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Lex Parliamentaria:
OR, A
TREATISE
OF THE
LAW and CUSTOM
OF
PARLIAMENTS.

Just Published.

Parliamentary and Political TRACTS,
written by Sir ROBERT ATKINS, Knight
of the Bath, and late one of the Judges
of the Court of Common-Pleas:
Containing,

- I. THE Power, Jurisdiction, and Privilege of Parliament; and the Antiquity of the House of Commons asserted: Occasioned by an Information in the King's-Bench by the Attorney-General, against the Speaker of the House of Commons.
- II. An Argument in the great Case concerning Election of Members to Parliament, between Sir Samuel Barnardiston Plaintiff, and Sir William Soame, Sheriff of Suffolk, Defendant, in the Court of King's-Bench, in an Action upon the Case, and afterwards by Error sued in the Exchequer-Chamber.
- III. An Enquiry into the Power of dispensing with Penal Statutes. Together with some Animadversions upon a Book writ by Sir Edward Herbert, Lord Chief Justice of the Court of Common-Pleas, intitled, *A short Account of the Authorities in Law*; upon which Judgment was given in Sir Edward Hale's Case.
- IV. A Discourse concerning the Ecclesiastical Jurisdiction in the Realm of England.
- V. A Defence of the late Lord Russel's Innocency, by way of Answer or Confutation of a Libellous Pamphlet, intitled, *An Antidote against Poison*, with two Letters of the Author of this Book upon the Subject of his Lordship's Tryal.
- VI. The Lord Russel's Innocence further defended, by way of Reply to an Answer, intitled, *The Magistracy and Government of England vindicated*.
- VII. The Lord Chief Baron Atkins's Speech to Sir William Ashurst, Lord Mayor Elect of the City of London, at the Time of his being sworn in their Majesties Court of Exchequer.

Lex Parliamentaria:
OR, A
TREATISE
OF THE
LAW and CUSTOM
OF
PARLIAMENTS.

Shewing their
Antiquity, Names, Kinds, and Qualities.

Of the three Estates; and of the Dignity and Excellency of Parliaments, their Power and Authority.	Of the Manner of Election of the Speaker; and of his Business and Duty.
Of the Election of Members of the House of Commons in general, their Privilege, Qualifications, and Duties.	Of the Manner of passing Bills, and the Orders to be observed in the House of Commons.
Of the Electors; and their Rights, Duties; and Manner of Elections.	Of Sessions of Parliament; as also of Prorogations and Adjournments: Together with the proper Laws and Customs of Parliaments.
Of the Returns to Parliament; the Sheriff's and other Officers Duty therein.	

With an
APPENDIX of a Case in Parliament between Sir Francis Goodwyn and Sir John Fortescue, for the Knights Place for the County of Bucks, 1 Jac. I.

The SECOND EDITION, with Large Additions.

LONDON: 1734:
Printed for J. STAGG, in Westminster-Hall.

THE
P R E F A C E.

IT must be confessed, that Lex Parliamentaria, or Parliamentary Law, cannot be meant or intended to signify any Prescription or Application of Laws to that Power, which in itself is boundless, and unlimited: This Collection, therefore, only shews what Parliaments have done, and not what they may or ought to do. The Parliament alone can judge of such Matters as concern their own Rights, Authorities, or Privileges.

And yet, seeing the Phrase, Parliamentary Law, or Law of Parliaments, has for some Ages past obtained, (and that too among Authors of great Name,) I hope the present, or any future Parliament, will not censure me for a Word (misapplied,) or for endeavouring to illustrate that Authority which is improperly denominated Parliamentary Law. The Parliament itself is, no doubt, properly to be stiled, The fundamental Law and Constitution of this Kingdom, as it comprehends all Legal Powers whatsoever.

Lord Coke,
Sir Matth.
Hales's &c.

But

PREFACE.

But as God and Nature influenced the Voice and Desires of the People to this Form of Government by Parliaments, so it must be confessed that the same supream Power also influenced their Voices and Desires, to establish this Parliamentary Government for the Safety and Preservation of the Governed, and thereby constituted the Salus Populi to be the supream Law; to whose Support all other Laws, Powers, and Authorities ought to tend. 'Tis for this End Kings are created; and for this End Parliaments assemble; that so the Polity and Government of the Nation may be administered with Honour and with Safety, for the Good of the whole Community

Nor can it be denied, but that Parliaments in former Times esteem'd it as their most incumbent temporal Duty, to oversee, recognize, and restrain, within the Bounds of Law, the Commands and Acts of Kings; and to take care that that great and honourable Trust reposed in the Hands of the Prince, for the Good of the People, might be rightly and duly administered, and not perverted or abused to the Invasion of their Rights, or the Sub-

version of the Constitution. 'Twas the Sense of this Duty of Parliaments induced both Bracton, an eminent Judge under King Henry III. and Fleta, a learned Lawyer

Brac. p. 34
Flet. p. 2.
17. vide
hic, p. 89.

PREFACE.

Lawyer in King Edward I's Time, to record this great Duty of Parliaments to succeeding Ages.

And from this very Motive it was, that our antient Parliaments were so cautious, as to oblige our Kings to swear at their Coronations, Concedere justas Leges quas vulgus elegerit; That they would grant such just Laws as the common People should choose. (See this Oath admirably well explained in Sadler's Rights of the Kingdom. Page 71, 88, 91. &c.)

See the
Preface to
Privilegia
Londini.
p. 6. 7.

From all which, and much more, that may be added, I think it clearly appears, That both Kings and Parliaments, Lords and Commons, and all Laws of Government whatsoever, were in their first Intention instituted and ordained for the sole Good and Benefit of the People; And wherever all or any of them are perverted from that View, they loose the Nature of their first Intention, and ought to receive a contrary Denomination.

And from the foregoing Particulars, I at present apprehend, that the Lex Parliamentaria, or Fundamental Law of Government, in this Nation, was not originally founded on any Capitulation or Compact between the King and the People, as is usually done in Contracts of Bargains and Sales, or other Purchases; For that would infer a separate Interest between Prince and People. But who will say, that a British Monarch can by Law have a distinct Interest from his People? Also

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Also the mutual Obligation that is established between the Prince and People by the Laws of this Kingdom, have laid an unsurmountable Bar against any such Capitulation, or contracting Project: For by the original and inherent Nature of our Government, there is such a mutual Relation and political Connection created between the King and his People, as in that natural Relation and Connection between the Head and the Members of the Body; so that in neither Instance can the Head say to the Members, I have no need of you, &c. This mutual Relation between Prince and People seems to have been interwoven in the fundamental Being, and impressed in the very Heart of our Constitution, &c.

The Publisher here thinks fit to declare, That this Book has received no little Advantage from a Manuscript of that judicious and learned Judge, the late Mr. Justice Price, who, having been many Years a Member of the House of Commons, had made divers curious historical Collections, with several Notes and References relating to the Subject Matter hercof: And in this Edition, the Reader may find (collected from authentick Records and Histories) all that is necessary to be known, touching the Rights and Privileges of Parliaments; and, in a great Measure, the legal Prerogatives of the Prince, and just Liberties of the People.

T H E

The C O N T E N T S.

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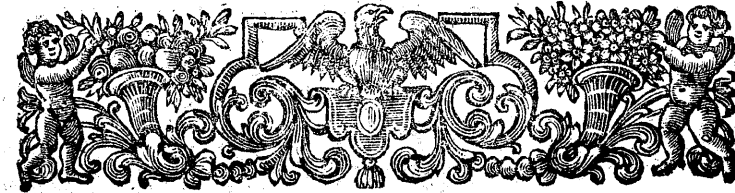
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Lex Parliamentaria:
OR, A
TREATISE
OF THE
LAW and CUSTOM
OF THE
PARLIAMENT of England, &c.

CHAP. I.
Of Parliaments in General, their Definition, constituent Parts, &c. with a brief Inquiry into the Original and Nature of our British, Saxon and Norman Parliaments.



THE Word *Parliament*, in *Minshew*,
French, Parlement, and in *in verbo*
Spanish and Italian, Parlamento, is, in its principal *Parlamt.*
Part, deriv'd from the *French*, *Spelm.*
Parler, to speak, and (as *Lord Coke* and *See Coke*
some Others conceive) The General Council, *on Littl.*
B *cil*, 164.

Spelm. Gloss. in verbo Parliament. Hales of Parliaments, 122. Elsing of Parliaments, 167. 4 Inst. 8. Bohun's Collection, 353.

cil, or National Assembly of this Kingdom is so call'd; because every Member thereof, should, in the Matters there debated, *Parler la Mente*, i. e. *Freely speak his Mind*: And tho some Authors have oppugned this Derivation, yet tis evident from the very Nature and Essence of a Parliament, That every Member thereof, ought to *speak his Mind freely*, in what relates to the Publick Welfare. And this Freedom of Speech, is now constantly claimed by the Speaker of the House of Commons, at the first Meeting of every New Parliament, and in insisted on as a Claim of Right.

Minshew ut supra. See Vincent Lupanus, lib. 2 c. Parliament, N^o. 28. Vide Du Haillan Pasquier, &c. of the Fr. Parliaments.

The Word *Parlament*, is, in *France*, now taken for one of those *High Courts of Justice* in that Kingdom, wherein Men's Causes and Differences are publickly heard and determined, without further appeal. Of these Parliaments there are Seven, viz. 1. *Paris* (now superiour to the Rest.) 2. *Tholouse*. 3. *Grenoble*. 4. *Aix*. 5. *Bourdeaux*. 6. *Dijon*. 7. *Roan*. whereto some add an 8th, viz. *Rhenes* in *Bretaigne*.

Sir Tho. Smith, De Repub. Angl. lib. 2. c. 1. 2.

But with us in *England* (or rather *Great Britain*) The universal Assembly of all the Estates of the Kingdom (*i. e.*) The King, Lords and Commons (wherein every Freeman of the Kingdom is said to be present, either in Person or by Representation,



sentation, and who are met together for debating of Matters touching the *Commonwealth*) especially for the enacting of Laws and Statutes) is properly called a *Parliament*; and such Laws and Statutes, when agreed on, are significantly term'd *Acts of Parliament*.

Cro. Jur. f. 1. &c. Cambd. Brit. 6. &c. 4 Inst. 1.

Indeed, various Authors, have had various Sentiments (and even *Acts of Parliament* differ) about the three Estates, some (alleging the King to be the Head of, but not included in the Number) assert, That the three Estates are, 1st, The *Lords Spiritual*. 2dly, The *Lords Temporal*. And 3dly, The *Commons*; but Others more rationally say, The King is one of the three *Estates*, which compose the *Parliament*; and that the second *Estate*, is constituted of both the *Spiritual* and *Temporal Lords* jointly; for (say they) Tho the *Archbishops* and *Bishops* are denominated *Spiritual*, yet they sit in Parliament as *Temporal Barons* only, *i. e.* By Reason of the *Temporal Baronies* annexed to their *Bishopricks*, and not as they are *Spiritual Persons*. And they further urge, in Confirmation of their Opinion, 1. That no Bishop, notwithstanding his Election, Consecration, Confirmation, &c. can be a *Lord* of, or sit in *Parliament*, till the King has granted to him the *Temporalities* of the *Bishoprick*.

Of the three Estates, viz. 1. King. Cotton's Records, 709. 710. 4 Inst. 1. Hales of Parliaments, 1. Finch's Nemotecnia, lib. 2. c. 1. 2. The Lords. Sadler's Rights of the Kingdom, p. 79. to 93. Kelway's Reports, 184. Stamf. P. Cor. 153. See Bagshaw's Reading, p. 17. to 21.

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(N. B. Tho this Stat. was repealed by Q. Mary, yet that Repeal was repealed by Q. Elizabeth, &c. As the Parliamt. at Bury, 24 E. 1. 1 Eliz. all the Acts about Religion passed Dissentibus Episcopis. See Journal Dom. Procer. 11 H. 7. 27. Bro. Par. 107. Kelway 184. 3 The Commons. See hereafter. See Sadler's Rights, p. 79. to 93.

shoprick. 2. That by Virtue of the Stat. 1 E. 6. c. 2. still in Force, *The King may constitute Bishops by his Letters Patent only, without any Election or Consecration*; and 3. That Parliaments have been, and may be held, *Excluso Clero*, exclusive of the Bishops and Clergy; and that some of our most beneficial Statutes have been enacted, whereto the whole Body of the Clergy dissented; all which, they say, prove the Bishops to be no *essential Part*, or any of the *three Estates of Parliament*. And in *Trinity Term 7 H. 8.* tis agreed by all the Judges of *England*, That the *King* may well hold his *Parliament* by himself and his *Lords Temporal and Commons*, without any *Bishops* or *Spiritual Lords* at all.

The *third Estate* of which we shall herein principally treat, is on all Hands confess'd to consist of the *Knights, Citizens* and *Burgesses*, with the Barons of the *Cinque-Ports*, all which being at this Day elected by the free Votes of the Freemen of *Great Britain*, are properly esteem'd the Representative Body of the People, and constitute that Part of the Parliament usually called the *House of Commons*. (N. B. The antient *Modus Tenendi Parl.* reckons up six Degrees, or Orders of Parliament; but that Division cannot be denominat'd *six Estates*.)

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The Numbers of the *Commons*, I find to have been formerly variant, according as the Sheriffs of Counties, (from what Motive is uncertain,) were pleas'd to direct their Precepts, to the several Cities or Burros, within their respective Counties; or as the same Sheriffs made their Returns thereupon: But indeed, another Cause of this Variation, was, That it was usual for the Prince, on his Accession to the Throne, to grant Charters to antient Demesne Vills, and other popular Towns, thereby erecting 'em into *free Burros*, and this consequently gave 'em a Right to be represented in Parliament. And by this Artifice, among others, the Crown advanced its Interests in the House of Commons.

For it must be confess'd, That by the antient Constitution, there were no Representatives of the Commons as Commons in Parliament, besides the Knights for the Shires, the Barons for the Cinque Ports, the Citizens for the Cities, and the Burgesses for the ancient Burros only; and that the Elections for all those, were to be made by such Persons only, as were possess'd of Lands or Tenements, held by them as *Freeholds*, or *free Burgage Tenures*; which consequently excluded all Villeins and Copyholders, as also Tenants in *antient Demesne* (which were but the *King's Villeins*) and the Tenants and Dependants

Numb. of Commons formerly. See Mr. Willis's Preface to his 1 Vol. of Not. Parl. Prynne of Parliamentary Writs.

Crompt. of Courts, f. 2. 3. &c. Stat. 23. H. 6. c. 11. Stat. 12. R. 2. c. 12. Crom. 2. 3. 4. 5. Bro. Ant. Dem. 434

B 3

of

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Parl. 96.
Reg. 261.
Nat. Bre.
14.

of other *Lords*, from being either the *Elec-
tors*, or *elected* of the House of *Commons*.

See Bo-
hun's Col.
per Tot.

Indeed, the Practice of increasing the
Number of the Representatives of the
Commons, began very early, *viz.* *Temp.*
Johan. (if not before) for I find it a
Practice of that Prince, to grant usually,
in Consideration of Money, &c. Charters to
Antient demesne Towns (as generally all
Sea-Port Towns were) thereby erecting
'em into *free Burroughs*; and hence it
was, as I conceive, That *Bridport, Dor-*
chester, Harwich, Helstone, Kingston up-
on Hull, and divers other antient de-
mesne Towns, came to be erected into
free Burros, which originally had no
Right of being represented in Parliament.

The Re-
presenta-
tive of
London
and West.
p. 14. to
p. 21.
Spelm. in
voce *Ma-*
jur.

Fortescue
p. 40.

But whatever Methods were then ta-
ken to encrease the Number of the House
of Commons, I find their Number to be
much the same from the End of *H.* the
6th's Reign, to the Beginning of that of
H. the 8th, *viz.* about 300.

MS. Penes
Authorem.

That <i>H.</i> 8. added to their Number, 38.
King <i>Ed.</i> 6. _____ 44.
Queen <i>Mary</i> , _____ 25.
Queen <i>Elizabeth</i> , _____ 62.
King <i>James</i> the 1st, _____ 27.

And King *Charles* the 1st, about 10,
or 12. so that at the Time of the Resto-
ration,

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ration of King *Charles* 2. I find their
Numbers to have been about 500. But
the Commons, about that Time, restrain-
ed this mischievous Practice for the Fu-
ture, so that they declared the Elections
made by Virtue of that Prince's Charters
void; and as *Chester* had been enabled to
send two Members for the County, and
two for the City, by Virtue of a Sta. 34. St. 34. 35.
35. *H.* 8. so an Act past in the 25 *Car.* H. 8. c. 13.
2. enabling *Durham* to send four Mem- St. 25. C.
bers in like Manner, and thus the Num- 2. c. 9.
ber of the House of Commons stood at
513, till the Union of the Kingdoms of
England and *Scotland*, when, by Virtue
of the *Union Act*, forty-five *Scottish* St. 5. An.
Members were added, which made the c. 8.
whole Number of that House to be 558,
as it now stands.

Mr. *Prynn* and Others observe, That Denomi-
our Ancestors had many Expressions and nations of
Phrases, which signify'd a Parliamentary Parliam.
Assembly; as *Magnates Regni, Omnes Prynn's*
Regni Nobiles, Proceres et Fideles Regni, Rights of
Universitas Regni, Communitas Regni, the Com.
Discretio Totius Regni, Generale Conci- &c. p. 99.
lium Regni, and many others, varying Spelm.
the Stile in successive Ages, till at length Glossary,
it came to be fix'd in the Word *Parlia-* in verb.
ment. See divers Records and Precedents *Parlam.*
touching this Matter in the Appendix & *Debata.*

to Mr. Petyt's *Miscellanea Parliamentaria*.

Prynn's Truth triumphing over Fals-hood, &c. f. 69. Petyt's Antient Rights, &c. p. 68.

Sir Robert Atkyns's Argument, p. 18. see hereafter.

Rymer's View of Govern. p. 13. 14. &c.

Cæsar De Bello Gallico, l. 5. p. 87.

Tacitus de Moribus Germanor. &c.

Mr. Prynn also says, That by many antient Precedents before the Conquest, it is apparent, that all our pristine *Synods* and *Councils*, were nought else but *Parliaments*; and that our Kings, Nobles, Senators, Aldermen, Wisemen, Knights and Commons, were usually present, and voted in them as *Members* and *Judges*.

And Mr. Lambard, in his *Archæion*, maintains, That *Parliaments* were used in the *Saxon* Times; as in the Time of King *Ina*, *Ann.* 712, and other *Saxon* Princes; and that they then consisted of *King*, *Lords* and *Commons*.

And that the like Assemblies were in Practice among the antient *Britons*, *Gauls* and *Germans*, and other *Northern* Nations, may in some Measure appear from those noble Remains of *Cæsar* and *Tacitus*: For the Former, speaking of the *Britons*, says, *Summa Imperii Bellique administrandi Communi Concilio permissa est* Cassivellauno; That the chief Power of administering the Government, and Command in War, was by a Common Council (or Parliament) committed to *Cassibellan*; and the Latter, treating of the *German* Customs, *De Minoribus Rebus Principes consultant De majoribus omnes*, i. e. That in smaller Matters their Princes

Princes only consult or determine; but if the affair be weighty, they all consult as in a common Assembly or Parliament. *Et quod Reges & Principes audiuntur magis suadendi Autoritate quam jubendi potestate*, i. e. that the Prince's Authority consisted rather in Persuasion than in Coertion; *Et quod Principes, &c. Communi Concilio Eliguntur, &c.*

But the better to clear this Point, touching national Assemblies, especially those of the *Britons* and *Saxons* in this Island; I shall here add the ensuing Inquiry.

The Denominations of a Parliament, or National Assembly, have been various according to the Language and Phrase of Speech of the several Nations, where Used and Practised: Thus the *Jews* had their *Great Sanhedrin*, consisting of the Prince, the Rulers of the People, and the Heads of their Tribes and Families; and in this manner we find their Parliaments assembled in the Days of *Saul*, *David*, *Solomon*, *Rehoboam*, &c.

Nor was *Moses* the first Modeller of a National Assembly or Parliament; the Scripture itself seems to contradict it; and doubtless there had been something Equivalent to such collective Consultations from the first Instant of congregated Societies; nay some spiritualizing Heads have stretch'd the

Rymer ut ante. Sadler's Rights, p. 79.

Denomination of Parliaments.

Selden, de Synedriis Lib. 2. c. 4. sect. 1, 2, 11, &c. & Lib. 3. c. 14. & De Successione Pontif. c. 12. See Genes. c. 11, 14, 23, &c.

the Pattern to a Time, antecedent the Existence of Humanity, and almost *coeval* with *Time* itself; These (not contemplating Oriental Idioms) Derive both the Doctrine of the Trinity and the three Estates of Parliament, from that uneffated Speech, *Let us make Man, &c.*

Genef. c. 1. v. 26.

