin. cancellarius, eo quod die crastino Domini circa ardua negotia in camera stellata consulturi, & Dom. spirituales die Veneris in convocatione conversaturi fuerint, ex consensu totius domus continuavit hoc præsens Parliamentum in diem Sabbati, hora consueta.*

I find no other precedent directly for this; and the *Star-chamber-days* being sometimes one day in the week, sometimes another, it appears not by the ordinary continuances of the Parliament, that any day was pretermitted, *quia* a *Star-chamber-day*. But when in queen *Elizabeth's* time the *Star-chamber-day* was settled to be on *Wednesdays* and *Fri-*

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days,

days, you shall not find that the Parliament did sit on those days in the term-time.

Which was constantly observed also in the time of our late king *James*, until the Parliament 18 Jac. And then an. 19 Jac. 24 April. die Martis, *Upon motion made this day unto the house, that there is a great cause in the middest of hearing to be heard in the Star-chamber to-morrow, the lords were contented not to sit to-morrow in the morning; provided, that it be not drawn into a precedent; but that this house, being the supreme court, may sit upon any Star-chamber-day, notwithstanding the absence of such lords as do use to attend that court.*

And accordingly the house was adjourned unto the next day, being *Wednesday*, in the afternoon; and the next Star-chamber-day, being *Friday*, the 26th of *April*, the house did sit both in the forenoon and afternoon.

C H A P. V.
O F P R O X I E S.

§ 1. *In what cases proxies were made.*

THOSE lords that could not appear according to their summons, made their proxies; and even this shews their right to be summoned, else what needed their proxies?

But if they neither came, nor made proxies, then, for their disobedience unto the king's writ, they were amerced; viz. antiently an earl at 100*l.* and a baron at 100 marks. *Vide* the antient manuscript, *Modus tenendi Parliamentum, cap. de Inchoatione Parliam.*

Which sum was qualified in after-times, *prout*, an. 31 H. 6. n. 46. A duke was taxed at 100*l.* an earl at 100 marks, and a

baron at 40*l.* if he came not to Parliament.

And the lords made their *proxies*, if they came not to the king's great council (being summoned) as well as to the Parliament.

The antient form of a proxy.

Excellentissimo principi, ac domino suo illustrissimo, domino Edwardo, Dei gratia, regi Angliæ, & Franciæ, & dom. Hiberniæ, suus humilis capellanus, Johannes, abbas de Selbye, reverentiam & honorem cum jugi precum instantia apud Deum. Quia impedimentis variis, & arduis negotiis concernentibus reformationem status domus nostræ sumus multipliciter impediti quod in instanti Parlamento vestro apud Westminst. in quinden. sanct. Mich. prox. futur. tenendo sine gravi dispendio dom. nostræ prædict. personaliter esse non valemus, dilectos nobis in Christo & discretos viros, dominos Henr' de Barton, & Will. de Minfield, cleric. Lincoln. ecclesiæ canonicos, & eorum quemlib. per se, ad comparend. & audiend.

audiend. pro nobis in hoc Parlamento tractand. & consentiend. una cum prælatis & procerib. super iis quæ ad ecclesiæ Dei, & ipsius regni utilitatem expedientia videbuntur, nec non ad allegand. proponend. & proband. causas absentiæ, & non-comparitionis nostræ personaliter, procurat. nostros conjunctim, & divisim, & eorum utrumq; per se & in solidum ordinamus, facimus, & constituimus per præsentem: ratum & gratum habitur. quicquid per duos procurator. nostros vel eorum alterum, actum seu gestum extiterit in præmissis. In cujus rei testimonium, &c. Regist. de Selbye, fol. 128.

§ 2. *In what cases proxies were made without the king's licence.*

In divers writs of summons the king denied to accept of proxies, *ea vice; prout*, an. 6 E. 3. 27 Januar. an. 11 R. 2. 20 Martii; an. 6 R. 2. 7 Januar. an. 22 E. 3. 20 Novemb. proxies are absolutely denied, *ista vice.*

An.

An. 39 E. 3. 20 Januar. *proxies* are denied, *ista vice*; and the lords commanded to appear the day before.

An. 45 E. 3. 8 Januar. *ista vice* is left out, and it is thus; *Scientes, quod propter arduitatem, &c. Procuratores seu excusationem aliquam, legitimo cessante impedimento, pro vobis admittere nolumus*: which clause (*legitimo cessante impedimento*) all the former precedents have.

Hereupon the lords that could not come obtained the king's licence to be absent, and make *proxies*, as did the abbot of *Selbye*, an. 22 E. 3. Whereas to the Parliament an. 46 E. 3. (which had not that clause) he sent his *proxy* without any licence, nor expressed any cause for his absence, save that he was hindered *impedimentis variis, & arduis negotiis*, for the reformation of his abbey. *Vide Registr. de Selbye* with Sir Robert Cotton.

By this, and the clause of denying their absence, *ista vice, legitimo cessante impedimento*, inserted in some special writs only,
it

it seems that at all other times they might make their *proxies*, notwithstanding they had not first obtained the king's licence.

I have not seen many other precedents for it, of the antient times, than that of the abbot of *Selbye*; but under *Hen. 8.* it was usual in case of sickness; *prout*,

An. 3 H. 8. 20 die Parliamenti. *Relatum est quod abbas Salop. gravi infirmitate detinetur quod hic interesse nequeat, & ideo constituit procuratores suos episc. Coventr. & Lichfield, & comitem Salop. conjunctim & divisim.*

An. 6 H. 8. 12 Febr. *Domin. Scroop de Upsall ægrotud. detentus abest (affidante ejus famulo Jacobo Marshall) suosq; constituit procuratores abbatem de B. & dom. Darcy.*

An. 28 H. 8. 10 Junii. *Consimile, pro abb. monast. Salop.*

An. 31 H. 8. *Consimile, pro dom. Zouche.* By which it appears plainly they had not the king's licence; yet in such cases an *affidavit* was made of their sickness.

§ 3. *The king's licence to be absent, and to make proxies.*

I have seen two precedents thereof; the one an. 22 E. 3. to the abbot of *Selbye*, when the king had denied in his writ to allow of proxies *ea vice*.

The other unto the said abbot, an. 2 H. 4. The first was under the privy seal; nay, the abbot's servant was so careful, that he procured a warrant under the privy seal to pass it under the great seal; and the abbot had a testimonial under the privy seal of the king's allowance of his procurator.

The other (2 *Hen.* 4.) was under the signet only; and they both testified the lord's name who procured the licence from the king. *Vide Regist. de Selbye prædict.*

Edward per la grace de Dieu roy d'Angleterre, & de France, seigneur de Ireland, a nostre cher en Dieu abbe de Selbye, saluts. Coment q' pur plusieurs grosses & urgeantz besoins touchants nous & l'estate de notre royaume

alme

alme eons ordines d'avoir prochainement nostre Parliament a Westminst. & sur ce vous eons mandez par brieff souz nostre graund seale de y estre en propre persone sanz faire procureur en celle partie; nientmeins a la requeste nostre cher & foiall Johan Darcy nous vous tenons pur excuse de vostre venue in propre persone a mesme nostre Parlement a cest foiz issint qe vous faces un suffisaunt procurator de y venir en vostre nom en maner come appent nient voillantz q' vous ne soiez endamage n'empesche en temps a venir pur reason de nostre mandement suisdit; queu chose vous signifions per cestes nos lettres. Don. souz nostre privie seale a Westminst. le 18 jour de Decemb. l'an de nostre regne de Angleterre 22. & de France 8.

An. 1 H. 8. 22 die Parliamenti, licentiatu est abbas de Crowland, per cancell. & thesaur. per procuratores suos abbatem de Ramsey, & dictum thesaur. id est. The chancellor and treasurer certified, that the king gave the abbot licence to depart, &c. and not that the chancellor and treasurer gave him;

prout,

prout, an. 6 H. 8. (in the beginning of the book) *Abbas sancti Augustini de Cant' absens ex licentia regis, dom. Bergavenny nuncio, & constituit procuratores, &c.* And the licence of divers others to be absent is recorded in like manner.

Yet in those years some have their licences expressed to be *per literas dom. regis*. *Prout*, eodem an. *dom. Hastings, absens ex licentia dom. regis, ut patet per literas*. *Ibid.* 17 Feb. *Consimile, pro abb. sancti Benedicti de Hulmo*.

An. 7 H. 8. *primo die. Hodie recepta est billa, manu regis signata, per quam dominus rex licentiavit Edwardum Sutton, militem, dom. de Dudley, &c.*

Consimil. pro abbat. de Thorney & pro ab. de Ramsfey, & pro ab. Salop. Yet the licence itself was not always shewn; *prout, ibidem. Dom. rex licentiavit abb. de Malmsbury, ut patet ex dictis abb. de Wynchcomb, Will. Cumpton, milite, nuntio existente, &c.*

An. 25 H. 8. 28, 31 & 35 H. 8. the proxies are entered thus; *Literæ procurat.*
of

of such a lord, *absentis ex licentia dom. regis, attestante* such a one: but whether the licence were by word of mouth, or otherwise by bill signed with the king's hand, *non constat*.

The king's verbal licence is sufficient; yet I suppose they then had for the most part a formal licence signed by the king; and it being not produced, a testimonial thereof was required; which was sometimes testified by a lord, and sometimes by a stranger; *prout*, an. 25 H. 8. 15 Jan.

Literæ procurat. in quibus abbas de Evesham, sub reg. grat. absens, attestante Thoma Cromwel, arm. constituit procur. &c.

Literæ procurator. in quibus dom. de la Warre, &c. attestante Thoma Cromwel, &c.

Literæ, &c. abbas de Crowland, &c. attestante magistro Cecill, &c. Literæ, &c. com. Essex, &c. attestante com. Oxon.

Consim. an. 28, 31, &c. H. 8.

But an. 38 H. 8. and downward, neither the licence, nor any such testimonial, was required; only it sufficeth, that the letters
ters

ters of proxy mention the king's licence, which none will presume on, unless he had it.

It was determined by the house, 25 Apr. 1626, That if a peer, having leave of the king to be absent, gives his proxie, and afterwards comes and sits in the house, his coming and sitting in Parliament doth determine that proxie, and his licence of absence also.

And that if a peer, having leave to be absent, makes his proxie, and afterwards returns, he cannot make a new proxie without new leave.

§ 4. *Unto whom proxies may be made.*

A proxy cannot be made to a lord that is absent himself. *Vide an. 33 & 34 H. 8. in fine libri journal' this entrance, viz.*

The lord Latimer sent his proxy, which the clerk received; but it was repealed by the lord chancellor, for that the lord Latimer's deputies were not present.

So

So if the lord, unto whom the proxy is made, be afterwards absent, the proxy is void; yea, although the procurator be absent *ex licentia regis*, and hath made a procurator also for himself; for the proxy is but an authority to give another man's assent, which cannot be transferred to a third person: and therefore in such case the lord *Vaux* made a second proxy an. 18 *Jacobi regis*, which, I think, was rather to retain his particular vote (a dignity peculiar to the lords of Parliament) than to avoid the king's displeasure; the first proxy being a sufficient excuse for his absence.

Neither is it the use now to make proxies unto strangers who are no members of the house, nor to any of the attendants, as to the judges, barons of the exchequer, or the like.

Yet there are divers precedents that the spiritual lords have made proxies unto strangers; *prout*, the abbot of *Selbye* made *John Gouldale*, a monk of that house, and master

I

Will.

Will. R. Clerk, his procurators, an. E. 3.
The year is not recorded.

And divers other precedents there are of this nature. The lords temporal had then the like right; and we may guess that they did make the like proxies unto strangers by this, that an. 14 *Edw. 3.* in Middle Lent, *Monf. William Scot* and *Monf. Will. de la Pole* were not summoned, and yet were appointed triers of petitions; a matter merely belonging to the lords of the upper house: so that we may guess they came with proxies, and not of any spiritual lords (for they sent clergymen) but of the temporal lords; for they have the title of *Monsieur*, which sheweth they were laymen.

So we may guess that *Monf. John de St. Paul*, *Monf. John de Pultenye*, *Monf. Walter de Creyke*, *Monf. Will. de Felton*, *Monf. John de Stryvelin*, and *Monf. Thomas de Rokebie*, came with proxies to that Parliament, for they were not summoned; and yet were of divers committees, *promiscue* with other lords, in matters touching *Flanders*,
Bruxels,

Bruxels, and the marches of *Scotland*, an. 14 E. 3. n. 13, 14, & 17. So that strangers had proxies, and place, and voice in Parliament.

But the question is, where they fate? surely not each in that lord's seat whose procurator he was; yet they do so at a general council or diet beyond the seas.

An. 21 R. 2. cap. 12. It appeareth, in the printed statutes, that *Sir Thomas Skelton*, learned in the law, was demanded of the king his advice, touching the answers of the justices to certain questions, an. 11 R. 2. and gave his opinion therein: and yet the said *Sir Thomas Skelton* was not summoned to that Parliament. We may suppose, and that upon probable conjecture, he had a proxy of some lord of Parliament, unless he came as an attendant, as now certain of the masters of the chancery use to do, such as the lord chancellor doth appoint; but at this day their advice is never demanded.

The lords spiritual do usually grant their proxies unto two or three lords. The question is, if the one of them give his vote one way, and the other two another, which shall stand? And it was resolved by the lord president of the council, the earl of *Manchester*, that the vote shall go with him that is first named in the proxy and present. (At the committee of privileges 24 Apr. 1626, p. m.)

It was ordered by the house, 25 Feb. 1625, *That after this session of Parliament no lord shall be capable of receiving above two proxies; nor more to be numbred in any cause voted. And that all proxies from a spiritual lord shall be made to a spiritual lord, and from a temporal lord to a temporal lord.*

The form of the king's licence to be absent.

The first extant is in the journal of 8 Eliz. *in hæc verba.*

Right trusty and wel-beloved, we greet you well. Whereas we are informed, that by
4 reason

reason of sickness you are not able to make your repair hither to this our session of Parl. to be holden at *Westminst.* we have thought good, by these our letters, to dispense with you for your absence, and to license you to remain still at home for this time, *so nevertheless that you do send up your proxy to some such personage as may for you, and in your name, give his voyce and assent, or denial, to such matters as shall be treated and concluded upon in our said Parl.* And this our letter shall be your warrant in this behalf. Given under our signet at our palace at *Westminst.* the 20th of *Septemb.* in the 8th year of our reign.

Another form of the king's licence.

Charles R.

Right trusty and well-beloved, we greet you well. Whereas for divers important considerations we have thought fit to sum-mone our high court of Parliament to be

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holden

holden at our palace of *Westm.* &c. Albeit we have caused our writ of summons to be addressed unto you for your repaire thither, yet, understanding that in regard of your indisposition of body you are unfit and unable to attend that service in your owne persone, we are pleased to license, and by these presents doe license, you, &c. to forbear your coming to the said Parlement, *soe as neverttheless you cause your proxie to be sent, in some convenient time, unto some one of your owne quality, who may for you, and in your name, give his voice and consent unto such matters as are to be treated and concluded in our said Parlement.* And these our letters shall be your sufficient warrant and discharge in this behalf. Given under our signet, &c. 27 May, in the first year of our raigne.

The

The form of the proxy at this day.

Omnibus Christi fidelibus, ad quos hoc præsens scriptum pervenerit, Edwardus, dominus *Zouche*, salutem. Noveritis me præfatum dom. *Zouche* per licentiam ferenissimi domini nostri regis a præfenti hoc suo Parlamento tent. & inchoato apud Westminster, duodecimo die mensis Februarii ult. præterit. sufficienter excusat. abesse, nominare, ordinare, & constituere dilect. mihi in Christo prænobilem. & honorand. virum Henricum, comitem *Southampton*, præclarissimi ordinis garterii militem, meum verum, certum & indubitatum factorem, actorem, attornatum, & procuratorem per præfentes; eidemque procuratori meo dare & concedere plenam auctoritatem, & potestatem pro me & nomine meo de & super quibuscunq; causis & negotiis in præfenti hoc Parlamento exponend. seu declarand. tractandi, tractatibusque hujusmodi factis seu faciendis consilium nomine meo

impendingi, statutisq; etiam & ordinationibus, quæ ex maturo & deliberato iudicio dominorum tam spiritualium quam temporalium in eodem Parlamento congregatorum inactitari, seu ordinari contigerint, nomine meo consentiendi, eisdemque si opus fuerit subscribendi, cæteraq; omnia & singula quæ in præmissis necessaria fuerint seu quomodolibet requisita faciendi & exercendi in tam amplis modo & forma prout ego ipse facere possem aut deberem si præsens personaliter interesset, ratum & gratum habens & habiturus totum & quicquid dictus procurator meus statuerit aut fecerit in præmissis; in cuius rei testimonium præsentibus subscripsi, sigillumque meum apposui. Datum decimo die Decemb. anno regni dicti domini nostri Jacobi, Dei gratia Angliæ, Franciæ, & Hiberniæ regis, fidei defensor, &c. vicesimo, & Scotiæ quinquagesimo septimo.

C H A P.

C H A P. VI.

DE SUMMONITIONIS CAUSA.

§ 1. *By whom the cause of summons ought to be declared.*

MANUSCRIPT *de Modo tenendi Parliament. cap. de Pronunciatione pro Parl. Cancellarius Angliæ, vel capitalis iudiciarius qui tenet placita coram rege, vel alius honestus, & facundus iudiciarius, vel clericus, pronunciare debet causam Parliamenti, primo in genere, & postea in specie.*

Vide tamen 9 H. 6. n. 1. Pro eo quod Johannes, archiepisc. Eborum, cancellarius Angliæ, cui ratione officii sui secundum consuetudinem regni Angliæ pertinuit causam summonitionis pronunciare, &c. infirmitate detinetur, &c. magister Henricus Lynwood, legum doctor, de mandato dicti custodis declaravit, &c.

