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L E T T E R S

U P O N

Parliamentary Impeachments.

[ PRICE ONE SHILLING. ]

L E T T E R S

U P O N

Parliamentary Impeachments,

IN WHICH THE QUESTION IS CONSIDERED,

WHETHER IMPEACHMENTS ARE CONTINUED

IN STATUE QUO, FROM PARLIAMENT

TO PARLIAMENT, OR ABATE BY

A DISSOLUTION?

---

BY A BARRISTER AT LAW.

---

L O N D O N :

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there is not an instance of an Impeachment, continuing *beyond one Session of Parliament.*

In 1678, the Lords determined that Impeachments continued in *statu quo*, notwithstanding a dissolution, and Lord Stafford, who had been impeached in the preceding Parliament, was tried, convicted and executed.

The attainder was reversed in the next reign.

Four Popish Lords, and the Earl of Danby, who had also been impeached in 1678, continued in the Tower until 1683, when they were admitted to bail by the King's Bench.

In 1685 in the first meeting of Parliament, these Lords presented a Petition to the House, and in considering their case, they reversed, and annulled the Resolution of 1678, in consequence of which the Impeachments were dismissed.

Here then are two Resolutions, both passed in very turbulent times, the first affirming that an impeachment remained in *statu quo*, notwithstanding a dissolution: the

the second reversing and annulling that Resolution.

But a third instance happened soon after. On the 26th of October, 1689, in King William's reign, the Commons impeached the Earls of Salisbury and Peterborough of High Treason.

On the 6th of February following Parliament was dissolved.

On the 6th of October, 1690, a Committee was appointed to inspect and consider precedents, *whether impeachments continue in statu quo from Parliament to Parliament.*

On the 30th of the same month Report was made from the Committee of Precedents from the Tower as far back as the reign of Edward the Third, and from the Journals which reach to the reign of Henry the 7th, " amongst all which (the Committee observe) none are found to continue from one Parliament to another, except the Lords who were lately so long in the Tower, viz. Lord Danby &c." After considering this report, Lord Salisbury was discharged.

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Thus it appears that the Resolution of 1678, that Impeachments continue in *statu quo* notwithstanding a dissolution, was intirely unprecedented, and the revival of that Resolution in 1685, *was approved by the decision of the 30th of October, 1690.*

After considering all these Precedents in 1717, it was moved, “ that the Impeachment of the Commons against the Earl of Oxford is determined *by the intervening Prorogation;*” but this motion was negatived by 87 to 45, upon which some of the dissenting Lords entered the following Protest.

“ Because there seems to be no difference  
 “ in law between a prorogation and dissolution, of a Parliament, which in constant practice have had the same effect,  
 “ as to determination both of judicial and legislative proceedings, and consequently  
 “ this vote may tend to weaken the Resolution of this House, May the 22d,  
 “ 1685, *which was founded upon the law and practice of Parliament in all ages, without one precedent to the contrary;*  
 “ *except in the Cases which happened after*  
 “ *the*

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“ *the Order made the 19th of March, 1678;*  
 “ *which was reversed and annulled in 1685; and in pursuance hereof the Earl of Salisbury was discharged in 1690.*”

It appears that a distinction was taken in the debate between a prorogation, and a dissolution, nor can there be a doubt upon an inspection of the Journals, but that a dissolution does put a stop to an Impeachment, unless the Lords upon further consideration, shall reverse their last order.

Mr. Hastings's Case is in one particular perfectly new. There is no precedent of a Trial *actually begun* which was not finished in the same session, except my Lord Strafford's, in the reign of Charles the First. Before the close of his trial the mode of proceeding was altered, and he suffered by a Bill of Attainder, *but it passed in the same session.* The Trial of Mr. Hastings has continued three years. The possibility of such a Case never occurred to our ancestors, nor did the Legislature suppose such an event could happen at any period, unless under very peculiar circumstances, for which provision is made in an Act of the 13th of his

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his present Majesty, which empowers the Chancellor, or Speaker of the House of Commons to *issue warrants for the examination of witnesses in India*, and then enacts that as it would be impracticable to receive the examination taken upon such warrants in the ordinary length of a Session of Parliament, “ that from and after the first day of November, 1773, no proceedings in Parliament touching any offence committed or to be committed in India, *wherein such warrant as aforesaid, shall have been issued, shall be discontinued by any Prorogation, or Dissolution of Parliament*, but that such proceedings may be resumed and proceeded upon, in a subsequent Session, *or in a subsequent Parliament*, in like manner, and to all intents and purposes, as they might have been, in the course of one and the same Session, *any law, usage, or custom to the contrary notwithstanding.*”

From this Clause it is evident, that except in cases where witnesses were to be examined in India, the Legislature could not conceive the necessity to arise for continuing any proceeding from Parliament to Parliament.

Mr.

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Mr. Pitt's Bill, which erects a new Court for the Trial of offences committed in India, though it takes from British subjects the right of a Trial by Jury, yet in a most material instance, has strictly conformed to the true spirit of Magna Charta, for it enacts, *that after a Trial shall have been commenced, the Court shall sit every day, Sundays, Christmas Day and Good Friday excepted, unless the Judges (originally fifteen) should by sickness or death be reduced to ten; should one of the ten be absent by sickness, then the Court had power to adjourn for three days, and no longer at one time, nor under any circumstances, should there be more than ten adjournments.*

The Act further provides, that should the Court be reduced to less than ten (a possible, but a very improbable event) *the trial shall begin de novo*, except as to the depositions of witnesses, (if any) *which shall have been given in writing.*

Here appears to be as much attention as could be paid under the circumstances to *speedy as well as equal justice*, but the Impeachment as carried on hitherto, is totally unprecedented. Thirty-one of the Judges who

who originally belonged to the Court are dead--the *prosecution* still pending. Many others are politically dead, not being returned to serve for Scotland. Others withdrew themselves during the trial, publicly declaring their reasons for so doing, and the House that voted the articles is dead. Under such circumstances, and with the precedents that I have quoted, this great and important constitutional question will be taken up when Parliament meets. I have stated the facts without intending an opinion of what ought to be done.