But however heavenly their Conjectures are, our inquirers herein must tend another way; and yet to me it seems apparent, that Parliaments existed before what the Scriptures Record, *i. e.* among the *Assyrians, Babilonians, Caldeans, Egyptians, &c.* and tis most evident the inspired Legislator confesses himself in a gross Error, by attempting to Govern without their Assistance; and therefore instead of consulting the Divine Oracle, condescends to receive the Instructions of an *Arabian*, whereby he new Modelled his *Theocracy* according to a Parliamentary Plan of Government; Behold an unlighten'd Shepherd directing and enlightening the illuminated Friend and boasted Companion of God! A Riddle might puzzle our best Divinity, and prove it to be not altogether from above.

(Compare Exod. c. 18. v. 21, 22, &c. with Deut. c. 1. v. 13, &c. Take yee, *i. e.* Elect yee, &c.) Jethro was Prince of Midian in Arabia.

That the *Persians* (whose Language and Laws bear no small analogy with our own) had also the like Parliamentary Assemblies, is not only intimated by those Texts

Texts which mention the Laws and Decrees of the *Medes* and *Persians*, but is Univerfally confessed by all the *Greek* and *Latin* Historians: That noble Description of their Government left us by *Xenophon*, may justly attract our Approbation and Imitation; and their *Ἐλευθερα Ἄγορα*, as strongly incline us to desire FREE Parliaments, as their *Ἐλευθερο γεραιτεροι* to insist on FREE Elections.

Xenoph. Cyripæd. p. 8. & 20.

The *Greeks* had also their *Σύννοσος Ἄγορα*, or *Conventus Primatum*. Wherein not only the Kings and great Men, but even the Commons assented to their Decrees or Statutes, as is Evident from those Marble Monuments, containing the Statutes and Decrees of those *Grecian* Assemblies, as in that of the People of *Smyrna* and *Magnesia, &c.* vide Opera *Seldeni*, Vol. 2. Tom. 2.

Notæ ad Smyrneo. Decreta. p. 11, 13, &c.

The like Assemblies were in use among the *Romans*, and as *Paulus Manutius* observes, Instituted by *Romulus* in the Infancy of their *Monarchy*, and continued in some Degree thro' all the changes of that State. They were call'd in Latin, *Comitia quasi Coitia a coeundo quia coeunt ibi deliberaturi de Salute Republicæ, i. e.* from Assembling or meeting together, because they therein Assembled to Deliberate for the Good and Safety of the Common Wealth.

Paul. Manut. De Senatu Romano Lib. 1. c. 1.

Such

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British Parliaments. See Orig. Jurid. p. 14. Pref. 2. & 4. ad L. L. Hoeli, i. e. Sub Anno Christi. I.

Camb. Britannia in Wiltshire.

See Baxters British Glossary verbo Laberus.

This Authors own Observations.

Pelman's Gloss. 386. Antiquus dos fuit.

Such an Assembly is called in Low Dutch, *Rijcs-dach* the King's Day. But more properly in High Dutch, or the German Language, *Reich-stagh*, i. e. *Stabilimentum Regni*. For that it is the chief stay and support of a Kingdom. And that the like meetings were in Practice among the antient Britons, is Evident from the Preface to the Laws of *Hoel Dha*, who denominated such Assemblies *Gynnulleidfa* or *Cyfrythin-y Doethjon*, i. e. *Conventus Legalis*, because Laws were therein made and *Chyd-Synniedigaeth*, i. e. *Confessus Magnatum*; from whence Mr. *Cambden's* Error may appear, who on occasion of the Pillars on *Salisbury-Plain* translating the *British* Words into *Latin*, renders 'em *Chorea Gigantum*, when they properly signify *Conventio Magnatum*, or the Assembly of great Men. That building being apparently Erected for the Use of such an Assembly, there still remaining not only the marks of Distinction where the several Orders or States of Parliament Sate; but very Visible incisions in those Pillars, and divers intermediate Stones for supporters do manifestly prove how, and in what order the Seats or Benches were therein fix'd and placed.

Besides which, the Scituation of those Parts being near the Heart of the Kingdom,

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dom, (a considerable Motive for Northern Princes, to hold their general Councils and national Assemblies near the midst of their Dominions) as also the Nature of the Place, being on a wide open Plain, and consequently not so liable to either Force or Treachery, as more Popular, or covert Places; with divers other Motives, may rationally induce the old Britons to choose that Place, for the holding of their general Councils, or Parliamentary Assemblies.

Note the several Prefaces to the Laws of *Howell Dha*, who lived near the Time of our *Athelstane*, whose Laws as well as those of *Ina*, &c. are apparently derived from *British* Patterns, run thus, *Hoelus Bonus Rex Waltia convocavit Sextos viros ex Qualibet Centuria ad Domum Albam: Hi erant ex Sapientissimis viris Regni; Horum (Sextorum) 4 erant Laici & 2 Scholastici: Advocabantur autem Scholastici ne Laici quidquam Sacris Scripturis contrarium Statuerent, &c. Tum Communi Consilio & consensu Sapientes illic congregati Leges veteres inspexerunt; Quod durum nimis esse videbatur allevarunt, Quod nimis leve fuit aggravarunt Quasdam ex eis ut prius erant reliquerunt alias emendarunt, alias penitus abrogarunt alias denique de novo Statuerunt; and lastly a*

ut Sub. Dio & intra Septimum aliquod Militare ob Salutis gratiam convenire compages, &c. ibid. Baxter ut supra. Selden's Janus 93.

Vid. Cot. Titus. D. 2. & ibid. Caligula A. 3. N. 3.

L. L. Hoeli p. 5. 8. Curse 7.

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Curse is pronounced on that King, or other Persons who should attempt to change any of those Laws, without the consent of a General and full Council or Parliament.

Antiq. of Parl. p. 4. Spelman in Voce Wapentachia.

Touching the *Saxon* Parliaments, we may observe that at first all their Councils and Parliamentary Assemblies whether they debated of Peace or War, were as *Cæsar* and *Tacitus* observe of the *Germans*, &c. *Sub. fremitu armorum.*

Selden's Epinomis, 5. 6.

Their averfenss at first to the *Britons* and their Customs confirm'd them in this practice, till another Species of Christianity different from that of the *Britons*, was introduc'd amongst them, when they soon applyed themselves to more civilized Assemblies and the making of Laws; only *Egbert* King of *Kent*, and some of his Successors being too much influenced by *Austin* the *Monk* and others of his Order, gave the Clergy opportunity to Usurp over the Rights and Properties of the *Laity*, and hence all the Laws of *Ethelbert*, *Hlothair*, *Eadric* and *Wibtred* shew a Manifest partiality to Churchmen, and indeed their general Councils or Parliaments seem to be composd only of Ecclesiastics: But after these *Ina* the *West Saxon* King, being near of Kin to *Cadwallader*, and of *British* as well as *Saxon* Blood, seems to have Established a better

Wilkins LL. Saxon p. 1. to 14.

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better Plan of Government, and to have Founded his Parliamentary Assemblies on a *British* Pattern.

For the *Prolegomenon* to his Laws runs thus, *Ego Ina Dei Gratia occiduorum Saxonum Rex, consilio & Doctrina (Suasu) Cenredæ Patris, mei & Hedde Episcopi mei & Eorckenwoldæ Episcopi mei, et cum omnibus meis Senatoribus, & Senioribus Sapienibus Populi mei, &c.* So that his Parliamentary Assembly plainly appears to have been composd of King, Lords and Commons; and as many of his Laws respect the *Britons* as well as the *Saxons*, so his Parliamentary Assemblies seem to consist of the Representatives of both People, whom he endeavourd to unite in one Body.

Wilkins LL. Saxon p. 14. Selden's Janus, 93.

As for the Laws of King *Alfred*, tis evident, from the Conclusion of the first Part (or rather the Introduction to the Second) That they were made in a General Council or Parliamentary Assembly, in Imitation of the *Britons*; and here I beg leave to produce my Authorities, which prove, That this King (as well as *Ina*) took the Pattern of his Laws and Government from the *Britons*, induced hereto, as tis probable, by that Relation in Blood he bore to King *Ina*, whom he styles, *Cognatus meus.* But more effectually by the Advice and Persuasion of *Afser Menevensis*, who wrote his Life, was

See Wilkins, ibid. p. 34.

Wilkins ut supra.

See the Notes on LL. Hoerli, p. 4. one

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one of his chief Counsellors, and a *Briton* born.

Life of Alfred, p. 96. 97. 98, &c.

Hist. Jor-nalen, ad A. D. 1066.

Pon. Vir. l. 3. p. 10.

Ib. p. 14.

See Hygden's Polychron, l. 1. c. 50.

Dugd. Mon. v. 1. p. 32. Sub Ann. 872. & vide ib. p. 40.

The Author of the Life of King *Alfred*, says, That he compiled his Laws chiefly from those of the Old and New Testament, and after those, added several Matters taken from the Laws of the *Trojans, Greeks, Britains, &c.* And mention is made in the Notes thereon, That he took divers of his Laws from those of *Dunwallo Molmutius*, an antient *British* King.

And herewith *Ponticus Virunnius* agrees, whose Words are, *Belinus habens totius Britanniae Dominium Paternas Leges, i. e. Molmutianas, confirmavit & alias Statuit; Quas (omnes) Gildas Historicus convertit in Latinum; Rex vero Alfredus De Latino in Anglicum Sermone transtulit.* And afterwards he says, *Martia etiam (quae fuit uxor Regis Britonum, Guitellini) condidit Leges, quae Martiana Lex dicebatur, quas Rex Al-vredus inter caetera transtulit in Saxonicam Linguam.*

But more particularly Mr. *Dugdale*, has, from an antient *MS*, given us this Passage, viz. *Leges Britonum Rex Al-vredus transtulit in Anglicum quae tunc dicebantur Leges Al-vredi, & Multos Libros transtulit eodem modo. Iste instituit Hundredos*

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Hundredos & Tythingas (these are known to be of *British* Original, &c.) See al-*Sheringham, De Anglorum Gentis Origine.* Who further observes, That many Words, introduced into the *Saxon* and *English* Laws, are of *British* Original; as *Murder, Denizon, Rout, &c.*

And hence the Author of the Notes on the Laws of *Howel Dha*, has justly remark'd, That *Alfred* learnt the Partition of *Shires, Hundreds, &c.* from *Affer Menevensis*, a learned *Briton*.

Hollinshead also, in his History, or Chronicle, speaking of the Laws of *Dunwallo Molmutius*, says, That King *Alfred* translated them into *English*, and inserted them in his Body of Laws. And Mr. *Taylor*, in his Treatise of *Gavel-kind*, says, That both *Ethelfred* and *Alfred*, translated the *Welch* Laws, and expressly affirms, That the *Saxons* had their Laws from the *Britons*: And if so, we may well conclude, That they had the *Modus Condendi Leges* (or Method of enacting Laws in a Parliamentary Assembly) from them also.

But a Question has arisen, how far the *Commons* were a constituent Part of those Assemblies, in the Time of the *Saxons*; and it must be confess'd, That generally those Councils are said to consist of the *Magnates & Proceres*, include the *Commons*, Vide Post King 34.

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See Brady King and his Bishops, and the Wisemen, or of Burros, (Magnates) Great Men only; or perchance and his sometimes with the Words Seniores Populi Introdu- added (as in Ina's Laws) But whether the ction. Commons were present, either in Person, or by Representation, is, in the Opinion of some Inquirers very doubtful.

Lambard, Now, in Order to clear this Doubt, it LL. Sax. will be necessary to consider, who were p. 26. 27. those Magnates, and Seniores, or Sapientiores Populi, and how they came to be so denominated.

Wilkins, And first, I am of Opinion, That the LL. Sax. Words Magnates & Seniores, did intend not only those which were Rulers p. 96. 97. or Governors of Counties and Hundreds, Post. 35. either Civil or Military, as were the Aldermen of Counties, which we call Earls, and the Heretoges of Counties (usually rendred Duces, because they headed the People in War (and were then as our Lords Lieutenants, but of far greater Authority) But, That they also comprehended other, Temporal Magistrates, as also the Bishops and Rulers of the Church; for that it appears, those Words, Magnates & Seniores, or Seniores, included the chief Rulers, Magistrates and Officers of the People, in all Affairs Civil, Military and Ecclesiastic; and it appears, That these generally constituted the Wittenagemote, or Saxon Parliament.

Indeed

Ibid. 204. 205.

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Indeed, on extraordinary Occasions, the Commons, i. e. their lesser Thanes, or Lords of Manors, as also the Representatives of Cities or Burros, did in Person appear there likewise. But if we rightly consider the Model of the Saxon Government, we shall find, That, except in such extraordinary Cases, it would be a vain and fruitless Thing for the Commons to appear in Person at all their Assemblies of the Magnates Regni, seeing those Magnates, were, in Truth, the Peoples ordinary Representatives, being elected and fully instructed by the Commons, about such Affairs as related to them.

For the Constitution of the Saxon Government, was such, as made all the lesser Assemblies of the People, for the Election of Magistrates, and Distribution of Justice, to have a Connection with, and Dependance on some higher and more honourable Convention, to whom there lay a Representation and Appeal, from the inferior Convention; in such a Manner, as, That every inferior legal Convention, was, as it were, a lesser Parliament to appeal to: So the higher Assemblies had the Inspection and Controul of what was transacted in the next subordinate Conventions.

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And

See Saxon Chron. An. 1055. And the Beadman-ealre Wittenagemote, i. e. Et indictus fuit omnium Procerum Conventus, before Mid-Lent. This included the Commons and was by Reason of the extraordinary Business then there transacted Wilkins ut supra. Lambard, ut supra.

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Spelman, 540.

And hence it appears, That the *Saxon* County-Courts, the Hundred-Courts, or Wapentakes, and even the Court-Barons, or Manor-Courts, were as much *Parliamentary Assemblies* within their respective Precincts and Jurisdictions, as the *Wittenagemote*, or Assembly of *Great Men* was for the whole Kingdom. Thus, in ordinary Cases, there was no Occasion to apply to the superior Parliament, when the inferior Parliament could, and usually did, provide a Remedy.

See Mirror, cap. 5. sect. 1. Parliamts. to be held at London twice yearly, &c. i. e. Whether the King summon'd 'em or nor and as Sadler, p. 50. Licet Rex sit absens, &c. Note, the inferior Courts were held 12 Times yearly, on 7 Days Notice; but not the Superior. Wilkins Sax. LL. 205. c. 2.

But there are two Things especially remarkable in the *Oeconomy*, or Connection of the *Saxon* Plan of Government, which will give us great Light into the Nature of their Folkmotes, and *Wittenagemotes*, or Parliaments, viz. 1st, That all their Folkmotes, or County Assemblies, being generally held twice yearly, at certain particular Places, and on certain stated Days, or Times in the Year, there was no Occasion for any special Notice to be given of, or any Summons to those Assemblies, no more than for the Terms at this Day. Every Freeman, whose Duty it was, attended there in Person, or by Representation, and that under a Mulct or Penalty, as may be seen in the *Saxon* Laws, relating to this Matter.

Thus

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Thus the Free-Tenants of Manors, by their Lord or Steward, the Burroholders by the Head-Burros, and the Freeman in each Tything by their Tienmantale, or Representative, attended at the Hundred Courts, and those of the Hundred, attended at the County Courts, by their Hundreders, &c. And those of the County (as Earls and Bishops, of the respective Counties) attended the *Wittenagemote* in this Manner, viz. The Courts of Manors and Tythings, always ended before the Wapentacks, or Hundred Courts began, and these ended just before the Folkmotes, or County Courts began, and these last just before the ordinary Wittenagemote, or Grand Parliamentary Assembly began.

Spel. Glos. in verbis Manor, Turnus, Comitatus, &c.

By this Method, a certain Connection and Dependance of all inferior Courts, on the next Superior was established; so that there lay an easy Transition by Appeal from the Inferior, to the next superior Court; and lastly, To the *Conventio Magnatum*, or Supream Assembly.

See 32d Law Edv Conf.

2dly, Another observable, is, That all these Courts were so held, twice yearly, for the free Election of Magistrates, and the free Distribution of Justice, within their respective Precincts. To which End, all the inferior Courts were held about the End of September, for electing their

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Magistrates and Officers (as they still are in *London* and some other Cities) and the other half yearly Assembly, for Distribution of Justice, was usually about the End of *March*, yet so that all was over before the *Wittemagemote*, or Grand Assembly was held, which, by an express Law, was always to commence, The first, on the *Calends of October*, for confirming or constituting all the Aldermen, or Earls or Hetetoges, or Lord Lieutenants of the several Counties, as also of all the other Great Officers of the Kingdom; and the other about the *Calends of May* for distributing of Justice, &c.

See Wilkins, LL. Saxon. p. 205. c. 1. in Craftino Purif. B. M. uno & eodem Die per Totum Regnum.

N. B.

For by the Constitution of the *Saxon* Government, no Officer, either Civil or Military, or even Ecclesiastical, could be invested in his Office, or Exercise any Jurisdiction or Authority over *Freemen*, without the *free Election* and Consent of those *Freemen* over whom he was to exercise such Authority; and tis for this Reason, more especially, That the People of *England* are denominated *Free*; for that by the antient Laws and Constitution of the Kingdom, they had this just and natural Right, *viz.* The free Election of their Magistrates and Governors, without which our Ancestors thought all other Liberties were but a Species of Bondage. For of what Use can Liberty be to him, whose Person, or Estate, is subject to Officers,

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Officers, &c. set over him, without his own Consent?

This Freedom of Election of Magistrates, &c. Civil and Military, under the *Saxon* Government, fully appears thro-out the whole Body of their Laws, especially in the 35th Law of *Edward* the Confessor, which provides, That all Sheriffs (or Earls) and all *Heretokes*, or Lords Lieutenants of Counties, shall be elected in *pleno Folkmote*, i. e. by the Freeholders in a general County Assembly, or Parliament.

See Spel. Gloss. in verbo Vicecom. p. 555.

And that their Practice was therein pursuant to the Law, appears from the Case of *Tosty*, Earl of *Northumberland*; for (says the *Saxon* Chronicle) That Earl, misbehaving himself in his Office, the People of that County deposed him from being their Earl, and proceeded to elect *Morkar*, the Son of *Elfgar*, into his Place: Which Power of deposing Earls, and other Officers, appears to have been vested in their Folkmotes, by express Provision of divers Laws both of the *Saxon* and *Danish* Kings.

Sax. Chr. sub Anno 1064.

LL. Inæ c. 8. & 36. LL. Edgari, c. 3. LL. Canuti, c. 13. 14.

I confess, in the Case of Earl *Tosty*, tis said, That after the People had so elected *Morker* to be their Earl, they certified their Election to the King, and intreated his Assent thereto, to which the King yielded; and on the Vigils of

Sax. Chr. p. 171.

Simon and Jude, sent them a Confirmation, or Renewal of the Laws of King *Cauute* (*i. e.* That for deposing Earls, &c.) This shews, That tho the King had the Power of confirming the Earl in his Office, yet he could not of himself appoint any *Earl* over the People, without their own free Election and Consent, in a *Folknote* or County *Parliament*.

Vide Edv. Conf. 32. & 35.

Qualifications and Elections of Peers, &c.

Now, as all Titles and Dignities in the *Saxon* Plan of Government, had both *Officium* and *Beneficium* annex'd thereto, so there were divers previous Qualifications necessary to enable the Persons to be elected to such Dignity or Office: Thus, in Order to be a greater Thanes-worthy, or worthy to be elected one of the greater Thanes (*i. e.* Lord of a Hundred) he was to have such an Estate; and to be an Earl, or Alderman's-worthy or worthy to be elected an Earl, or Alderman of a County, he was to have such an Estate; with other Qualifications respecting each Office.

So that three Things, at least, ought to concur in constituting an Alderman, or Earl of a County, as also of a greater Thane, or Lord of a Hundred (both which, with the Bishops then, made up the Body of their ordinary *Folknotes*, and *Witenagemotes*) *viz.* 1st, He was to have an Estate in Lands, with other Qualifications.

Secondly,

Secondly, The *Election* and Consent of such *Freemen* over whom he was to preside. And thirdly, The *Royal Assent*, or Confirmation (*usually in Parliament*)

And further, as all the *Magnates Regni*, and all other Officers and Magistrates, whether Civil or Military (and even Ecclesiastical, as *Bishops*, &c.) were in those Times elected to their respective Offices, by the Persons over whom they were to preside; so they were liable for Misbehaviour in their Offices, not only to a Deprivation, but also to be otherwise censured and punished in their *Folknotes*, and other Conventions; and consequently were under the strictest Guard, to keep to their Duty, and perform their Trust, both in their *Folknotes*, or County *Parliaments*, as also in the Grand *Witenagemote*, or *Supream Parliament*. And tho such Officer presided in the former, as their Prince or King; yet in the latter, he was but their Representative: And thus the *Magnates Regni*, or *Lords of Parliament*, were *originally* and *ordinarily*, no other than the *Representatives of the Commons or Freemen*.