And

And in 5 *Edw.* 3. the first Parliament-roll now extant that hath the formal proceedings of the Parliament (which antiently were not recorded) the bishop of *Winchester*, being chancellor, declared the cause of summons.

An. 6 E. 3. *Crō. Mich. Confimile.*

An. 6 E. 3. *die Lunæ post fest. sancti Gregorii*, the archbishop of *Canterbury* declared the cause of summons, touching the king's going into the Holy Land with the *French* king; then the bishop of *Winchester*, being chancellor, declared the same also: and afterwards the lord chief justice Sir *Jesferie le Scroop*, by the king's commandment, declared other causes for which the Parliament was summoned, *viz.* to redress the breach of peace, and other mischiefs at home, *n.* 6.

And when the breach of peace was handled, the bishops, and the procurators for the clergy, departed all out of the house, for that it did not belong unto them; and so the lord chief justice was speaker all that
Par-

Parliament, *n.* 10 & 12. And so the chief justice was speaker in many Parliaments of *Edw.* 3. and in the 2d of *Hen.* 4. but in no other king's time, when the lord chancellor was present.

§ 2. *Upon what occasions the cause of summons hath been declared by the lord chief justice, tempore E. 3. though the chancellor were present.*

I observe the occasion to have been offered, when a bishop was chancellor, and the cause of summons was either touching malefactors for breach of the peace, or the like (for then none of the bishops or clergy would be present); or when it concerned the usurpations of the pope, for *tielx paroles ne gisont mye en bouche de prelat*, says the record an. 51 E. 3.

Therefore in divers years of *Edw.* 3. the same hath been declared by the lord chief justice; *prout*, an. 6 E. 3. *die Lunæ post festum*

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festum sancti Gregorii, by *G. le Scroop*, lord chief justice, the bishops and clergy departing out of the house when the matters which concerned the breach of peace were handled, n. 6. 10, 11.

An. 6 E. 3. *Vendredi devant le feste sancti Nicholas*, by the lord chief justice *Jeffery le Scroop*, concerning *Ireland*, and the malice of the rebels there, &c.

An. 6 E. 3. *octabis sancti Hillarii*, by *Jeffery le Scroop*, lord chief justice, touching *Scotland* and the marches.

An. 13 E. 3. *quinden. Mich.* it is not recorded by whom the cause of summons was declared; nor eodem an. *octabis sancti Hillarii*; nor 14 E. 3. *in Lent*; nor in the second Parliament in that year; nor 15 E. 3. nor 20 E. 3. nor 25 E. 3. *octabis purificationis Mariæ*.

An. 17 E. 3. the cause of summons, touching *France*, was begun by the chancellor in general, but pursued in particular by *Monf. Barthol. Burgbersh*, n. 7. yet the chancellor was speaker afterwards, n. 10. touching

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touching the better observation of the laws of the land, and against maintenance.

But the usurpations of the pope were treated *per countes, barons, & autres nobles, & toute le communaltee*. Vide the petition for the statute against Provisions, &c. n. 60. The *prelates* are not named.

An. 21 E. 3. *Crō. Hillarii*, per *Monf. William de Thorpe*, touching the *French* wars, and how the peace may be kept at home.

An. 22 E. 3. by *Monf. William de Thorpe*, chief justice, touching the wars of *France*.

An. 25 E. 3. *in festo Hillarii*, per *Monf. William de Sharesbull*, chief justice, touching the disturbers of the peace and maintainers of quarrels, &c. and also touching the realm of *France*, the king's inheritance.

An. 27 E. 3. at a great council, per *Monf. William Sharesbull*, chief justice, touching the staple.

An. 29 E. 3. *Crō. sancti Martini*. *Monf. William de Sharesbull*, Chr. chief justice, dit, *que il pleist au roy que la cause de summons soit*

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soit monstre per Monf. Walter de Manny touching France.

An. 36 E. 3. *per Monf. Henry Green*, chief justice, touching the liberty of the church and the peace of the land, &c. and touching *Scotland*, and to advance the small price of wool, &c.

An. 37 E. 3. *o^{ct}ab. Hillar*. Proclamation was made by the king's commandment in *Westminster-hall*, that all the prelates, lords, and commons who were come to the Parliament, should draw themselves to the painted chamber; and afterwards on the same day, there being in the chamber the chancellor, treasurer, and some of the prelates, lords, and commons, Sir *Henry Green*, the king's chief justice, told them in *Englisch*, that the king is ready to begin his Parliament, but that many of the prelates, lords, and commons who are summoned, are not yet come; wherefore the king willeth that they should depart, and take their ease until *Monday*: on which day the cause of summons was declared by the bishop of *Ely*,
then

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then chancellor, touching the liberties of the church, and the grievances of the people.

This is the last Parliament of *Edw. 3.* that mentions the chief justice.

In all the subsequent Parliaments of his time the cause of summons was declared by the chancellor alone, and he hath been speaker.

Except that of 46 *Edw. 3.* The summons was declared by *John Knevet* the chancellor, and the next day by Sir *Guy Brian* more particularly; and that of 51 *Edw. 3.* where the cause touching modern affairs was declared by the bishop of *St. David*, the chancellor, and the usurpation of the pope by Monf. *Robert de Ashton*, the king's chamberlain.

Since *Edw. 3.* the cause of summons was ever declared by the chancellor, if he were present, though the day after some other matters have been opened unto the lords and commons, *prout*, by the steward of the king's house, an. 2 R. 2. at *Gloucester*, and
an.

an. 5 R. 2. by Sir *Hugh Segrave*, the king's treasurer, and an. 6 R. 2. by the bishop of *Hereford*, &c.

The like hath been in latter times, *prout*, an. 21 Jac. by the duke of *Buckingham*, touching the match with *Spain*, and the recovery of the *Palatinate*, &c.

An. 2 H. 4. the cause of summons was declared by Sir *William Thirning*, chief justice of the common pleas: yet the Parliament business was afterwards managed by the chancellor, *n.* 47. It seems the chancellor was not present the first day.

§ 3. *Whether he that antiently declared the cause of summons, not being the chancellor, were speaker also all the Parliament, though the chancellor was present?*

These ordinary matters are not entered usually in the rolls of *Edw.* 3. yet by some we may guess at the rest.

Vide

Vide an. 25 E. 3. the cause of summons was declared by *William de Sharesbull*, chief justice; and receivers and triers of petitions being read, he willed the commons to put their advice in writing, and deliver it to the king on *Thursday* following; so that he was speaker; and yet the bishop of *Winchester* was chancellor, and present; for the record says, that he delivered the lord of *Arundel's* petition unto the clerk to be entered, *n.* 8 & 9.

An. 25 E. 3. *in festo sancti Hillarii*, Sir *William Sharesbull*, chief justice, declared the cause of summons, *n.* 1. 6. then willed the commons to assemble, &c. *n.* 8. and on *Friday* following willed them to deliver in their petitions, *n.* 8. so he managed the Parliament business; and yet the chancellor was present; for he is appointed to assist in the trying of petitions in causes of importance, *n.* 3 & 4.

And in all other Parliaments of *Edw.* 3. when the cause of summons was declared by the chief justice, the chancellor was present,

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sent, as may appear by the triers of petitions.

So that, in those Parliaments, it cannot be said that the chief justice did supply the lord chancellor's place (for that is properly when he is absent) but was appointed by the king to be speaker that Parliament.

An. 29 E. 3. The chief justice declared, that the king's pleasure was, that the cause of summons should be declared by Monf. *Walter de Manny*, and so it was; yet the chief justice managed the Parliament business as speaker: for presently after Monf. *Manny* his discourse, he willed the commons to advise thereof, &c. and to make ready their petitions, n. 10.

And the petition of the earl of *March* being read, it was said by Monf. *Will. Sharsbull*, and the lords then present, with one minde and one accord, that it seemed to them, that the petition was good and reasonable, &c. *Ibid.* after the petitions of the commons.

Here

Here you see the chief justice ranked first above the lords in delivering their votes: so that it is plain the chief justice managed the Parliament business as speaker appointed by the king, and that he did execute the office (not supply the place) of the chancellor therein.

For in such cases, where the chancellor's place is supplied, there, when the chancellor comes, he executes his office himself: *prout*, an. 31 H. 6. *The chancellor being absent* (saith the record) *the king commanded the bishop of Lincoln to pronounce the cause of summons*, n. 1. March 6.

But when the chancellor was come, he prorogued the Parliament by the king's commandment, n. 12. *March* 28.

K 2

§ 4.

§ 4. *Whether be that antiently declared the cause of summons (not being the chancellor) had any commission (as now) under the seal or no?*

Here by the antient Parliaments I mean those whose records are kept in the *Tower*.

An. 6 E. 3. *Lunæ post fest. sancti Gregorii*, the chief justice, by the king's *commandment* declared the cause of summons, &c.

An. 21 E. 3. *Consimile*, by the king's *commandment*; which, in my opinion, is to be understood of a *verbal commandment* only, and not by any commission: for none is recorded in any of the rolls of his time, which would have been in one Parliament or other, when as commissions of far less moment are entered.

In two Parliaments of *Hen. 6.* the chancellor's place was supplied by a verbal authority, *prout*, an. 9 H. 6. the chancellor
being

being sick, unto whom it appertains *ratione officii sui* to pronounce the cause of summons, the duke of *Gloucester* (the king's protector) appointed Doctor *Lyndwood* to pronounce the same.

An. 31 H. 6. the chancellor being absent, the king commanded the bishop of *Lincoln* to declare the cause of summons: there was then no commission granted to supply the chancellor's place, as now of later times.

In the end of this chapter shall be shewed when the first commission was granted, and precedents of the several forms thereof.

§ 5. *The manner how the cause of summons is declared, when the king is present in person, and how when his majesty is represented by commission.*

The king is ever present when the cause of summons is declared, either in person, or by commission. If in person, the lord chancellor doth first remove from his place,

which is on the king's right-hand behind the chair of state, and confers privately with his majesty.

The cause of which ceremony may seem to be this; that, as none but the king can call the Parliament, so it may appear, that none but his majesty can propound and direct wherefore it is called.

And this ceremony is ever observed by the lord chancellor, before he speak any thing in Parliament, when his majesty is present; as for the continuance, prorogation, or dissolution of the Parliament; and they are entered to be done *ex mandato domini regis*. So antiently all the chancellors speeches are entered to be *de par le roi*, when the king was present; whereby it seems this ceremony was observed also.

If the king be represented by commission, then the lord chancellor sits on the woolfack, and the commission being read, the commissioners repair to the seat prepared for them, on the right-side of the chair of state beneath the steps. Then the
lord

lord chancellor ariseth, and conferreth with the commissioners, and returns to his place on the woolfack, and there declares the cause of summons, *prout*, an. 28 Eliz. 29 O^r.

Vide an. 51 E. 5. The prince of *Wales* represented the king in Parliament, and sat in the chair of state.

Here may be a question, where the lord chief justice sat temp. E. 3. when he declared the cause of summons? and where he, that should now supply the lord chancellor's place, ought to sit, when he declares the same in the king's presence?

In my opinion he ought to sit in his own proper place, until he doth arise to confer with the king, and then to declare the same in the lord chancellor's place, as he may be near the king. It is not fit that he should sit or stand at the woolfack, and speak with his back to the king; but I have no precedent for it.

The commission to supply the lord chancellor's place.

Elizabeth, by the grace of God queen of *England, France, and Ireland*, defender of the faith, &c. To our trusty and well-beloved Sir *Robert Catelene*, knight, chief justice of the pleas to be holden before us, greeting: Whereas our right trusty and right well-beloved counsellor, Sir *Nicholas Bacon*, knight, lord keeper of our great seal of *England*, is at this present sore visited with sicknesse, that he is not able to travaile to the upper house of this our present Parliament holden at *Westminster*, nor there to supply the room and place in the said upper house, among the lords spiritual and temporal there assembled, as to the office of the lord chancellor, or lord keeper of the seal of *England* hath been accustomed, we, minding the same place and room to be supplied in all things as appertaineth, have
named

named and appointed you, and by these presents do name, constitute, appoint, and authorize you, from day to day, and time to time, hereafter during our pleasure, to use and occupy the place and room of the said lord keeper in our said upper house of Parliament, amongst the said lords spiritual and temporal there assembled, and there to do and execute all things from day to day, and time to time, as the said lord keeper of the great seal of *England* should or might do, if he were there present, using and supplying the same place: wherefore we will and command you the said *Robert Catelene* to attend unto and about the execution of the premises with effect; and these our letters patents shall be your sufficient warrant and discharge for the same in every behalf. In witness whereof we have caused these our letters to be made patents. Witness our selfe at *Westminster* the 25th of *October*, in the 8th year of our reign.

I have

I have not performed my promise to set down the first commission of this kind, and the occasion thereof; but this is the first in our journals; and I suppose that this authority was first granted by commission, when the king did forbear to be present daily in person as the former kings were, when a verbal commandment sufficed, *prout*, temp. E. 3. & H. 6. antea.

C H A P.

C H A P. VII.

PROLOCUTOR DOMUS COMMUNIS.

§ 1. *The commons ever had a speaker.*

THAT the commons have ever had their speaker, I think none will doubt. Yet it may be objected, that they needed none in the antient times when both houses sat together. But I have shewed, in the third chapter, that the commons ever had a place for their consultations apart from the lords, though they did often meet and sit together in one room, and then a speaker was necessary, to avoid confusion of speech and arguments.

To resolve this more clear, *vide lib. sanct. Albani*, fol. 207, in Sir Robert Cotton's library; the answer of the Parliament, an. 44 H. 3. to pope *Alexander*, touching the
recal

recal of *Adomar*, the elect bishop of *Winchester*, from banishment; viz. *Si dom. rex & regni majores hoc velint, communitas tamen ipfius ingreffum in Angliam jam nullatenus pffineret*; which is figned and fealed by all the lords, and by *Petrus de Monteforti*, vice totius communitatis; which fhews plainly that he was their fpeaker: for the very fame words did Sir *John Tiptofte*, their fpeaker, fign and feal to the intail of the crown, an. 7 & 8 H. 4.

There are fome other records, out of which one may guefs they had a fpeaker; *prout*, an. 17 E. 3. n. 9. *Les ckivalers des countees & les communs responderent per Monsieur William Truffell*, who may be fupposed to be their fpeaker.

But the firft that doth directly name him is the Parliament 51 E. 3. n. 87.

The laft day of the Parliament (faith the record) Sir *Thomas Hungerford*, knight, fpeaker, declared to the lords, that he had moved the king to pardon all fuch as were unjustly convicted in the laft Parliament,
and

and that the king willed him to make fpecial bills for them, which he had done for feven, &c.

It can be no argument that the commons had no fpeaker before this 51 *Edw.* 3. because no former records mention him; for this is to be noted, that the antient rolls did record only what acts paffed between both houfes, and what laws were made, and omitted the forms and ceremonies then ufed.

There are divers Parliament-rolls of *R.* 2. that mention the fpeaker in the beginning, as his prefentment or proteftation, or the like; and ever after he is omitted in the fame rolls, and all is entered to be fpoken by the commons, not once naming him; *prout*, an. 1 R. 2. an. 2 R. 2. *apud Gloucester.* n. 18. 20. 22, 23, 24. 26. an. 4 R. 2. n. 10. 12, 13. an. 5 R. 2. n. 10. 16. an. 21 R. 2. n. 8, 9. 14, 15. And the Parliament-rolls an. 1, 2. 4, 5, 6, & 11 H. 6. do mention the fpeaker's proteftation; but whatsoever elfe is fpoken or done, as on the
behalf

behalf of the commons, is recorded to be done by the commons, and the speaker not once named.

The like may be observed out of the Parliaments an. 2 H. 6. n. 6. an. 4 H. 6. n. 10. an. 6 H. 6. n. 16. an. 28 H. 6. n. 16. an. 29 H. 6. n. 16. an. 31 H. 6. n. 30. and an. 12 E. 4. n. 10. an. 22 E. 4. n. 10. which say, that that was spoken by the commons, which, without doubt, was spoken by the speaker on their behalf.

Whereas in divers other Parliaments of *Rich. 2.* and *Hen. 4.* and downwards to this day, the party that speaks for the commons is always recorded; *viz.* the speaker anti-ently, and their messenger of later times.

And although the Parliament-rolls of 1, 2, 4, 5, 6, 17, 20. and 21 years of *Rich. 2.* do mention the speaker, and his solemn protestation is there recorded; yet there be divers other parliament-rolls of *Rich. 2.* wherein the speaker is not once named at all; *viz.* an. 5 R. 2. 7 Maii; an. 6 R. 2. *oſtabis Mich.* and an. 9, 10, 11, 13, 14, 15, 16,

16, & 18 R. 2. So that I do not marvel that the records of *Edw. 3.* (which are the first Parliament-rolls now extant) do not mention the speaker. And therefore I may boldly affirm, that the commons had their speaker as well in the time of *Edw. 3.* and ever before, though he be not then recorded, as in the time of *Rich. 2.* when it is apparent they had a speaker, though not mentioned in the rolls, *viz.* in all the Parliaments between the 6 and the 17 *Rich. 2.*

§ 2. *The election of the speaker.*

At this day, the cause of summons being declared, if by the king (who in this learned age hath ever delivered the same to the great admiration of the hearers) the lord chancellor confers first with his majesty, and then in his name commands the commons to assemble in their house, and to choose one of their members to be their speaker, and to present him to his majesty on a day certain.

If the cause of summons be delivered by the lord chancellor, or by any other whom the king appointed, he concludes his speech with the king's commandment to the commons to choose their speaker, without removing from his place to confer first with his majesty, or with the commissioners, if the king be absent.