Temple, Aug. 21. A. R.

LETTER II.

S I R,

I Troubled you some time ago with a letter upon Impeachments in general, and with some observations on the Trial of Mr, Hastings. The state in which this trial was left by the dissolution, has been the subject of much conversation amongst men of

of my profession. What I have already written, or may hereafter send you upon it, is not with a party view, either for or against Mr. Hastings, but merely with the hope, that men of more legal knowledge than I possess, should turn their attention to a question, which appears to me of infinite importance, when considered in a constitutional light.

A case similar to that of Mr. Hastings is not to be met with in the History of England. A trial has commenced in the language of law, when articles have been preferred; the answer delivered in, and replication made, issue being then joined. This was the case of the Earl of Oxford, who lay in the Tower two years after this process, before he was brought into Westminster-hall; but when he came there, the trial went on in that session to its close, and so has every other trial that we read of. In some instances (Lord Strafford's and Archbishop Laud's) the close has been violent. Mr. Hastings is the only British subject who has been brought three years successively before a Court of Justice, and

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whose prosecution were dissolved before the close of the Prosecution: the case that comes nearest to it, though the difference is very essential, is that of Sir Thomas Rumbold.

A Bill of Pains and Penalties was brought in by Mr. Dundas in 1782, and at the close of the session, the proceedings were continued for another year by a short Bill, though a prorogation, or *dissolution* should take place, in the mean time.

They were resumed in 1783, and the evidence *closed on both sides* in that session; but as the House had been very thinly attended while evidence was at the Bar, Mr. Dundas moved, that it should be printed, to enable every Member to give a conscientious vote upon it; and as the printing could not be finished in time for a decision in that year (it being then the 2d of June) he moved for leave to bring in a Continuation Bill *for another year*.

Mr. Sawbridge thought the Bill *cruel and unconstitutional*, and to prolong the business to another year appeared to him to be subversive of every principle of justice and humanity.

Mr.

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Mr. Fox was for a decision in that session if the evidence could be printed in time; if not, it was an act of necessity to postpone it to another year: it was not a question of party, but one upon which every Gentleman would act with the utmost independence, taking reason, candour, and justice for their guides.

Mr. Rigby said, that to continue a Bill of Pains and Penalties in existence, *though a dissolution should take place*, struck him as extraordinary and extremely ridiculous; were they to bind five hundred and fifty eight other persons to abide by evidence which they only had heard?

Mr. Burke said, it was not more absurd, than it would be for the Commissioners of the Great Seal to determine a cause, the evidence upon which had been given before the late Lord Chancellor.

Lord North approved of continuing the Bill to the next session, but thought there was an impropriety in the word "Dissolution;" as one Parliament had no right to bind another, it would be absurd to say that five hundred and fifty-eight men should

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hear evidence, and another five hundred and fifty-eight men should decide upon that evidence.

Mr. Lee, the Solicitor General, said he always conceived the proceedings to be illegal.

Mr. Dundas said, there were precedents to justify the Bill, and it passed.

A similar Bill passed to continue the proceedings in the case of Mr. Hastings in 1786, limited in like manner, *to one year*, and the Bill never was renewed.

By these Bills the preceding inquiries were not to be rendered nugatory in case of a prorogation, or a dissolution, *but they were limited to a year.*

It has, however, been an invariable Parliamentary doctrine, that one House cannot be bound by the decisions of a former House. To prove this, an hundred instances may be brought, and the doctrine was laid down in the clearest manner by Lord Beauchamp in the year 1781, when he opposed Mr. Burke's Reform Bill, which that Gentleman proposed on the ground, amongst others, of the vote of the preceding House, relative to the increased influence

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ence of the Crown. Lord Beauchamp affirmed, that the House could not, in any degree, be bound by a resolution of a former Parliament, and therefore he should lay it totally out of the question, and consider the Bill before him merely upon its merit. If this be true constitutional language, it appears equally to apply to the case of Mr. Hastings.

I will suppose, therefore, that the Lords should rescind their last order, by which Impeachments are determined by a dissolution, and that they should fix a day for proceeding on the trial of Warren Hastings, Esq. then a question perfectly *new* will come before the House of Commons.

The Impeachment was an act (and is so expressed in the article) of the Knights, Citizens, and Burgesses, in *Parliament assembled*, in the name of *themselves*, and of all the Commons of Great Britain. *Themselves* were the House *then assembled*, representing all the Commons of Great Britain. *Themselves* are not now in existence. The King in virtue of his prerogative, returned them to the mass of the people. The impeachment therefore, is to all intents and purposes

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poes dead and gone, if I am right in my conclusions. But I am equally clear, that *this House* possesses the power to vote the twenty articles which the last House passed *totidem verbis*, without the hesitation of a moment. They may do this, in confidence, that the last House would not have passed such a mass of matter without due examination, but I should apologize to the House were I to say that they would do an act so flagrantly unjust. They may totally abandon these twenty articles, and present twenty others, that are totally new. In truth no man can dispute the House of Commons, as to Impeachments; but their acts *must be their own*. The present House is a body perfectly distinct from the last. It cannot say, as this Impeachment was a legacy bequeathed to us by the last Parliament, we must pursue it while we live, and so must our successors when we are no more; such reasoning would be absurd in the extreme. If the Lords chuse to go on, the Commons must determine whether they will sanction the acts of their predecessors in the whole or in part, and there are great difficulties to be surmounted any way; for it will form a precedent of so singular a nature, that I dare say

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say the proceedings will be most attentively considered.