'Tis true, in extraordinary Cases, as in Granting of New Ayds or Taxes, as *Danegelt*, &c. the Commons likewise attended in *Parliament* either in Person, or by their Deputies, specially authorized; but such

Who ordinarily were Representatives of the People. That Bishops were elected by the People, even after the Conquest. See Sadders Rigts. of the Kingdom, p. 1178. 133. 134. 140. &c.

Nota.

in Spel. Glóf. verbo *Subsidium*.

See Mr. Madox's Hist. Exchequer. c. 7. 8, 9, &c.

Vide Paulus Manut. De Legibus Romanis.

Spel. Glos. verbo Villenagium.

Note.

such Ayds and Taxes were then very rare; the Crown in those Times being abundantly supply'd in ordinary Cases, by its Rents and Revenues, both certain and casual; as Fines, Forfeitures, Escheats, the third Part of the Profits of all Leets, Hundreds, Counties, and other Courts, Ayds, to make the King's eldest Son a Knight, to marry his eldest Daughter, &c. all which I take to be of a *British* or *Roman* Original.

Besides which, if we consider the vast Profits and Revenues then arising from the antient Demefne, and other Crown Lands, we may easily Grant, That the King had rarely any Occasion for extraordinary *Ayds*: For the Tenants of those Lands, holding the same in *Villanage*, and they themselves being esteemed as the *Villani Regis*, the King could not only Tax 'em at his Pleasure, but also appoint 'em what Officers and Magistrates, and even out 'em of their Possessions as he pleased; and therefore Tenants in antient Demefne, while they continued such, were never esteemed Freemen; they never served on Juries, never voted for Members of Parliament, nor ever contributed to their Expences: In short, They were thought to be so far under the Power and Influence of the Crown,

Crown, as not to be in any wise entrusted with the Peoples Liberties.

Sir *H. Spelman*, in his Glossary, says thus, I find not that the (*antient*) Saxons on Kings had any Subsidies, &c. But they had many Customs, whereby they lewyed Money of the People, or Personal Services towards building (repairing) of Cities, Castles, Bridges, Military Expeditions, &c. call'd Burgbote, Bridgebote, Herefare, Heregeld, &c. But when the Danes oppress'd the Land, King *Egelrede* (or *Ethelred*) Anno 1007, yielded (in a Parliament) to pay them 10000 l. which was afterwards encreased to 36000 l. then to 113000 l. and lastly, to a yearly Tax or Tribute of 48000 l. This was call'd Danegeld, and for raising it, every Hyde (or Plough) of Land, was cessed at 12 d. yearly (the Church-Lands excepted) which therefore was call'd *Hydage* (and Carvage) which Name afterwards remained upon all Subsidies and Taxes imposed upon Lands; for sometimes it was imposed upon Cattle, and then twas call'd *Horngeld*.

But tho' the *Saxon* Witenagemotes were so ordinarily held *per Regem cum Magnatibus Regni*. Yet it is very Evident, that when any matters were to be there Transacted, which in general concerned the Body of the Freemen of the Kingdom,

In verbo Subsidium p. 527.

Note, this Assessment was doubtless with Consent of the Commons. If Churchmen were not Procuratores aut Participes Danici Subsidii.

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Kingdom, in such cases the Rule was *Quod tangit omnes tractetur ab omnibus*, and nothing could be determined in their Parliaments relating to Peace or War, new Ayds, Taxes or other publick charges on the People, without their Common Assent either in Person or by special Representatives.

See *Madox* ut ante.

Tis true, the *Saxon* Kings had very rarely any such Ayds, Taxes or Subsidies, as are granted to our Kings at this Day: The vast Profits arising to the Crown in those Days, consisted in the Rents and Produce of their antient Demeasns Lands; the third Part of the Profits of all the County, and other Courts in the Kingdom, besides the many other Incomes on Fines, Forfeitures and other Penalties, and other Revenues certain and casual, made it seldom necessary to Tax the People by a Parliament.

In verbo *Subsidium*.

They had also (says *Spelman*) many Customs, whereby they levied Money of the People, or exacted their Personal Services towards the Building and Repairing of Cities, Castles and Bridges, for Military Expeditions, &c. which they called *Burg-bote*, *Brig-bote*, *Here-fax*, *Here-geld*, &c. Tho' we may well conclude those Customs and Duties, to have been originally granted by Assent of the Commons in a Parliamentary Assembly,

Vide ante.

as

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as 'tis certain *Peterpence*, *Danegeld*, *Spelman* *Horn-geld*, &c. were. ib.

As to *Peterpence*, otherwise called *Rome-scot* and *Rome-fee*, whether the same was first granted by King *Ina*, as is generally said, or by King *Offa*, as others affirm; 'tis plain a Parliamentary Consent was had thereto, as the Laws touching the Regulation of the same, doe manifestly prove. Idem in Verbo Roman-scot. See Fedus Edvardi and Guthurui c. 6. L.L. Edgari c. 4. L.L. Cauntic. 15. L.L. Hen. 1. c. 12 &c. In verbo Subsidium.

And as to *Danegeld*, &c. *Sir Henry Spelman* says, The *Danes* having oppressed the Land, King *Egelred* (i. e. *Ethelred*) in the Year 1007, yeilded (i. e. by consent of Parliament) to pay them for obtaining Peace 10,000*l.* which was after encreased to 36,000*l.* then to 113000*l.* and lastly to a yearly Tribute of 48,000*l.* and for the raising of this Tax, every Hyde or Plough Land was charg'd with 12*d.* Yearly, (*Church Lands excepted*) and thereupon twas called *Hydage*, which Name was afterwards apply'd to all Taxes and Subsidies imposed on Lands; but if the Tax was laid on Cattle, 'twas call'd *Horn-geld*.

Note this Tax appears to have been promoted by some Churchmen who tis probable shared the plunder. Splem. ut Supra.

The *Normans* (says the same Author) called these sometimes, from the Latin and Greek Word, Taxes, and sometimes from their own Language *Tallagia*, signifying to cut or divide from, (as the Word Excise doth at present) and sometimes

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times they denominated 'em according to the usual Words beyond Sea. *Auxilia* and *Subsidia* (Ayds and Subsidies) and accordingly *W. 1.* had those Taxes or Tallages, and made Laws for the manner of Levying them: But this also seems to be by pretence or colour of (I cannot call it a *free*) Parliament.

Vide LL. W. 1. p. 125. Rights of the King- dom 115.

Hist. Æthelwerdi Li. 3.

See In- gulph. p. 6. 12. 17.

But to return to the *Saxons* and their manner of granting Aids and Taxes; we may observe that King *Egbert*, (who is generally said to have been the first Monarch of *England*) seems to have attained his Conquests and Extent of Dominion, chiefly by the extraordinary Aids and Supplies granted by his Commons; and that by the same Means, he was enabled so vigorously to Repel the *Danes*, &c. To this purpose we meet with a Passage in the History of *Croyland*, viz. That this King confirmed a grant of Lands to that Abby; *coram Pontificibus & Majoribus totius Anglie, i. e.* (as I apprehend) before the Prelates, Peers and greater Commons of all *England*, who (as the History saith) were then met together at *London*, consulting how to provide Aids and Supplies *contra Danicos Piratas*, &c.

The whole Passage proves this Transaction to have been in a general Council, or Parliament, met purposely for the raising of new Aids; and the Word *Majores*,

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jores, seems plainly to intend the Representatives of the Commons, and to be of a lower Degree than the *proceres* or *Tem- poral Peers*. And that the Commons attended at that Consult, may not only appear from divers of the Names Subscribed to that Charter: But 'tis also evident from *Bede* and other antient Authors, that the Word *Majores* was then used to signify such Officers and Magistrates as we now Term, Sheriffs of Counties, and Mayors or Bailiffs of Towns and Cities.

Vide Bed. Hist.

And tho' the Word *Danegelt*, is not quite so antient as the Time of K. *Egbert*, yet that the first grant thereof, was with consent of the Commons, appears from the Laws of *Edward* the Confessor; who first remitted it, it having been diverted from its Original and true Institution; the very Cause ceasing under the Kings of the *Danish* Race, who notwithstanding continued the Tax, and which tho' remitted by the Confessor, was afterwards revived by the Conqueror, as a proper Expedient for augmenting regal Power; and yet [this Revival seems also to be by consent of, or under colour of a Parliament.— But further,

See Laws of W. 1.

In the abovementioned History of *Croyland*, there is a remarkable Charter made by *Ethelwulph* the West *Saxon* King,

Hist. In- gulphi ad Annum 855.

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Rights of the King- dom p. 84, 85.

King, who was Son and Successor to K. Egbert, and the Father of his four Successors, i. e. Ethelbald, Ethelbert, Ethelfred and Alfred. The Charter itself imports a grant of Lands, Tythes, &c. to that Abby, and in the Body of it, is said to be made cum Consilio Episcoporum Principum, &c. and is Subscribed by, and in the presence of the Kings of Mercia and East Anglia, Omniumque Archieporum Episcoporum Abbatum Ducum Comitum Procerumque totius Terre; aliorumque Fidelium insuata Multitudine, Qui omnes Regio Chirographo Laudaverant.— A pregnant Instance of a Saxon Parliament compos'd of Kings, Lords and Commons, and of the concurrent Assent of the three Estates in the passing of the Grant.

See Wilkins, p. 34 and Lambard 26.

I cannot here forbear observing an Expression in that Introduction to the Laws of K. Alfhred (which might seem strange in a King at this Day) where speaking of his Establishing those Laws. (Ex consulto Sapientum Suorum) By consent of his Parliament, he goes on thus, Fortham ic ne durst gedyrst-lacan, &c. for that he durst not attempt to do it otherwise; and it concludes thus, Ergo Ego Alfhredus— omnibus Sapientibus meis hic usus sum; et illi dicebant quod ipsis omnibus bene placuerint ea (que Statuta Sunt) ut observarentur.

And

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And Andrew Horn, a Learned Lawyer, who wrote Temp. Ed. 2. in many places of his Book, Speaks of K. Alfhred's Parliaments, and that his Laws were made by Assent of his Great Wise Men and Commons; He Expressly mentions and applauds that Law of his, that Parliaments ought to be held twice Yearly, and Declares the Non-observance of that grand Law of State, to be one of the highest abuses of Law and Government.

Mirror of Justices.

I might here also take notice of other Parliaments of the same King, particularly that Treaty entered into between him and Guthrun the Dane, which was made Ex Sapientum anglorum Consilio; and I might further shew that all the Acts of State, both of him and his Saxon and Danish Successors, were made and transacted with the consent of the Commons, as well as Consilio Magnatum. But the Point is so fully proved in our antient Historians, as well as in the stile used by those Princes in their Enacting of Laws, that I conceive my further Endeavours to illustrate, it would prove but holding a Candle to the Sun.

Wilkins LL. Sax-on. p. 51.

And as for the Norman Times, tho' the two Williams, Father and Son, endeavour'd what they could to suppress the Rights of the Commons, yet we find on the Death of the latter; the Com-

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mons of *England* began in some Measure, to be Restored to their antient Rights, *i. e.* the Election of their Officers and Magistrates, Civil and Ecclesiastical, and their being Represented in Parliament.

'Tis True, *W. 1.* Soon after his acquisition of the Kingdom, Swore to the Observation of the *Laws of Edward the Confessor*, but added a very odd Limitation to the Oath, *viz. with such amendments (i. e. alterations)* as he, with advice of his Council should make therein. This shewed he had little regard to those Laws, and the Rather for that the Observance of them, would in a great Measure deprive him of Nominating the Officers and Governors of the Kingdom; a tender Sore to a Prince that aims at arbitrary Power.

He therefore took upon him the Nomination and Disposition of all Offices and Dignities; Sold and Distributed, Earldoms and Baronies at pleasure, and seems to have utterly deprived the People of their Right of *Election of Magistrates and Representatives*, (except for *London*) without which, no People can be esteemed Free; and having *afterwards settled his Revenue* by the Record of *Domesday Book*; he had thence forward no occasion for supplies in *Parliament*.

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W. Rufus succeeded him on the like Foot, and on his Coronation, Swore the like Oath with the like Explanation, *i. e.* to observe the Confessors Laws *with such amendments, i. e. alterations* therein, *as had been made by his Father*; and *H. 1.* on his coming to the Throne, Swore to the Observance of the same Laws, *with such alterations as had been made therein, by his Father and Brother.*

Hitherto the Yoak of the *Norman* Conquest and Tyranny, had layn heavy on the Necks of the Commons of *England*; but now their Day of Redemption seem'd to draw Nigh; for in a few Years after this, *Robert* the Eldest Son of *W. 1.* being return'd from the Holy Land, and coming into *England* set up his claim to the Crown, and made such a Party among the *Norman* Nobility here, that King *Henry* was forced to throw himself into the Arms of the *English*, and thereupon called a Parliament at *London*, which seems to have been composed *almost, if not wholly of an English* House of Commons.

The Speech made by that Prince at the Meeting of that Parliament, is Recorded by *Mat. Paris*, and does so remarkably discover the Restoration of the Rights of the Commons, and the Renovation of the antient Constitution (by

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granting the Original of our *Magna Charta* and other Liberties,) that I cannot forbear giving the Speech and its Introduction to the Reader, both in *Latin* and in *English*, viz.

Oratio Regis Henrici ad Anglos. See Mat. Paris old Edicon p. 83. and in Watts, p. 42.

Magnatibus igitur Regni ob hoc Londonium Edicto Regio convocatis Rex, (Henricus) talibus alloquiis super Mel & Favum Oleumque Mellitis & Mollitis blandiens Dixit; (Vos Angligeni) Amici & fideles mei Indigenæ ac Naturales. Nostis veraci Fama referente qualiter Frater meus Robertus electus et per Deum Vocatus est, ad Regnum Hierosolymitanum feliciter Gubernandum, et quam frontose illud infeliciter Refutaverit; Merito propterea a Deo Reprobandus: Nostis etiam in multis alijs Superbiam et ferocitatem illius, et quia Vir bellicosus Pacis Impatiens est; Vosque Scilicet quasi contemptibiles, et quos Desiderat vocat & Gluttones conculcare desiderat. Ego vero Rex humilis & pacificus Vos in Pace & in antiquis Vestris Libertatibus prout crebrius jurejurando promisi gestio confovere, et vestris inclinando Consilijs, consultius ac Mitius, more Mansueti Principis Sapienter Gubernare; Et super his (si provideritis) Scripta subarata roborare, et iteratis Juramentis predicta certissime Confirmare; Omnia Videlicet que Sanctus Rex Edvardus

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vandus, Deo inspirante, provide Sancivit inviolabiliter jubebo observari; ut vos mecum fideliter Stantes, Fratris mei, immo et mei & totius Regni Angliæ Hostis cruentissimi Injurias, potenter animose ac voluntarie propulsetis; si enim Fortitudine Anglorum roberer, inanes Normanorum Iras, Nequaquam censeo farmidandas.

The King having by his Royal Edict, ^{K. H. I.} called the *English* great Men of the King-^{his Speech to his Eng. Parliam.} dom to *London*, for that intent harangued them with a *most gracious Speech*, smoother than Oil, and sweeter than Honey, or the Honey-comb, thus: My belo'd, and faithful Friends (*Englishmen*) You ^{It seems the Norman Nob. tho' Summon'd, refused to attend H. Parliam. and to have join'd with Robert.} who are the true born Inhabitants, and natural Proprietors of this Kingdom. You know what undeniable Truth is founded in the Report that my Brother *Robert* hath been Elected, and by God call'd to the glorious Government of the Kingdom of *Jerusalem*, and how shamefully he has rejected that call; for which Cause he deserves to be abandoned by God. You also know among many other his ill Qualities; that he is of a proud and brutal Disposition, and that being as it were nurs'd in War and Blood; he is an utter stranger to Peace; that he publickly Treats you as contemptible, and calls you Slaves and Gluttons, and that his

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whole aim is to Tyrannize over you. But I a mild, gentle and pacifick King, desire to protect you in Peace, and in the enjoyment of your antient Laws and Liberties as I have often Sworn to do, and to be guided by your Counsels, whereby I may Govern you with the more Prudence and Moderation, as a Mild and a gentle Prince. Nay more than this, if you will provide a Charter, I am ready to confirm and Establish thereby, and on my renewed Oath inviolably observe all those good Laws which the holy King Edward being inspired by God, did with Wisdom ordain. That so, you standing faithfully and courageously by me, we may powerfully resist and repell such injuries as may be attempted against us by this Brother of mine, who is the bloody Enemy of you, and of the whole Kingdom of England: For let me be but assisted with the Courage of you Englishmen, I shall not in the least fear the vain Threats of those (upstart) Normans.

From the foregoing Passage concurrent with other circumstances of those Times, I conceive we may raise the following conclusions.

LL. Ed. Conf. c. 33. 35. &c

1. The Convention abovemention'd being Convoked *Edicto Regio*, &c. was one of those extraordinary Parliaments before mentioned, met together to consult

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De arduis Negotijs Regni (i. e. how to secure the Possession of the Crown) and not one of those stated, and ordinary Parliaments which by the Saxon constitution were to be held twice Yearly (viz. about the beginning of May and beginning of October) which ordinary Parliaments were afterwards by divers Statutes, reduced to once a Year certainly, (i. e. whether Summoned or not) or oftener if need were, i. e. if there was any occasion to call one by a special Summons, *pro arduis Negotijs Regni*.

2. That tho' the *Magnates Regni* are only mentioned to be Summoned, yet the Commons of England were therein included; and indeed it is very Evident, that the Words *Magnates Regni* or *Nobiles Regni*, in the Language of those Times included both Lords and Commons when applyed to a National Assembly: For as Mr. Selden observes the Word *Nobilis* in the Saxon Times denoted every Gentleman (i. e. under Thanes or Knights, &c.) So after the Conquest, the Word *Baronagium*, included the Commons as well as Peers, and Mr. Cambden with others, do confess *Quod Sub Nominibus Baronagij omnes Regni ordines continebantur*. Thus *Rex Magnates & Proceres* are said to make the Stat. of Mortmain, which was apparently made by the

LL. Edgari. c. 5. Sec 4. Inst. fo. 9. & 36. E. 3. c. 10. St. 4. E. 3. c. 14.

Selden Tit. Hon. 603. & 604.

Camb. fo. 137. Edit. Lond. 1600.

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17 Johannis.

Mat. Par. Edit. per Watts, p. 38. 45. 51. 166. & alibi.

M. Paris 10. 6. & 40.

K. Lords and Commons; and the *Magna Charta* of K. *John* (of which that of K. *H. 1.* is clearly prov'd to be the Foundation) appears to have been made *per Regem Barones & Liberos homines totius Regni*, all which are by the Historians of those Times, called *Magnates Angliæ*. See farther of the Import of the Word *Magnates* in *Mat. Paris*.

3. That the *Norman Nobility*, tho' Summoned, refus'd to appear at this Parliament, they being almost entirely devoted to *Robert* the King's Elder Brother; and hence it is that we find the King's Speech is here Directed to *English Men* only, and that too in opposition to the *Normans* in general, on whom the King in the Conclusion very warmly Reflects, in order to ingratiate himself the more with the *English Commons*, of whom this Parliament seems to have been (almost) wholly composed.

Vide ibid 42.

The cause of the *Normans* defection seems to have been, for that King *Henry* having in the 2d year of his Reign Married *Maude* the Daughter of *Margaret, Q. of Scotland*, who was *Edgar Atheling's* Sister, and the direct lineal Heir of the *English Blood Royal*, was so enamoured with her (*tanto ardentius exarsit in ipsius amorem*) that he very much favoured the *English* for her Sake; whereupon

Mat. Par. 40.

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upon the *Normans* raised a general Rebellion against him, in favour of *Robert*; and tho' by the Intervention of Friends, the difference between the two Brothers was Skinn'd over for the present, yet we find the K. could never afterwards be heartily reconciled to the *Norman Nobility*, tho' of his own Blood, diverse of whom as *Robert de Belesmo, William Earl of Moreton*, and others; he soon after Bannish'd the Kingdom.

And it is very remarkable, That in the Event of the several Contests about *Robert's* Right, the *English Commons* became the Victors over the *Norman Nobility*; first, on behalf of *W. Rufus*, in the Beginning of his Reign, and now on the Behalf of *K. H. 1.* And the Example of their former Valour might induce this King to gratify and caress them with those high Encomiums, and Promises in his Speech. Which Promises, tho' as the Historian asserts, he afterwards, *impudenter violavit*; yet, as to the granting a Charter for restoring the *Confessor's* Laws, doubtless the Parliament took him at his Word; and this Charter I take to have been that very Charter which the same Historian observes to have been produced to King *John*, at the Rencounter of *Runny-Mead*, and not that which is mentioned to have been granted by this King.