The commons being thereupon assembled in their house, one of them putteth the rest in mind of their charge given in the upper house, touching the choosing of a speaker; and then doth of himself commend one unto them, and desireth their opinions to be signified by their affirmative or negative voices; and if any man stand up and speak against him so named, alledging some reason, he ought to name another.

When it appeareth who is chosen, after a good pause he standeth up, and sheweth what abilities are required in the speaker, and that there are divers amongst them well furnished with such qualities, &c. disableth himself;

himself, and prayeth a new choice to be made; which is commonly answered with a full consent of voices upon his name.

After which two go unto him in the place where he sits, take him by the arms, and lead him to the chair. After a while he riseth, and uncovered, with humble thanks for their good opinion of him, promiseth his willing endeavour to do them service, &c.

Then some one (commonly he that first spake) puts them in mind of the day appointed to present their speaker, &c.

The mace is not carried before him until his return from the upper house, being presented to the king, and allowed of.

Here may be two questions moved:

1. Whether the commons might choose their speaker, if the king commands them not?
2. Whether the election be in their own absolute choice?

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To clear these, we must view the antient records. Those of *Rich. 2.* are the first that mention the speaker.

It doth not appear by any of them, that the commons ever had any such commandment to choose their speaker; neither is a word of it in any record of *Edw. 3.* which have the speeches at large touching the cause of summons; most of them concluding with a charge to the commons, to consider and advise thereof amongst themselves, but nothing touching the election of their speaker.

Yet out of doubt they did first choose their speaker, before they entered into any debate of their charge.

The first charge to choose their speaker is in an. 2 H. 4. and yet it is omitted again in the Parliament an. 7 & 8 H. 4. but, that only excepted, it is continued from 2 H. 4. until this day; and the long use hath made it so material, that without the king's commandment or leave they cannot choose their speaker; which appears plainly by this, that
in

in an. 31 H. 6. the Parliament being prorogued, and the speaker arrested in execution, in the interim before the access, the commons prayed his enlargement, which, after long debatement of the privileges of Parliament, was denied; and then certain of the lords were sent to the commons, and commanded them in the king's name to choose a new speaker, and thereupon they did so.

And of late years, in the time of queen *Elizabeth*, the Parliament being prorogued, and the speaker dead in the interim, before the access, the commons, before they proceeded to any business, acquainted the lords therewith, and desired the lords to intimate the same to the queen (as shall be more largely declared hereafter in this chapter) and so were commanded by her majesty to choose a new speaker.

But as touching the *second* question; surely the election of the speaker was antiently free to the commons, to choose whom they would of their own house, which ap-

pears in this, that the king never rejected any whom they made choice of.

Vide 5 R. 2. The Parliament began the 4th of November, and the 18th of November the commons came and presented Sir Richard Walgrave, whom they had chosen for their speaker, who excused himself, desiring to be discharged; but the king *luy chargeast. del faire par sa ligeaunce*, in as much as his companions had chosen him, n. 9.

Whereby it appears plainly, that the choice was absolutely in their own power.

§ 3. *The presentment of the speaker.*

At the day appointed, his majesty sitting on his royal throne, and the lords all in their robes, the commons are called in, who being come, the speaker is brought between two of them, with low obeisances, to the bar, and so presented unto his majesty.

The presentment of the speaker is not recorded in any of the rolls of *Edw. 3.* and none

none of *Rich. 2.* speak of the king's commandment to choose a speaker; so that there could not be any day appointed to present him: yet I suppose the commons did ever first present their speaker, before they declared any thing to the king; otherwise, what needed the speaker's excuse unto the king before he was admitted to speak, even in the first years of *Rich. 2.* which no record says was a new institution, and therefore no doubt was in use also under *Edw. 3.* and before.

From the second year of *Hen. 4.* and downwards, the commons are willed to choose their speaker, and to present him.

§ 4. *The speaker's excuse.*

This is now formal and out of modesty; for he first excuseth himself unto the commons when they elect him, and afterwards to the king when he is presented.

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The first excuse that I find is that of Sir *Richard Walgrave*, knight, speaker, an. 5 R. 2. whom the king charged upon his allegiance to take it upon him, *si he be was chosen by the commons.*

The next is an. 1 H. 4. of Sir *John Cheyny*, who made no excuse at his presentment: but the next day after he and the commons came before the king, and declared his disability to serve by reason of a sudden disease, and that the commons had chosen Sir *John Dorewarde* in his place, beseeching his majesty to allow thereof; which the king did, and commanded Sir *John Dorewarde* to be their speaker, and he made the common protestation for himself and the commons, but no excuse, n. 63.

The next excuse is an. 5 H. 4. n. 8. of Sir *Arnold Savage*, which the king would not allow of.

An. 6 H. 4. n. 8. Sir *William Sturmy* made no excuse.

An. 7 & 8 H. 4. n. 9. Sir *John Tiptoft* desired to be excused in respect of his youth;

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youth; but the king affirmed the election.

All other speakers in *Hen.* 4th's time desired to be excused, and some under *Hen.* 5. some others did not; it was not constantly observed, but from the sixth year of *Hen.* 6. since which time they have all (except two) desired to be excused: yet none were excused, save only Sir *John Popham*, knight, an. 28 H. 6. whom the king discharged; and thereupon the commons chose and presented *William Tresham*, esq; who made no excuse. Neither did Sir *William Oldball*, an. 29 H. 6. desire to be excused.

At this day, the speaker having made his excuse, the lord chancellor confers with the king, and then telleth him, that his majesty doth approve of the commons choice, and will not allow of his excuse.

Then the speaker proceeds to his speech; but antiently they made first a protestation, as followeth.

§ 5. *The speaker's protestation.*

The first protestation is that of 1 *Rich. 2. n. 15.* yet, no doubt, the like was made in former times, though not entered; for I find no new institution or order for this; neither could it be new, being in the beginning of the first Parliament of this young king.

The words of the protestation are to this effect; *viz.* That what he had to say was from the whole house, and therefore he required, that if he should happily speak any thing without their consents, that the same might be amended before his departure from the same place.

An. 7 H. 4. n. 9. Sir *John Tiptoft* was presented speaker, and affirmed by the king, his excuse by reason of his youth being first rejected. This was the 2d of *March*. On the 23d day of *March* he made the common protestation (it should seem the first day

day he was in good hope to be excused, and therefore was unprovided of a protestation, which he made not until he had somewhat else to speak on the behalf of the commons) and desired a confirmation of their privileges. On the third of *April* he desired his protestation to be entered, and desired also (in the name of the commons) that if they shall deliver any thing in writing, the same writing may be redelivered to them again, at any time during the Parliament, to be amended, if need be, at their pleasure; unto which the king assented.

An. 11 H. 4. n. 12. The commons prayed the king that a petition, which they had delivered in Parliament, touching *Lollards*, might be redelivered to them again, and nothing therein enacted; which the king granted, *of his special grace*, provided it be not drawn into example. *Nota*, they prayed not any amendment, as they might of right, but that the petition be redelivered, and that nothing be proceeded thereupon; which was unusual.

At

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At this day the speaker wholly omits the protestation, neither is it now needful; for he never comes to speak on the behalf of the commons, unless to demand judgment against any whom they have accused to the lords.

§ 6. *His speech antiently and at this day.*

Antiently the speaker came not before the king, until he had somewhat to say unto his majesty on the behalf of the commons; and then, having first made his protestation for amendment of any thing he should speak otherwise than he was directed, he proceeded to speak in the name of the commons, and if he spake any thing of his own mind, as sometimes it happened, he declared it so; but never made any oration, as now of latter times.

To prove this, *vide* all the records of *Rich. 2. Hen. 4.* and downwards to the 6 *Hen. 8.* until cardinal *Wolfey* had the seal; during whose time there are no journals extant,

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tant, neither are the acts certified into the chancery, as they ought to have been. Whereby the antient forms of Parliament are much obscured and diminished. His ambition first brought in the privy counsellors, and others of the king's servants, into the house of commons, from whence they were antiently exempted. The effects are, the commons have lost their chief jewel (freedom of speech) and the lords departed with as much of their judicature.

An. 1 R. 2. The speaker's speech follows his protestation; but it concerns not the cause of summons, but matters *debors*; so that it seems he was directed therein by the commons.

An. 2 R. 2. He rehearseth the chancellor's speech, and answers in the name of the commons, which shews plainly the commons directions for his speech.

An. 3 R. 2. He delivers the answer of the commons touching the aid required.

An. 6 R. 2. The commons debated two days amongst themselves of their charge touching

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touching the king's passage into *Flanders*; then they desired conference with the lords. After consultation had, the speaker came, and made his protestation, and then delivered the answer of the commons; so that the speaker came not until the commons had agreed what he should say. And no records of *Edw.* 3. mention either the speaker's presentment or protestation, but the answer of the commons when they were agreed thereon; though out of doubt the same was delivered by the speaker only.

Afterwards, an. 17 R. 2. (for between the 6th and the 17th no speaker is recorded) the speaker's presentment and protestation are only entered, and no speech the first day.

An. 20 & 21 R. 2. *Consimile.*

And so in very many Parliaments of *Hen.* 4, 5, and 6. and *Edw.* 4. and downwards to the 6 *Hen.* 8.

Which protestation the commons also directed; as may appear an. 13 H. 4. where the speaker required, on the behalf of the commons,

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commons, that it would please the king, that they might be advised of their protestations until the next day; which plainly shews, that the speaker spake nothing (his excuse excepted) but what the commons advised him.

Vide etiam an. 2 H. 4. The speaker's protestation being allowed, he then *of his own authority* (saith the record) rehearsed the cause of summons, &c.

So that if he made any speech of his own he declared it so.

Of latter times, the speaker's speech is what it pleaseth himself, having no direction at all from the commons touching the same. Nay they do now wholly omit their antient protestation, and, in lieu thereof, make petition to the king, on behalf of the commons; some, in general words, for all their antient privileges, and some, in particular, for, 1. Access unto his majesty; 2. Freedom of speech; and, 3. Freedom from arrests.

And

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And yet they did ever enjoy these privileges in as ample manner as now, though not formerly prayed by the speaker.

I have entered this last speaker's speech (Sir Thomas Crewe) at large, in the journal of 21 Jac. R. which, in my opinion, is the best that is recorded since the 6th of *Hen. 8.* It consists not in verbal praises, but is real, fit for the times, and well befitting the dignity of a Parliament.

The speaker having ended his oration, wherein he always makes some requests on the behalf of the commons, the lord chancellor confers again with the king, and makes answer thereunto in his majesty's name, granting his requests for access to his majesty, and for their liberty and privileges in as ample manner as they have enjoyed them in any times of his majesty's progenitors.

§ 7.

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§ 7. *That the commons ever enjoyed those privileges which the speaker now petitions for, though never desired by any of the antient speakers, until after the sixth year of King Hen. 8.*

The petitions are now three, touching their privileges; *viz.*

First, *Access unto his majesty;*
2dly, *Freedom of speech;* and
3dly, *Freedom from arrests.*

As touching *access unto his majesty*, it appeareth plainly they ever enjoyed this, even when the kings were absent from Parliament, *prout*, an. 51 E. 3. the king being then sick at *Eltbam*, the speaker, Sir *Thomas Hungerford*, declared to the lords, that he had moved the king to pardon all such as were unjustly convicted in the last Parliament, &c. n. 87.

That

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That the king was then sick at *Eltham*,
vide n. 21.

At all other times of *Rich. 2. Hen. 4.*
and downwards, the commons, with the
speaker, were ever admitted to the king's
presence in Parliament to deliver their an-
swers: and oftentimes under *Rich. 2. Hen.*
4. and Hen. 6. they did propound matters
to the king, which were not given them in
charge to treat of.

This request for access unto his majesty
is first recorded, an. 28 H. 8. to be made
by *Richard Riche*, speaker; then by *Thomas*
Moyle, speaker, an. 33 H. 8. and afterwards
by all others whose speeches are in the jour-
nals.

The speaker's petition for *freedom of*
speech is not recorded before the 33 *Hen. 8.*
when it was made by *Thomas Moyle*, speaker.

Neither was it ever denied them; for the
commons would never suffer any uncomely
speeches to pass of private men, in their
house, much less of the king, or of any of
the lords.

They

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They did oftentimes under *Edw. 3.* dis-
cuss and debate amongst themselves many
things concerning the king's prerogative;
and agreed upon petitions for laws to be
made directly against his prerogative, as
may appear by divers of the said petitions;
yet they were never interrupted in their con-
sultations, nor received check for the same,
as may appear also by the answers to the
said petitions.

The precedents of *Edw. 3.* are the best,
(he being the right heir to the crown, abso-
lute in his government, and well-beloved
of his people) and may be freely cited.

Rich. 2. succeeded, being very young,
having froward uncles, who were so popu-
lar, that they made him very jealous of his
prerogative.

I will not allege such precedents of his
time, as prove that the commons argued
and propounded matters contrary to his pre-
rogative (for they are many); but only ob-
serve how that king did, in the latter end
of his reign, take notice of the commons

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consultations in matters concerning the same.

This first happened in the Parliament an. 20 *Rich. 2.* when the king had mastered his uncles, and became absolute.

In this Parliament (Sir *John Bussye*, one of the king's minions, being speaker) a bill was exhibited to the commons, that the great and excessive charge of the king's house be amended and taken away, and against the multitude of bishops, and ladies in the king's house.

No man will doubt but that *Bussye* did presently acquaint the king with this; and it was bruited also at that very time, that the king was displeased with the commons, for that they intended to dissuade his majesty from sending certain lords with forces into *Lombardy*; whereupon the commons came before the king, and denied there was any such speech among them: and yet (though this occasion was offered by themselves) the king took no notice of the bill touching his house, but willed the lord chancellor to
tell

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tell them, that his officers should come and confer with them about weighty affairs.

At the lords return from this conference the king came into the Parliament-house, and told the lords, that he understood that the commons had (in this conference) handled some matters against his royal estate and liberty, and commanded the lord chancellor to declare the same.

Whereupon the lord chancellor declared four bills propounded by the commons, whereof the fourth and last was the bill touching the excessive charge of the king's house, &c. which only displeased his majesty; and he was highly offended that the commons, who are his subjects, durst presume upon any ordinance or government of the king's person or house; which he commanded the lords to tell the commons, and to charge the speaker to declare his name that exhibited the bill: and thereupon *Haxey* was condemned in Parliament for a traitor for that bill, but afterwards

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pardoned. *V. Rot. Clauf. & Pat. an. 20 R. 2. p. 3. m. 12.*

By this you may see how the king did cast about to have this matter related unto him in the upper house; neither can it appear by any antient record, that the king did ever take notice of any of the commons speeches or consultations, until they were reported unto his majesty in open Parliament.

V. an. 1 H. 4. n. 90. This *Thomas Haxey* exhibited his petition (of right) to reverse the said judgment, for that it was *encountre droit & la course quel avoit este devant en Parlement.* And the said judgment was reversed accordingly. And in the same Parliament also, *n. 104.* the commons, among their petitions, do shew, that this *Haxey* was condemned *encountre droit & la course quel avoit este use devant en Parlement, en anientisement des custumes de les cōes;* and do therefore pray the same to be reversed, *&c. si bien en accomplissement du droit come pur salvation des liberties de les ditz cōes.*

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The next precedents are of *Hen. 4.* which are not much to be stood upon, because he was an usurper; and therefore it behoved him to affect the love of his commons. In his time (an. 7 & 8.) the speaker told him plainly, in open Parliament, that his house was far more chargeable, and yet less honourable, than any of his progenitors, and it was well taken by the king, whereas *Haxey* was condemned for a traitor for a less matter under *Rich. 2.* Yet some precedents of his time do plainly prove the antient privileges of the commons in this point, and therefore I will recite those only.

An. 2 H. 4. n. 11. The commons petition the king, that he would not suffer any report to be made unto him of any matters either moved or debated amongst them, until they be concluded, nor give them any credit; whereunto the king assented.

An. 9 H. 4. n. 21. It is plain that the king is not to be told of any thing in communication with the commons, until it be declared by themselves; which was declared

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to

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to be so upon this occasion. The lords sent for certain of the commons, and told them what subsidy they thought fit to be given to the king, and wished them to tell it their companions, and to advise them to yield thereunto; unto which the commons did (justly) take exceptions, and made complaint thereof unto his majesty; and thereupon it was declared and agreed, that it is lawful for the lords to commune of the subsidies by themselves, and for the commons by themselves; but neither the lords nor the commons are to make report thereof unto the king before they are agreed: and then the same is to be declared by the speaker in the accustomed manner. *Vide chartam de Indemnitate in schedula ibidem.*

If the king might not take notice of the subsidy (about which the lords and commons did often confer, and, being agreed, made an indenture thereof) much less might any thing else moved amongst the commons be reported unto his majesty before the commons were fully agreed thereon, and declared

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declared the same by their speaker, or otherwise, either unto the king or lords. And, if my poor opinion may be heard, what hurt or prejudice can it be to suffer the commons to have their consultations free, without check or control? They will use no unseemly terms of any man. They can do nothing of themselves; neither can they propound any thing but by way of bill or petition. If they be suffered to proceed freely, their proposition will the sooner be rejected or agreed on among themselves. If agreed on, it will be related to the lords or to the king: and when it comes before his majesty, it is in his power (if the lords stop it not) to make a full stay thereof, if he like it not. Whereas on the contrary side, to be denied free liberty of speech seems very harsh unto them, and hath made them so jealous of their privileges, that they have appropriated more unto themselves of late than ever they claimed heretofore; I mean, judicature, which they ever disclaimed; as shall be shewn hereafter.

The third petition is for *freedom from arrests.*

This petition was never made until of late years; yet this privilege did ever belong to the lords and commons, and to their servants also, coming to the Parliament, staying there, and returning home.