But if the Lords should abide by their last order, and determine as they did in the case of Lords Salisbury and Peterborough, in the reign of William and Mary, that the dissolution *has* put an end to the Impeachment, and to that opinion the majority of those with whom I have conversed seems to incline, then the question in another shape comes before the House of Commons, viz. whether Mr. Hastings ought to be impeached again, or not? If the former, shall the House prefer the same articles? or shall it select some of those articles? or shall it frame articles totally new, and upon different ground, availing itself of all that has passed in Westminster Hall, for the chance of hitting their object more securely in this Parliament, than they did in the last, and weighing every allegation in their new articles with the utmost care? These are very material points to consider. But admitting that the House should impeach again, then is there any satisfaction to be given to Mr. Hastings, for what he has suffered, that he may

may be enabled again to meet his opponents ? Or supposing the House should not impeach, is a matter of this importance to be left in its present state ? These points appear to me of serious consequence to the security of our constitution. The power of Impeachment is too valuable to be lost ; but it ought never to be used for the purposes of oppression. I therefore trust that this question will be considered upon fair ground, and that a full discussion of it will not be got rid of by a side wind ; I mean by one House insisting upon it that the Impeachment is terminated by the dissolution, and the other resolving that it is not. The point ought to be fixed one way or the other.

A. R.

*Femple, Oct. 2, 1790.*

LETTER III.

S I R,

MY former letters on the subject of Impeachments have drawn two replies---the one from "A Student," who agrees with me, that the impeachment is ended in the Commons, and that it must be renewed by the present House, before the proceedings can be resumed.

The other reply is from a Gentleman who signs himself "Honestus," and whose arguments I shall treat with every possible degree of respect, assigning my reasons for disagreeing with him, in the conclusion he draws.--

He thinks the question, to be that of all others, which Lawyers are incompetent to decide upon. Now, Sir, with humble submission, I do conceive that a man who has taken some pains to understand the laws of his country, may without presumption give his opinion upon the impeachment of Mr. Hastings.

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The whole of the argument of "Honestus" is, that as an impeachment is preferred in the name of all the Commons of Great Britain, it cannot possibly be destroyed by a dissolution, because the Public is still the same.

I wish to examine this argument with the utmost candour, and the way to do it, will be to resort to precedents.--

Those who consult the journals will find that all Impeachments run in the same language. Before the Union the articles were exhibited by the Knights, Citizens, and Burgesses, in Parliament assembled, in the name of *themselves, and of all the Commons of England*; since the Union the Preamble is the same with the change only of *England* for *Great Britain*.

There are various instances of Impeachments preferred in one Parliament, which were totally neglected by succeeding Parliaments; yet if the argument of "Honestus" is a sound one, the prosecution being that of *the people*, a new Parliament must of necessity resume it.

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I will give three instances, which prove it to be optional in the Commons.

Lord Danby was impeached in 1678, and while the proceedings were depending, Charles the Second dissolved the Parliament. Notwithstanding all his efforts, the new elections were so much against the Court that nearly the same Members were returned, and they resumed immediately the proceedings against Lord Danby, the Lords having determined that the Impeachments continued in *statu quo*, though a dissolution had taken place.

This order of the Lords was annulled in 1685. In 1689, the first year of the reign of William and Mary the Lords Salisbury and Peterborough were impeached by the Knights, Citizens and Burgesses in Parliament assembled, in the name of *themselves and of all the Commons of England*. Parliament was dissolved in 1690, and at the meeting of the next Parliament *these Lords were discharged*. This could not have been the case were the doctrine of Honestus founded upon law, or upon the practice of the constitution.

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But the last case which I shall quote, is of a nature that requires the most particular attention.

On the 14th of April, 1701, the House of Commons impeached the Lords Somers, Portland, Halifax, and Orford, of high crimes and misdemeanors, and in the following month separate articles were exhibited against three of these Lords, by the Knights, Citizens and Burgeſſes in Parliament aſſembled, *in the name of themſelves, and of all the Commons of England.* Lord Portland, tho' he had been impeached the firſt, and in the name of *all the Commons of England*, had no articles exhibited againſt him, though the Lords *reminded* the Commons of this neglect, ſix weeks after his impeachment was carried up. The Commons addreſſed his Maſteſty to remove theſe Lords from his preſence, and Councils for ever. A counter-addreſs was preſented by the Lords, to prevent the conduct of men from being pre-judged, againſt whom criminal charges were preferred.

The impeached Lords preſſed *for a ſpeedy trial.* The Lords told the Commons, tha

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that the perſons impeached had a *right* to what they demanded. The Commons deſired a free conference, at which they inſiſted upon it as a right, that where ſeveral perſons were impeached, they ſhould begin with any one they choſe. They alſo inſiſted upon a joint committee to ſettle the mode of proceeding.