Vide ib. sub Anno 1089.

Ib. p. 42.

Ib. p. 167.

Mat. Par.
38. 167.

King, at his Coronation, in which we find this ensnaring Stricture, viz. *Lagam Regis Edvardi vobis reddo, cum illis emendationibus quibus Pater meus eam emendavit.* His Father having, under Pretext of those Emendations, utterly deprived the *English* of the Free Election of their Magistrates; whereas tis evident from History, That for some Years after this new Charter granted in this *English* Parliament, the People were generally restored to the Right of electing their own Magistrates and Officers, Civil, Military and Ecclesiastical; and this I take to be the grand Foundation of the *Magna Charta* of *English Liberties*, i. e. as it gave Relaxation from *Norman Tyranny* and Slavery. And this may teach us, That the Rights and Liberties of the Commons of *England*, are neither so illegally begotten as by *Rebellion*, nor of such tender Years, as some imagine. But if any Man is not convinced from what I have before produced, touching the Origin of *English Parliaments*, and the Antiquity of the House of Commons, let him peruse the Authors cited in the Margin, especially the Treatise writ by that learned Judge Sir Robert Atkyns, on this very Subject.

Mat. Par.
37. 39.
2 Inst. 15.

Nor was this the first *English* Parliament held under this King, *Mat. Paris* has

Dier 60
& 70.
See Mirror, c. 1.
Sect 3.
Bra. Flet.
Lambards
Archaion,
57. 239.
245.
Sir R. Atkyns, p.
20. 17, &c.
Vide Post.
c. 6. & 7.

has given us a brief Account (which other Authors confirm and enlarge) That one *Ranulph*, Bishop of *Durham* (whom *Mat. Sc.* adorn with the sublime Titles of, *Vir pessimus, & corruptissimus; Homo perversus & ad omne scelus paratus; Vir subacto ingenio & profunda nequitia, &c.*) was imprisoned, &c. by a Common-Council or Parliament of *Englishmen*. The whole Passage runs thus, *Eo tempore Rex tenuit in Custodia Ranulphum Dunelmensem Episcopum hominem perversum & ad omne scelus paratum, Quem Frater Regis, i. e. Rex Willielmus Episcopum fecerat Dunelm. & Regni Anglorum subversorem; Qui cum Regi jam dicto nimium esset familiaris, constituerat eum Rex, Procuratorem suum in Regno, ut evelleret, destrueret, raperet et disperderet, et omnia omnium Bona ad Fiscum commodum comportaret. Sed mortuo eodem Rege iniquo & Henrico coronato, de Communi Consilio Gentis Anglorum, posuit Rex eum in vinculis, &c.*

Nor was the Concurrence of the Commons in Parliament requisite only to the Imprisonment or Exauktion of *Bishops*, the same Assent seems as necessary, and that too in a superior Degree, as to their Election or Confirmation; divers Instances of this appear in the Historians of those Times: I shall select some to prove it

Saxon
Chron.
sub Anno
1099. p.
208. 210.
Flor.
Wig. &c.
Mat. Par.

N. B. The
Office of
a Court
Bishop.

Rights of
the King
dom, p.
118. 133.
140. &c.

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it then the Custom of *England, Scotland, Wales, Ireland, France, &c.*

Sax. Chr. p. 306.

Anno 1113, *Ralph*, Bishop of *Roche-ster*, was elected Archbishop of *Canterbury* by the King, *Annuate Plebe & Clero*; this was done *in Communi Consilio apud Windsore*. And I find about the same Time, That another *Ralph*, who had been ordained a Bishop in *Scotland*, was rejected by all, because not elected with the Consent of the People, &c. And notwithstanding his Consecration, was forced to wander about, and officiate as a Coadjutor to other Bishops.

Eadmer. Hoveden.

Malmsb.

About the Year 1120, one *David* was consecrated Bishop of *Bangor*, by the then Archbishop of *Canterbury*; but tis expressly said, That he had been thereto elected, *A Principe Clero & Populo Wallie*, i. e. by a *Welch* Parliament. And in the same Reign one *Gregory*, an *Irish* Abbot, was elected to the Bishoprick of *Dublin*, *a Rege Hibernie & Clero & Populo*, an *Irish* Parliament. So that the Commons at this Time, were a constituent Part of the *Scottish, Welch* and *Irish* Parliaments, as well as with us in *England*.

Vide Sax. Chro. sub An. 1127.

And in the Year 1128, I find that fam'd Scholar *Gilbertus Universalis*, to be elected and consecrated Bishop of *London*.

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don, Annuate Clero & Populo. This seems at a Parliament at *London*.

But this Right of the Commons in electing Bishops, does more clearly appear in *H.* the 2d's Time, when all Historians agree it to be a general Custom both here and in *France* (and seems founded on divers express Canons of the Primitive Church) Inasmuch, as *Mezeray*, in his History, asserts, That until that Time (i. e. the Middle of the 12th Century) *The Voice of the People in electing Bishops, was esteem'd the Voice of God*.

The Successors of *K. H. 1.* took their Coronation Oaths in a Form much more enlarged, for the Ease of the Commons, than those of King *Henry 1.* or his two Predecessors: Thus *K. Steven* swore, *Coram Regni Magnatibus, i. e. the Lords and Commons convoked at London. Ad meliorationem Legum juxta voluntatem & Arbitrium singulorum*; which must mean, That he would reform the Laws according to their common Consent in Parliament; and afterwards going to *Oxford* (i. e. to hold his Parliament) *Ibi confirmavit Pacta, quae Deo & Populo, in Die Coronationis suae concesserat*. See there some Particulars of his Oath, whereof the 3d is (*Tallagia*) *Quae antecessores ejus accipere consueverant in aeternum condonaret*. And in the following Year, on the

K. Steven Mat. Par. 51.

This I take to be meant of Danegelt, Hydage, Cornage, &c.

Ibid. 51. the Arrival of *Rob. Earl of Gloucester*, this King was again sworn to observe the Good Laws (of the Realm) and thereof granted his Charter; and see there the conditional Homage paid to the King by that Earl.

I might here pursue this Thread of Coronation Oaths, in those of *H. 2. R. 1. K. John*, &c. but my Intention is not to trace the Practices of Kings in taking Coronation Oaths, an unlucky Blot remains in History as to those Princes I have already named, it being generally observed, *Impudenter fregerunt*, &c.

An Author, who seems to be very conversant in Matters of this Nature, and observes thus, "The King's Oath is to confirm the just Laws which the *Commons* (not the *Lords*) shall elect or choose (in *Latin, Quas vulgus elegerit*) and in the old *French* Oaths of *Edw. 2.* and *Edw. 3.* tis, *Les quels la Communante aux Estue.* And in the *English* Oaths of *H. 8.* and other Princes, tis, Which the *Commons* of the Realm shall choose. "And that the antient Writs for summoning the *Commons*, are, *Nobiscum tractur' & consilium impensur' de arduis Negotiis Regni.*"

And the same Author, a little before, says thus, "The *Mirror* (as well as *Tacitus*) shews how our *Lords* were originally raised out of (and by) the *Commons*,

Vide Ib. 42. in pede 51. and the Praef. to Privilegia Londini. Rights of the Kingdom, p. 88.

See Sir R. Atkyns ut supra p. 28. 29.

The King's Rights, ut supra.

"mons, and (with *Bracton Fleta*, &c.) "gives them a judicial Power over the "Rest, &c. Nay, the *Modus Parliamenti*, will not only tell us, That the *Commons* have better and stronger "Votes than the *Lords*; but that there "may be a *Parliament* without the *Prelates*, &c. For there was a Time, wherein "there was neither *Bishop* nor *Earl*, and "yet there were *Parliaments* without "them; but never without the *Commons*, and concludes with the *Impossibility* of holding a *Parliament* without "them; thus, *Parliamentum sine Comunitate, tenebitur pro nullo, quamvis omnes alii status plenarie ibidem interfuerint.*"

Lastly, The *Freeholders of England* had originally the Election of the *Conservators of the Peace*, who are become out of Date, by introducing *Justices of Peace*, who have their Power, not by any Election of the *Freeholders* (as of Right they ought) nor are they nominated by them, but by the King, and have their Power by his special Commission, &c. (*i.e. contrary to the Common-Law*) And how, and by what Means, and in what tempered Times, this came about, may be read in *Lambards Eirenarcha*. It was done by Act of *Parliament*, in the Beginning of *K. Edw. the 3d's* Reign,

Sir R. Atkyn's Power of Parliament, p. 32.

Lambards Justice, f. 16. 19. 20.

147, &c. and

and in his Minority, *when the Queen (and Mortimer) ruled all.*

Sir R. Atkyns supra

The Freeholders did also originally, and from all Antiquity, at their Folkmotes, or County Courts, chuse their *Heretochii*; and what were these? You may call them Lords Lieutenants, Deputy Lieutenants (or it may be *Lieutenants Generals*) For the *Saxon* Laws tell you their Duty and Office, and that they were to be *Ductores Exercitus*, &c.

LL. Ed. Conf. 35. Vide ante

All these great Officers were chosen by the Freeholders, as our Knights of the Shires now are, and as Conservators, or Justices of Peace formerly were, and as Coroners and Verdredors (formerly Men of great Power) still are, by *Writ* at the County Courts.

Sir R. Atkyns supra Sec 4 Inst. 174. 558.

These were mighty Powers and Freedoms, and were enjoy'd by the People, as antiently as any of our *Records do reach*; which are more authentic Proofs (of our Constitution) than the Writings of Modern Historians, &c. And do best shew the *native Freedom*, which the People had by the antient *Constitution* of our Government, contrary to all the *new Doctrines* of our *late Writers*; and prove, That the *Privileges* and *Freedoms* we yet enjoy, are not meer *Emanations of Royal Favour*, as our *Novellists* would impose upon us.

CHAP. II.

Of the Dignity and Excellency of Parliaments.

THE Parliament is the Foundation and Basis of Government, and consequently of the Peace and Happiness of the Kingdom; as it creates the Law by which we are ruled and governed in Peace and Quietness; so it preserves the Law in Power and Authority: It watches over our Religion, that it be not supplanted and exchanged by suppositious Innovations; or the Truth and Substance of it eaten up with Formality, vain Pomp, and unnecessary Ceremonies. It is the *Conservative* of the Rights and Liberties of the Subject, and the *Corrective* of Injustice and Oppression, which by equal Right is distributed to all, and every Man hath that Benefit and Protection of Justice which is due to him. It is that by which alone common Necessities can be provided for, and Publick Fears prevented; so that I may say, not only the Peace and Happiness, and well Being, but the very Being of this Kingdom, can have no other Bottom to stand upon,

Rushw. Coll. 3d Part Vol. 1. fo. 739.

upon, but the Parliament; it being the Foundation upon which the whole Frame of the Commonwealth is built.

Ib. 201. The Parliament is the Cabinet, wherein the chiefest Jewels both of the Crown and Kingdom are deposited. The great Prerogative of the King, and the Liberty of the People, are most effectually exercised and maintained by Parliaments, &c.

Ib. 587. Parliaments are the Ground and Pillar of the Subject's Liberty, and that which only maketh *England* a free Monarchy.

Ib. 752. Parliaments are (says the Earl of *Warwick*, Admiral of the Sea, to *John Pym*, Esq; July 6, 1742) That Great Council, by whose Authority the King's of *England* have ever spoken to their People.

Ib. 702. Both Houses of Parliament are the Eyes in the Body Politick, whereby His Majesty is (ought) by the Constitution of this Kingdom, to discern the Differences of those Things, which concern the Publick Peace and Safety thereof.

(The Parliament is the Mouth of the King and Kingdom, *Vox Dei*, &c.)

Rushw. Coll. 3d Part Vol. 2. p. 40.

Parliaments (says *K. C. 1.* in his Declaration to all his Loving Subjects, after his Victory at *Edgehill*, on the 23d of *October*, 1642) are the only Sovereign Remedies for the growing Mischiefs which Time and Accidents have, and will always

ways beget in this Kingdom. That without Parliaments, the Happiness cannot be lasting to King or People.

The Parliament is to be considered in Ib. p. 45. three several Respects; first, As it is a Council, to advise; 2dly, As it is a Court, to judge; 3dly, As it is the Body Representative of the whole Kingdom, to make, repeal, or alter Laws.

L'Assemblée de Troys Estates, Cest-à-dire le Roy, Nobility, & Commons, qui font le Corps del Realm, est appel un Parliament, & leur Decree, un Act de ^{Finch's Nemotecnia, lib. 2. c. 1. fo. 21.}

Parliament; Car sans tous troys (come si soit fait per Roy & Seigneurs, mes rien parle del Commons) nest Aseun Act de Parliament: i. e. The Assembly of the three Estates, *to wit*, the *King*, the *Nobility*, and the *Commons*, which make the Body of the Realm, is called a *Parliament*, and their Decree an *Act of Parliament*; for without all three (as if it be done by the *King* and *Lords*, but speaks nothing of the *Commons*) there is not any *Act of Parliament*.

On the Restoration of King *Charles* ^{May 1. 1660.} the 2d, the *Commons* resolved, That this House doth agree with the *Lords*, and do own and declare, that, according to the antient and fundamental Laws of this Kingdom, the Government thereof is, and

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ought to be, *By King, Lords and Commons.*

The Word *Parliament* is used in a double Sense.

Englsh Liberties, p. 78.

1. Strictly, as it includes the *Legislative Power of England*, as when we say — *an Act of Parliament*; add in this Acceptation it necessarily includes the *King*, the *Lords*, and the *Commons*, each of which have a *Negative Voice* in making Laws, and without their Joint Consent no new Laws can pass, that be obligatory to the Subject.

2. Vulgarly, the Word is used for the Two Houses, the *Lords and Commons*; as when we say, The King will call a Parliament; His Majesty has dissolved his Parliament, &c.

Crompton's Jurif. p. 1.

This Court is the highest Court in *England*, in which the Prince himself sits in Person, and (usually) comes there at the Beginning of the Parliament, and at the End, and at any other Time when he pleaseth, during the Parliament. The King is the *Caput Principium*, and *Finis* of Parliaments.

4 Inst. 3.

Rushw. Coll. Vol. 3. Part 1. p. 772.

It appears by Precedents, That whenever a Parliament was sitting in the King's Absence, there was always a *Custos Regni*, or a *Locum Tenens Regis*, appointed.

This

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This Court consists of the King's Majesty, sitting there as in his Royal Politic Capacity, and of the three Estates of the Realm, viz. the *Lords Spiritual, Arch-Bishops*, and *Bishops* (who sit there by Succession in respect of their Counties, or Baronies, parcel of their Bishopricks) The *Lords Temporal, Dukes, Marquesses, Earls, Viscounts*, and *Barons*, who sit there by reason of their Dignities, which they hold by Descent, or Creation (every one of which, both Spiritual and Temporal, ought to have a Writ of Summons, *ex debito Justitia*) And the *Commons of the Realm*, whereof there be Knights of Shires, or Counties, Citizens of Cities, and Burgeses of Boroughs; all which are respectively elected by the Shires or Counties, Cities and Boroughs, by Force of the King's Writ, *ex Debito Justitia*, and none of them ought to be omitted: And these represent all the Commons of the whole Realm, and are trusted for them.

Vide Dy. fol. 60.

The King, and these three Estates, are the great Corporation or Body Politic of the Kingdom, and do sit in two Houses: King and Lords in one House, called, *The Lords House*; the Knights, Citizens and Burgeses in another House, called, *The House of Commons.*

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Arc. Parl. 2. That which is done by this Consent, is called *firm, stable, and sanctum*; and is taken for Law.

Townf. Coll. 5. 6. Vid. Crompton, 1. All the Judges of the Realm, Barons of the Exchequer of the Coif, the King's Learned Council, and the Civilians Masters of the Chancery, are called to give their Assistance and Attendance in the Upper House of Parliament; but they have no Voices in Parliament, but are made sometimes joynt Committees with the Lords.

Arc. Parl. 3. Smyth's Common-wealth, 74. Every Englishman is intended to be there present (either in Person, or by Procuration, and Attorney) of what Pre-eminence, State, Dignity, or Quality soever he be; from the Prince (be it King or Queen) to the lowest Person in England. And the Consent of the Parliament is taken to be every Man's Consent.

2 Bulstro. 173. See Cotton's Records, 12. 13. 348. Post. 60. In antient Time, the Lords and Commons of Parliament did sit together, in one and the same Room; but afterwards they were divided, to sit in several Rooms, and this was at the Request of the Commons; but yet still they remain but one Court: And of all this I have seen the Records, one in the Time of H. 1. where all of them did sit together, and mention is there made of the Degrees of their Seats; so in the Time of E. 3. 39.

No

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No Man ought to sit in the High Court of Parliament, but he that hath Right to sit there: For it is not only a personal Offence in him that sitteth there without Authority, but a publick Offence to the Court of Parliament, and consequently to the whole Realm.

It is to be observed, That when there is best Appearance, there is the best Success in Parliament. At a Parliament Hen. 5. of the Lords Spiritual and Temporal, there appeared but Thirty, and there was but one Act pass'd, of no great Weight. In 50 Ed. 3. all the Lords appeared in Person, and not one by Proxy; and so many excellent Things were done, that it was called *Bonum Parliamentum*.

At the Return of the Writs, the Parliament cannot begin, but by the Royal Presence of the King, either in Person or Representation.

The King's Person may be represented by Commission under the Great Seal to certain Lords in Parliament, authorizing them to begin the Parliament, or to prorogue it, &c.

When a Parliament is call'd, and doth sit, and is dissolved, without any Act of Parliament passed, or Judgment given, it is no Session of Parliament, but a Convention.

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Ib. 32.

It is an Observation proved by a great Number of Precedents, that never any good Bill was preferred, or good Motion made in Parliament (whereof any Memorial was made in the Journal-Book, or otherwise:) Tho sometimes it succeeded not at the first, yet it hath never dy'd, but at one Time or other hath taken effect.

Ib. 17.

Matters of Parliament are not to be ruled by the Common-Law.

Ibid.

Vide 1 Inf. Sect. 108.

If Offences done in Parliament might have been punish'd elsewhere, it shall be intended, that at some Time it would have been put in Ure.

Ib. 50.

It doth not belong to the Judges, to judge of any Law, Custom, or Priviledge of Parliament.

Sir Tho. Smith's Commonwealth, 74

The Judges in Parliament are the King or Queen, the Lords Temporal and Spiritual, the Commons represented by the Knights and Burgeses of every Shire, Borough-Town. These all, or the greater Part of them, and that with the Consent of the Prince for the Time being, must agree to the making of Laws.

Seld. Judic. 95.

It is the just and constant Course of Parliament, to bring the Party accused to his Answer: Yea, tho he fly Justice, yet to send out Proclamation into the Countries, that he appear at a Day, or else

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else such and such Judgments shall be given against him.

What is done by either House, according to the Law and Usage of Parliament, is properly, and in the Judgment of the Law, the Act of the whole Parliament: And what concerns the one, must of Necessity concern the whole; not meerly by Consequence, but by an immediate Concernment, as being one and entire.

The three Estates of Parliament are one entire Body, and Corporation: All their Powers and Priviledges in the Right of them, and in the Title to them, are entire, *per my & per tout*, and belonging to the whole Body of the Parliament; tho in the Exercise of those Powers, and sometime in the Claim of them, they are distinguish'd; and in the Practise of their Powers, they are in many Things distributed into Parts.

All the Estates in Parliament are call'd by one common Name, as *Commune Concilium Regni, Magna Curia*, they are one Body Politic. It is said by *Fineux* Chief Justice, *That the Parliament at the Common-Law consists of the King, Lords and Commons, and they are but one Body corporate.*

The Libertics and Franchises of the Parliament, in the Right of them, are entire,

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entire, and due to both Houses, for both make up the Parliament.

Knighton de Eventibus Angliae, l. 5. f. 268. col. 1. 2. Petyt's Rights, &c. in Pref. p. 43. 44. Hollingf. f. 1055. col. 1.

Knighton (one of our best Historians) doth notably disclose the antient Ends of calling Parliaments, in saying, *Quod ex Antiquo Statuto, & Consuetudine laudabili & approbata, &c.* That by an antient Statute, and Custom laudable and approved, which no Man could deny, the King was once in the Year, to convene his Lords and Commons to his Court of Parliament, as to the highest Court in the whole Realm [*In qua omnis Aequitas relucere deberet absque qualibet Scrupulositate vel nota, tanquam Sol in Ascensu Meridiei; ubi Pauperes & Divites pro Refrigerio Tranquillitatis & Pacis, & Repulsione Injuriarum, Refugium Infallibile quaerere possent, ac etiam Errata Regni reformare, & de Statu & Gubernatione Regis & Regni cum Sapientiori Concilio tractare; ut Inimici Regis & Regni Intrinsici; & Hostes Extrinsici destruantur & repellantur, qualiterquoque Onera incumbentia Regi & Regno levius ad Ediam Communitatis Supportari poterunt.*] i. e. In which Court all Equity ought to shine forth without the least Cloud or Shadow, like the Sun in its Meridian Glory; where Poor and Rich, refreshed with Peace and Ease of their Oppressions, may always find infallible and

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and sure Refuge and Succour; the Grievances of the Kingdom redressed, and the State of the King and Government of the Realm debated with wiser Councils; the Domestick and Foreign Enemies of the King and Kingdom destroy'd and repelled, and to consider how the Charges and Burthens of both may be sustained with more Ease to the People.