An. 18 E. 1. *Bogo de Clare* and the prior of Holy Trinity in *London* were complained of, for that the said prior (by procurement of the said *Bogo*) had cited the earl of *Cornwall* in *Westminster-hall*, in Parliament-time, to appear before the lord archbishop of *Canterbury*, &c. whereupon they were sent for *ad respondendum domino regi, & Petro de Charent senescallo regis, Waltero de Fane-court marescallo regis, domino Edmundo comiti Cornubie & abbati de Westminst. eo quod dicta aula est infra libertates dicti abbatis.* They appeared and submitted themselves to the king; whereupon they were sent to the Tower of *London*. *Postea venit prædictus Bogo & finem fecit domino regi pro prædict. transgressione per duas mille marcas, & quoad prædictum*

*prædictum comitem * vid. mille libras pro transgressione sibi facta, &c. Vide Placita Parliamenti an. 18 E. 1. in an old manuscript in the Tower and in the plea-rolls.*

In that year also there is a petition of the master of the Temple, to have leave to distrain for the rent of a house in *London*, (held of him by the bishop of *St. David*) for that he could not distrain *tempore Parliamenti*. The answer is, *Non videtur honestum quod rex concedat &c. tempore Parliamenti; sed alio tempore distringat, &c.* And *Edw. 2.* sent his proclamations to the justices of assize, *quod supersedeant, ubi barones & alii summoniti ad Parliamentum regis sunt partes.* Vide *Claus. an. 8 E. 2. m. 22 & 23. & an. 7 R. 2. m. 24.*

But these precedents prove the privileges of the lords only; the next shall of the commons also, and their servants.

* In *Ryley's Plac. Parl.* it is *vad.* which, probably, stands for *vadiavit*, and is the right reading.

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An. 5 H. 4. n. 71. *inter petitiones communium.* Item, Pray the commons, that whereas, according to the custom of the realm, the lords, knights, citizens, and burgeses, coming to your Parliament at your command, staying there, and returning home to their countries, and their men and servants with them in the said Parliament, are under your special protection and defence, and ought not, for any debte, trespass, or other contract whatsoever, to be arrested, or any way imprisoned in the mean time; and now so it is, that many such men coming to your Parliament, and others their men and servants, during the said Parliament, have been arrested by them who had full knowledge that they so arrested were of the Parliament, or the men and servants of them of the Parliament as aforesaid, in contempt of you, great damage of the party, and delay of the business of your Parliament; may it please you to establish, that if any hereafter do arrest any such man coming to the Parliament as aforesaid, or
any

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any of their men or servants remaining with them in the said Parliament, during the said Parliament, or any thing attempt contrary to the custom, he shall make fine and ransome unto you, and render treble damages to the party grieved.

R^o. *Y ad sufficient remedi en le cas.*

I have translated this petition or bill exhibited by the commons, *ad verbum*, out of the original. By this you see who are privileged; *viz.* the lords, knights, citizens, and burgeses, and their servants, coming to Parliament, staying, and returning.

The petition of the commons is to have the contemners of this privilege punished by fine and ransom to the king, and treble damages to the party, which the lords rejected, for that the party grieved had sufficient remedy.

What remedy this was doth appear by the earl of *Cornewall's* case, an. 18 E. 1. *viz.* that the party contemning the privilege of Parliament is to be committed to prison, to make fine and ransom to the
king,

king, to render to the party grieved such damages as the lords of the Parliament shall award; and to answer the king's steward and marshal, if the contempt be within the verge, for the wrong done to them; which is a greater punishment than the commons required; and happily they knew it not.

But this being the antient custom, and due by prescription, the lords thought it more honourable to retain it, than to enact a new law to punish the contemners of their privileges, as if they had not been otherwise able to do it of themselves, or had no remedy before, but were subject to scorn and contempt.

As the offender was punished, so the party arrested was set at liberty; and this was so notorious, that the commons (at that time) desired no redress therein by their petition.

It rests to shew how the party so arrested, was set at liberty, which shall follow: but here first occurs another petition of the commons, touching assaults during the Parliament; *viz.*

Eodem an. 5 H. 4. n. 78. *Item*, Pray the commons, that whereas all lords, knights, citizens, and burgeses, and their servants, coming to Parliament by the king's writ, in coming, staying, and returning are under your protection royal, and many mischiefs and impeachments do often happen unto the said lords, knights, citizens, and burgeses, and their menial servants at those times, as by murther, maimes, and batteries, by people lying awaite, or otherwise, for which due remedy is not yet provided: and namely in particular in this present Parliament, an horrible battery and mischief is committed upon *Richard Chedder*, esquire, who is come to this Parliament with Sir *Thomas Brooke*, knight, one of the knights for the countie of *Somerset*, and menial with him, by *John Sallage*, otherwise called *John Savage*, whereby the said *Richard Chedder* is emblemished and maimed even to the peril of death, that it would please you to ordain upon this matter sufficient remedy, and for other such cases semblable, so as the
punish-

punishment of him may give ensample and terror unto others not to commit the like mischief in time to come; that is to say, if any man shall kill or murther any that is come under your protection to Parliament, that it be adjudged treason; and if any do maim, or disfigure any such so come under your protection, that he lose his hand; and if any do assault or beat any such so come, that he be imprisoned for a year, and make fine and ransome to the king: and that it would please you of your special grace hereafter to abstain from charters of pardon in such cases, unless that the parties be fully agreed.

R^o. *For that the deed was done within the time of this Parliament, let a proclamation be made there where the deed was done, that the said John Sallage appear, and render himself in the king's bench within a quarter of a year after the proclamation made: and if he doth not, let the said John Sallage be attainted of the said deed, and pay unto the partie endamaged his double damages, to be taxed*

taxed by the discretion of the judges of the said bench for the time being, or by inquest, if need be, and make fine and ransome at the king's will; and so likewise let it be done in time to come in like cases.

Thus far the petition of the commons with the answer. *Vide* the printed book, how the statute is drawn up upon this petition and answer; & *vide* Rot. Claus. an. eodem. *Constat* that the said *John Sallage* did yield himself according to the proclamation.

This petition and answer may be compared to the former; *viz.* that the lords would not *discedere* from the remedy due by antient prescription, which they had for assaults as well as for arrests. Only they agreed to the commons herein, to provide for him that could not be apprehended after the fact done.

An. 23 H. 6. n. 41. *inter petitiones communium.* The commons pray that every person, being of the lord's house, or of the house of commons, having any assault or
affray

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affray made upon him at the Parliament, or coming, or going from thence, may have the like remedy therefore as Sir *Thomas Parr* had.

R°. *The statutes therefore made shall be observed.* It should seem the commons had forgotten the statute made 5 Hen. 4.

Concerning a commitment of a peer of this realm in the time of Parliament.

The earl of *Arundel's* case, in a Parliament of the 6th of *February*, an. 1 Car. R. will fully satisfy this point; and therefore I will add it here at large.

The 14th of *March*, an. 1625, the earl of *Arundel* being committed by the king to the *Tower of London*, sitting the Parliament, the house was moved to take the same into their consideration, and so to proceed therein as they might give no just offence unto his majesty, and yet preserve the privileges of Parliament.

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The lord keeper of the great seal thereupon signified to the house, that he was commanded to deliver this message from his majesty unto their lordships; viz. *That the earl of Arundel was restrained for a misdemeanor which was personal to his majesty, and lay in the proper knowledge of his majesty, and had no relation to matters of Parliament.*

Whereupon the house was put into a committee, and being resumed, the lords sub-committees for privileges, &c. were appointed to search for precedents concerning the commitment of a peer of this realm during the time of Parliament; and the lord chief justice, Mr. Justice *Dodderidge*, and Mr. Justice *Yelverton*, were appointed to attend their lordships:

To meet when they please, and to report, when they were ready for it, what their lordships think fit for the consideration of the house.

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The

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The 15th of *March* 1625, the lord treasurer delivered a message from the king *in hæc verba, viz.*

Whereas upon a motion made by one of your lordships, the lord keeper did yesterday deliver a message unto your lordships from his majestie, that the earl of Arundel was restrained for a misdemeanor which was personal to his majestie, and lay in the proper knowledge of his majestie, and had no relation to matters of Parliament: his majestie hath now commanded me to signifie to your lordships, that he doth avow the message, in sort as it was delivered, to have been done punctually according to his majestie's own direction; and he knoweth that he hath therein done justly and not diminished the privilege of the house.

And because the committee appointed yesterday to search for precedents, &c. had not yet made any report to the house, therefore the decision of this business was suspended for this time.

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The 5th of *April* 1626, the earl of *Hertford* made this report to the house, *viz.* The lords committees for privileges met on *Munday* last.

The first question that did arise amongst them was, whether those proxies are of any validity, which are deputed to any peer who sitteth not in Parliament himself? and it was conceived that those votes were lost; whereupon the committee found this house to be deprived of five suffrages by the absence of the earl of *Arundel*, unto whom they were intrusted. And the committee finding by the journal-book, that the sub-committee (which was appointed to search for precedents of privileges concerning the commitment of a peer in time of Parliament) had not yet made report to this house; they therefore conferring their notes of precedents together, whereof they had made search, they found no peer to have been committed (the Parliament sitting) without trial, or judgment of peers of Parliament;

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and

and that one only precedent of the bishop of *Winchester*, in the book-case of the 3d year of king *Edw. 3.* which was here urged, cannot be proved to be in Parliament-time; and this the lords of the grand committee thought fit to offer to the consideration of the house.

Hereupon the house was moved to give power to the lords sub-committees for privileges, &c. to proceed in the search of precedents of the commitment of a peer of this realm during the time of Parliament; and that the king's council might shew them such precedents as they have of the commitment of a peer during the time of Parliament, and that the said sub-committee may make their report unto the house at the next access.

All which was granted and agreed unto, and these lords were added unto the said committee; viz. The lord treasurer, the lord president, the duke of *Buckingham*, the earl of *Dorset*, the earl of *Devon*, the earl
of

of *Clare*, lord viscount *Wallingford*, lord viscount *Mansfield*, the lord *North*.

The king's council are appointed to attend the lords. They, or any five of them, the said committee, to meet on *Thursday* in the *Easter* week at two of the clock in the painted chamber, and afterwards when they please.

The 18th of *April*, the lord president reported the proceedings of the lords sub-committees for privileges, &c. upon the commitment of the earl of *Arundel*; viz. that the king's council had searched, and acquainted the said lords sub-committees with all that they had found in records, chronicles, or stories concerning this matter, unto which the said lords sub-committees had given full answer, and also shewed such precedents as did maintain their own rights: all which follow, *in hæc verba, viz.*

Touching the imprisonment or restraint of lords in time of Parliament.

Under *Edw. 1.* the privilege of the lords of Parliament was such, that although the power of the church was so great, that it pretended to be scarce less than the highest temporal power; yet when *Edmund* duke of *Cornwall*, in Parliament-time, was but cited by a process from the archbishop of *Canterbury*, which was far less than any imprisonment, he recovered 1000 marks damages against *Bogo de Clare*, that pronounced the citation, and both this *Bogo*, and the prior of *St. Trinity* that served it, were fined in great sums to the king for the contempt also against him in the citation. 18 *Edw. 1.* *Plac. Parl. Rot. 1. n. 4.*

2. The case of archbishop *Stratford*, in the 15 *Edw. 3.* is observable here. It appears, that though he were commanded to stay from the Parliament until he had answered certain articles in the exchequer, touching

touching an account; yet by a dutiful standing on his right, he did get his place in the house; and so sensible were the lords of that breach of their privilege in that restraint of this archbishop, that they declared, that none of them ought to be questioned in any place but in Parliament; and to that purpose also an act passed that year, though with the rest of that year it now stands repealed. *Rot. Parl. 15 E. 3. m. 6 & 7. & Stat. 15 E. 3. cap. 2.*

3. Between the Parliaments of 50 and 51 *Edw. 3.* *William Wickham*, bishop of *Winton*, was called to an account for divers monies that he had received of the king, and some other matter, and his temporalities were seised, and by command of *John* duke of *Lancaster*, in the king's name, he was not to come near the king by twenty miles: this was in *Michaelmas* term, 50 *Edw. 3.* In *Hillarii*, 51 *Edw. 3.* a Parliament was held, where the bishops and the clergy, that then were a third state of the Parliament (as they are called frequently in

the antient time) being pressed to give the king a supply, made their complaint to the archbishop of *Canterbury*, as the chief of their state, *De injuria illata eorum confratri & coepiscopo, domino episc. Winton, & quomodo non solum sibi in ipso, sed omnibus illis est & toti libertati ecclesie derogatum; unde constanter asseruerunt se de instantibus negotiis nullatenus effectualiter tractaturos, donec coadunarentur singula cleri membra; affirmantes revera instans negotium eum cum illis communiter tangere, & quod omnes tangeret debere ab omnibus approbari.* And although the archbishop was willing to have declined the meddling with their suit (being of the duke's party); yet he was so far urged by them, that at length he sent for him to come and take his place amongst them, as he did also; notwithstanding no writ of summons appears to have been sent to him that Parliament. *Claus. 50 E. 3. p. 2. m. 6.*

4. The presence of all the lords was thought by the house of commons to be so necessary, and a matter wherein they had such

such interest, that they desired that all the lords that were absent might be sent for: but it was answered, that it would be too long a delay of the Parliament, but such as were near should be sent for. *Rot. Parl. 20 R. 2. n. 8.*

5. The lord *Grey* being imprisoned by *Owen Glendour* in *Wales*, the commons conceived they had so much interest in the presence of every lord there, that they petitioned the king to give the lords of *Roos* and *Willoughby* leave to provide his ransom, which was 1000 marks, which was granted. *Rot. Parl. 4 H. 4. n. 13.*

6. A bill passed both the houses in the *5 Hen. 4.* wherein it is affirmed, that, according to the custom of the realm, the lords, knights, citizens, and burgeses, and their servants, coming to the Parliament, and there staying, and returning home again, ought not to be arrested, or in any manner imprisoned in the mean time for any debt, account, trespass, or other contract whatsoever. It was desired, that if any

any did offend against the privilege, he should suffer fine and ransom, and pay treble damages; but the king's answer is, *Y ad sufficient remedy en le cas.* So that there was no doubt made of the privilege, though a desire were, of a greater remedy than the law had yet provided. *Rot. Parl. 5 H. 4. n. 71.*

7. The commons in 8 *Hen. 6.* in their bill for *Lark*, a servant to *Will. Milred*, a burges of Parliament (which bill passed both houses) affirm, that the privileges of Parliament were clear, that no member was to be arrested in Parliament-time, but for treason, felony, or surety of the peace. *Rot. Parl. 8 H. 6. n. 57.*

8. It was resolved, upon great advice, in 31 *Hen. 6.* that no member of Parliament was to be arrested, saving in cases of treason, felony, breach of the peace, or upon a condemnation had before the Parliament, which (as the law is to this day) must be understood of an arrest of a commoner, upon an execution, before his time
of

of privilege of Parliament. *Rot. Parl. 31 H. 6. n. 28.*

9. In the 34 *Hen. 8.* the king himself, in his speech touching *Ferrer's* case (who being a burges was taken in execution, but discharged by order of the commons house) says, that his learned council had informed him, that all acts and processe, coming out of any other inferiour courts, must for the time cease, and give place to the Parliament as the highest; and that whatsoever offence or injury is in Parliament-time offered to the meancst member of the house, is to be judged to be done both against the king and the whole court of Parliament.

And the chief justice, *Sir Edward Mountague*, and the rest of the judges, confirmed with divers reasons what the king said to that purpose. 34 *H. 8. Hollingshed*, p. 956.

10. Though a lord be sued at the suit of the king in the Star-chamber, for a contempt or riot, &c. yet the suit is to be stayed, &c. by privilege of Parliament in Parliament-time.

time. Case of lord *Vaux*, 9 *Febr.* 1625.
J. H. Lords.

Precedents alleged by Mr. Attorney General, to prove, that a lord of Parliament may be committed in Parliament-time for a personal offence done to the KING, though it be neither treason, felony, nor breach of the peace; with the answers to the said precedents.

1st Precedent. Philip earl of *Arundel* was committed, and not for treason, sitting the Parliament, an. 28 *Eliz.* for which Mr. Attorney cited *Cambden*, in the first part of his history of queen *Elizabeth*.

Nota. This Parliament began the 29th of *October*, on which day the said earl was not present; *ultimo die Octobris* he was present, when the speaker was presented; and then the Parliament was continued unto the 4th of *November* following, and then the
said

said earl was not present, nor the 5th, 7th, 8th, 9th, nor 10th of that *November*, though his name is inserted in the list of the lords.

All other days of that session, which continued to the 2d of *December*, the said earl's name is omitted; and then the Parliament is continued till the 15th of *February* following, on which day the Parliament began again; and in all that journal the said earl's name is omitted.

Answer 1. *Cambden*, out of whose *Annals* the case is cited, saith expressly, that, *after the Parliament was ended*, the earl, proposing to go beyond the seas, wrote a long letter to the queen, complaining of the malice of his enemies, and of the misfortune of some of his ancestors that had suffered in this state, and touching also the liberty and exercise of his conscience, which he meant to gain to himself in other countries, where the Roman catholic religion was exercised; which letter he meant should have been delivered after his passage over:
but

but his purpose being discovered, he was taken in *Suffex*, while he was entering on his journey, and thence brought back, and then committed to the Tower. And for the omitting his name in the journal, on many days of the Parliament of 28 *Eliz.* that is no proof at all of his being committed in the time of Parliament; for there are omissions of lords names in divers days of the journal very frequently, when yet, without question, they were not committed.

2d Precedent. The earl of *Hertford* was committed to the Tower by queen *Elizabeth*, an. 5.