In the courſe of the conferences held upon theſe points, the Lord Haverſham ſaid, that the Commons had allowed men guilty of the ſame crimes (as the impeached Lords had been charged with) to ſit and vote in their own houſe, and therefore he conceived the Commons muſt think the impeached Lords innocent--this ſtrong obſervation broke up the conference--the Commons returned to their own Houſe, which was in a flame on hearing the expreſſion, and voted it moſt ſcandalous, and falſe, and highly reflecting upon the honour, and juſtice, of the Houſe of Commons. They reſuſed to meet the Lords again at a conference until puniſhment was inflicted upon Lord Haverſham.

The Lords profeſſed the utmoſt readineſs to

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to settle this dispute; and continued to press the Commons to proceed to the trial of the four impeached Lords; at last they fixed certain days for their trial. The Commons not only refused to attend, but forbid any of their Members to be present, and said (which was certainly true) that a trial or an acquittal under such circumstances, *was a mere mockery.*

The Lords however went into Westminster Hall, made three proclamations, and then acquitted the impeached Lords.

The Commons the day of Lord Somers's trial, came to this resolution:

“ That no member of this House do presume to appear at the place erected for *the pretended trial* of the impeachment of Lord Somers, under the pain of incurring the utmost displeasure of this House.”

They resolved the next day, “ That the House of Lords, by the *pretended trial* of John Lord Somers, have *endeavoured* to overturn the right of impeachment lodged *in the House of Commons* by the ancient constitution of this kingdom, for the safety and protection of the Commons  
“against

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“ against the power of Great Men, and have made an invasion upon the liberties of the subject, by laying a foundation of impunity for the greatest offenders.”

In another resolution they accused the impeached Lords of an attempt to make a breach between the two Houses, “ *to procure an indemnity for their own enormous crimes.*”

The Commons on the 20th of June, 1701, appointed a Committee to consider the proceedings between the two Houses relative to the impeached Lords; but on the 24th of June the King prorogued the Parliament, and dissolved it on the 11th of November.

This is the history of these proceedings extracted from the thirteenth volume of the Commons Journals.

If we are to credit cotemporary historians, *all the Commons of England* were exceedingly displeas'd with the conduct of their representatives.—Petitions in reprobation of their proceedings were presented from various places, and the dissolution, though

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though the Parliament had sat but a single session, gave very general satisfaction.

The new Parliament met on the 30th of December, 1701, but it never thought of beginning where the last left off. It did not revive the committee which the last Parliament had appointed to consider the business of the impeached Lords, nor did it insist upon those Lords being *really* tried, nor did it impeach them again; yet something of this kind must have been done, on behalf of *all the Commons of England*, had not the Impeachment been merely the *act* of the last Parliament, and *not of the people*.

But the impeachment of those Lords had made so much noise, and the delay in bringing them to trial, had caused such a ferment amongst the people, that the new House of Commons took up the business in a new style.

The House, on the 26th of February, 1701-2, resolved itself into a Committee, of the whole House to consider their Rights and Privileges, and came to various Resolutions, which the House adopted.

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The first was, That to assert that the House of Commons is not *the only Representative of the Commons of England*, tends to the subversion of the Rights and Privileges of the House of Commons, and the fundamental constitution of the Government of this kingdom.

The second, that to assert that the House can only commit its own Members, tends to subvert the Constitution of the House of Commons.

The third, That to publish any book or libels reflecting on the proceeding of the House, or any Member thereof, for, or relating to his service therein, is a high violation of the Rights and Privileges of the House of Commons.

Having thus defined *their own Rights*, they passed two very laudable Resolutions, in which the *Rights of the People are defined*.

First, That it is the undoubted Right of the People of England to petition or address the King, for the calling, fitting or dissolving of Parliaments, and for the redressing of grievances.

Second, *That it is the undoubted Right of*

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*every*

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*every Subject of England, under any accusation either by Impeachment or otherwise, to be brought to a speedy trial, in order to be acquitted, or condemned.*

Here, Sir, you see a very material distinction in the conduct of the two Parliaments with the same speaker (Mr. Harley) in the Chair of each Parliament.

Both were equally sollicitous to preserve *their own Rights and Privileges*--but, in other respects, they differed most essentially: the first Parliament impeached four Lords in the name of themselves, *and of all the Commons of England*. They strongly reprobated that *pretended tryal* to which those Lords had been brought, they stopped the supplies, and were proceeding still greater lengths, when they were first prorogued, and then dissolved. The four impeached Lords continued to possess the confidence of the Sovereign, King William, and of the people too, though they were impeached *in the name of the Commons of England*, and were only brought to a mock trial.

The second Parliament never took up the Impeachment again at all. The impeached

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Lords were Cabinet Ministers of King William, and afterwards of Queen Anne, and posterity has done justice to their characters.

From this account it is obvious, that the *people*, in whose names those Lords were impeached, *abhorred the Impeachment*, and that a new Parliament conceived itself to be under no necessity to follow the steps of the old; yet if the doctrine of Honeſtus were constitutional, they must have taken up the business, of necessity.

I do not profess to be very deeply versed in the case of Mr. Hastings, but, in my next letter, I shall state the analogy that it bears to that of the Impeached Lords in the reign of King William; there are circumstances in the situation of publick affairs at that time, and the present, which certainly are very similar, and, I trust, Sir, that a lawyer may, without offence, communicate his observations upon a subject of such importance.

A. R.

Temple, Oct. 17.



LETTER IV.