Minshieu, in his Etymological Dictionary tit. Parliament, says, In a Monument of Antiquity, meaning the antient *Modus Tenendi* Parliament, shewing the Manner of holding the Parliament in the Time of K. Edward, the Son of K. Etheldred, which (as the Note saith) was delivered by the discreeter Sort of the Realm, to William the Conqueror, and allowed by him, tis said, That the Parliament consisted of six Ranks or Degrees; it begins thus, *Rex est Caput, Principium, et Finis Parliamenti, & ita non habet Parem in suo Gradu: Et sic a Rege solo primus Gradus est. Secundus Gradus est ex Archiepiscopis, Episcopis, Abbatibus, Prioribus, per Baroniam. Tertius Gradus est de Procuratoribus. Cleri. Quartus Gradus est de Comitibus, Baronibus, et aliis Magnatibus. Quintus Gradus est de Militibus Comitatum. Sextus Gradus est de Civibus* et

But these six Degrees were never allowed to be six Estates of Parliament.

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et Burgensibus: Et ita est Parliamentum ex sex Gradibus.

Rolls 1. Report fol. 18. ante 54.

En Antient temps tout le Parliaments sea Insimul, et le Separation fuit perle desire del Commons, Mes nient obstant ils font forsque un Mese; jen aie view un Record, 30 H. 1. de leur degrees et seats, 39 E. 3. per Choke ch. Inft.

Reform'd vol. 2. p. 49.

It is generally believed, That the whole Parliament fate together in one House, before E. 3. Time, and then the inferior Clergy were a Part of that Body without Question. But when the Lords and Commons were divided, the Clergy likewise fate in two Houses, and granted Subsidies as well as the Temporalities.

1 Inft. Sect. 164. fol. 109.

My Lord Chief Justice Coke says, The Parliament is the highest and most honourable, and absolute Court of Justice of England, consisting of the King, the Lords of Parliament, and the Commons. And again, the Lords are here divided into two Sorts, viz. Spiritual and Temporal. And the Commons are divided into three Parts, viz. Into Knights of Shires or Counties, Citizens out of Cities, and Burgeffes out of Boroughs.

In the High Court of Parliament, all the whole Body of the Realm, and every particular Member thereof, either in Person, or by Representation (upon their own Free Elections) are by the Laws of this

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this Realm deemed to be personally present, 1 Jac. 1. c. 1.

Sir Edward Cook, in his Epistle to the 9th Report, says, There is a threefold End of this great and honourable Assembly of Estates: First, That the Subject might be kept from offending, that is, That Offences might be prevented both by good and provident Laws, and by the due Execution thereof: Secondly, That Men might live safely in Quiet: And thirdly, That all Men might receive Justice by certain Laws and Holy Judgments, that is, to the End that Justice might be the better administred, that Questions and Defects in Laws might be by this High Court of Parliament planed and reduced to, a Certainty, and that Claims of Right might be adjudged and determined. This Court being the most supream Court of this Realm, is a Part of the Frame of the Common Laws, and in some Cases doth proceed legally, according to the ordinary Course of the Common Law.

The House of Lords cannot exercise any Power, as an House of Parliament, or as a Court for Error, without the House of Commons be in Being at the same Time. Both Houses must be prorogued together, and dissolved together.

By

Sir R. Atkin's Argument, f. 51.

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Ib. 59.

By the Law, Parliaments ought to be very frequent. Before the Conquest (as it is untruly call'd) by the Law, Parliaments were to be held twice a Year, as appears by King *Edgar's* Laws. So it was ordained by King *Alfred*. By the Stat. of 4 *Ed.* 3. c. 14. Parliaments ought to be once a Year, and oftner, if need be. And in 36 *Ed.* 3. c. 10. to be once a Year, without Restriction, if need be. By 16 *Car.* 2. c. 1. these Acts are declared to be in Force: And further, it is declared and enacted, *That the holding of Parliaments shall not be discontinued above three Years at the most.*

Plow.
Com. 398.
11 Col.
14

The Parliament
can do no
Wrong.
6 Col. 27.
Sir R. At-
kyne Arg.
60.

Plow.
Com. 797.
9 Col.
106.
Ibid.

Ibid.

The Parliament is a Court of very great Honour and Justice, of which no Man ought to imagine a Thing dishonourable.

An Offence committed in Parliament, is a very very high Offence; but the higher it is, the more proper it is for their Judicature; and that Court is arm'd with a Power to punish the highest Offences, and the highest Offenders.

Yet a Parliament may err, for they are not infallible; but the Law hath provided a Remedy against those Errors, and a way to reform them. A subsequent Parliament may reform the Errors of a preceding Parliament.

But to say that they will be partial, or unjust, or corrupt, or do any Thing out of Malice, is to raise a Scandal upon the

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the whole Nation, whose Representative they are. Ibid.

If any Offence whatever be committed in the Parliament by any particular Member; it is an high Infringment of the Right and Privilege of Parliament, for any Person, or Court, to take the least Notice of it, till the House it self either has punish'd the Offender, or referred them to a due, or proper Course of Punishment. To do otherwise, would be to make the Highest Court an Offender, and to charge them with Injustice.

Their Right and Priviledge so far extends, that not only what is done in the very House, sitting the Parliament; but whatever is done relating to them, or in pursuance of their Order, during the Parliament, is no where else to be punish'd, but by Themselfes, or a succeeding Parliament, tho done out of the House. Ibid. 61.

Either House doth ever for the most part shew it self so careful to keep firm Correspondence with the other, as that when a Bill hath pass'd either of the said Houses, and is sent to the other, it doth for the most part pass, and is neither dash'd, nor alter'd, without very great Cause upon mature deliberation, and usually also not without Conference desir'd, and had thereupon; that so full Satisfaction may be given to that House, from which

See Huf-
band's,
Collecti-
ons, ante
p. 1. & p.
67.

Sir Simon
d'Erwes
Journal,
186.

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which the Bill so rejected, or alter'd, was sent.

Preface to Petyt's Miscel. Parlemer- tar.

Pessima Gens humani Generis always abhor'd a Parliament: And the Reason thereof is demonstrative; because they all knew they shou'd then be call'd to an impartial and strict Account, and be punish'd according to their Demerits.

Ibid.

It was said by the Lord Bacon to Sir Lionel Cranfeild, newly made Lord Treasurer, That he would recommend to his Lordship, and in him to all other great Officers of the Crown, one considerable Rule to be carefully observ'd, which was, *Remember, a Parliament will come.*

Petyt's Miscel. Parliam- ent. 6. Vide Cromp. Jur. 10.

The King at no Time stands so highly in his Estate Royal, as in the Time of Parliament; wherein the King as Head, and they as Members, are conjoyn'd and knit together in one Body Politic: So as whatsoever Injury (during that Time) is offer'd to the meanest Member of the House, is to be judged as done against the King's Person, and the whole Court of Parliament.

Ibid.

The Prerogative of Parliament is so great, That all Acts and Processes coming out of any inferior Courts, must cease, and give place to that, the highest.

Fortescue 40.

Statutes in *England* are made not only by the Princes Pleasure, but also by Assent of the whole Realm: So that of Necessity

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cessity they must procure the Wealth of the People, and in no wise tend to their hindrance.

It cannot otherwise be thought, but that they are replenish'd with much Wit and Wisdom, seeing they are ordain'd, not by the Device of one Man alone, or of a hundred wise Counsellors only, but of *more than three hundred learned Men (now 558) that ought to be freely Elected by the People.*

Ibid.

Acts of Parliament are made with such Gravity, Wisdom, and Universal consent of all the Realm, and for advantage of the publick Wealth; that they are not from the General and ambiguous Words of a Subsequent Act to be abrogated.

11. Co. 63. Fortesc. c. 18. c. 40.

Acts of Parliament have been tender of racking the King's Subjects for Words, and the Scripture Discountenances Mens being made Transgressors for a Word.

1. Mod. Rep. 234

Every Proviso in an Act, is not a determination what the Law was before; for they are often added for the Satisfaction of those that are ignorant of the Law.

1. Siderf. 155.

The King of *England* can neither by himself or his Ministers, impose (any) *Tallages* or other *Burdens* on his Subjects, or alter their Laws, or make new Laws, without Assent of the whole Kingdom in Parliament.

Fortescu. P. 84.

CHAP. III.

Of the Power and Authority of Parliaments.

Hollinsh.
Vol. I. p.
173.

THE Parliamentary Power, as it is in the Legislative Capacity, consisting of the Agreement and Act of all the three Estates, King, Lords and Commons, to make it Binding; it imports no less than the united Consent of all and every Person of the Kingdom; and under this Notion its Power is Unlimited and Universal; its Authority is the most unerring and firm support of Monarchy and Government, and has been ever used as the only Expedient, to accommodate the differences of Pretenders and Competitors, to arbitrate and decree, not only the Right and Possession, but even the Inheritance and Reversion of the Regal Power, to succour and defend the King and Kingdom, against all possibility of Injury or Incroachment that might be Intended against or Usurped upon it, or its Authority; to decree the Nations Liberties, ascertain Property, and to establish an unquestionable Peace, and Security to all the People, both from the

the danger of Grievances at Home, or the Assaults of foreign Power.

In this capacity it hath Power above the Law itself, having Power to alter the common Law of England, to declare the meaning of any doubtful Laws, to repeal old Patents, Grants or Charters, and Judgments whatsoever of the King, or any other Court of Justice if erroneous or illegal, and extends so far as finally to oblige both King and People, to punish Offenders of all Sorts, to examine into the corruptions of Religion, and either to disannul or reform it.

Hollinsh.
c. 1. vol. 1.
p. 173.

Anno 1626. 2. Car. the Commons in their Remonstrances declare, that it hath been the antient, constant, and undoubted Right and Usage of Parliaments, to question and complain of all Persons of what degree soever, found grievous to the Common-Wealth, in abusing the Power and Trust committed to them by the Sovereigns, a Course approved of by frequent Presidents in the best and most glorious Reigns, appearing both in Records and Histories, &c.

Rushw.
Coll. vol.
1. p. 245.

In 30. E. 3. the Parliament accused John de Gaunt, the King's Son, and Lord Latimer, and Lord Nevil, for misadvising the King; and they went to the Tower for it.

7. H. 4.
Rot. Parl.
No 31 &
32.

Rushw.
Ib. p. 607.

In 11. H. 4. N^o 13. the Council are complained of, and are removed from the King; for that they mewd-up the King, and disuaded him from the common Good. In 4. H. 3. & 27. E. 3. & 13. R. 2. the Parliament moderateth the King's Prerogative, and nothing grows to an Abuse, says Sir Edward Coke, but the Parliament hath Power to treat of and Correct it.

Idem. p.
620.

And King James the 1st. put the Commons assembled in Parliament, in mind, that it would be the greatest unfaithfulness, and breach of Duty to his Majesty, and of the Trust committed to them by the Country that could be, if in setting forth the Grievances of the People, and the Condition of all the Petitions of this Kingdom from whence they come; they did not deal clearly with him, without sparing any Persons how near, and dear soever they were unto him; if they were hurtful, or dangerous to the *Common-Wealth*.

Sir Tho.
Smith's
Common-
wealth, l.
2. c. 2. p.
72. Arca-
na Parl. 1.

The most High and Absolute Power of the Realm of *England*, consisteth in the Parliament. For as in War, where the King himself in Person, the Nobility, the rest of the Gentility, and the Yeomanry are, is the Force and Power of *England*: So in Peace and Consultation, where the Prince is to give Life, and the last and highest Commandment, the Baro-
ny

ny or Nobility for the higher; the Knights, Esquires, Gentlemen and Commons for the lower part of the *Common-wealth*; the Bishops for the Clergy be present to advertise, consult and shew what is good and necessary for the *Common-wealth*, and to consult together; and upon mature deliberation; every Bill or Law being thrice read and disputed in either House, the other two parts, first each a part, and after the Prince himself in presence of both the Parties doth consent unto, and alloweth, that it is, the Prince's and whole Realm's Deed; whereupon justly no Man can complain, but must accommodate himself to find it good, and obey it.

Ibid p. 73.

Thus, the concurrent Consent of these three Estates when reduced to writing, and pass'd in Parliament, is as it were a Tripartite Indenture, between King, Lords and Commons; and that which is so done by this Consent is called firm, stable and *sanctum*, and is taken for Law.

As to the Power of *Parliaments*.

1. It abrogateth old Laws.
2. Maketh new Laws.
3. Giveth order for things past.
4. Directs things hereafter to be followed.
5. Changeth Right and Possessions of private Men.
6. Legitimateth Bastards.

Sir Tho.
Smith. ibid.
Arc. Parl.
2. Vide
Crompt.
Jur. 3.

Of the Power and

7. Establisheth Forms of Religion.
8. Altereth Weights and Measures.
9. Giveth Form of Succession to the Crown.
10. Defineth of doubtful Rights whereof is no Law already made.
11. Appointeth Subsidies, Tallies, Taxes and Impositions.
12. Giveth most free Pardons and Absolutions.
13. Restoreth in Blood and Name.
14. And as the highest Court condemneth or absolveth them who are put upon their Trial.

Ibid.

In short, all that ever the People of *Rome* might do, either *Centuriatis*, *Comitiis* or *Tributis*, the same may be done by the Parliament of *England*; which representeth, and hath the Power of the whole Realm, both the Head and Body: For every *Englismen* is intended to be there present, either in Person, or by Procurator, and Attorney, of what preeminence, state, dignity or quality soever he be, from the Prince (be he King or Queen) to the lowest Person of *England*. And the Consent of the Parliament is taken to be every Man's consent.

Rastal's
Statutes,
fol. 546.
25 H. 8.
c. 21.

As to its Power over both the Statute and Common Law of this Realm, you will be best informed of it from the memorable words of an Act of Parliament itself

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itself, viz. *Whereas this Realm recognizing no Superiour under God but only the King, hath been, and is free from Subjection to any Man's Laws, but to such as have been devised, made, and ordained within this Realm, for the Wealth of the same; or to such other as by Sufferance of the King and his Progenitors, the People of this Realm have taken at their free Liberty by their own Consent to be used amongst them, and have bound themselves by long Use and Custom to the Observance of the same; not as to the Observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the Custom and antient Laws of this Realm, originally established as Laws of the same, by the said Sufferance, Consents and Custom, and none otherwise. It standeth therefore with Natural Equity and Good Reason that all and every such Laws Humane, made within this Realm by the said Sufferance, Consents and Custom, that the King and the Lords Spiritual and Temporal and the Commons representing the whole State of this Realm in the most High Court of Parliament, have full Power and Authority, not only to dispence, but also to authorize some Elect Person or Persons, to dispence with those and all other Human Laws of this Realm, and with every*

Of the Power and

one of them, as the Quality of the Persons and Matter shall require; And also the said Laws, and every of them to abrogate, adnul, amplifie, or diminish, as it shall be seem to the King, and the Nobles and Commons of this Realm, present in Parliament, meet and convenient for the Wealth of this Realm.

4 Inst. 36.

The Power and Jurisdiction of the Parliament for making of Laws in proceeding by Bill, is so transcendent, and absolute, as it cannot be confined, either for Causes or Persons within any Bounds. Si Antiquitatem spectes, est vetustissima: si Dignitatem, est honoratissima: si Jurisdictionem, est capacissima.

Speed's Hist. f. 914 Rot. Parl. 1 R. 3. In Cotton's Abridgment f. 713, 714

The whole Parliament (which should best know its own Power) affirms, that the Court of Parliament is of such Authority, and the People of this Land of such a Nature and Disposition, as Experience teacheth, that the Manifestation and Declaration of any Truth or Right made by the Three Estates of this Realm assembled in Parliament, and by Authority of the same, maketh, before all other things most Faith, and certain quieting of Mens Minds, and remoyeth the Occasion of Doubts.

Parliamentum omnia Potest, says the 4 Inst. 74. 76.

The

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The Parliament is of an absolute and unlimited Power in things Temporal, within this Nation. Sir Rob. Atkyns's Argument &c. 50.

The Parliament hath the highest and most sacred Authority of any Court: it hath an absolute Power: It is the highest Court in the Realm, as is acknowledged by our most learned and gravest Writers and Historians. Ibid.

A Man gives Land to one, and to his Heirs Males; in that Case his Heirs Females shall also inherit; and this was adjudged in Parliament. Crompton 20. b. Dr. and Student.

One of the fundamental and principal Ends of Parliaments was, for the Redress of Grievances, and easing the Oppressions of the People. And the Mirror of Justices says, c. 1. p. 4. and 5. That Parliaments were instituted to hear and determine the Complaints of the wrongful Acts of the King, the Queen, and their Children; and especially of those Persons against whom the Subjects otherwise could not have common Justice for wrongs so by them done. Petit's Preface to Ancient Rights, &c. p. 41.

Covient per droit que le Roy ust Companions pur oyer et terminer aux Parliaments trestouts les breues et plaints de Torts de le Roy, de la Roigne, et de leur Enfants, et de Eux specialment de que Torts len ne poit aver autrement Common droit. (i. e.) The King ought by Law to have Horn's Mirror. p. 9.

have Companions or associates, to hear and determine in Parliament of all Writs and Plaints of all Torts or Wrongs, as well of the King as of the Queen, and their Children; and especially of those (*Great Ones*) where one cannot otherwise have Common right for those wrongs.

Sir Rob. Atkyns Argument, p. 45. The greater the Persons are, if they are in the Rank of Subjects, they must be subject to the King's Laws, and they are the more proper for the Undertaking, and Encounter of this High Court. It will not be *impar congressus*.

Id. 37. King John had resign'd up the Crown of *England* to the Pope, by the Hand of *Pandulphus* his Legat, and fordidly submitted to take the Crown at his Hand again, at a yearly Tribute. In the Reign of our Noble King *Edward* the Third, the Pope demanded this Rent, and all the Arrears. But the Prelates, Dukes, Counts, Barons, and Commons resolved, that neither the King, nor any other, could put the Realm, nor the People thereof, into Subjection, *sans l'assent de eux*, without their Assent.

Sir R. Atkyn's Arg. p. 50. This intimates, that with their joynt Consent the Crown may be disposed of. And it was the highest Resolution in Law, in one of the highest Points in Law, concerning the King's claim of an Absolute Power,

Power, and in a Time, when the Pope was in his Meridian Height.

It is the proper Work of this Supreme Ibid. Court to deal with such Delinquents, as are too high for the Court of *King's-Bench*, or other ordinary Courts.

Daughters, and Heirs apparent of a 4 *Inst.* 36. Man, or Woman, may by Act of Parliament inherit, during the Life of the An- Ante 69. cestor.

It may adjudge an Infant or Minor to Ibid. be of full Age.

It may Attain a Man of Treason af- Ibid. ter his Death.

It may Naturalize a meer Alien, and Ibid. make him a Subject born.

It may bastard a Child, that by Law Ibid. is Legitimate, (*viz.* begotten by an Adulterer, the Husband being within the four Seas.)

It may Legitimate one that is Illegiti- Ibid. mate, and born before Marriage, absolutely: It may Legitimate *secundum quid, etiamque simpliciter*.

21 *Rich.* 2. The Lords Appellants ac- Selden's Judicature 91. cused the Duke of *Gloucester* of Treason; and tho' they knew he was dead, they pray'd the King that he might be brought to his Answer. The King sent his Writ, &c. they desired Judgment, and had it.

So *Robert Possington* was impeached Id. 95. at the Parliament at *Westminster*, and found

Of the Power and

found Guilty, long Time after he was dead, and so forfeited his Estate.

4 Inst. 36. Cotten's Record p. 363.

John of Gaunt Duke of Lancaster had by Catherine Swinford, before Marriage, four illegitimate Children, Henry, John, Thomas, and Joan. At the Parliament holden 20 Rich. 2. the King by Act of Parliament, in Form of a Charter, doth Legitimate the three Sons, and Joan the Daughter.

Vide post. 4 Inst. 36.

Thomas Cromwel, Earl of Essex was attainted by Parliament, and forth-coming to be heard, and yet never call'd to answer in any of the Houses of Parliament; and resolved by the Judges, that if one be Attainted by Parliament, it can never come in question after, whether he were call'd, or not call'd to answer; for the Act of Attainder being pass'd by Parliament did bind.