That the commitment was in Parliament-time, he alleged, that the Parliament began the 12th of *January*, an. 5 *Eliz.* and continued until the 10th of *April*; thence prorogued to the 2d of *October*; thence by many prorogations unto the 13th of *September*, an. 8 *Eliz.* and averred, that the said earl was committed (not for treason, &c.) during the prorogation. To prove this,

this, he cited *Cambden's Annals in English*, 5 *Eliz.*

Answer 2. The earl of *Hertford* was committed long before the 5th of *Eliz.* as appeareth by *Cambden's Annals*, where he placeth both his commitment and his censure in the Star-chamber about the beginning of 1562, that is, in the 4th of *Eliz.* So that the Parliament of 5 *Eliz.* beginning not till the 12th of *January*, it is plain that he was both committed and censured long before the Parliament.

3d Precedent. *Fisher* bishop of *Rocheſter* committed in Parliament-time, an. 25 H. 8. for his opinion to maintain the pope's supremacy, which was not treason by statute until the year following: for this he cited *Martin's Chronicle. Vide Parl.* an. 25 of *Hen. 8.* that the said bishop of *Rocheſter* was not present all that Parliament, as appeareth by the journal.

Answer 3. The bishop, though all were granted to be true that *Martin* saith of him, was

was not committed in the time of Parliament, but after the Parliament ended; and that both for misprision of treason and for treason.

First, One of his offences is supposed to have been the denying to take an oath of supremacy, ordained by the statute of 25 *H. 8. cap. 222.* for the defence of that act, the refusal whereof was misprision of treason by the same act.

But the first time this oath was offered to any man, was the very last day of that Parliament, that is, the 30th of *March*, when the form of it was made, and remains yet in the journal of that year; so that his refusal of that oath must be either on the very last day (on which it seems it was not, because he is not mentioned in the journal to be then present) or after the end of the Parliament; for before that time never was any man put to swear any such oath.

Secondly, To this offence is added in *Martin*, that he contested, and protested against, the act of Parliament touching the
dissol-

dissolution of the marriage of the queen *Katherine* and the confirmation of that with queen *Anne*, for which he was committed, and suffered as a traitor: but until a month after the Parliament it was not treason to do any act against the second marriage, as appeareth in the body of that statute: and after a month ended, that is, from *May* following, it was by that statute made treason to do any act in derogation of it; so that neither his misprision of treason, nor his treason (for which *Martin* saith he was committed) nor his commitment, could fall in the time of the Parliament; nor doth *Martin*, or any other say so; nor doth the journal, that hath not his name in that Parliament, prove any such matter; for in that very journal divers lords names are often omitted, that no man can conceive stood therefore at that same time committed. Yet perhaps there was reason enough to have committed him in the Parliament-time also, for he stood then very much suspected of treason, as we may see by the act of the

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same

same Parliament, wherein he was attainted of misprision of treason. 25 H. 8. cap. 12.

But the truth of the case is, that the relation of it in *Martin* is false here as it is delivered, and divers others mistake it also who wrote before him. This bishop was not condemned that year at all, for aught appears, nor committed; but in 26 Hen. 8. he was attainted by act of Parliament of misprision for refusing the oath, and thereupon committed; and in the 27th year of Hen. 8. he was attainted of treason for speaking traitorous words against the stat. of 26 Hen. 8. cap. 13.

4th Precedent. An. 28 Hen. 6. the duke of *Suffolk* being accused by the commons of treason, put himself upon the king's grace, and not upon the peers; and the king alone judged him; and the lords did not demand him, but required that a protestation might be entered to save the privilege of their peerage.

Answer

Answer 4. In that case, for so much as concerns commitments (which is the only question now agitated) it appears expressly, that when it was in question (before the particular accusations that the commons put up against him) whether he should be committed by reason of a general fame raised against him, the lords only determined, that he ought not yet to be committed. *Rot. Parl.* 28 H. 6. n. 16.

Afterwards the commons accusing him in particular, that by his invitation the *French* king was ready to invade the realm, at the request of the commons, it is said, he was committed to the Tower; but the roll mentions not by whom: but howsoever, there is nothing in that proceeding concerning commitment, that shews he was at all committed for any less offence than treason. And before the charge of treason laid against him, the lords alone determined, whether he should be committed or no. Afterwards the commons put in two bills of accusation against him, one of divers treasons,

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treasons, the other of offences of a less nature, and he is by writ brought from the Tower to answer; and then desires copies of the accusations, which are granted him: and the king, by advice of all the lords, then committed him to the award of three esquires, to be kept in a tower at *Westminster*. *Ibid.* n. 48.

Now for the king's judging him in time of Parliament, which is the point objected, the case goes on thus:

The 13th of *March*, which was four days after, he made his answer to divers particulars, the king and the lords sitting in Parliament.

The 14th being *Saturday*, the chief justice, by the king's commandment, remembered all the lords of what was done the day before in this matter, and asked what advice they would therein give to the king. At which time they deferred their advice until the *Monday* following: but on *Monday* nothing was done; and on *Tuesday* the king sent for the lord chancellor, and all the lords

lords that were in town, to his palace at *Westminster*; and when they were all assembled, he sent for the duke also, who came and denied divers of the offences, and submitted himself wholly to the king's rule and government, to do with him as he list.

Thereupon the lord chancellor, by the king's commandment, told him, That he conceived that the duke, not putting him on his parage, had submitted himself wholly to the king's rule and governance; wherefore, touching the treason, the king held him neither clear nor guilty; and touching the other offences, the king, *by force of your submission* (as the words of the roll are) *by his own advice, and not reporting him to the advice of his lords, nor by way of judgment* (for he is not in place of judgment) putteth you to his rule and governance; that is to say, that you before the first of *May* next coming shall absent yourself out of this realm of *England* for five years.

And instantly upon this, so said by the chancellor, the viscount *Beaumont*, on the behalf of all the lords, and by their advice, assent, and desire declared, That this, that was so decreed and done by him, concerning the person of the said duke, proceeded not by their advice and counsel, but was done by the king's own demeanance and rule, and desired that this may be entered in the Parliament-roll with this protestation, That it should not be, nor turn in prejudice nor derogation of them or their posterity; but that they might have and enjoy their liberty and freedom in case of their parage hereafter, as freely and largely as ever they or any of their ancestors enjoyed before this time.

Upon this it is now objected, that the king here judged him, and the lords demanded him not. But it is, first, plain, that it was no judgment at all. The chancellor says expressly, *it was neither by way of judgment, nor in place of judgment.* It was only a declaration made to him by the king, out of Parlia-

Parliament, that he should absent himself out of the kingdom for five years, &c. And this declaration was made by way of rule and governance of him, and not by way of judgment.

Secondly, a judgment could not be so given against him, neither was it any legal banishment; for, by the ordinary course of the common law, there is no punishment by banishment; and that which hath been in examples, hath been by judgment given in Parliament, as appears in that famous case of the dukes of *Hereford* and *Norfolk*, under *Rich. 2.*, and others at that time.

And for the lords demanding him, there was no need at all or colour why they should have demanded his person; for he was not restrained from them, but was extrajudicially bid absent himself only out of the kingdom, and of his own will to obey the king. When he was about to do so, he was taken upon the sea, and there slain.

And for the matter of judgment and proceeding against him, which should other-

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wife have been before the lords against him, they sufficiently saved their right by protesting first, that all that was done to the duke by the king, was only by the king's own demeanance and rule, and that this should not prejudice their right of parage, or *jus paritatis*, which is their right of judging as peers, as it is called in the protestation of the clergy, when they left the house, because they would not be party to judgment of blood in the 11 *Rich.* 2.

5th Precedent. An. 8 *Hen.* 6. the commons petitioning for the discharge of *William Lark*, arrested in execution during the Parliament, and that the king would be pleased also to ordain, that no lord, knights, citizens, and burgeses, nor their servants, coming to the Parliament, may be arrested during the Parliament, unless it be for treason, felony, or breach of the peace, the king granted the first part of their petition, but *quant al remnant le roy s'adviseira.*

Answer

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Answer 5. To this the answer is full, that the latter part of the bill doth comprehend more than it was fit the royal assent should be given unto, or more than was, or at this day is, the law of Parliament.

For it is, that no member, of either house, be *arrested or detained in prison* during the Parliament, saving in these three cases. To be *arrested*, is to be taken by the officers, by process, or otherwise. To be *detained in prison*, is either to be detained after an arrest, or after a commitment from the bar of some court, which is never called an arrest, though in truth it be one. So that the bill desired, not only that none should be arrested or detained upon an arrest, during the Parliament (which is the only privilege supposed in the body of the bill) but also, that none should be detained in prison during the Parliament; whereas there is no doubt, but that any of the house of commons, or their servants, or the servants of lords, being detained in prison, upon an execution, served upon them before

fore the time of privilege of Parliament; or being in execution, in any other ordinary course of justice, before that time, ought to be detained still, as it is practised at this day. And accordingly also a fourth limitation is added to those three in the 31 *Hen. 6.* in *Tborp's* case, where treason, felony, surety of the peace, and *condemnation before the Parliament*, are the cases excepted: so that there being more asked by the bill than the privilege of Parliament allowed, there was reason enough why the king assented not to it.

6th Precedent. An. 1 *Hen. 4.* the bishop of *Carlisle* was arrested by the lord marshal in Parliament-time, and not for treason, &c. for he was committed to the abbey of *St. Alban's*, which was no prison for traitors.

Answer 6. The bishop was committed for as high a treason as could be uttered; for he expressly denied *Hen. 4.* to be king, in open Parliament. *Hollingshead*, p. 512.
And

And for his being committed to the abbey of *St. Alban's*, that or any other place without question, at the pleasure of the king, was a prison for traitors, as well as others.

7th Precedent. An. 5 *Hen. 4.* the lords of Parliament claimed their privilege to judge the earl of *Northumberland* in respect of the statute of 25 *Edw. 3.* and not in respect of privilege of Parliament.

Answer 7. The lords, in that case, expressly claim and exercise their right of judgment, both in matter of treason and matter of trespass. They first consider the statute of 25 *Edw. 3.* of treason, and then the statutes against liveries. Thereupon they judge the earl's offence not to be treason, or felony, but they judge also that it was trespass only; and for that they judge also, that he ought to make fine and ransom at the king's will. So that upon the one statute, as judges in Parliament, they judge the fact to be no treason; upon the other,
to

to be trespass; and so give their judgment as judges of their peers, as well in trespass as treason. And the iteration of their being judges in Parliament, in this case in the roll, is an express mention and claim of their privilege also.

8th Precedent. An. 15 *Edw. 3.* the king denied the archbishop of *Canterbury* to come into the Parliament-house until he had answered certain answers objected against him in the exchequer, and then also the king denied his entrance; yet at last, at the intercession of the lords, he was admitted.

For this Mr. Attorney cited *Mathew Parker de Antiquitate Eccl. Brit.*

Answer 8. It is true that the king denied him for some time to come into the house, until he had answered those articles; but he did, upon challenging of his right as a peer, and baron of the kingdom, come in, before he had answered them; and so well he understood the right of his *pairalty*, that though the Parliament-house door was shut
against

against him, where he was kept out by violence, he yet stood there, and professed he would not go thence, until he was either suffered to come in, or else some cause were shewed why he should not. And what the lords thought of his being kept out of the house, or questioned in any other court, sitting the Parliament, may appear in the roll of that year, where, while he was kept out, they desired the law to be declared touching questioning of peers in any other court but in Parliament; and thereupon a committee of twelve lords was made to examine in what case peers should be bound to answer in Parliament, and not elsewhere. And the committee's report is general, *Que les pieres de la terre ne doivent estre arefnez ne mesnez en judgment, si non en Parliament & per leur pieres.* And the same day that this was reported, the archbishop came into the house; where he desired of the king that he might be tried, which the king granted.

9th Precedent. An. 3 *Edw. 3. termino Pasc.* the bishop of *Winchester* was indicted in the king's bench, for departing from the Parliament at *Salisbury*.

Answer 9. This is the same *Stratford* that was archbishop of *Canterbury* in that case of 15 *Edw. 3.* It is plain that the whole proceeding against him was long after the Parliament, from whence he departed. The Parliament was kept at *Salisbury* (not *Salop*, as it is falsely printed in the year-books) and began *in quinden. Michaelis.* It ended 31 *Octobris* following, as appears by the writs for levying the expences of the knights and burgeses. *Cl. an. 2 E. 3. m. 15. dorf.*

And the next Parliament is summoned by writ dated the 14th of *June, 3 Edw. 3. Claus. in dorso m. 19.* Now *Edw. 3.* began his reign the 25 *January*; so that from the 31 *October* in the 2 *Edw. 3.* to the 14 *June* in 3 *Edw. 3.* there was neither Parliament held, nor any summons sent forth; in that time falls *Easter* term, wherein the bishop of *Winton.* was questioned in the king's bench,

bench, as appears both in the year-book, *Pasc. 3 E. 3. fol. 9.* and in the rolls of the case; so that it proves nothing at all to the point in question, being done out of Parliament.

These being read, it was agreed upon by the whole house, *That the privilege of this house is, that no lord of Parliament, sitting the Parliament, or within the usual times of privilege of Parliament, is to be imprisoned, or restrained, without sentence or order of the house; unless it be for treason or felony, or for refusing to give surety for the peace.*

And it was thereupon ordered, that the said lords sub-committees for privileges, &c. or any five of them, shall meet this afternoon to consider of a remonstrance of the privileges of the peers of Parliament, and of an humble petition to be made unto his majesty to enjoy the same.

19 *April.* The lord president reported the remonstrance and petition of the peers, concerning the claim of their privileges from

been inviolably enjoyed by them. Wherefore, we your majesty's loyal subjects and servants, the whole body of the peers now assembled in Parliament, most humbly beseech your majesty, that the earl of *Arundel*, a member of this body, may presently be admitted, with your gracious favour, to come, and sit, and serve your majesty and the commonwealth in the great affairs of this Parliament, and we shall pray, &c.

This remonstrance and petition being read, it was generally approved of by the whole house, and agreed to be presented to his majesty by the whole house:

And further agreed, that the lord president, the lord steward, the earl of *Cambridge*, and the lord great chamberlain, should presently go to the king, to understand his pleasure, when they should attend him.

And the said lords being returned, the lord president reported, that his majesty had appointed this day, between two and three,
for

for the whole house to attend his majesty with the said remonstrance and petition, in the chamber of presence at *Whitehall*.

And it was agreed, that the lord keeper should then read the same unto the king, and present it unto his majesty.

20 *April*. The lord president thus reported the king's answer unto the remonstrance delivered unto his majesty yesterday.

My lords,

Ye have spent some time in this business, and it being of some consequence, I should be thought rash, if I should give a sudden answer; and therefore I will advise of it, and give you a full answer in convenient time.

24 *April*. The house was called; and the earl of *Arundel* being called, the lord keeper signified to the house, that his majesty hath taken into his consideration the petition exhibited by their lordships the 19th of *April*, concerning the earl of *Arundel*, and will return answer thereunto with all expedition.

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2 May. It was this day ordered, that the lord keeper do move his majesty from the house for a speedy and gracious answer unto their petition on the behalf of the earl of *Arundel*.

4 May. The lord keeper signified unto their lordships, that, according to the order of the second of *May*, he had moved his majesty from the house on the behalf of the earl of *Arundel*, who answered, *That it is a cause that he hath a great deal of care of, and is willing to give your lordships satisfaction, and hath it in his consideration how to do it, but hath been interrupted by other busineses, wherein Mr. Attorney hath had occasion of much conference with him (as your lordships are acquainted) but will with all conveniency give your lordships satisfaction, and return you an answer.*

9 May. The house being moved to petition the king touching the earl of *Arundel*, these lords were appointed to set down the form of the said petition; viz. The lord president, the earl of *Essex*, the bishop of

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Norwich, the bishop of *Coventry* and *Lichfield*, the lord *Russel*, the lord *Denny*, the lord *Montague*; who reported the same in writing, as followeth.

May it please your Majesty,

Whereas the whole body of peers now assembled in Parliament did, the 19th of *April*, exhibite to your majesty an humble remonstrance and petition, concerning the privilege of peers in Parliament, and in particular touching the earl of *Arundel*, whereupon we received a gracious answer, that in convenient time we should have a full answer, which we have long and dutifully attended; and now at this time, so great busines being in handling in the house, we are pressed by the busines to be humble suitors to your majesty for a gracious and present answer.

Which being read, was approved by the house, and the said committee appointed to present the same unto his majesty from the

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house, at such time as the lord chamberlain shall signify unto them that his majesty is pleased to admit them to his presence.

11 *May.* The lord president reported the king's answer unto the petition from the house, touching the earl of *Arundel*, viz.

My lords,

I did little look for such a message from the house. I have been of the house, and did never know such a message from the one house to the other: therefore when I receive a message fit to come from you to your sovereign, you shall receive an answer.

The lord president further reported, that the lords committees appointed to deliver the said petition unto the king did thereupon withdraw, and require him (the lord president) humbly to desire his majesty, to be pleased to let them know, unto what point of the said petition he takes this exception.

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And

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And that his majesty willed him (the said lord president) to say this of himself, viz.

The exception that the king taketh is at the peremptoriness of the term, to have a present answer. And the king wonders at their impatience, since he hath promised them an answer in convenient time.

Hereupon the house altered their former petition, leaving out the word (*present*) and appointed the former committee humbly to present the same to his majesty, at such time as the lord chamberlain shall signify unto them, when his majesty will be pleased to admit them to his presence.

13 *May.* The lord president reported the king's answer unto the petition of this house, concerning the earl of *Arundel*; viz.

It is true, that the word (present) was somewhat strange unto me, because you do not use it from one house to another: but now that I know your meaning, you shall know this from me, that you shall have my answer so soon as conveniently I can: and this I will assure you, it shall be such an answer, as you

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shall

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shall see I will not trench upon the privileges of your house.