S I R,

I CONCEIVE that I have proved to the satisfaction of every impartial person, that though the Impeachment, in the year 1701, in King William's reign, ran in the name of *all the Commons of England*, the people were exceedingly averse to the whole proceeding. They did not call upon the new House to resume the Impeachments, much less did Parliament think that it was *obliged to resume them*, because the former House presented them in the name of *all the Commons of England*.

When the new Parliament met in 1701-2, a general war appeared to be inevitable, and did in fact break out in a very few months. The four impeached Lords were appointed to great employments: --- Lord Portland was created a Duke; Lord Halifax an Earl, and placed in high office; Lord Orford (the gallant Admiral Ruffel) was at the Head of the Admiralty, and Lord Somers, President of the Council, and the Leader of the

the Whigs, in the reign of Queen Anne; yet there is nothing, however atrocious, which comes under the description of High Crime and Misdemeanor, that the House of Commons did not lay to the charge of those noble Lords---*acquiring for themselves and their dependants enormous wealth---an abuse of the confidence reposed in them by their Sovereign---flagrant violations of the Laws of their Country---bringing dishonour upon England, in the eyes of all Europe*. How was it possible that the Impeached Lords, or the Country could have sat easy under such Charges, if it were not true, as I have already remarked, that these heavy accusations were not the accusations of *the People of England*, but of *the majority of their Representatives*; and the next Parliament not renewing them, they fell to the ground. I will not insult the memories of those noble Lords, by saying that they were *acquitted*. Three were brought indeed to what the Commons justly called *a pretended Trial*; the fourth, though the first impeached, was never arraigned at all.

The Charges against these Lords, were awful, serious, and heavy, but they were the Charges

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Charges of a Majority of one House of Commons, which the succeeding Parliament *declined to follow up*. *The People*, in whose name the Commons impeached, were strongly in favour of the Impeached Lords, and in this particular the case of Mr Hastings bears a very close analogy, for it is a fact which no man who mixes with the world, either in town or country, will dispute the truth of, that the Impeachment of Mr. Hastings is very generally unpopular *amongst the People*. Why it should be so, when such infinite pains have been taken to make it otherwise, and when it is the only point in which Ministers, and Ex-Ministers agreed, I will not presume to say, but the following observations have frequently been made in my presence.

Many have observed, that the guilt of Mr. Hastings must be of a very singular nature, since so much time and trouble is necessary to discover it.

Many have said, that they were really inclined to have a very bad opinion of Mr. Hastings, from the strong language held by the Managers in the outset of the Impeachment,

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ment, but finding that in three years, they have not ventured to close their cause, and finding also that Mr. Hastings is so highly spoken of throughout India, where every step taken against him is fully known, they now look upon him as a very great, and a very injured man.

Many have observed, that the Managers so far from proving what their Articles assert, that Bengal has been ruined and depopulated under the British Government, have established by evidence in Westminster Hall, the truth of Mr. Dundas's assertions in the House of Commons, that Bengal has considerably improved under the administration of Mr. Hastings, and is the very best governed country in Indostan.

Many (and of these I am one) are so alarmed at the precedent which has been set of continuing a criminal trial for three years, that they think no man can be secure in his person, or his property hereafter, and that it renders nugatory a very laudable Resolution of the Commons, that in Trials by Impeachment, a British subject ought to be speedily acquitted or condemned, as well as in all other Trials.

Many,

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Many, who well recollect the dreadful denunciations of parliamentary vengeance, which were thundered against those Ministers who doubled our debt, and dismembered our Empire, are grieved and surpris'd to see them in the peaceable enjoyment of pensions and sinecures, while the publick are sinking under the weight of taxes, and while a lingering prosecution is carrying on against a man, who by the confession of his bitterest enemies, preserved India to Great Britain during the late war.

Many, who are from principle most sincerely attached to Mr. Fox, deplore the Impeachment as the most unfortunate event that could have happened for that Gentleman; they observe, that it has not gained him a single friend throughout the country, but has materially injured the reputation which the world gave him for political foresight, since he has been so palpably the dupe of a man of less talents, but of more cunning than himself.

Many who originally applauded the management of the Minister in throwing out such a tub to the whale, begin now to see the business in a very different point of view, they

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they declare very publicly, that no miserable scheme of temporary policy can justify that sort of oppression, to which Mr. Hastings has been expos'd.

Many who approve that declaration of rights, by which it was affirmed at the Revolution *that excessive fines ought not to be imposed*, are seriously alarmed at the discovery of a new mode of imposing an excessive fine, that is to say, by bringing that sort of accusation against a man, which has been prosecuted in that part only in three years, at an expence to the nation of Thirty-four Thousand Pounds, and at a cost to the individual prosecuted, *far beyond the fine that could have been imposed, had he been found guilty*; for the injury to Mr. Hastings and to the Constitution is the same, whether it arises from the improper mode of drawing the Articles originally---from the misconduct of the Managers, or from the delay of the High Court of Justice; and I have heard it attributed sometimes to the one, and sometimes to the other.

Many who feel the pressure of taxes in this Country, to lie so heavy, that they

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can scarcely subsist under them, are astonished that Mr. Hastings should be impeached for calling upon a subject of the State over which he presided, to contribute a small proportion to the maintenance of an expensive war; and they are still more astonished that the Minister should so fully have justified that Act, and yet have taken no step whatever, to prevent its being an Article in the Impeachment.

Many are confounded at the declaration they have heard so confidently uttered, that the Articles were passed by the House of Commons, without examination or debate. A fact they are inclined now to believe, as three years have been spent in going through three and a part of two more, while the Commons voted the whole twenty, after a few days examination.