Id. 39.

Where by Order of Law a Man cannot be Attainted of High-Treason, unless the Offence be in Law, High-Treason; he ought not to be Attainted by general Words of High-Treason by Authority of Parliament (as sometimes hath been used) but the High-Treason ought to be especially exprest; seeing that the Court of Parliament is the highest and most honourable Court of Justice, and ought to give example to inferior Courts.

Acts

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Acts against the Power of the Parliament subsequent bind not. It is against the Power and Jurisdiction of the Parliament, the Liberty of the Subject, and unreasonable, (i. e. Illegal.)

The Stat. 11. Rich. 2. c. 5. That no Person should attempt to revoke any Ordinance then made, was repealed; for that such Restraint is unreasonable, &c.

An Act 11 Rich. 2, c. 3. That no Man, against whom any Judgment or Forfeiture was given, shou'd sue for Pardon, or Grace, &c. was holden to be unreasonable, without Example, and against the Law and Custom of Parliament, and therefore void.

The Authority of the High Court of Parliament to be committed to a few (as in 21 Rich. 2. c. 16.) is holden to be against the Dignity of a Parliament, and that no such Commission ought to be granted.

Tho' it be apparent, what transcendent Power and Authority the Parliament hath, and tho' divers Parliaments have attempted to bar, restrain, suspend, qualify, or make void the Power of subsequent Parliaments; yet could they never effect it: for the latter Parliament hath ever Power to abrogate, suspend, qualify, explain, or make void the former in the Whole, or in any Part thereof, notwithstanding any Words of Restraint, Prohibition, or Penalty

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nalty in the former. For it is a Maxim in the Law of Parliament, *Quod Leges posteriores priores contrarias abrogant.*

Hobart 256.

An Act of Parliament doth include every Man's Consent, as well to come (and unborn Persons) as those present.

Hakewel 86.

The Sovereign Power of this High Court of Parliament is such, that altho' the King's Majesty hath many great Priviledges and Prerogatives, yet many Things are not effectual in Law, to pass under the great Seal by the King's Charter, without the consent of Parliament, as was resolv'd by all the Judges in the Princes case.

Id. 87. Bro. Denizen. No 9. 36. H. 8.

The King by his Letters Patents may make a Denizen; but cannot Naturalize him to all purposes, as an Act of Parliament may do.

Hakewel 89.

If a Man be Attainted of Felony, or Treason, by Verdict, Outlawry, Confession, &c. his Blood is corrupted (which is a perpetual and absolute Disability for him, or his Posterity, to claim any Hereditament in Fee-simple, either as, Heir to him, or any Ancestor *paramount* him) and he shall not be restored to his Blood, without Parliament. And yet the King may give to any attainted Person his Life, by this Charter of Parliament.

Id. 90.

The King cannot alter the Common Law, or the general Customs of the Realm

Authority of Parliaments.

Realm (as Gavelkind, Borough-English, or the like) without consent of Parliament.

Altho' a King have a Kingdom by Discent, yet seeing by the Law of that Kingdom he doth inherit that Kingdom, he cannot change those Laws of himself, without Consent of Parliament.

By the Laws of this Kingdom, the King cannot by his Proclamation alter the Law; but the King may make Proclamation, that he shall incur the Indignation of his Majesty, that withstands it. But the Penalty of not obeying his Proclamation, may not be upon Forfeiture of his Goods, his Lands, or his Life, without Parliament.

Le Parliament d'Engleterre ne lia Ireland, quoad Terras suas, quar ils ont Parliament la: mes il poient eux lier quant al Choses transitory, come eskipper de Lane, ou Merchandize, al intent de ceo carrier al auter Lieu ultra Mare.

The Parliament of England cannot bind Ireland, as to their Lands, for they have a Parliament there; but they may bind them, as to Things transitory, as the shipping of Wool, or Merchandize, to the intent to carry it to another Place beyond the Sea.

Sometimes the King of England call'd his Nobles of Ireland to come to his Parliament

Of the Power and

liament of *England*, &c. And by special Words the Parliament of *England* may bind the Subjects of *Ireland*.

Id. 23. The Lords in their House have Power of Judicature; and the Commons in their House have Power of Judicature; and both Houses together have Power of Judicature.

Ibid. This Power is best understood by reading the Judgments and Records of Parliament at large, and the Journals of the *House of Lords*, and * the Book of the Clerk of the *House of Commons*, which is sometimes also tyled a Record.

* 6 H. 8. c. 16. Raft. 429, 430. Vaughan 285.

If Inconveniencies necessarily follow out of the Law, only the Parliament can cure them.

Id. 327. If a Marriage be declared by Act of Parliament to be against God's Law, we must admit it to be so: for by a Law (that is by an Act of Parliament) it is so declared.

Id. 14. In many Cases Multitudes are bound by Acts of Parliament, which are not Parties to the Elections of Knights, Citizens, and Burgeffes, as all they that have no Free-hold, or have Free-hold in ancient Demefne, and all Women having Free-hold, or no Free-hold; and Men within the Age of One and twenty Years, &c. (and we may add Persons unborn.)

Hob. 256.

It

Authority of Parliaments.

It is declared by the Lords and Commons in full Parliament, (upon Demand made of them on the Behalf of the King) That they could not assent to any Thing in Parliament, that tended to the disherison of the King, and his Crown, whereunto they were sworn.

The Expounding of the Laws doth ordinarily belong to the Reverend Judges; and in Case of greatest Difficulty, or Importance, to the High Court of Parliament.

Hakewel

94.

Errors by the Law in the Common-Pleas are to be corrected in the King's-Bench; and of the King's-Bench in the Parliament, and not otherwise, *i. e.* where the Proceedings are by *original Writ*. For if they are by *Bill*, they may be corrected in the Exchequer Chamber by *St. 27 Eliz. c. 8.* from whence a Writ of Error lyes to the Parliament.

4 Inst. 22.

Vid. Stat. 1

Fac. 1 c. 1.

Instit.

Leg. 171.

172.

Actions at Common Law are not determined in this High Court of Parliament, yet Complaints have ever been receiv'd in Parliaments, as well of private Wrongs, as publick Offences. And according to the Quality of the Person, and Nature of the Offence, they have been retained, or referred to the Common Law.

Selden's

Judica-

ture 2.

There be divers Precedents of the Trial of Bishops by their Peers in Parliament, as well for Capital Offences, as

Id. 4. 5.

G

Mifde-

And so there have been of Commoners.

Misdemeanors, whereof they have been accused in Parliament. As the Arch-Bishop of *Canterbury*, 15 *Ed. 3. n. 6, 7, 8.* § *ibid. postea*, 44. § 39. § *ibid* 17 *E. 3. 22.* And the Bishop of *Norwich*, 7 *Ric. 2.* for Misdemeanors: So were the Bishops of *York* and *Chichester* tried for Treason by their Peers in Parliament, upon the Appeal of the Lords Appellants, 11 *R. 2.*

And *Anno 21 R. 2.* The Commons Accused the Arch-Bishop of *Canterbury* of Treason by their Peers in Parliament, upon the Appeal of the Lords Appellants, 11 *R. 2.* And

Anno 21 R. 2. The Commons accused the Arch-Bishop of *Canterbury* of Treason, and the *Temporal Lords* judged him a Traitor, and banished him.

But if a Bishop be accused out of Parliament, he is to be tried by an ordinary Jury of Free-holders; for his Honour is not inheritable, as is the *Temporal Peers* out of Parliament; yet in all other Matters, save that only of their Trial, they have Priviledge; as no Day of Grace to be granted against them in any Suit, A *Knight* to be returned upon the Pannel where a *Bishop* is Party, and no Procefs in a Civil Action to be awarded against his Body, and the like; And by this it appeareth what Persons are, *de Jure*, triable

able by the Lords in Parliament, viz. their Peers only (which Bishops are not.)

Judgments in Parliaments for Death have generally been strictly guided per *Legem Terræ* (i. e. *Lex Parliamenti*.)

The Parliament hath three Powers; a Legislative; in Respect of which they are call'd the three Estates of the Realm: a Judicial, in respect of this it is call'd *Magna Curia*, or the High Court of Parliament: a Counselling Power, hence it is call'd, *Commune Concilium Regni.*

The Parliament gives Law to the Court of King's-Bench, and to all other Courts of the Kingdom: and therefore it is absurd, and preposterous that it shou'd receive Law from it, and be subject to it. The greater is not judged of the less.

All the Courts of Common Law are guided by the Rule of the Common Law; but the Proceedings of Parliament are by quite another Rule. The Matters in Parliament are to be discussed and determined by the Custom and Usage of Parliament, and the Course of Parliament, and neither by the Civil, nor the Common Law, used in other Courts.

The Judges of all the Courts of Common Law in *Westminster* are but Assistants, and Attendants to the High Court of Parliament; And shall the Assistants judge of their Superiors.

Sir Rob. Atkyns Argument, &c. 36.

Id. 49.

Id. 50.

Ibid.

Of the Power and

Ibid.

The High Court of Parliament is the dernier Resort, and this is generally affirm'd, and held; but it is not the last if what they do may yet again be examin'd, and controlled.

Id 52.

Because the High Court of Parliament proceeds by a Law peculiar to that High Court, which is call'd, *Lex & Consuetudo Parliamenti* (and not by the Rules of the Common Law) and consists in the Customs, Usages, and Course of Parliament; no Inferior Court can, for this very Reason, judge, or determine of what is done in Parliament, or by the Parliament.

Arc. Parl. 85.

A Statute, or Act of Parliament need not be proclaim'd, for the Parliament represents the Body of the whole Realm, for there are Knights and Burgeses of every County, and Town; But otherwise where it is ordained by the Act, that it shall be proclaimed.

Id. 100.

A Man Attainted of Felony, or Treason, shall not be restored in Blood without Parliament.

Pety's Appendix to Miscel. Parliam. p. 38.

28 Ed. 1. A Truce being concluded between the *English* and *French*, by King *Edward's* Ambassadors (who therein had dishonourably agreed to include the *Scots*) the Ambassadors at the ensuing Parliament were sharply rebuked and corrected, not only by the King himself, the Prelates and Nobles, but by the Commons.

The

Authority of Parliaments.

The Court of Parliament was the Sanctuary, whether the distressed Subject in his Exigence fled for Shelter, and Refuge, and alway found it. *Turner's Case of Bankers, 36.*

Into the Sacred Bosom of Parliaments it was, that they poured out their Sighs and Groans with constant Success; and when in Cases of high Nature the Common Law was arrested, and stop't in her proceedings, Parliaments evermore ran into their Rescue, and in dutiful ways discharged those Locks and Bars which had been unjustly fastned on the *Exchequer*.

The Right of the Crown of *England*, and the Law of the said Realm is such, that upon the Mischiefs and Damages which happen to the Realm, the King ought, and is bound by his Oath (of the Accord of his People in Parliament) thereof to make Remedy, &c. *Stat. Prov. 25 Ed. 3. Rast. Stat. 99.*

To conclude this Chapter, *Le Parliament ad Absolute poiar en tous Cases, come a faire Leys, d'adjuer Matters en Ley, a trier vie del home, a reverser Errors en Bank le Roy; especialment lou est ascun Commune Mischief que l'ordinary Course del Ley n'ad ascun means a remedi-er; en tiel Case ceo est le proper Court. Et touts choses que ils font sont come Judgments. Et si le Parliament mesme erre, come il poet, ceo ne poet estre reverse en ascun Lieu forsque en le Parliament.*

Finche's Nomotecnica l. 2. c. 1. f. 21. 22.

G 3

Which,

Of the Power and

Which, because it is omitted (as several other things are in the Book translated into English) I will thus give it the Reader that does not understand French.

The Parliament hath Absolute Power in all Cases, as to make Laws, to adjudge Matters in Law, to try Men upon their Lives, to reverse Errors in the King's Bench; especially where there is any Common Mischief which the ordinary Course of the Law hath not any means to remedy, in such Case this is the proper Court. And all things which they do are as Judgments. And if the Parliament it self errs, as it may, that cannot be reversed in any place but in Parliament.

See Sir Robert Cot. Treatise of Parliaments p. 44, 45. &c

Sir Robert Cotton, in his Discourse of the Privilege and Practice of Parliaments, says thus; by Parliaments all the wholesome Fundamental Laws of this Land were, and are Establish'd and Confirmed.

By Act of Parliament the Pope's Power and Supremacy (in this Kingdom) and the Romish Superstition and Idolatry, were abrogated and abolished.

By Act of Parliament God's true Religion, Worship and Service are (or may be) establish'd and maintain'd.

By Act of Parliament, the two Universities of Oxford and Cambridge, with other

Authority of Parliaments.

Other Cities and Towns, have had many Privileges and Immunities granted 'em.

By Parliament, one Pierce Gaveston, a great Favourite and Misleader of King Ed. 2. was remov'd and Banished; and afterwards by the Lords Executed.

(Also by Parliament, the Spencer's Favourites and Misguiders of the same King, were Condemned, &c. and so was Delapool, in H. 6. Time, and others since.)

By Parliament, Empson and Dudley, two notable Polers of the Common-wealth, by exacting Penal Laws on the Subjects were Discover'd, and afterwards Executed.

By Parliament, the Damnable Gunpowder Treason (hatch'd in Hell) is recorded, to be had in Eternal Infamy.

By Parliament, one Sir Giles Mompeyson, a Caterpillar and Poler of the Common-wealth, by exacting upon In-holders, &c. was discover'd, degraded and Banished by Proclamation.

By Parliament, Sir Francis Bacon, made by K. James 1. Baron of Verulam, Viscount of St. Albans, and Lord Chancellor of England, was for Bribery, &c. discover'd and displac'd.

Note the Censure on the late E. of Macclesfield &c. Quere.

By Parliament, Sir John Bennet, one of the Judges of the Prerogative Court, being Pernitious to the Common-wealth in his Place, was discover'd and displac'd.

Of the Power and

By Parliament, *Lyonel Cranfield*, some-
time a Merchant of *London*, and made
by *K. James I.* Earl of *Middlesex*, and
Lord Treasurer of *England*, being hurt-
full in his Place to the *Common-wealth*,
was discover'd and displaced.

Note.

By Parliament, *Sir Francis Mitchell*,
a jolly *Middlesex* Justice of Peace, in
the Suburbs of *London*, another Canker-
worm of the *Common-wealth*, by Cor-
ruption in exacting an Execution of the
Laws upon poor Alehouse-keepers, Vict-
uallers, &c. was discover'd and degraded
from his Knighthood, and utterly disa-
bled from being a Justice of Peace.

ib. p. 46.

By Parliament, the *Spanish* Frauds
were discovered, and by an Act of Parli-
ament the two Treaties (*i. e.* touching the
Spanish Match, and for restoring the *Pa-*
lantine, both which had cost the King
and his Subjects much Money and much
Blood) were Dissolved and Annihilated.

And we may remember, (says the same
Author) That, that sage Councillor of
State *Sir William Cecil*, Lord *Burley*,
and Lord Treasurer of *England*, was oft
Times heard to say, *He knew not what*
a Parliament might not do; which say-
ing was approved by *K. James I.* and is
cited by him in one of his publick
Speeches.

The

Authority of Parliaments.

The Parliament (says one) is of an ab-
solute and unlimited Power in all Things
Temporal within this Nation. Another
says, *Parliamentum omnia potest.* *Brac-*
ton and *Fleta* both affirm *Rex habet Su-*
periorem in Regno. *Scilicet Curiam suam*
i. e. Comites & Barones (doubtless the
Lords and Commons) *qui apponuntur Re-*
gi ut si Rex sine Fræno, i. e. sine Lege
fuerit, Debent ei Frænum apponere &c.
Nay, some great Authors have asserted,
Quod Concilium hoc (i. e. Parliamen-
tum) Facultatem habet Deponendi Re-
gem Malum & Substituendi Novum; and
that this Power is claimed *ex antiquo*
Statuto, &c. *Knighton* has a remarkable
Passage concerning the Execution of that
antient Statute in the Cases of *E. II.* and
R. II. which at this Time I forbear to
Transcribe or Translate.

Sir Robert
Atkins's
Argument.
p. 50.
Bract. fo.
34. Fleta,
p. 2. 17.

See Mat.
Paris per
Watts, pag.
498.
Knighton
de Eventu-
bus
Angliæ p.
2683. in
the Decem.
Scriptores.

Note, It appears by *Mat. Paris*, p. 99.
&c. That the Commons were then
(*i. e.* 15 *H. II.*) summoned to the
Parliament held at *Clerkenwell*; and
that they also were a Part of the
Parliament in the Time of *K. H. I.*
See before, p. 34. 35. &c.

C H A P.

C H A P. IV.

Of the House of Lords in general.

Rushw.
col. vol. 3.
part. 1. p.
777.

THE House of Peers, are the hereditary Counsellors of the (King and) Kingdom, as the House of Commons are the representative Body of the whole Commons of the Kingdom.

Nelson,
566.

There certainly cannot in the whole World be seen a more illustrious Court, than this high and honourable Assembly of Peers in Parliament; nor any Thing of greater Benefit and Advantage to the Subjects of this Monarchy.

Sir Simon
d'Ewes's
Jour. 11.
Col. 1.

No Lord of Parliament can sit there, till he be full One and twenty Years, unless by special Grace of the Prince; and that very rarely, unless they be near upon the Age of Twenty one Years at least.

ibid.

3. 4.
13. 44.

A Bishop elect may sit in Parliament, as a Lord thereof, (*i. e.* if called thereto by Writ,) Q. For he is not properly a Peer, (or even a Bishop,) till his Temporalities are granted to him.

Inst. 44.

If the King by his Writ calleth any Knight or Esquire to be a Lord of the Parliament, he cannot refuse to serve the King there *in communi illo Consilio*, for the Good of his Country.

It

It lies in the Favour of the Prince, to make Heirs of Earldoms Members of the upper House, by summoning them thither by Writ; but then they take not their Place there as the Sons of Earls, but according to the Antiquity of their Fathers Baronies.

The Archbishop of *Canterbury* is the first Peer of the Realm.

The Earl-Marshal's Place in Parliament is betwixt the Lord Chamberlain, and the Lord Steward. *See the Statute.*

No Man ought to sit in that high Court of Parliament, but he that hath Right to sit there.

If a Lord depart from Parliament, without License, it is an Offence done out of the Parliament, and is finable by the Law.

4 June 1642, upon an Order of the House of Lords, to those Lords that had left the Parliament, and repaired to the King at *York*, requiring their Appearance as Delinquents, in the Answer they returned to it, there are these Words, " We do conceive, that it is the apparent, usual and inherent Right, belonging to the Peerage of *England*, that in the highest Misdemeanors whatsoever, no Peer is to answer to the first Charge, but in his own Person, and not upon the first Charge to come to the Bar. "

Any

4 Inst. 12. Any Lord of the Parliament, by License of the King, upon just Cause to be absent, may make a Proxy.

Townsh. Col. 135. Vide Sir Simon d'Ewes Journal, 605. 43 Eliz. 1601, agreed by the Lords, That the antient Course of the House is, That the Excuses of such Lords, as shou'd happen to be absent from the House, upon reasonable Occasions, ought to be done by some of the Peers, and not by other Information.

Rushw. Col. Vol. 1. p. 365. Anno Domini 1626, 2 Car. 1. resolved upon the Question by the whole House, *Nemine dissentiente*, That the Priviledge of this House is, That no Lord of Parliament, the Parliament sitting, or within the usual Time of Priviledges of Parliament, is to be imprisoned or restrained, without Sentence or Decree of the House, unless it be for Treason or Felony, or refusing to give Surety of the Peace. *N. B.* This was upon the King's having committed the Earl of *Arundel* to the Tower, without expressing the Cause of his Commitment.

Hakerwell 82. All the Priviledges which do belong to those of the Commons House of Parliament, *a fortiori*, do appertain to all the Lords of the upper House; for their Persons are not only free from Arrests, during the Parliament, but during their Lives: Nevertheless, the original Cause is, by Reason they have Place and Voice in

in Parliament. And this is manifest by express Authorities, grounded upon excellent Reasons in the Books of Law.

A Proxy is no more than the constituting of some one or more by an absent Lord, to give his Voice in the upper House, when any Difference of Opinion, and Division of the House shall happen; for otherwise, if no such Division fall out, it never cometh to be question'd, or known, to whom such Proxies are directed; nor is there any the least Use of them, save only to shew, prove, and continue the Right which the Lords of the upper House have, both to be summon'd, and to give their Voices in the same House, either in their Persons, or by their Proxies.

As many Proxies as any Peer hath, so many Voices he hath beside his own; and if there be two or three Proxies constituted by one absent Lord (as is frequent) then always the first named in the same, is to give the Voice, if he be present; and if absent, then the second, & sic de reliquis.