17 *May*. Their lordships being moved to renew their humble petition to the king from the whole house, on the behalf of the earl of *Arundel*, these lords were appointed to draw up the said petition; *viz.* The lord president, the lord chamberlain, the earl of *Dorset*, the earl of *Devon*, the earl of *Mulgrave*, the viscount *Saye and Seale*, the lord *North*; who having penned and reported the same to the house, it was read *in hæc verba, viz.*

May it please your Majesty,

The cause that moves us now humbly to attend your majesty in our whole body, as at first we did, is because we observe that the house of commons have speedily received a member of theirs, being committed; we the peers, being ambitious to deserve of your majesty, and to appear in the eye of the world as much respected in our rights and privileges as any peers or commons have

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have ever been, acknowledging you a king of as much goodness as ever king was, do now again humbly beseech your majesty, that the earl of *Arundel*, a member of our house, may be restored to us, it so much concerning us in point of privilege, as that we all suffer in what he suffers in this his restraint.

Which petition was approved of, and ordered to be presented, at such time as the lord chamberlain shall signify his majesty's pleasure to admit their lordships to his presence.

19 *May*. The lord chamberlain signified to their lordships, that his majesty is pleased that this house attend him at two of the clock this afternoon at *Whitehall*.

20 *May*. His majesty's answer unto the petition of the house concerning the earl of *Arundel*, the 19th of *May*, at *Whitehall*, is reported; *viz.*

My

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My lords,

I see that in your petition you acknowledge me a king of as much goodness as ever king was, for which I thank you; and I will endeavour, by the grace of God, never to deserve other: but in this I observe that you contradict yourselves; for if you believe me to be such as you say I am, you have no reason to mistrust the sincerity of my promises; for whereas upon often petitions made by you to me concerning this business, I have promised to give you a full answer with all convenient speed, by this again importuning of me, you seem to mistrust my former promises. It may be said, there is an emergent cause, for that I have delivered a member of the house of commons. In this, my lords, by your favour, you are mistaken, for the causes do no way agree; for that he that was committed of the house of commons was committed for words spoken before both houses, which being such as I had just cause to commit him, yet, because I found that they might be words only misplaced, and not ill meant, and were

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so conceived by many honest men, I was contented upon this interpretation to release him, without any suite from the lower house; whereas my lord of Arundel's fault was directly against myself, having no relation to the Parliament. Yet, because I see you are so impatient, I will make you a fuller answer than yet I have done, not doubting but that you will rest contented with that. It is true, I committed him for a cause which most of you know; and though it had been no more, I had reason to do it: yet, my lords, I assure you I have things of far greater importance to lay to his charge, which you must excuse me to tell you at this time, because it is not yet ripe, and it would much prejudice my service to do it. And this, by the word of a king, I do not speak out of a desire to delay you, but as soon as it is possible you shall know the cause, which is such, as I know you will not judge to be any breach of your privileges; for, my lords, by this I do not mean to shew the power of a king, by diminishing of your privileges.

This

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This being read again, it was ordered, the committee for privileges to meet on *Monday* next, at two of the clock *post meridiem*, and to consider how further to proceed with dutiful respect to his majesty, and yet so as may be for the preservation of the privileges of the peers of this land, and the liberties of the house of Parliament.

24 *May*. The lord president reported the petition agreed on by the lords committees for privileges, &c. to be presented unto the king, which was read *in hæc verba, viz.*

May it please your most excellent Majesty,

Whatever our care or desire is to preserve our right of peerage, yet it is far from our thoughts, either to distrust, or express any thing that stands not with the affection and duty of most loyal and loving subjects: and therefore in all humilitie we cast ourselves before your majesty, assuring ourselves, in that sacred word of a king, that with all possible convenience your majesty will please
either

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either to restore the peer to his place in Parliament, or express such a cause as may not infringe our privilege.

Which was generally approved of, and ordered to be presented to his majesty by the whole house, and the earl of *Carlisle* and the lord *Carleton* to go presently, and know the king's pleasure, when they shall attend his majesty.

Who, being returned, reported, that his majesty had appointed this afternoon at two of the clock for the same.

25 *May*. The lord keeper delivered the king's answer unto the petition of the house yesterday at *Whitehall* to be read, which followeth *in hæc verba, viz.*

My lords,

*Your often coming to me about this business made me somewhat doubt least you did distrust me; but now, since I see you rely wholly on me, I assure you, that it shall prevail more upon me than all importunities; and if ye had
done*

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done this at first, I should have been more carefull to have given you content; and now I assure ye, that I will use all possible speed to give you satisfaction, and at the farthest, before the end of this Parliament.

This being read the second time, the house was moved, that all busines might be laid aside, and that consideration might be had how their privileges may be preserved unto posterity; and the house being put into a committee for the freer debate thereof, and afterwards resumed, it was ordered, the house to be adjourned till tomorrow, and all busines to cease.

26 May. The lord keeper delivered this message from the king, viz.

His majesty hath willed me to signify unto your lordships, that he doth marvail that his meaning in his last answer should be mistaken; and, for the better clearing of his intention, hath commanded me to deliver unto your lordships his further answer, which is, that your lordships last petition was so acceptable to his majesty,

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majesty, that his intent was then, and he is still resolved, to satisfy your lordships fully in what you then desired.

It is ordered, that all busines be adjourned till this day sevensnight.

And memorandum, that the duke of Buckingham began to signify unto their lordships, that he would decline his desire to have the king's council allowed him to plead his cause: but the lords would not hear him, because they would entertain no busines; and so the house was adjourned to the second of June.

2 June. The lord keeper delivered a message from the king to this effect.

His majesty hath commanded me to deliver to your lordships a message touching the earl of Arundel; that his majesty hath thought of that busines, and hath advised of his great and pressing affairs, which are such as makes him unwilling to enter into dispute of things doubtful; and therefore to give clear satisfaction touching that case, whereby you may the more cheerfully proceed in the busines of the
house,

house, he hath endeavoured as much as may be to ripen it, but cannot yet effect it; yet is resolved, that by Wednesday sevensight at the furthest, he will either declare the cause, or admit him to the house; and addeth further, upon the word of a king, that if it shall be sooner ripe, which he hath good cause to expect, he will declare it with the soonest; and further, that if the occasion do enforce to stay to the time prefixed, yet he doth not purpose to set such a short end to the Parliament, but that there shall be ample and good space between that and the end of the session, to dispatch affairs.

This message being delivered, the house was adjourned *ad libitum*, and put into a committee, and being resumed, it was agreed all other business to cease, but this of the earl of *Arundel's* concerning the privilege of the house, and the house to meet thereon to-morrow morning, and to be put into a committee to consider thereof; and so the house was adjourned to the next day.

3 June.

3 June. The lord keeper delivered a message from the king to this effect, *viz.*

That in the matter concerning the earl of Arundel, his Majesty hath been very careful and desirous to avoid all jealousy of violating the privileges of this house, that he continueth still of the same mind, and doth much desire to find out some expedient way, which might satisfy your lordships in point of privilege, and yet not hinder his majesty's service in that particular; but because this will require some time, his majesty (though his great affairs are instant and pressing) is unwilling to urge your lordships to go on therewith, till his majesty hath thought on the other; and therefore hath commanded me to signify his pleasure, that his majesty is contented your lordships adjourn the house until Thursday next; and in the mean time his majesty will take this particular business into further consideration.

It is agreed, that the lord keeper render unto his majesty from the house their humble thanks for his gracious respect unto their privileges: and then the lord keeper

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demanded of the lords, whether their lordships would adjourn the house until *Thursday*; whereunto it was agreed; and all busineses to cease until the said *Thursday*.

8 *June*. The lord keeper delivered this message from his majesty, *viz.*

That on Saturday last his majesty sent word to the house, that by this day he would send them such an answer concerning the earl of Arundel, as should satisfie them in point of privilege; and therefore, to take away all dispute, and that their privileges may be in the same estate as they were when this Parliament began, his majesty hath taken off his restraint of the said earl, whereby he hath liberty to come to the house.

The earl of *Arundel*, being present, did render his humble thanks unto his majesty for this his gracious favour unto him, and gave their lordships also most hearty thanks for their often intercessions for him unto the king, and protested his loyalty and faithful service unto his majesty.

§ 8.

§ 8. *How the party arrested hath been set at liberty.*

An. 8 H. 6. n. 57. *William Lark*, servant to *William Mildred*, a burges of Parliament, being arrested, and imprisoned in the *Fleet*, upon an execution, out of the king's bench, upon complaint made thereof by the commons, the king, by advice of the lords, at the request of the commons, and by consent of the plaintiff, ordered the said *William Lark* to be delivered out of prison: and that after the end of the Parliament, the plaintiff shall have execution again by process, as if there had been no execution had before.

An. 31 H. 6. The Parliament began at *Reading* 6th *March*, and continued until the 28th day of *March*, and then, after divers prorogations, it began again at *Westminster* the 14th of *February* following. In the interim, between the prorogation in *April* and the access the 14th of *February* following,

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Thomas Thorpe, the speaker, is arrested in execution, at the suit of the duke of York. The commons made request to the lords for their speaker's liberty. The lords demanded the opinion of the judges (touching the arrest in time of prorogation) and denied him his liberty; whereupon the commons were commanded to choose a new speaker.

An. 39 H. 6. n. 9. *Walter Clarke*, a burges of *Chippenham*, in the county of *Wilts*, being committed to the *Fleet* for fundry condemnations, as well to the king as to others, and outlawed upon some of them at the suit of the king and of others, is discharged, and set at liberty out of the *Fleet*, at the petition of the commons to the king and lords, and that without bail or mainprize.

An. 12 E. 4. at the like petition of the commons, *William Hide*, a burges of *Chippenham*, in *Wilts*, being in execution in the king's bench, is delivered by a writ out of the chancery, saving the Plaintiff's right to have execution again, after the Parliament ended, n. 55.

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An. 17 E. 4. n. 35. it is enacted, That *John Attwill*, a burges for *Exeter*, being condemned during the Parliament in the exchequer upon eight several informations, by the pursuit of *John Taylor* of the same town, shall have as many writs of *superse-deas* therefore, as he will, until his coming home.

Here ariseth a doubt, whether the party privileged might be delivered out of the execution, without an act of Parliament, that is, without the consent of both houses and the king.

There may be much dispute upon this question. The strongest allegation against it is, that it will prejudice the plaintiff's execution. But, since the party privileged is not to be arrested for any debt, trespass, or contract, prout an. 5 H. 4. n. 71. nor can be arrested during the Parliament, but for treason, felony, or breach of the peace, prout an. 8 H. 6. n. 57. my opinion is, that the arrest upon an execution for debt, trespass, or contract is merely void, and then

it can be no prejudice to the plaintiff, but he may have a new execution after the end of the Parliament: so that an act to deliver him that is so arrested, or to save the plaintiff's rights for a new execution, is *ex abundanti*, and needless.

And, under correction be it spoken, the declaration of the judges in * *Thorp's* case, viz. *That there is no general superedeas to surcease all procefs, must be understood for all time, and not for all procefs, thereby to exempt*

* The opinion of the judges, delivered by the chief justice, in *Thorp's* case, an. 31 H. 6. Rot. Parl. n. 25, 26, viz.

As for declaration of the proceedings of the lower courts, in such cases as writs of superedeas of privilege of Parliament be brought and delivered, the chief justice said, There be many and divers superedeas of privilege of Parliament brought into the court, but there is no general superedeas brought to surcease all procefs; for if there should be, then this high court of Parliament, that ministreth all justice and equity, should let the procefs of the common law, and so it should put the partie complainant without remedie;

exempt executions. And their declaration at that time also, *That if any person that is a member of this high court of Parliament, be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons shall be released of such arrests, &c.* cannot be understood to except arrests upon execution, sitting the Parliament, but of such arrests, in the interim between the adjournment and the access, as *Thorp's* was; for otherwise, to say that the privilege is from arrests for debt, and yet to be subject to arrests upon execution for debt, is mere frivolous, and but

remedie; for so much as actions at common law be not determined in this high court of Parliament. And if any person that is a member of this high court of Parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests, and make an attorney, so that they may have their freedom and liberty freely to attend upon the Parliament.

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a shew of privilege, and no privilege indeed. And whereas the judges did then further declare, *That it is used, that all persons should be released of such arrests, and make an attorney, so that they may have their freedom and liberty fully to extend upon the Parliament*; I am of opinion, that in such cases they did not use to make any attorney at all; for the party had a *supersedeas* to stay all proceedings against him. For it is a breach of privilege to commence but a suit in Parliament-time against a member thereof; or else *Bogo de Clare* had not been punished for citing the earl of *Cornwall*, whenas the earl might appear by a proctor, an. 18 *E. 1.* nor had the master of the Temple his petition been denied to distrain upon a house of the bishop of *St. David* in Parliament-time, whenas the bishop might make an attorney to prosecute a replevin, an. eodem *E. 1.* nor would king *Edw. 2.* have commanded by proclamation, that the justices of assize should *supersedere*, where barons or others summoned to Parliament were

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were parties, they then not being arrested, but defendants only. It is not enough that a member of Parliament be free in person only, but in mind also. But how can his mind be free, if he be subject to executions, and being arrested, be without remedy for his liberty, unless by a solemn act made by consent of king, lords, and commons? So that I conclude, leaving others to their own sense in this point, that all arrests upon executions are merely void in this case; that the party so arrested might be set at liberty by a *supersedeas* out of the chancery; and that such deliverance is no prejudice to the plaintiff, the former arrest being none, but merely void.

But if I be demanded for antient precedents, I answer, there are none recorded; for that the *supersedeas* was granted of course, being due, and needed no petition for it. Yet there are precedents of latter times to prove it directly; viz. *Journal. H. Com. die Merc. 22 Febr. an. 18 Eliz.* Report was made by Mr. Attorney of the dutchy, from

from the committee for the delivery of Mr. *Hall's* man (*Edward Smalleye*) arrested in execution, that the said committees found no precedent for the setting at large by the mace any person in arrest, but only by writ; and that by divers precedents of record perused by the said committees, it appeareth, that every knight, citizen, and burghers of this house, which doth require privilege, hath used in that case to take a corporal oath before the lord chancellor or lord keeper of the great seal of *England* for the time being, that the party for whom such writ is prayed, came up with him, and was his servant at the time of the arrest made.

And thereupon Mr. *Hall* was moved by the house, that he should repair to the lord keeper, and make oath in form aforesaid, and then to proceed to the taking of a warrant for a writ of privilege for the said servant, according to the said report of the said former precedent.

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By this appears the remedy for their liberties out of arrests, and that executions are not exempted; for Mr. *Hall* his man was then in execution, as appears afterwards in the same journal. I find not that the burghers did take an oath in case of privilege for his own liberty; happily the sheriffs return, or a certificate thereof, was sufficient.

The writ of privilege being so easy to be had, what needed any petition to be made by the commons to the king and the lords for the same? And as there is no precedent for this in the time of *Edw. 3. Rich. 2. Hen. 4. nor Hen. 5.* so there are none to the contrary; and the lords in queen *Elizabeth's* time did usually, of their own authority, deliver their servants out of execution, if arrested in Parliament-time.

But now this doubt is cleared by the statute of 1 *Jac. cap. 13*, for new executions to be had against such as are delivered out of execution by privilege of Parliament, and for discharge of them, out of whose custody

custody they are delivered; which statute notwithstanding saith, that it was heretofore only doubted of, whether such deliverance by privilege of Parliament were prejudicial to the plaintiff or no.

A question may be touching the stay of a suit against a Parliament-man in time of privilege, whether the *superfedeas* hath been used to be directed to the judge or to the plaintiff?

For resolution hereof, though an. 8 *E. 2.* a general *superfedeas* went out to the judges to stay all suits where such are parties, and particular writs of *superfedeas* have usually been granted out of the chancery in latter times; yet an. 1 *Eliz.* an injunction out of the chancery was granted unto the plaintiff, to stay a trial at the assizes in Parliament-time between *Broxham* and the lord *Willoughby*.

And in 1^o *Car. 23 Feb.* an order of Parliament was made, that a trial at the assizes shall be stayed, and that the plaintiff's counsellor and attorney shall not proceed therein,
in

in the cause between *Harrison* plaintiff, and *Atkinson*, servant to the earl of *Devonshire*, defendant.

And note, that the lords rejected the petition of *John Watson*, servant to the earl of *Nottingham*, who complained of one *Thomas Brett* for proceeding to a trial at the assizes, notwithstanding that *Brett* knew of his necessary attendance on the said earl in time of Parliament; for that the petitioner ought to have had an order from the house for stay of the said trial. 1 *April.* an. 1 *Car.* Whereby it may seem, that to commence a suit is a breach of privilege; but it is none to proceed to a trial upon a suit commenced before, unless he be first countermanded.

And note, that these orders for stay of trials, &c. are to be directed to the party plaintiff, his attorneys, &c. and not to the judges. For they cannot stay the trial, if the plaintiff will proceed, notwithstanding any such order; for it is against the law. But the plaintiff may be punished, if he
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contemn the lords order and break the privileges of Parliament.

§ 9. *In what cases a new speaker hath been chosen.*

An. 1 H. 4. n. 62. The commons presented Sir *John Cheyny*, knight, for their speaker, whom the king allowed.

The next day, the said Sir *John*, and the commons, came before the king, and Sir *John* declared, that for a sudden disease which happened, he was unable to serve, and that the commons had chosen Sir *John Dorewarde*, knight, in his place, beseeching the king to allow of him; which the king did, and commanded him to be speaker, n. 63.

An. 1 H. 5. The commons presented *William Stourton*, their speaker, the 18th *May*. The 22d of *May* the said *William Stourton* made a speech to the king, on the behalf of the commons; and being required to exhibit

bit certain articles in writing, he immediately promised so to do.

On the 25th of *May* *John Dorewarde* did, on the commons behalf, deny that they had given their assent to exhibit the said articles in writing, n. 9.