These, Sir, are opinions that I have heard, that you, I dare say, have heard too, and that every Gentleman who is not so wedded to a party as to confine his conversation to any one particular set of men, must have heard also.

These several opinions may be very erroneous—but that they are held by a very great majority of the people is beyond a doubt. Under such circumstances therefore, it is a most fortunate event, that both by precedents, and by common-sense, the Impeachment is dead and gone in the Commons, whatever it may be in the Lords. But no solid reason strikes me why this House of Commons may not again impeach Mr. Hastings, after it has appeared by a previous, solemn, and judicial enquiry, that he merits Impeachment; but for the present Parliament, *to adopt as their own*, Twenty voluminous Articles, merely because a majority of their predecessors voted them in the name of *themselves and of all the Commons of Great Britain*, would be an act of such a nature, that a rational being would doubt whether it excelled most in injustice, or absurdity. Mr. Hastings at this moment stands precisely in the situation that the Four Impeached Lords did, after the dissolution in November 1701, and prior to the first meeting of the new Parliament. The Articles against these Lords are still

upon the Journals of both Houses, and are, to this day, unrefuted— but not being followed up, they have obtained no credit with posterity. The Articles against Mr. Hastings are also upon the Journals of both Houses. If the present House shall examine the allegation in each Article (for each Article, contrary to former precedents, contains a great variety of facts alledged to be criminal) and vote them to be High Crimes and Misdemeanors, then the accusation will assume a serious form, but the Articles as they now stand, are nothing more than the affirmations of the Majority of a Body, not in existence, and it has been so confidently asserted, I know not how to refuse giving credit to it that two thirds of these Articles never were read at all, by the Body that did pass them, and that the several points of criminality in the remaining Articles were not separately voted.

It has been too much the fashion to call every man, who wishes to appeal to the common sense of mankind upon this subject, the Advocate of Mr. Hastings. I have not taken up the cause as his advocate, but from a love of justice. If he is guilty, I wish

with him to be punished as every man in England ought to be punished, *by the Sen- of a Court of Justice.* That the guilt of Mr. Hastings was not proved in the first, second, or third year of the trial, I believe, because I have that opinion of the good sense and ability of the Managers, as induces me to think that the moment they had established Criminality they would have closed their Case, for they are not ignorant of the sentiments of the country at large upon this Trial. I also believe that they brought forward their strongest Articles first; this they would do out of respect to the Body whose Delegates they were, and from that sort of personal and venial pride, which spurred them on to display their own talents.

The “ Law’s delay” is often complained of, and sometimes with reason, but in our Courts, we have no instances of the protraction of a Criminal Trial, nor did we suppose until now, that it could happen in a Criminal Trial by Impeachment.

Mr. Hastings approaches, as I understand, to sixty years of age, and left his native country above forty years ago. Any annuitant

suivant will tell you that the chances were against his living to see the death of the last Parliament, and had he died in the first year of the trial, his character must have been blasted to the latest posterity. It now stands high throughout all Europe and Asia, but the final seal must be put upon it by the present House of Commons.

If they do not impeach again, posterity will view the Articles which were exhibited against him, as they view the Impeachment of Lord Somers.—If they do impeach, I firmly believe there are Gentlemen of my profession in this House who will exert every nerve in the cause of justice; who will follow the line taken up by the Solicitor General (Sir John Scott) in the last Parliament, and I dare say the House will adopt their advice, namely, that a separate question shall be put upon each fact, which any Member shall state to be criminal; that articles shall then be drawn out, *short, specific, and pointed*; that the House having thus resolved upon what points it shall impeach, shall before the commencement of the Trial take proper measures to carry into effect the virtuous

tuous and constitutional Resolution of a Whig Parliament in the reign of King William, viz.

“ That it is the undoubted right of every subject of England, under any accusation, *either by impeachment or otherwise,* to be brought to a *speedy trial,* in order to be acquitted, or condemned.”

A. R.

Temple, Oct. 18, 1790.

LETTER

L E T T E R V.

S I R,

HAVING stated what has been done upon former Impeachments, from the authority of the Journals of Parliament, I shall trouble you with some remarks of a cotemporary Historian upon those proceedings.

Bishop Burnet was a prelate of the strictest integrity, a staunch Whig, and a steady assertor of civil and religious liberty. He has entered very fully into the Cases of Lord Danby, in 1678, and of the four impeached Lords, in the reign of King William.

The Bishop tell us, that after Lord Danby had been impeached, Charles was persuaded by the Marquis of Halifax, and the Earl of Essex, by dissolve the Parliament " as they had engaged so far in the " Exclusion Bill, and the Impeachment of " Lord Danby, they could not let them fall, " whereas a new Parliament though composed of the same Members, not being " yet

yet engaged, might be persuaded to take " other methods."

The scheme did not succeed, for he was attacked with the same violence by the next House of Commons, and pleaded the King's Pardon, but as it was granted subsequent to the Impeachment, the Commons in a solemn Address to the Throne, declared it to be illegal and invalid. His Lordship remained several years in prison, was bailed by the King's Bench, and discharged without a trial in the reign of James the Second.

For his services at the Revolution, William created him Marquis of Carmarthen, and appointed him to be President of the Council. Had Impeachments been any thing but the Acts of a body subject to dissolution, the Commons would have reminded King William, that they had impeached Lord Danby of High Treason in 1678, that they had twice demanded Judgment against him *in the name of the Commons of England*, that they had invariably denied the legality of his pardon, and contended that the Lords had no right to dismiss the Impeachment,

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peachment, on account of a former dissolution; as the Revolution had restored the British Constitution to its former energy, they insisted, *in behalf of the Commons of England*, that Lord Danby, *who had been impeached in their name*, should be brought to a trial. Such must have been the language of the Commons were it not the law, and the practice of the Constitution, that an Impeachment is ended by a Dissolution, though it is the undoubted privilege of the Commons to impeach again, as often as they think fit.