It is plain by the antient Treatise, *Modus tenendi Parliamentum*; That if a Peer neither came to the Parliament, nor sent a Proxy upon his Writ of Summons, he forfeited 100 l. if an Earl, 100 Marks, if a Baron, 100 s. &c.

Sir Simon d'Ewes Journals 5. Col. 2.

Ibid. Col. 2.

Ibid. 6. Col. 1.

It

Of the House of Lords

Townf. Col. 4. 39, 40, 42. It feldom happeneth, That any Bifhop doth nominate fewer than three, or two Proctors; nor any Temporal Lord more than one.

Id. 34. John Archbishop of Canterbury, had this Parliament five Proxies.

4 Inst. 12, 13. 1 Eliz. a Lord of Parliament by Licence obtained of the Queen to be absent, made a Proxy to three Lords of Parliament; one of which gave Consent to a Bill; the other two faid, Not Content. And it was by Order of the Lords debated among the Judges and Civilians Attendants, and conceiv'd by them, That this was no Voice; and the Opinion was affirmed by all the Lords, That it was no Voice.

Rush. Col. 269. 2 Car. 1. 1626. the House of Peers made an Order, That after this Session, no Lord of this House fhall be capable of receiving above two Proxies, or more, to be numbred in any Caufe voted.

Arc. Parl. 12. Smith's Commonwealth, 87. In the Lords House, the Lords give their Voices from the *puisne Lord feriatim*, by the Word [Content] or [Not Content.] 4 Inst. 34. First for himself, and then feverally for fo many as he hath Letters and Proxies.

Townf. Col. 11. A Bill had three Readings in one Forenoon, in the House of Lords.

Townf. Col. 9. Where a Committee of Lords is selected out to meet with another Committee

in General.

tee of the House of Commons; neither the Judges, being but Affiftants, nor the Queen's Council, being but Attendants of and upon the House, were ever nominated a Joynt-Committees with the Lords. But when the Lords among themselves do appoint a Committee to confider of some ordinary Bill, especially if it concern Matter of Law, it hath been antiently used, and may ftill, without Prejudice to the Honour of the House, that the King's learned Council, but especially the Judges, may be nominated as Committees alone, or as Joynt-Committees with the Lords.

January 19. 1597. 39 Eliz. it was resolved, That the Order and Usage of this House was, and is, that when any Bills or Messages are brought from the lower House, to be preferr'd to the upper House, the Lord Keeper, and the rest of the Lords, are to rise from their Places, and to go down to the Bar; there to meet such as come from the lower House, and from them to receive in that Place their Messages, or Bills. Contrariwise, when any Answer is to be delivered by the Lord Keeper, &c.

In passing of Bills, if the *Not Contents* be most, then the Bill is dash't, *i. e.* the Law is annihilated, and goeth no further. If the *Contents* be the most, then the Clerk

Of the House of Lords

Clerk writeth underneath, *Soit baile aux Commons*, i. e. Let it be delivered (or sent) to the Commons.

Rush. Col. 365.

3 Car. 1. 1626. resolved upon the Question, That the Priviledge of this House is, that no Lord of Parliament, the Parliament sitting, or within the usual Time of Priviledges of Parliament, is to be imprison'd, or restrain'd, without Sentence, or Decree of the House, unless it be for Treason, or Felony, or refusing to give Surety of the Peace.

Nelson 380.

Hakewel 84.

Vide Kel. wey 184.

Vid. Lord

Hollis's Letter.

Vid. Lord

Hollis's Remains.

Vid. contra Hunt's Argument for the Bishops Right, &c.

Vid. Grand Question concerning Bishops Right, per totum.

Hakewel 84.

Vid. contra

Hunt

ut supra

per tot.

Vid. Grand

Question

concern-

ing Bi-

shops

Right, &c.

per totum.

Giving the Lye to a Peer, is a Breach of Priviledge.

Ever since the Conquest, the Archbishops, and Bishops, have no Title to have Voice and Place in Parliament, but only in respect of their Temporal Baronies; where they are present, *quousque perveniat ad Diminutionem Vitae*, &c.

When a Question is had of the Attainder of any Peer, or other, in Parliament, the Archbishops and Bishops depart the higher House, and do make their Proxies; for by the Decrees of the Church, they may not be Judges of Life and Death.

11 Rich. 2. Divers Lords, and others, being appealed of Treason, and other Misdemeanors, the Prelates absented themselves

in General.

elves during the Trial, having first made Protestation, saving their Right to be present in Parliament.

Selden of Judicature, p. 150.

The Protestation, I think, intends, That they could not be present by Reason of the Common Law, and by Reason of an Ordinance made at the Council at Westminster, in 21 Hen. 2. by which all Clergymen were forbidden *agitare Judicium Sanguinis*, upon Pain to be deprived both of Dignities and Orders. For surely, as I think, they might otherwise have been present, both by the Common Law, and by the Law of God. *Sed Quere.*

Vid. there the Protestation of the Bishops. Ibid. 151.

All the Lords Spiritual and Temporal, 11 Rich. 2. claimed as their Liberty and Franchise, that the great Matters moved in this Parliament, and to be moved in other Parliaments in Time to come, touching the Peers of the Land, ought to be admeasured, adjudged, and discussed by the Court of the Parliament, and not by the Civil Law, nor by the Law of the Land, used in the more base Courts of the Realm; which the King granted in full Parliament.

Selden's Judicature, &c. 39.

The Proceeding against a Peer in Parliament is not necessary. 2.

Id. 53.

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

Id. 61.

H

1 Rich.

Id. 123.

1 Rich. 2. The Lord *Beauchamp* was sworn, and examined; and the Duke of *Lancaster* being one of the Committee, was diligently examin'd before the rest of the said Committee, but not sworn *ad testificandum*. Earls and Dukes are not sworn, on Trials, &c. in Parliament.

Vid. post.

Id. 132.

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

Id. 141.

Vid. Id.

144. 147,

148, 154,

158.

The King's Assent ought to be to capital Judgments, and the Lords Temporal to be only Judges therein, and not the Lords Spiritual; but in Misdemeanors, the Lords Spiritual and Temporal are equal Judges, and the King's Assent is not necessary, *Id.* 136. yet it seemeth that the King's Assent is necessarily required in capital Causes and Judgments.

If a Peer be committed to Prison, the Gentleman Usher hath the Charge of him thither, and the Serjeant attending on the Great Seal.

Vide Stat.

31 Hen. 8.

c. 10.

Vid. 4 Inst.

362.

Rot. Parl.

3 H. 6. 10.

Arcana

1arl. 70.

How Lords of Parliament shall be placed in the Parliament, and other Assemblies and Conferences of Council.

A Peer of the Realm shall be tried in an Appeal by Knights, &c. and not by his Peers, because it is at the Suit of the Party, *Brook* 142, 153. Otherwise it is in

in an Indictment of Treason or Felony, for that it is at the Suit of the King.

The Duke of *Somerset* in the Time of *Ed.* 6. was tried for Felony and Treason by his Peers upon an Indictment, for it is the Suit of the King.

When a Lord of Parliament is tried by his Peers, they shall not be Sworn to say their Verdict; but they shall give their Verdict upon their Honour, and are not charged but upon their Honours.

And 6 *Maij*, 1628. It was ordered on the Question, (*Nem. Dissen.*) That the Nobility of this Kingdom, and of the upper House of Parliament, are of antient Right to Answer *in all Courts as Defendants*, upon *Protestation of Honour only*, and not upon the common Oath.

An order of the House of Lords was in 1640. That the Nobility of this Kingdom, and Lords of the upper House of Parliament, and the Widows and Dowagers of the Temporal Lords, shall Answer (in Chancery, &c.) upon Protestation of Honour only; *but altho their Honour may bind their Conscience in Equity, yet Evidence upon their Honour, ought not to be admitted in any Court of Law.*

And we must here Note, That even Lords of Parliament, or Peers of the Realm,

Realm, in giving Evidence to a Jury, or in their Depositions in Chancery, &c. are to be Examined on Oath.

27 Hen. 8. f. 27. A Lord of Parliament shall have Knights upon his Trial in every Action.

27 Hen. 8. f. 17. A Lord of Parliament may be Outlawed for Murder.

27 H. 8. 27. If a Lord of Parliament makes a *Rescous*, a *Capias* shall be taken out against him, if the Sheriff return the *Rescous*; otherwise it is in Case of Debt.

11 H. 4. 15. A *Capias ad Satisfaciendum* does not lye against a Lord of Parliament, 27 Hen. 8. 27. for the Law presumes that he has Affets.

Dyer 316. An Attachment is not grantable by the Common Law, Statue Law, Custom, or Precedent against a Lord of Parliament: and the Lord *Cromwel* by Order in the Parliament-Chamber was discharged of such Procefs.

Ar. Parl. In a *Premunire* against a Lord of Parliament, he ought to appear in his proper Person, and not by Attorney, unless he has a special Writ of Chancery, *De attorney faciendo*.

CHAP. V.

The Power of the House of Lords.

A Peer of the Realm being Indicted of 4 Inst. 23. Treason, or Felony, or Misprision of Treason, may be Arraigned thereof in Parliament, a Lord Steward being appointed; and then the Lords Spiritual shall make a *Procurator* for them: and the Lords, as Peers of the Realm, during the Parliament, are Judges, whether the Offence be Treason, &c. (that is supposed to be committed by any Peer of the Realm,) and not the Justices.

Vide, a Letter sent by nine Lords, (to *R. 15b. Col.* the Parliament, June 4, 1642) who had *3. Stat.* gone from their House, and repaired to *vol. 1. f.* the King at *York*, wherein they say, *737. Ant.*

“ We do conceive, that it is the apparent
“ usual and inherent Right belonging to
“ the Peerage of *England*, that in the
“ highest Misdemeanour whatsoever, no
“ Peer is to Answer to the first Charge,
“ but in his Place in his own Person, and
“ not upon the first Charge to come to
“ the Barr.”

In 1553. *primo Mariae*, The Bill of *Burn. Hist.* Tonnage and Poundage was sent up to *Ref. vol.* the Lords, who sent it down to the Com- *2. p. 253.*

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mons to be reformed in two *Proviso*es that were not according to former Precedents. How far this was contrary to the Rights of the Commons, who now say, that the Lords cannot alter a Bill of Money, I am not able to determine.

Die Mercurij, 25 Novembris, 1692. It is Resolved upon the Question, by the Lords Spiritual and Temporal, that for the future when there shall be a Devision in the House upon any Question, the Contents shall goe below the Barr, and the Not Contents, stay within the Barr: And it is Ordered, that this Resolution be added to the Roll of standing Orders of this House.

Die Lune, 7. Decembris, 1691. It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, that for the future, upon giving Judgment in any Cases of Appeals, or Writs of Error in this House, the Question shall be put for Reversing, and not for Affirming: And that this be added to the Roll of standing Orders.

Rusb. Col.
3-part vol.
1. p. 165.

30. *Jan.* 1640. Upon a Debate in the Lord's House, touching the Power of conveying away of Honour, it was (*Nemine contradicente*) Resolved upon the Question, that no Person that hath any Honour in him as a Peer of this Realm, may alien and transfer the same to any other

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other Person. See Sir *B. Shower's* Cases in Parliament, 1. 2. &c.

See many notable Judgments by the Lords, at the Prosecution of the Commons, and in later Times. *Rusb. Col. passim. & Nalson.*

Error serra sue in Parliament, & Parliament *poet prendre Recognizance*, Brook 137. Error. Error shall be sued in Parliament, and the Parliament may take a Recognizance. *Vid. Crom. 18. Error Vid. infra.*

If a Judgment be given in the King's Bench, either upon a Writ of Error, or otherwise, the Party grieved may (upon a Petition of Right made to the King in *English* or in *French*, and his Answer thereto, *Fiat Justitia*, let Justice be done) have a Writ of Error directed to the Chief Justice of the King's Bench, for removing of the Record in *praesens Parliamentum*, &c. *4. Inst. 21.*

And hence it may be presum'd, that Writs of Error in Parliament, were originally Returnable before the Commons, as well as the Lords. See *Yelverton's* Rights of the Commons, and *Hales* of Parliaments, p. 18. to 23.

When one sueth in Parliament to Reverse a Judgment in the King's Bench, he sheweth in his Bill, which he exhibiteth to the Parliament, some Error, or Errors, whereupon he prayeth a *Scire Facias*.

The Proceeding upon the *Writ of Error* is only before the Lords in the Up- *Id. 22.*

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per House, *Secundum Legem & Consuetudinem Parliamenti.*

2 Nalson 716.

The Case between *Smith* and *Busby* in a *Writ of Error* Resolved, 'twas decidable in no other Court, but in Parliament.

4 Inst. 363

If any Question be moved in Parliament for Priviledge, or Precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament, in the House of Lords, as all Priviledges and other Matters concerning the Lords House of Parliament are.

2 Nalson 625.

November 1641. Resolved by the House, *Nemine contradicente*, that it belongs to the House of Peers, by the antient Laws and Constitutions of this Kingdom, to interpret Acts of Parliament, in Time of Parliament, in any Cause that shall be brought before them.

2 Nalson 381.

Julij 12. 1641. An order of the Lords for Relief of a *Feme-Covert*, and her Children, against a Husband refusing to Cohabit.

Rusbau Col. 27. 28.

The Sentence pronounced by the Lords upon *Sir Giles Mompesson*, and *Sir Francis Michel*, for Projectors.

Selden's Judicature &c. 6, 7.

Upon Complaints and Accufations of the Commons, the Lords may proceed in Judgment against the *Delinquents* of what Degree soever, and of what Nature soever the Offence be. For where the Commons complain, the Lords do not assume

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assume to themselves Trial at Common Law. Neither do the Lords at the Trial of a Common Impeachment by the Commons, *decedere de Jure suo*; for the Commons are then instead of a Jury; and the Parties Answer, and Examination of Witnesse, are to be in their Prefence, or they to have Copies thereof: and the Judgment is not to be given but upon their Demand, which is instead of a Verdict; so the Lords do only judge, not try the *Delinquent*.

) 2)

Post 120.

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

Id. 98.

The Lord within his Place, the Commoner at the Bar; and they are not committed till Judgment; unless upon the Answer of a Commoner, the Lords find Cause to commit him, till he find Sureties to attend, &c. lest he should fly. *Prout Jo. Cavendish* upon the Lord Chancellor's demand of Justice against him for his false Accufation, was Committed after his Answer until he put in Bail,

Bail, Anno 7 Rich. 2. and before Judgment.

Id. 105. In Cafes of Misdemeanors only, the Party accused was never deny'd Counsel.

Id. 163. If the Commons do only complain, and do neither impeach the Party in Writing, nor by Word of Mouth in open Houfe, nor demand Trial to be in their Prefence: in thefe Cafes it is in the Election of the Lords, whether the Commons fhall be prefent, or not.

Id. 173. In Complaints of Extortion, and Oppreffion, the Lords awarded Satisfaction to the Parties wronged, which fometime was certain, fometime general; but alway *fecundum, non ultra Legem.*

Id. 176, 177. It appeareth plainly by many Precedents, that all Judgments for Life and Death, are to be render'd by the Steward of *England*, or by the Steward of the *King's Houfe*; and this is the Reason, why at every Parliament the King makes a Lord Steward of his *Houfe*, tho' he hath none out of Parliament. And at fuch Arraignment the Steward is to fit in the Chancellor's Place; and all Judgments for Misdemeanors are by the Chancellor, or by him who fupplies the Chancellor's Place.

Id. 187. In Cafe of Recovery of Damages, or Reftitution, the Parties are to have their Remedy (the Parliament being ended) in the

the Chancery, and not in any other inferior Court at the Common Law. But the Lords in Parliament may direct how it fhall be levied.

The Judges (who are but Affiftants to Sir *Simon d'Ewes* the Upper Houfe) have leave from the Lord Chancellor or Keeper, to fit cover'd in the Houfe, but are alway uncover'd at a Committee. Journal, 527. Col. 2.

3. *Car. 1.* The Sentence of the Lords Spiritual and Temporal, pronounced by the Lord Keeper againft Ensign *Henry Reynde*, for ignominious Speeches uttered by him againft the Lord *Say* and *Seal*, and for his Contempt of the High Court of Parliament, was thus: 1. That he never bear Arms hereafter, but be accounted unworthy to be a Soldier: 2. To be imprifoned during Pleafure: 3. To ftand under the Pillory (with Papers on his Head fhewing his Offence) at *Cheapside, London*, or at *Banbury*: 4. To be fined at 200*l.* to the King: 5. To ask Forgiveness here of all the Lords of Parliament in general; and of the Lord *Say* and his Son in Particular, both here, and at *Banbury*. Petyt's Miscel. Parliam. 212, 213.

And the Court of *Star-Chamber* ordered by the Lords to put the faid Sentence in Execution, out of Time of Parliament. Id. 213.

Vide a Sentence pronounced by the Lords *Die Martis, 26. Julij, 1642.* againft

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gainst one *John Escot*, of *Launceston* in the County of *Cornwall*, for speaking Scandalously of the Parliament, in *Rush.* Col. Vol. 1. f. 759, 760. And likewise against *John Marston*, Clerk, Rector of *St. Mary Magdalen*, in the City of *Canterbury*. *ibid.*

See divers particulars touching the Power and Jurisdiction of the *House of Lords*, in *Pryn's* Plea for the House of Lords, &c. as also a Book printed Anno 1669. Entitled, *The Grand Question* concerning the Judicature of the House of Peers Stated, &c.

See also Sir *M. Hales* of Parliaments, *Pa.* 138, 139. and *ibid* 140, &c. where Attendants on the upper House may be Members of the House of Commons. 2.

C H A P.

C H A P. VI.

House of Commons.

THE House of Commons was originally, and from the first Constitution of the Nation, the Representative of one of the three Estates of the Realm, and a part of the Parliament. Sir R. Atkyns Argument, &c. p. 13.

It is affirmed by Mr. *Lambard*, that Burgeses were chosen to the Parliament before the Conquest. Lambard's Archeion. 257, 258.

The antient Towns call'd Boroughs, are the most antient Towns that are in *England*; for the Towns that now are Cities or Counties in old Time were Boroughs; and call'd Boroughs, for that of such old Towns came the Burgeses to the Parliaments. Littleton, Sect. 164.

Knights of the Shire to serve in Parliament, and the paying Wages to them for their Service, has been Time out of Mind, and did not begin 49 *Hen.* 3. for that is within Time of Memory, in a Legal Sense. Sir Rob. Atkyn's 18

The House of Commons, as a Member of the High Court of Parliament, have been as antient as the Nation itself, and may in the Sense of *Julius Caesar*, be accounted

counted among the *Aborigines*, and that they have had a perpetual Being (to speak in the Language of the Law) *a Tempore cujus Contraria memoria Hominum non existit*, and that they are therefore capable by Law (together with the rest of the three Estates in Parliament) to prescribe and claim a share in all Parliamentary Powers and Priviledges; I do not mean seperately, but in conjunction with those other Estates, which they could not otherwise legally have done, if their Original and Commencement could have been shewn.

Pitt's
Preface to
the anti-
ent Rights
of the
Commons
&c. p. 3.

During the *British Saxon*, and *Norman* Governments, the Freemen (or Commons of *England*, as now call'd, and distinguish'd from the great Lords) were *pars essentialis & constituens*, an essential and constituent part of the *Wittena Gemot*, *Commune Concilium*, *Baronagium Angliae*, or *Parliament* in those Ages.

Id. 12.

It is apparent, and past all Contradiction, that the Commons (in the Times of the *Britons*, *Saxons*, and *Picts*) were an essential Part of the *Legislative Power*, in making and ordaining Laws, by which themselves and their Posterity were to be Govern'd, and that the Law was then the golden Metwand and Rule which Measured out, and allowed the Prerogative of the Prince, and Liberty of the Subject

Vid. Ch.
1. ante

Subject (and when obstructed, or denyed to either, made the Kingdom deformed and leprous.)

I may with good Reason and Warrant^{Id. 125.} conclude, that our Ancestors the Commons of *England*, the Knights, Gentlemen, Freeholders, Citizens, and Burgeses of a great and mighty Nation, were very far from being in former Times such Vassals and Slaves, or so abject, poor, and inconsiderable, as the absurd and malicious Ignorance and Falsties of late Writers have been pleased to make and represent them, especially the Author of the Grand Freeholders Inquest, and Mr. *James Howel*, &c. as if they were only Beasts of Carriage and Burthen, ordain'd to be tax'd and talliated, and have their Lives, Estates, and Liberties given away, and disposed of, without their own Assents.

If the Commons do only Accuse by any way of Complaint whatsoever, and do not declare in Special against the Party accused, then the Suit is the King's, and the Party is to be Arraigned, or otherwise proceeded against by Commandment, *Ex parte Domini Regis*.

Selden's
Judica-
ture, &c.
14.

In the Lower House sit the Speaker, and the Knights, Citizens, Burgeses, and Barons of the Cinque-Ports, who represent the Body of the whole Commonalty of *England*.