And on the 3d of *June* the commons presented the said *John Dorewarde* for their speaker, whom they had chosen, for that the said *William Stourton* lay sick in his bed, and was not able to execute the said office, n. 11. It should seem that *Stourton* was sick for grief. *Note*, the king was not first acquainted with their choice of a new speaker before they presented him.

An. 15 H. 6. The commons presented Sir *John Tyrrell*, knight, their speaker, in *January*.

The 11th of *March*, the king understanding Sir *John Tyrrell* was fallen sick, commanded the commons to choose a new speaker, which they did that day.

An. 28 H. 6. Sir *John Popham*, knight, was presented speaker; he desired to be excused

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used in respect of his age, and that a new choice might be made, whereunto the king agreed; and thereupon the commons chose and presented Sir *William Tresham*, knight, the same day.

An. 31 *H. 6.* *Thomas Thorp* was presented speaker. After the adjournment of the Parliament he was arrested in execution at the suit of the duke of *York*. The commons at the access the 14th of *February* pray his liberty, which was denied; and the commons commanded to choose a new speaker. The 16th of *February* the commons sent word that they had chosen Sir *Thomas Charlton*, knight, for their speaker in the place of the said *Thomas Thorp*; and the chancellor answered, that the king liked him, n. 29.

These are all the antient precedents.

An. 5 *Eliz.* *Thomas Williams*, esquire, was presented speaker. The Parliament is prorogued divers times; the speaker dies.

At their access, an. 8 *Eliz.* 30th of *September*, the commons (by four of their house)

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signified

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signified their speaker's death to the lords, requesting their lordships aid to intimate the same to the queen. The lords appointed the lord keeper and three more to accompany those four (being all privy-counsellors) to the queen, and in the name of both houses to declare the same to her majesty, which was done.

On the first day of *October* the commons were assembled in the upper house: and her majesty's commission read, directed to the lord keeper, repeating the whole business; commanding, constituting, and appointing the lord keeper, in her name, to call the commons before his lordship, and the lords in the higher house of Parliament, and there in her majesty's name to will and command them to resort to their accustomed place, and there to choose amongst themselves a new speaker: and after they have made their election, that three or four of them, for and in all their names, shall signify the same unto her majesty; and thereupon her majesty will signify unto them on what day

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they

they shall present him unto her.—This is the effect of the commission.

The next day the commons presented Sir *Richard Onslow*, the queen's solicitor, for their speaker.

An. 14 *Eliz.* *Robert Bell* was presented speaker. The Parliament being prorogued divers times, he was made chief baron of the exchequer, and died. At the access 16 *January*, an. 23 *Eliz.* the commons acquainted the lords with his death, and the same course was taken for a new election, *prout antea*, an. 8 *Eliz.*

The commission, an. 8 *Eliz.* for choice of a new speaker.

Elizabeth, by the grace of God, queen of *England*, *France*, and *Ireland*, defender of the faith, &c. To our right trusty and right wel-beloved counsellor Sir *Nicholas Bacon*, knight, lord keeper of the great seal of *England*, greeting: Where in the beginning of this present Parliament, holden at
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Westminster the 7th day of *January*, in the fifth year of our reign, the knights, citizens, and burgeses, being assembled in the same Parliament, were commanded by us to go to their accustomed place, and there to choose amongst themselves one to be their speaker, according to the accustomed manner; whereupon the same knights, citizens, and burgeses did elect and choose one *Thomas Williams*, esquire, to be their speaker; and the same their election did afterwards certify unto us, which we did allow and ratify; since which time, this our present Parliament hath been continued by divers prorogations, until the 30th of *September*, in this present eighth year of our reign: at which day the lords spiritual and temporal, and also the said knights, citizens, and burgeses, being assembled for this present Parliament, at *Westminster*, in their accustomed places, the said knights, citizens, and burgeses have declared unto us, that the said *Thomas Williams* since the last session of this present Parliament is
R 2 dead,

dead, and thereupon have made their humble suit and petition unto us, that they might have licence and commandment from us to proceed to elect amongst themselves one other to be their speaker, for the rest of this present Parliament yet to come; wherefore, we having certain and perfect knowledge that the said *Thomas Williams* is dead, as they have alleged; and considering their humble petition very meet and necessary to be granted, have appointed and constituted you, and by these presents we do will, command, constitute, and appoint you, for us, and in our name, to call the said knights, citizens, and burgeses before you, and other the lords spiritual and temporal assembled in this our present Parliament, in the higher house of Parliament at *Westminster*, and then for us, and in our name, to will and command the said knights, citizens, and burgeses, to resort to their accustomed place; and there to elect and choose amongst themselves one sufficient and able person to be their speaker
for

for the rest of this present Parliament yet to come; and after they have so made their election, that then three or four of them, for and in all their names, shall signify the same unto us; and thereupon we will further signify our pleasure unto them, what day and time they shall present the person elected before us, as heretofore hath been in like cases accustomed to be done: wherefore our will and pleasure is, that you do diligently attend about the doing of the premises, and execute the same with effect. In witness whereof we have caused these our letters of commission to be sealed with our great seal. Witness ourself at *Westminster*, &c.

C H A P. VIII.

RECEIVERS AND TRIERS OF
PETITIONS.

THE last ceremony used the first day of the Parliament is, that when the lord chancellor hath ended his speech to the commons to choose their speaker, then the clerk stands up, and reads, in *French*, the names of the *receivers and triers of petitions*.

§ 1. *By whom receivers and triers of petitions were appointed, and when.*

Some records make it doubtful, whether the king and his council, alone, or the king, his council, and the lords, did appoint these receivers and triers. I will recite the precedents, and then deliver my opinion.

An.

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An. 6 *E.* 3. in the Parliament held at *York*, on Wednesday *oētab. sancti Hillarii*; on the same Wednesday, *it is agreed by our lord the king and his council, that petitions be received, as was agreed in the last Parliament.* Then the record names the time for their delivery. *And that the petitions be delivered unto Sir Henry Edeneftowe, clerk of the Parliament, Sir Thomas de B. Sir Thomas de E. &c.*

Item, it is agreed, that the archbishop of York, the bishop of Ely, &c. shall be triers. And so proceeds, and shews, how they are to be answered, &c. And the Parliament was adjourned to the next day, *for that the lords were not fully come*; and the cause of summons was pronounced that next day, which was reckoned the second day of the Parliament.

An. 14 *E.* 3. at the Parliament held at *Westminster*, the Wednesday next after *Midlent Sunday*, in presence of the king.

First, it is entered in the roll, that proclamation was made in *Westminster-hall*

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against

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against wearing of weapons, riots, &c. and unlawful games near the Parliament-house; then thus, *Et mesme le jour seurent les souzescritz attitlez de faire les choses souzescritz; cest a savoir, Sir Thomas de Brayton soit clerke du Parliament.* Item, *pur recevoir les petitions d'Engleterre sont assignez Mich. de W. Tho. de B. &c.* Then, *the time for the delivery, and the triers, of petitions.*

Then, that the Thursday next following the Parliament was adjourned unto Saturday, &c. on which day was declared the cause of summons.

So here they are appointed *in the presence of the king*, but it is not named *by whom*.

An. 15 E. 3. *Lunæ, in quinden. Paschæ*, the roll begins thus. First, *it is agreed, that Sir Thomas de Brayton be clerk of the Parliament.*

Item, *it is agreed by our lord the king, and those of his council who were then come, that a proclamation be made that none shall bear arms, &c.*

Then follows the ordinary proclamation.

Item,

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Item, *un crie fu fait*, that whosoever will exhibit petitions unto our lord the king and his council, that they exhibit them between this and Saturday next, &c. *Et seront assignez* to receive the petitions of *England*, these under-written, *viz. Sir Thomas de E. &c.* and so names the *receivers and triers*.

Item, it is agreed, for that the prelates, earls, barons, and other grands are not yet all come this Monday, the first day of the Parliament, to continue the Parliament to the next day, being Tuesday, &c. From thence it was continued also to Wednesday, and from Wednesday to Thursday, for the same cause; and on Thursday the cause of summons was proposed.

An. 17 E. 3. the Parliament was summoned to begin on Monday, *quinden. Pasc.* the king and some few lords came, and the Parliament was continued to the next day, being Tuesday; on which Tuesday it was agreed, by the king and council, that proclamation be made against wearing of arms, &c.

And

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And a proclamation was made the same day for delivering of petitions by Monday next to the king and his council.

Et seront assignez to receive the said petitions, &c. *prout an. 15.* And on Wednesday following the cause of summons was declared.

An. 18 E. 3. *Lunæ, proxim. post octab. Trinitat.* the roll begins thus. *Enprimés fait assaver qe a mesme le Lundy,* there assembled in the Parliament-chamber, our lord the king and the prelatz and grandz underwritten, viz. The archbishop of *Canterbury*, the bishop of *Chichester, Bath,* and *Ely*, and the earl of *Huntingdon*, together with some abbots and barons and knights of the counties. *Et fu recitez devant eux,* &c. the summons of the Parliament to be as on that day, and the small appearance, wherewith the king was offended, &c. And the king commanded to continue the Parliament to Tuesday, being the next day.

Item,

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Item, be it remembered, that our lord the king commanded proclamation to be made, &c. against wearing of weapons, &c.

And on the said Tuesday our lord the king, and the said prelates, and the bishops of *London* and *Cardoil*, together with the said grands, assembled again in the said chamber: *Et illoques furent accordez les noms de ceux, qui receveroient les petitions du Parlement, en la manner qe s'ensuit; cest assavoir, primerement, sont assignez de recevoir les petitions d'Engleterre, &c.*

And so names the *receivers* and *triers*; and because the prelates and other grands were not come on the said Tuesday, *Si fu accordez & assentuz de continuer le Parlement tanq; au Meskerdy, pur attendre la venue des ditz grandz; & de ce Meskerdy tanq; a Foedy;* on which Thursday the cause of summons was propounded, &c.

There are some other precedents of this nature, *tempore E. 3.* to shew that the king and some lords met the first day of the Parliament, and for that there appeared but a few

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few lords, the cause of summons was not then declared; only receivers and triers of petitions were appointed, and the Parliament continued unto another day. But the records do not say directly by whom they were appointed, *prout an. 20 E. 3. Furent assignez*, but says not by whom.

An. 21 E. 3. *Fu ordene que certaines persons seroient assignez pour recevoir les petitions.*

An. 25 E. 3. *Sont assignez.*

An. 29. *Consimile.*

By these it doth not directly appear by whom these receivers and triers were appointed.

That of 6 *Edw. 3.* saith, *Par nostre seigneur le roy & son conseil.* By his council are here understood those of the *privy council*, who were summoned to Parliament, and not the lords of Parliament, as shall be declared elsewhere.

The rest speak indefinite that they were assigned, but name not by whom.

Vide the Parliament-roll of 37 *Edw. 3.* when the cause of summons was declared first,

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first, before the names of the receivers and triers were published (according to the use at this day, and of all Parliaments since the 29th of *Edw. 3.*) and there it is thus in the end of the cause of summons; *Et outre le dit roy volt que si nul se sent grevez mette avant sa petition en ce Parlement, & il en avera covenable repons, & sur ce ad assignez ascuns de ses clerks en la chancellerie receivers des ditz petitions*; then follow their names.

Here it appears, that *the king's will is*, that if any find himself grieved, he exhibit his petition, &c. and *he* (the king) hath assigned certain of his clerks of the chancery to be receivers, &c.

An. 38 E. 3. & 43 E. 3. *Consimile.*

An. 40 E. 3. The lord chancellor concludes his speech touching the summons; The king's will is, *que chescun qui se sent grevez mette devant sa petition a ces [qui] sont assignez de par luy de les re[ceivre] & aussi de les trier.*

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The rest speak indefinite; but these satisfy me fully, that none but the king, or the lord chancellor *de par luy*, appoints these receivers and triers, &c.

I have perused all the records of *Edw. 3.* of purpose for this, for that some doubt hath been made thereof.

§ 2. *Who were appointed receivers, and who triers.*

Receivers of petitions were ever the masters of the chancery; the records name them *clerks de la chancellerie*, and no other were antiently appointed but they; save that an. 6 *E. 3.* the clerk of the Parliament (who I think was a master of the chancery also) is appointed one. But none that had writs of summons were appointed receivers, since 6 *Edw. 3.*

This order was constantly observed whilst these receivers and triers were in use: but since they began to be out of use, and named *pro forma tantum*, the judges are mingled with them.

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As none that were summoned to Parliament were appointed receivers, so none but they who were summoned were appointed triers of petitions; they were ever of the prelates, and nobles, and judges.

And the chancellor and treasurer were appointed to be called *when need required, and they could attend*; as some records have it.

An. 21 *E. 3.* the receivers and triers of petitions are named; and that the triers of the petitions of *England*, &c. shall call the king's serjeants; and the triers of the petitions of *Gascoyne*, &c. shall call unto them the justice and treasurer of *Ireland* for *Irish* business, if need be: then it follows, *Et pur efforcer les auditors, & tryors des ditz petitions*, as well for *England* as for other places, these under-named are ordained;

The archbishop of *Canterbury*, the chancellor, the treasurer, and the chief justice; *to be with the said triers when they may attend it, and need shall be.*

272 *Receivers and Triers of Petitions.*§ 3. *Within what time the petitions were to be delivered.*

Primo die debet fieri proclamatio, primo in aula vel monasterio seu aliquo loco publico ubi Parliamentum tenetur, & postmodum in civitate vel villa, quod omnes illi qui petitiones & querelas deliberare voluerint ad Parliamentum, quod illas deliberent a primo die in quinque dies proxime sequentes. Modus tenendi Parliamentum MS.

This order was antiently observed, as it may appear by the Parliaments of *Edw. 3.* where the proclamation is often mentioned, *vide 15. 17. 20. 25 Edw. 3.*

In all the Parliament-rolls which record these receivers and triers, a day is limited for the delivery of these petitions; seldom above six days; which hath some times been prolonged for two or three days, *ex gratia regis. Prout, an. 25 E. 3. octabis Purificationis, & 25 E. 3. in festo sancti Hillarii.*

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The reason of this short time for the delivery of petitions was, for that the Parliament did seldom last many days; and therefore they were then appointed also on the first day of the Parliament, although it was afterwards adjourned to another day.

Here may be a doubt of the time for answering these petitions, whether during the Parliament only?

As many as time would permit were answered, sitting the Parliament; and to that purpose the several triers had several places to meet in, and they were often put in mind by the chancellor to attend the same, *prout an. 25 E. 3. n. 8. in fine.*

§ 4. *What kind of petitions they were.*

They were for the most part petitions of private persons for relief of any wrong done them, or for the king's grace, *prout,*

An. 1 E. 3. Petitio B. de Badlesmere, for restitution to lands and charters taken violently from him.

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Petitio

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Petitio Henrici com. Lanc', for delivery of deeds.

Petitio Jobannis de Vyenne, to be restored to his office.

Petitio Thomæ de Northrope, to be allowed his costs laid out in keeping the king's castle of *Brombam*.

Petitio Will. filii Eudonis la Zouche, for reversal of an outlawry for murder.

Petitio Thomæ de Berkelie, for his liberties of weyf and stray, &c. seized by the king.

Petitio Rici. de Perers, to be allowed a debt, due by the king, in his account.

Petitio ballivorum, & proborum hominum ville de Norwich, to be allowed 200 pounds which king *Edward* the second borrowed of them.

Petitio Lucie Multon, to have justice in a suit begun in the king's bench against the king's father for certain manors.

Petitio Eliz. Multon, against delay of justice.

Petitio

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Petitio Fran. Masse, and other merchants strangers, touching a wrong done them in *France* by merchant strangers who are now in *England*.

Petitio G. de Lacer, merchant of *London*, for redress touching a depredation in *Lumbardie, in partibus Bononiæ*.

Petitio H. S. against a piracy by four of the *French* ships, &c.

And among these, are sometimes petitions of a county, or a city, &c. *prout eodem an. 1 E. 3. rot. 3. in dorso.*

Petitio hominum Westmerland, quod exonerentur de putera [putura] balivorum regis.

Ibid. *A petition of the Cinque Ports*, for an explanation of their charter.

Ibid. *A petition of the dyers of London*, against false fulling of cloth, &c.

§ 5. *How the petitions were answered.*

First, let us see the direction.

In the times of *Edw. 3.* they were directed *Au nostre seigneur le roy & a son conseil.*

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fel. Some few were otherwise, *prout an.*
11 E. 3. *A conseil nostre seigneur le roy mon-*
stre A. de Weston.

Au chancellor nostre seigneur le roy monstre
A. le povre priour de Tackley.

Al tres honorable seigneur Monfr. William
de Clinton, *suplie* I. de Tavyle, *merchant du*
Portugal; touching a robbery at fea. (Lord
Clinton was constable of Dover, and admiral
at that time, as I remember.)

But these occur very seldom; yet they
were received and answered. Generally,
they were directed *To our lord the king and*
his council.

The question is, who are here meant by
the king's council? whether all the lords of
Parliament, or they only who were of his
privy-council. I was long of opinion, that
by the council were meant all the lords of
Parliament; but if you observe how the
answers were given to these petitions, you
shall find, that the consent of Parliament
was very seldom required.

Vide

Receivers and Triers of Petitions. 277

Vide 6 E. 3. which is the first Parliament
that mentions the manner thereof. And
there, *after the names of the receivers and*
triers are appointed, it follows;

Item, *it is agreed, that the petitions which*
shall be tried and determined by the aforesaid
prelates, barons, and justices, so appointed
triers, shall be delivered over into the chan-
cery under their seals, or under the seals of
two or one of them at the least. And that the
rest of the petitions shall rest under the seals
of the said triers in the custody of the clerks,
until the next day, and so from day to day.
And that the petitions, which are to be tried
and determined coram rege, be tried before
his majesty, calling unto him whom he please.
And that those petitions shall remain under
the seals of the auditors, or some of them,
until they be reported before the king, n. 3.