The Bishop tells us that a plan was laid by the Earl of Shrewsbury and others, in 1690, to ruin the Marquis Carmarthen. To effect this, they renewed a former question in the House of Lords, viz. Whether Impeachments continued from Parliament to Parliament? intending if they carried the Question to revive the old Impeachment of the Marquis, but they lost the Question upon a division by a great majority, and the Lords Salisbury, and Peterborough, upon whose Impeachments the debate arose, were in consequence discharged. This being

being a solemn decision, and a second decision upon the same question, must bind the Lords, unless they chuse to reverse it, in the Impeachment of Mr. Hastings.

Doctor Burnet has given the clearest account of the Impeachment of the Lords Somers, Portland, Halifax, and Orford, that I have yet seen. He says that after the turbulent Session in which these Lords were impeached was closed, it became a question with the King, "Whether the Parliament should be continued or dissolved?" "Some of the leading men of the former Parliament had been secretly asked how they should proceed, if they should meet again? Of these, while some answered doubtfully, others said they should begin where they had left off, *and would insist on their Impeachments.* The new Ministry struggled hard against a dissolution, and when they saw the King resolved on it, some of them left his service."

This is a clear statement of the business. The Commons impeach; they accuse the Lords of denying justice to the People of England by bringing the persons impeached



to a pretended trial; the King prorogues while the House is in a flame; he discovers that they will meet in the same ill humour again; he dissolves them, they are returned to the mass of the people, and the new Parliament, though with the same Speaker in the Chair, entertains very different sentiments as to the Four Lords, or they would have impeached them again, immediately upon their meeting.

Since I began these Letters I have read a very valuable Book, upon the Impeachment of Mr. Hastings, written by a Gentleman of the name of Broome; he has cleared up many points, upon which I have entertained some doubts. He concludes by a very able dissertation upon Impeachments, and with some remarks upon the particular Case of Mr. Hastings, in some of which I materially differ with him.

Every one must agree with Mr. Broome, that unless the Lords reverse their last Order, the Impeachment is at an end, but that the Commons may begin *de novo*, as they did in the Case of the Duke of Buckingham, in the reign of James the First, which Case he particularly cites.

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Mr. Broome supposes that the present House from the dread of the length of the Trial, or from a conviction of the innocence of Mr. Hastings should not impeach again; then says he, Mr. Hastings will be in a most miserable predicament because the Trial, as far as it has gone, will be printed, and posterity will not think the Managers would have said so much without some foundation.

In this point I totally differ from Mr. Broome; perhaps that Gentleman may tell me from the manner in which I consider the case, that it is impossible for a lawyer to get out of the trammels of his profession. It is the just maxim of our law, that innocence is to be presumed until guilt is proved; posterity will never lose sight of this maxim in judging of Mr. Hastings. Mr. Broome has himself very clearly proved that in the case of Mr. Hastings, the principal facts are admitted. The material question is, whether these facts be criminal, or meritorious? With all my respect for a majority of the House of Commons, I shall not believe a fact to be criminal, because they assert it to be so, and without meaning offence  
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to Mr. Burke, Mr. Sheridan, or Mr. Fox, I shall give more credit to what they prove, than what they say, on any subject in which Mr. Hastings is concerned.

Mr. Fox asserted it to be highly criminal in Mr. Hastings to levy five lacks annually from Cheyt Sing during the late war. Mr. Pitt with equal solemnity affirmed, that it was in the highest degree meritorious in Mr. Hastings to do so. Yet Mr. Pitt and Mr. Fox divided together, and most unquestionably this is the point upon which all the criminality alledged in the article must turn. Yet upon this fact, the House never came to a vote; it was included amongst a number of others, all forming one charge. Every man knows the distinction which Mr. Pitt took---the *proposed* fine exceeded in his opinion the *actual offence*. Light and darkness are not more different than the grounds upon which Mr. Pitt and Mr. Fox jumped to the same conclusion. This is but one of a great number of points in which, if there should be a new impeachment, the House will determine so clearly, that we shall not be left to wander and wonder, as we did in the last Parliament.

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But were Mr. Hastings in the miserable predicament which Mr. Broome supposes, can he get out of it by the trial going on upon the present articles? Then would he, indeed, be in a most miserable predicament. It would depend entirely upon the Managers to make the trial short or long as they pleased; and admitting that they should abandon the whole sixteen remaining articles, posterity would say, though these sixteen articles were abandoned, there can be no doubt of their truth and importance, because one Parliament passed them, and a second adopted them.

If Mr. Broome has given a fair and candid account of Mr. Hastings's conduct, and I have no reason to think he has not, it is most fortunate for the cause of justice, and for the honour of Great Britain, that if there should be a new trial, there should be a new indictment.

Mr. Broome has very properly commented upon the injustice which Mr. Hastings sustained by the introduction of a story which applied to no part of the indictment. The name of Deby Sing was never men-

tioned in the House of Commons, and it is certain that there is no allegation in any one article to which any thing that was said of that man can apply ; because, the Lords peremptorily refused to hear any evidence relative to the cruelties which were charged upon him by Mr. Burke.

As the House, whose Delegate Mr. Burke was, had never charged Mr. Hastings with being accessory to cruelties committed by Deby Sing, nay more, as the House had never heard that Deby Sing had himself been guilty of any cruelties, I agree that it was highly unjust in Mr. Burke to dilate as he did upon them. I think with Mr. Broome, that it had much the appearance of a stage trick.

Mr. Burke is a frail individual subject, subject in common with all mankind to weaknesses, prejudices, and passion. He staked his own reputation upon the truth of that story, and when he found that the Lords would not admit his evidence upon points not in the indictment, Mr. Burke in justice to his own character, and in compliance with the prayer of a petition from Mr. Hastings should

should have gone to his constituents and stated grounds for making *that* an article which the Lord Chancellor had said was of so dreadful a nature, that all the other articles sunk to utter insignificance in the comparison with it. Mr. Hastings has been completely exonerated by the silence of Mr. Burke, but the reputation of Mr. Burke received so severe a wound, that it will not be healed by any thing he can write in favor of Aristocracy.

Let this reasoning be continued and it acquires additional force. The articles voted by the last Parliament can have no more weight now, in a Parliamentary light, than the assertions made by Mr. Burke relative to Deby Sing had in the last Parliament.

The Lords could not take notice of any thing Mr. Burke said that had no reference to the indictment ; and what notice can they take of articles passed by a body that has no existence ? What does this Parliament know of them ? Would it not be infinitely more absurd for Mr. Hastings to answer to those articles now than it would

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have been to have answered what Mr. Burke alone, and without any authority, charged him with in his opening speech ?

While the Parliament existed, Mr. Hastings was impeached upon articles passed by the Knights, Citizens, and Burgeses in Parliament assembled. I can say now, after consulting the Journals, that the debate was upon the first six articles, and that a majority of eighty-six gentlemen, many of whom are not now in Parliament, determined that that report should be read a second time : so that upon the question of impeachment, the numbers were one hundred and sevenenty five *for*, and eighty-nine *against*, the impeachment.

Upon the seventh article which Mr Pitt strenuously opposed in the first stage, there was neither a debate nor a division ; and upon the last thirteen, as so much has been said in the House of Commons, I shall merely observe in this place, that the Member who has pledged himself to prove they were passed without its being possible that they should have been read, is bound in honour to establish the fact, or he will be

be deemed a foul callumniator by every honest man.

That the case of Mr. Hastings is a very cruel one, unprecedented in a free country, or, indeed, in any country upon earth, I admit; but that his character will be injured in this age, or with posterity, by any thing that has passed, I do not believe. Had Mr. Hastings died in the first year of his trial, (and we are all mortal) then I agree, that his reputation must have suffered, for the world would have given the Commons of Great Britain in Parliament assembled, credit for having evidence at hand to substantiate the strong assertions of their Managers. There was no man so silly as to entertain the same opinion at the close of the second year.

What Mr. Hastings's wishes may be, I neither know nor desire to know. He may think it for his advantage that the trial should go on to its close upon the present articles. But of this I am sure, that such a determination would be illegal, and unjust to the last degree to the publick : I think it would be equally injurious to Mr. Hastings himself.

In the first place, all the articles that might be abandoned, would by receiving the sanction of two Parliaments, acquire a character with posterity, which at present it is doubtful whether they are entitled to.

And secondly, though I have looked over the articles more as a Lawyer than as a Statesman, I can discover many facts for which they do not condemn Mr. Hastings, so much as they do the system by which India was governed, and is governed at this moment. But there is a third point which every Englishman will wish to have determined---Mr. Pitt expressly stated, that in his opinion it would be highly inconsistent and absurd to look upon Mr. Hastings as a culprit for any measures taken by him previous to his nomination to the office of Governor General by Parliament, which was in itself the highest certificate of their approbation. A similar declaration was made by Mr. Hays Campbell, now Lord President of the Court of Session, in Scotland. The last House, however, did vote a variety of criminal charges for acts done previous to Mr. Hastings's Parliamentary appointment. The publick

publick has a right to know whether these charges were voted hastily or after due deliberation.

If I should have the honour to be a Member when the question of a new impeachment comes on, I shall think it a duty which I owe to myself, to my country, and to Mr. Hastings, to insist that when a charge shall contain a variety of criminal allegations, a separate vote shall be put upon each, and that Mr. Burke, or any other Member who produces the charge, shall shew me the point of evidence by which he hopes to substantiate it in a Court of Justice. By any other mode this House might be caught in a trap; for a charge may be so drawn as to suit every taste, and by coming to a sort of a sweeping vote, as the last House did, that something is impeachable in an immense mass of matter, without stating what that something is, the House (as the Solicitor General, Sir John Scott, observed in the last Parliament) might vote a number of general resolutions, whereas if they were to come to a vote upon every fact stated to be criminal in each resolution, not

one of the charges might ultimately be voted by the House.

The advice which the last House did not attend to, the present I dare say will follow.

If it shall appear that there is no ground to impeach Mr. Hastings again, justice will be done to him. If he ought again to be impeached, that ground of impeachment must be fully stated, and each criminal fact laid to his charge must be fairly examined, before the House shall vote it. To adopt twenty voluminous articles, because the last Parliament voted them, would I am sure be an act of the most flagrant injustice to the public, and I think very unjust to Mr. Hastings also, though his friends perhaps may be of a different opinion.

But when I say this, I do not dispute the power of the House of Commons---they may, if they please, vote them, in confidence; but I have too high an opinion of their justice to think that they will do so.

A. R.

*Temple, Oct. 22, 1790.*

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