Here you see that the petitions are to
rest under the seals of the triers, and in the
custody of the clerks (that is, of the re-
ceivers) until they be answered; and then

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to

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to be sent from day to day, as they are answered, into the chancery.

Except the petitions *coram rege*; that is, those which required the king's grace. They were to be tried before the king, and to rest in the mean time under the seals of the auditors, *viz.* the triers.

To prove that by these words (*le conseil*) are not meant all the lords of Parliament, but the king's council only, *vide an. 21 E. 3. n. 63.* the answer to a petition of the commons, *viz. Il semble au conseil qil fait affaire pur grant bien sil plest au roy & a les grantz de la terre.*

Et puis nostre seigneur le roy per assent des grantz commanda a la dite comen adonques esteantz devant luy de luy auiser come, &c. Touching an act of provision against Rome.

Where I observe also a good testimony, that bishops are not *grantz de la terre.* They are not here understood, for they never meddled in any thing against the pope.

And

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And the answers to these private petitions were such as (in my opinion) required not the consent of Parliament, *prout,*

If the petition were for wrong done by a private person: *R^o.* Let him have a writ in the chancery to inquire thereof, and thereupon *fiat justitia.*

If for allowance of any thing in their account, &c. *R^o.* Let him have a writ in the chancery directed to the treasurer and barons of the exchequer, to view and examine the same, and thereupon to make the allowance; and the like.

If for delivery of charters, or the like, in the king's custody. *R^o.* Let him have a writ in the chancery to the treasurer and barons of the exchequer, to make search, &c.

If for reversal of an outlawry, or the like. *R^o.* Let him have a writ in the chancery to the justices of the king's bench, to cause the record to be brought before them; and if there be error, to reverse the same.

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If

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If for piracy, or any other wrong done by merchant strangers in foreign dominions. R^o. Let the petition be delivered in chancery, and upon hearing of the cause, let justice be done *secundum legem in tali casu usitatam*.

For these, and more such, peruse the petitions of *Edw. 3.*

All their remedy is out of the chancery: yet, now and then, a petition is of such weight or difficulty, that the matter is reported to the house, and there openly heard and determined; *prout*, the petition of the abbot of *Thornton super Humber*, touching lands recovered by him in the king's bench, whereof he was in possession, and afterwards disseised by *Hugh Despencer*.

The answer is, *Recordum & processus predicti monstrantur in Parlamento, ita quod jus inde fiat*, an. 1 E. 3. rot. 1. in dorso.

And the long petition of the two *Corbets*, eodem an. which depended *tempore E. 1 & 2.* and by the proceedings it seems to have been discussed in Parliament an. 12 E. 2.

But

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But it was answered, an. 1 E. 3. by the triers thus: *Soit ceste petition mande par brief du grant seal a Sire G. Lescroop, justice du bank notre seigneur le roy, & soit mande a luy par mesme le brief qil face regarder tout le proces dont mencion est fait en cest petition, & appelez eux, qui sont appeller, ayele avant a fynal discussion de la dite besoigne, sans qil ne ayle mye au jugement saunz le roy*, an. 1 E. 3. rot. 9. dorso. They sued for the castle of *Tremington*, and divers other lands, which *Roger de Vautort* (whose heirs they were) gave unto *Richard*, king of *Almaine* (the earl of *Cornwall*) and to the heirs of his body; the remainder to the heirs of the said *Roger Vautort*.

The petition of *Elizabeth de Burgo* is worth the observation. It is touching a recognizance enforced from her unto *Edw. 2.* not to receive any of his enemies; not to marry without his licence; nor to sell any of her land without his consent: the copy of which recognizance was annexed to the petition. The answer is by the triers;

Porce

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Porce qe tesmoigne est qe le dit escript est en la garderobe, eit brief en chancellerie au gardeyn de la garderobe de fair venir le script devant le conseil sanz delay. Then follows, *Par quel endossement*, the writ was made, which is there recited, and directed to the clerk of the privy seal (who was also master of the wardrobe) commanding him to bring the said writing, *coram consilio nostro in presenti Parlamento, &c. Teste meipso, &c.*

Per petitionem de consilio. (Which shews that the chancellor had no other warrant than the indorsement of the petition.)

The clerk of the privy seal, by virtue of this writ, brings in the said writing, which being examined and delivered *in full Parliament*, it was considered by the lords and commons, that it was contrary to the laws of the land, and all reason; and therefore it was damned, *per agarde del Parliament*, and delivered unto the said *Elizabeth*.

By this petition you may perceive, that what was done *in full Parliament*, is so recorded.

So

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So the long petition of *G. de Staunton*, an. 14 *E. 3.* was viewed and read in full Parliament, and assented unto by all in full Parliament. It was to demand judgment in a cause depending in the common pleas, which was of such difficulty for point in law, that the judges did forbear to proceed; and so the lords of Parliament directed them on which side to give judgment.

Note, that the commons joined with the lords to damn the recognizance of *Elizabeth de Burgo*, and so it was necessary, to avoid a record; but the commons did not join in assent touching *G. de Staunton's* petition; for there the lords did but direct justice to be done in another court, according to the law.

In the times of *Rich. 2.* the petitions were directed sometimes to the king and his council, as in *Edw. 3.*

Sometimes, *a nostre tresdoute seigneur le roy & as noble seigneurs du Parlement.*

Sometimes,

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Sometimes, as *honorablez & souveraignes seigneurs en cest Parlement.*

And some, *a nostre seigneur le roy & a touz lez seigneurs & communes de son royaume*; but they were public petitions, as that of the officers of the mint within the Tower of *London*, and the like.

And the Parliaments sitting long in those days, over they did in *Edw. 3d's* time, most of the answers to these petitions (if not all) were assented unto by all the lords, *prout an. 15 R. 2.* the petition of *Joan*, the wife of *Sir Robert Swinbourn*, knight, directed to the king and the lords, shewing, that the said *Sir Robert* enfeoffed divers gentlemen of certain lands to the use of her, and of her young children, and of his last will and testament: and that *Thomas Swinbourn*, his son and heir, entered violently upon the lands, and possessed himself of divers goods and chattels, &c. and by threats and maintenance kept her out, &c.

The answer was thus.

2

This

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This petition being read in Parliament, and the reasons of the one side and the other, and of all the feoffees, present in Parliament, being heard, it is awarded by the king and all the lords, that the said *Thomas Swinbourn* shall make full restitution, &c. And also, that the said parties shall come before the council of the king, at a day certain to be limited them by the said council, and there shew all their evidences, &c. And the council to make a good end, if they can; if they cannot, to adjourn them over to the common law: and further, that the said *Thomas* find to the petitioner, her children, and servants, and to the said feoffees, and to the executors of his father's will, sufficient sureties of the peace, and that he shall do no manner of maintenance, menace, nor other things, whereby the common law may be any way disturbed of its right course touching all the said matters. And moreover, because the said *Thomas* acknowledged, that he sent unto certain persons a letter (shewn
in

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in Parliament) of horrible menaces to the king's people touching this matter, he is awarded to the Tower of *London*, there to remain at the king's will. The which imprisonment, at the instance of the duke of *Yorke*, the king afterwards pardoned, upon his good behaviour.

I have recited this answer somewhat at large. By this I gather, and by some answers of *Edw. 1. Edw. 2. and Edw. 3.* that intricate busineses were discussed in open Parliament (what answer soever the triers had prepared); others of smaller moment were directed to be redressed by the chancery, without any further trouble to their lordships.

But the commons were not privy to these answers, as I noted in those of *Edw. 3.* unless it were to such as otherwise legally could not pass, *prout an. 18 E. 2. Westm. craft. nat. sanct. Jobann. Baptist. A nostre Sr le roy & a son conseil monstrent archevesques, evesques, countes, barons, & autres genz de la cominaltie d'Engleterre*, who petitioned,
that

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that they might let to farm the wastes belonging to their manors, which they held of the king *in capite*, as well within forests as without, without the king's licence first had: which petition is indorsed *coram rege*, and the king's answer is thus.

Il ne puit estre fait sanz novele ley, laquele chose fere la comminaltie de la terre ne vult mie uncore assentir.

In the times of *Hen. 4.* few petitions were directed to *the king and his council.* Some were directed to *the king* alone; some to *the lords* alone; and some to *the commons.*

But I find no answer by the commons. Only, if they were petitions of grace, the commons wrote this inscription over the first line, *viz.*

Soit baille as seigneurs pur parler a roy; or Soit parle a roy per les seigneurs.

The others were sent up to the lords without any direction; and here first began the private bills, now exhibited in Parliament.

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Hen. 5. Hen. 6. and Edw. 4. There are some bundles of petitions extant of these times; but I cannot determine, whether they were delivered to the receivers of petitions or no. Many of them are directed to the commons; some to the king, some to the lords; none to *the king and his council.*

By their answers it seems, that these (and those also of *Hen. 4.*) were assented unto in open Parliament, and none past by the triers alone, as in the times of *Edw. 3.*

After these times we have no bundles of petitions.

§ 6. *Petitions indorsed coram rege.*

These were petitions of grace from the king, and therefore the triers might not answer them *rege inconsulto.*

I will recite some of them, and the proceedings thereupon, *&c. viz.*

An. 1 *E. 3. rot. 3. Thomas,* bishop of *Worcester,* petitioned, that, whereas he is charged in the exchequer with divers tenths granted

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granted to *Edw. 2.* the said tenths might be allowed him in certain bills in the wardrobe, and that payment might be made to him of the residue *per assignation. eidem episc. faciend.*

R^o. Let him shew his bills in the chancery, and have a writ to the treasurer and barons of the exchequer, to allow him, in the debts exacted of him in the exchequer, the sum contained in these bills, *& quoad assignationem sibi faciend. de residuo summæ in eisdem billis contentæ, ponatur ista petitio coram rege.*

The petition of the bishop of *Winchester,* shewing that the churches of *Estmunds* and *Hameldon* are annexed to his bishoprick as things spiritual, and whereof the guardians of the spiritualities, *sede vacante,* are only to meddle, as the use is of other bishopricks, yet *Robert de Welle,* guardian of the temporalities, hath levied the profits thereof, and accounted for them to the king, to the value of 400 marks, whereof he prayeth restitution.

T

R^o.

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R°. *Videtur consilio, quod occupatio de fructibus hujusmodi ecclesiarum est injuriosa, sed propter possessionem habitam in hac parte, ponatur ista petitio coram rege.*

Postea retractata ista petitione coram rege & magno consilio, concessum est & concordatum, quod custodes temporalium infra scripti episcopatus non se intromittant amplius temporibus vacationum de hujusmodi fructibus ecclesiarum, an. 1 E. 3. rot. 9. dorso.

Here, at this time, some petitions *coram rege* were answered at the great council, which was often assembled at the end of the Parliament; and there also were answered divers petitions of the commons, which were not answered in Parliament, as shall be shewn in the second book.

An. 14 E. 3. at the Parliament held after *Midlent*, all busineses not being ended at *Easter*, the Parliament was adjourned till Wednesday sevensight after, and the king willed, that at that day the petitions, which were not already answered, should be then heard, and duly answered; and these under-

named

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named were assigned to sit upon petitions *coram rege, viz.* The bishop of *Chester*, the earl of *Huntington*, Monfr. *Thomas Wake de Lydel*, Monfr. *John de Stonore*, Monfr. *William de Sharesbull*, &c. *associez a eux les chancellor & treasurer, quant besoigne serra, n. 28 & 29.*

An. 25 E. 3. Receivers and triers being appointed, it followeth thus.

And that alwaies there be present when the said petitions be read, in case any of them doe touch the king's chamber, Sir Thomas de Brembre, or Sir Henry de Greystock, to give due information for the king, and to the king, when need shall be.

An. 28 E. 3. Sir *Henry de Greystock* is appointed to be called to all petitions which concern the lands or tenements reserved for the king's chamber. These (*Brembre* and *Greystock*) were for petitions which concerned the king's chamber only, and not generally for all petitions which required the king's special grace and bounty.

T 2

An.

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An. 36 E. 3. n. 31. Whereas lords are assigned to hear petitions; if any concern the king, they indorse the bills *coram rege*, and so nothing is done; the commons pray that the said bills may be viewed before the lords, and by advice of the chancellor, treasurer, and others of the king's counsel, answered and endorsed, in manner as right and reason demands; and this before the departure of the Parliament.

R°. *Le roy le voet.*

An. 4 E. 3. *apud Winton.* inter Bundel. Petition. *Robert de Vere*, earl of Oxford, exhibited his petition for the office of great chamberlain of *England*, whereof his ancestors were seised in fee, by the grant of *Henry* king of *England*, until *Hen. 3.* ousted his father *Robert de Vere*, *sauns judgement.*

The first answer is; *Let him come before the council, and shew his deeds and muniments.*

And having shewed his charter to the council, the second answer is; *Pur ce qe*
cest

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cest chose touche especialement le roy, soit ceste besoigne devant le roy & son conseil.

The third answer to that petition is; *Soit ceste petition mande en chancellerie, & le chancellor, pris a luy les justices, & autres sages du conseil ordeinent remede en ce cas.*

An. 16 R. 2. n. 32. *inter petitiones communium.* *Roberte Atmulle* and *Alice* his wife prayen the king's pardon, for that they were wrongfully condemned for taking of 700 pound of treasure trove at *Gildford.*

R°. *Let them sue to the king, for this is no petition of Parliament.*

The meaning is, *this is a petition of grace, and could not be answered by the council, rege inconsulto.*

(*Nota*, the king's council prepared all the answers to the petitions of the commons.) Compare with the answer to this petition the order made in the upper house of Parliament, an. 3 *Jacobi.*

That bills of restitution to blood begin in the upper house only, and ought to be first signed by the king.

T 3

An.

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An. 1 H. 4. n. 118. among the petitions of the commons. The citizens of *Lincoln* pray to be eased of their fee-farme, being 180 pounds *per annum*, which they are unable to pay.

R°. *Let them sue to the king, who will be gracious.* Which is as much in effect, as *Ponatur ista petitio coram rege*; and not to begin with the commons.

An. 29 E. 3. n. 18. the petition of the commons touching alienations without licence, *tempore H. 3.*

R°. *Soit monstre, & declare a notre fr. le roy.*

§ 7. *Of petitions indorsed per auctoritatem Parlamenti.*

The first of this sort I find an. 15 R. 2. to the petition of *Richard Pryour*; the direction is thus.

A nostre tres puissant & tres gracieux fr. le roy & a son tres honorable conseil en Parlement. He complains, that whereas divers lands
in

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in the counties of *Gloucester, Somerset, &c.* (which were the lands of *Tho. de la River*, son and heir of *Richard de la River*, who held of *Edw. 3. in capite*, lately within age, and in ward to the king, and dying within age) were delivered by the commandment of *Edw. 3.* unto him the said *Richard Pryor* and *Joane* his wife, coufen and heir to the said *Thomas*, for that *Agnes*, the sister of the said *Thomas*, was a nunne professed in the abbey of *Sbafton*, as by the records, &c. appeareth;

That presently after the said livery made, he and his wife were disseised by *Richard Cleydon*, and the said *Agnes*, his concubine, who was a nunne professed, and by *Tho. Brook*, &c. and their maintainors and fautors, for which they have been in suite these fifteen years, and are like to be utterly disinherited, &c.

The answer is thus indorsed; Let this petition be delivered in the chancery, and let the chancellor, by authority of *Parliament*, cause the parties to come before him
in

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in the chancery, and there, the matter comprised in this petition being diligently viewed and examined, and the reasons of the one part and the other heard, let that be done, *by authority of Parliament*, which right and reason, & *bone foy & bone conscience*, requires in the case.

I may doubt whether these words, *by authority of Parliament*, were added to countenance this answer or no; for if they had been omitted, yet the lord chancellor was directed by the Parliament to proceed, and his proceedings warranted thereby.

I find divers other petitions so answered this Parliament, but not all.

Divers other petitions were referred to be determined in the chancery that year, if they could not be determined by the common law, without these words; *prout*, the petition of Sir *John Randly*, knight, to be discharged of thirty shillings rent upon an hundred acres of assarted lands, part of his manor of *Pay* in *com. Northton*, which was sometimes within the forest of *Whittlewood*, but since disafforested by perambulation.

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The answer is; Let this petition be delivered in the chancery; and the justices and the king's serjeants being called, and the matter well examined, let that be done which right and reason demands.

But in the following times most petitions have the same words, *by authority of Parliament*.

And it seems to be, that they were added, for that the parties were thereby directed to the chancery, whereas they might otherwise have remedy by the common law; and sued in Parliament only for that they were interrupted in their ordinary proceedings by menaces, or maintenance, or the like, whereby their suits in law were become long and intricate; and the chancellor, happily, made dainty then to meddle in such causes; and, peradventure, the defendant excepted against it, as may appear by this, that the commons exhibited their petition against this kind of answers, an. 8 H. 5. n. 12. in these words.

Item,

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Item, prayen the commons, in this present Parliament, that if any man sue a bill or petition indorsed by these words (*by authority of Parliament, let this bill or petition be committed to the council of the king, or to the chancellor of England, to execute and determine the contents thereof*)

Whereas the said bill or petition is not by the commons of the land required to be affirmed or assented unto;

That no man to such bill or petition (unless the assent or request of the commons be indorsed) be bound to answer contrary to the laws of the realm of *England*.

Unto which was answered, *viz. Soit avise per le roy.*

F I N I S.

E R R A T A.

- P. 4. l. 21. For *comitivam*, read *comitatum*.
 20. 5. For *effectuose*, read *affetuose*.
 108. 10. For *degrees*, read *degree*.

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