Crompton's
4 Inst. 1.

All

St. 5 Rich. 2 c. 4. Rast. 140. All Persons, and Commonalties, which shall be summon'd to Parliament, shall come, as they have been used and *accustom'd of antient Time*; and he that shall not come (having no reasonable Excuse) shall be amerced, and otherwise punish'd, as *of antient Time* hath been used.

Vide ante P. 17. Algernon Sidney, c. 3. Sect. 38. An Eminent and Noble Author, has in his *Discourses on Government*, asserted that the *Power of calling and dissolving Parliaments, is not simply in our Kings alone*. And in support of this Assertion, gives us the following Reasons, *viz.*

First, (says he) the King can have no such Power, unless it be given him; (by Law) for *every Man is naturally Free*; and the same Power that makes him King, gives him all that belongs to his being King, and no more: 'Tis not therefore an Inherent, but only a Delegated Power; and whoever Receives it, is accountable to those who gave it; for they who give Authority by Commission, do always retain more than they Grant.

Secondly, The Law for Annual Parliaments expressly Declares it, not to be in the King's Power as to their Meeting; nor consequently as to their Continuance; for they meet to no Purpose if they may not continue to do the Work for which they meet; and it were absurd to give them a Power of Meeting; if they might not

not continue till the End for which they met were attained; *Qui Dat Finem Dat Media ad Finem Necessaria*; the only Reason (End) why Parliaments do Meet, is to provide for the publick Good, and they ought to Meet (and continue) for that End; they ought not therefore to be Dissolved till it be accomplished; and 'twas for this Reason, that the Opinion given by *Tresilian*, that Kings might Dissolve Parliaments at their Pleasure, was adjudg'd to be a principal part of his Treason. ^{Note.}

See other Reasons there Assign'd; and on the whole he concludes, that Parliaments have in themselves a Power of Meeting, Sitting and Acting for the Publick Good.

After which, he further Prosecutes the same Point, and then proceeds to shew; ^{432.} That as the Peoples Delegates or Representatives in Parliament do not meet there by a Power derived from Kings, but from those that chuse them; so they who Delegate Powers, do always retain to themselves more than they give; and therefore the People do not give their Delegates an absolute Power of doing what they please, but do always retain to themselves more than they confer on their Deputies, who must therefore be accountable to their Principalls. *Vide plura ibid.*

C H A P. VII.

The Power of the House of Commons in particular Cases.

Russ Coll. 217. vol 1.

THE House of Commons is a House of Information and Presentment, but not a House of Definitive Judgment.

Trials of the Regicides, p. 53.

The House of Commons is a considerable Grand Jury, 'tis a good *Billa vera* they return; their Orders are *Records*, and that appears also by 6. H. 8. c. 16. where the Words are, *viz.* And the same Licence shall be entred on *Record*, in the Book of the Clerk of the Parliament appointed, or to be appointed for the Common's House, &c. [Sir *Audley Merwyn's* Speech to the Duke of *Ormond*, 13. *Feb.* 1662. containing their Sum of Affairs in *Ireland*, p. 17.] And more directly in their point upon the Trial of *Harrison the Regicide*, Mr. *Jessop* was produc'd to attest several Orders of the Common's House, Mr. *Jessop* being Clerk of the House.

Raft. Stat. p. 429. 4. Inst. 23. Hales of Parl. 213. 213.

Note the said Stat. 6. H. 8. c. 16. says; That no Member should depart from the Parliament, nor absent themselves from the same, without the Licence of the Speaker and Commons in Parliament

Parliament Assembled, to be entred upon *Record* in the Book of the Clerk of the Parliament.

And yet some Judges have been of Opinion, that the Journals of the House of Commons are no *Records*, but only Remembrances. *Hob. Rep.* 110. 111.

Before the Year 1550. 3. E. 6. it seems that no Eldest Sons of Peers were Members of the House of Commons; and Sir *Francis Russel*, becoming by the Death of his Elder Brother, Heir Apparent to the Lord *Russel*; it was on the 21st of *January* carried upon a Debate, that he should abide in the House as he was before. But this was by a special Order; so it is entered in the Original Journal of the House of Commons, and is the first Journal that ever was taken in that House. *Bur. Hist. Ref. vol. 2. p. 143.*

1. *Car.* 1. 1625. Resolved, that *common Fame* is a good Ground of Proceeding for this House, either by Enquiry, or Presenting the Complaint (if the House find Cause) to the King or Lords. *Russ. ib.*

26 *Jan.* 28 *Hen.* 6. The Commons required the Duke of *Suffolk* might be committed to Ward, for that the General Fame went of him, &c. The Lords, on Consultation with the Justices, thought the same to be no good Cause of Commitment, unless some special Matters were objected against him. *Selden's Judicat. p. 29. Vid. id. 38.*

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Petty's Miscell. Pref. &c. p. 5.

It is certain, and not to be deny'd, That in elder Time the People, or Free-men had a great Share in the Publick Council, or Government. For Dion Cassius (or Xiphiline out of him) in the Life of Severus assures us, Apud hos (i. e. Britanos) Populus magna ex Parte Principatum tenet.

Id. 47, 48.

It was not in the Power of all the Tenants in Capite in England, tho' with the King's Consent, to bind and oblige others, or to make, or alter a Law, sine Assensu Communitatis Regni, who had Votum consultivum, & decisivum, an Act of Authority and Jurisdiction, as well in assenting to Spiritual Laws as Temporal; as may appear for an Instance in their Declaration, or Protestation to Edward the Third in Parliament, which concludes thus, For they will not be obliged by any Statute or Ordinance made, without their Assent.

M. S. Penes W. Bourn. p. 5, 6.

In a MS. Treatise, written by Mr. Rymer, entitled, an Inquiry into the antient Method of passing Bills in Parliament, I find it to have been the usual Practice, Temp. Ed. 3ij. &c. For the Commons to have first their Petitions and Bills answered, (i. e. their Grievances Redress'd) and then to Grant their Aids and Supplies.

See Annis Edw. 3. 14, 15, 16, 20, 21, 22. 36, 33. &c.

But note, These Matters often proceeded pari Passu. And sometimes Aids were

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were granted by the Commons, on express Condition, That the King Grant the Petitions Exhibited to him, &c.

But in 47 E. 3. The Subsidy or Aid, is commanded to be first Treated on, or Debated, which (says my Author) I remember not to have been in any other Parliament whatsoever, save that of 7 R. 2. And Note, 11 R. 2. The Commons Demand it as of Right not to Grant Subsidies till the End of the Parliament.

To give Subsidies upon Subsidies is not usual. In the 18 H. 3. There was one Punished for pressing for more Subsidies, when Subsidies had been Granted before in that Parliament.

And note, If any new Project was proposed in Parliament, for raising Subsidies or Supplies, the Commons usually reply'd thereto, That they were not Instructed by their Principals in that Matter; or that they durst not consent to such Tax, &c. without Conference with their Countries.

A Member of Parliament may charge any great Officer of State with any particular Offence.

If any Lord of Parliament Spiritual or Temporal, have committed any Oppression, Bribery, Extortion, or the like; the House of Commons, being the general Inquisitors

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quifitors of the Realm (coming out of all Parts thereof) may examine the same; and if they find, by the Vote of the House, the Charge to be true, then they transmit the same to the Lords, with the Witnesses and the Proofs.

Petyt's Miscel. Parl. 64.

1 *Jac. I.* 1603. The Bishop of *Bristol* publishing a Book, tending to make Division and Strife, Wrong and Dishonour both to the lower House, and the Lords themselves, was complain'd of by the Commons to the Lords; and he made his Recantation :

- 1. *That he had erred.*
- 2. *That he was sorry for it.*
- 3. *If it were to do again, he would not do it.*
- 4. *But protested, it was done of Ignorance, and not of Malice.*

Vide Rusb. Hist. Col. 4 Car.

7 *Jac. I.* 1609. Dr. *Cowel* writ a Book perniciously, asserting certain Heads to the Destruction of Parliaments, and the Fundamental Laws and Government of the Kingdom, and was complain'd of by the Commons to the Lords, who resolv'd to Censure his Errors and Boldness. *Ibid.* And afterwards the Book was burnt by Proclamation.

Vide Dr. Manwaring's Case, Rusb. Col. & Nalson. Vide Petyt's Miscel. Part 74. Vide Dr. Montague's Case in Rusb. Col. Nalson, & Petyt's Miscell. Part 82.

Note

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Note, The Case of Dr. *Burnet*, Bishop of *Salisbury*, who for writing and publishing a Book, Entitled, *King William and Queen Mary Conquerors*, was Censured in Parliament, and as I think on the Commons Address, Removed from being Preceptor to the Duke of *Gloucester*, &c. Note also Bishop *Fleetwood's* Preface, censured and burnt by Order of the House of Commons. And see *Nalson's Col.* p. 9. and 43. ten Bishops at once sent to the Tower by the Lords, &c.

4 *Junij*, 19 *Jac.* The Commons House of Parliament this Day, adjudged *Randolph Davenport*, Esq; for his Offence in Mis-informing the House, in a Cause wherein he was produced as a Witness, to be committed Prisoner to the Tower for the space of one whole Month, and then to be Discharged, paying his Fees.

Petyt's Miscel. Parl. 120.

19 *Jac. I.* Ordered by the Commons House of Parliament, That the Serjeant of Arms attending this House shall attach the Body of *John Churchill*, one of the Deputy-Registers of the Chancery, and him shall take into his Custody, and bring him to this House on Monday Morning next at Eight of the Clock; and the said Serjeant is in the mean time to keep him so, as none be suffer'd to speak with him, but in the hearing of the Serjeant.

Vide

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Vide ad hoc Rusb. Collect. passim. Vide Nalson's 2 Volumes. Vide Selden's Judicature, &c. Vide Sir Robert Atkyns's Argument, &c. Vide Petyt's Preface to Mis. Parliamentaria.

4 Inst. 23. *Thomas Long* gave the Mayor of *Westbury* four Pounds to be elected Burgeses, who thereupon was elected. This Matter was examin'd, and adjudged in the House of Commons, *secundum Legem & Consuetudinem Parliamenti*, and the Mayor fined and imprisoned, and Mr. *Long* removed (*i. e.* expelled the House) for this corrupt Dealing was to poison the very Fountain it self.

See several Orders and Resolutions of the House of Commons against Bribery and Corruption in electing Members, &c. in *Bobun's Collection of Debates, &c.* pa. 28. 55. 275. 281. 340. &c. particularly the Journal of the Commons for 1701. viz. Mar. 6. 7. 13. 17. 18. 20. 30. April 29. &c.

Ibid. Vid. Sir *Simon d'Ewes* *Four.* 2 12. Post 89, &c. *Arthur Hall*, a Member of the House of Commons, for publishing and discovering the Conferences of the House, and writing a Book to the Dishonour of the House, was, upon due Examination, *secundum Legem & Consuetudinem Parliamenti*, adjudged by the House of Commons, to be committed to the *Tower* for six Months, fined at five hundred Marks, and expelled the House.

Ibid. Call'd *Mar- ington* by *Scobel* 113. 23 Apr. 1. *Marie*, *Munton* struck *William Johnson*, a Burgeses of *B.* return'd

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turn'd into the Chancery of Record; for which, upon due Examination in the House of Commons, it was resolved, *That secundum Legem & Consuetudinem Parliamenti, every Man must take Notice of all the Members of the House returned of Record, at his Peril.* And the House adjudged *Munton* to the *Tower*.

Injuries offer'd to the Members, and their Servants, during the Session, have been usually punished by the House, upon Complaint. *Scobel* 113.

29 Febr. 1575, one *Williams*, for assaulting a Burgeses of this House, was, upon Complaint, sent for by the Serjeant, and brought to the Bar, and committed to the Serjeant's Ward. *Ibid.* Vid. Sir *Simon d'Ewes* *Four.* 251. Col. 2.

28 Nov. 1601, complaint being made by Mr. *Fleetwood*, a Member of the House, that one *Holland*, a Scrivener, and one *Brooks*, his Servant, had evil entreated and beaten the Servant of the said Mr. *Fleetwood*, in his Presence; they were both sent for by the Serjeant, and brought to the Bar, and for the said Offence, committed for five Days to the Serjeant.

12 Febr. 18. Jac. 1, Mr. *Lovel*, a Member of the House, informed, That one *Darryel*, threatned his Person (that for a Speech spoken by him in the House, he shou'd be sent to the *Tower*, during the

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the Parliament, or presently after) *Dar-ryel* was sent for by the Serjeant, to answer it to the House, and upon Testimony of it, he was committed to the Serjeant till *Thursday* following, and then to acknowledge his Fault, or to be committed to the *Tower*.

Ibid.

16 Junij 1604, Complaint being made of one *Thomas Rogers*, a Currier, dwelling in *Colemanstreet*, for abusing *Sir John Savil*, in slanderous and unseemly Terms (upon his Proceedings at a Committee in the Bill touching *Tanners*, &c.) he was sent for by the Serjeant at Arms, to the Bar, to answer his Offence.

Rush. Col. 656. Vid. Pe-ryt's Mis-cell. Parl. 108. Ac-son's Case.

Sir William Aston, Sheriff of *London*, being examined before the Committee, concerning some Matters about the Customs, and not giving that clear Answer which he ought, and as the House conceived he might have done, was there-fore committed to the *Tower of London*. And a Question was made in the House, at that Time, *Whether the House had at any Time before committed a Sheriff of London to Prison*. To which *Mr. Selden* made Answer, *That he could not call to mind a Precedent of sending one Sheriff of London to Prison; but he well re-membred a Precedent of sending both the Sheriffs of London to the Tower, and in-stanced the Case.*

One

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One *Trussel*, being in Execution in one of the *Compter's* in *London*, was order'd to be brought before the Committee, with his Keeper, without Danger of an Escape in the Execution.

Townsh. Col. 20. Vid. Sir Simon d'Ewes Jour. 438. Col. 1.

Note, the Case of *Mr. W. Montague*, who being a Prisoner in Execution, was notwithstanding elected a Burgess for *Stockbridge*, and discharged of his Imprisonment by the House. See the Case in *Bobbin's* Collection of Debates, pa. 275. to 281, where all the Precedents of this Kind are cited at large.

4 Novemb. 1640, upon a Report from the Committee for Priviledges, That several Indentures were returned for Burgeses, for the Borough of *Bossinny*, in the County of *Cornwal*, the one by the Mayor of the Town, the other promiscuously; the Committee were of Opinion, upon view of the bare Indenture, That *Sir Charles Harbord* (who was return'd by the Mayor) was well return'd; but the House declar'd he shou'd not fit, till the Election were decided.

See here- after Ch. 12. and 13

44 Eliz. 1601, the Course hath been, if the House hath been desirous to see any Record, the Speaker shou'd send a Warrant to the Lord Keeper to grant a *Certiorari*, to have the Record brought into the House.

Townsh. Col. 297.

Decemb.

Nalson
753.

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Decemb. 1641, ordered, That Mr. Speaker do write his Letters to the Mayor of Berwick, enjoyning him to require such Papiſts, and ſuſpected Perſons as reſide there, or make their conſtant Repair thither, forthwith to depart the Town; and to tender the Oaths of Supremacy and Allegiance to ſuch as ſhall reſuſe; and to proceed againſt them according to Law; and to require him that a Guard be kept at the ſeveral Gates, and that the Arms of that Place be in Readineſs. The like to the Mayor of Newcastle, and of Hull.

Ruſb. Col.
358.

The Commons, upon Imprifonment of their Members, and the Offence taken by the King, reſolved to proceed in no other Buſineſs, till they were righted in their Liberties. See *Nalſon's Col.* p. 3. to 21.

Nalſon
732.

Dec. 1641, Mr. Long, a Juſtice of the Peace, ſent to the Tower, for ſetting a Guard, without Conſent of the Parliament.

4 Inſt. 12.

A Knight, Citizen, or Burgeſs of the Houſe of Commons, cannot by any Means make a Proxy; becauſe he is elected, and truſted by Multitudes of People.

Selden's
Jud. 101.

If the Commons accuſe a Commoner of Miſdemeanors; in ſuch a State of Liberty or Reſtraint as he is in, when the Commons

Commons in particular Caſes.

Commons complain of him, in ſuch he is to anſwer.

Sir Francis Michel, and Sir John Bennet, were both committed by the Commons, before their Complaint to the Lords, and ſo they anſwered as Priſoners; but that in a Sort may be call'd, *Judicium parium ſuorum.*

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

The Preſence of the Commons is neceſſary at the Parties Anſwer, and Judgment in Caſes Capital. Now one Reaſon for the King's Aſſent, and the Commons Preſence in ſuch Judgments, may be this: Both King and People are to be ſatisfied for the Death of the Subject; therefore all Trials for Life and Death are publick in the full Aſſembly of the Court; and how can it be ſaid in full Parliament, when the Commons, one of the States, are abſent?

Tho the Commons are not preſent when the Lords do conſider of the Delinquents Anſwer, and the Proofs, and do determine of their Judgment; yet at their Return to their own Aſſembly, they conſider

The Power of the House of

consider among themselves, if the Proceedings were legal, and may come again, and shew it, and require a Rehearing of the Cause; as they did at the Judgment of the Duke of *Clarence* in 18 *Ed.* 3.

Ib. 162.
Ante 58.

In Judgments on Misdemeanors, the Presence of the Commons is not necessary, unless they impeach a Delinquent, *procur* 50 *E.* 3. and then they are present at all the Answers of those whom they impeach, and are to demand Judgment.

Ibid.

When the Lords had determin'd one Part of the Complaint of the Commons against *William Ellis* (touching the Wrong done to certain *Scottish* Merchants) the Commons pray'd a general Inquiry might be made of the Residue whereof they complained, which the Lords granted.

Id. 163.

When the Lord *Nevil* answered, the Commons required, that one *Richard Love* might be examined, to prove that which the said Lord deny'd, and so departed; but two of the Commons remained, and heard the Examinations, and told the Lords, *That the said Richard had related otherwise to the Commons, the Day before, which the said Richard deny'd.* Then all the Commons came, and justify'd it again, and thereupon the said *Richard Love* confessed it, and on their Demands was committed.

In

Commons in particular Cases.

In the 10 *Rich.* 2. when the Commons had Impeached the *Lord Chancellor*, they were present at his Answer, and so often reply'd, and enforced his Oath against him, and required him to be committed, and so he was before Judgment. *Id.* *Post* 80.

If the Commons do only complain, and do neither impeach the Party in Writing, nor by Word of Mouth in open House, nor demand Trial to be in their Presence: in these Cases it is in the Election of the Lords, Whether the Commons shall be present, or not. *Ibid.*

Issuing of *Quo Warranto's* out of the Court of *King's-Bench*, Court of *Exchequer*, or any Court, against *Boroughs*, that anciently or recently sent *Burgesses* to Parliament, to shew cause, why they sent *Burgesses* of Parliament, and all the Proceedings thereupon, are *Coram non Judice*, illegal and void. And the Right of sending *Burgesses* to the Parliament, is questionable in Parliament only; and the Occasioners, Procurers, and Judges in such *Quo Warranto's* and Proceedings, are punishable, as in Parliament shall be thought consonant to Law and Justice. *Nelson* 588. *Note.*

And note, The Practice and Proceedings on *Quo Warranto's*, *Mandamus's*, and some other Prerogative Writs, seem to have been an Invention of the Judges, in order to draw the Rights and Privileges of

See *Bohun's* *Inst. Legis* 186. 190. &c.

of Burroughs and Corporations, as well as of the People under the Cognizance of *B. R. &c.*

Selden's
Judicature
118.

Where the Articles against the Delinquents are *ex Parte Domini Regis*, there the Commons cannot reply, nor demand Judgment; for the Suit is the King's, and not theirs.

Id. 39.

In *Trewinnard's Case*, *Dyer* 60 & 61. The Priviledge of the Commons, is termed the *Priviledge of Parliament*; and the Judgment given in that Case by the House of Commons, is there said to be, *The Judgment of the most High Court of Parliament*. Sir Robert Atkyn's Argument, 35. which proves, they are not without a Judicial Power.

Id. 53.

The King cannot take notice of what is done in the Commons House, or deliver'd to them, but by the House itself; and that is one of the Laws and Customs of Parliament.

Id. 55.

In 31 *Hen. 6.* When the Commons requested the King and Lords, to restore their Speaker to them, &c. The Judges being demanded of their Counsel therein; after mature deliberation, they answer'd, *It was not their part to judge of the Parliament, which may judge of the Law.*

See this
Case reported
at large, in
Bobun's
Debates
in Parliament,
p. 276. &c.
Ibid.

The Reason, to judge of the Law, signifies that they (the Parliament) can judge

judge whether a Law be good, or not; in order to approve it, and to re-enact it; or to repeal a Law, &c.

In 1621. The House of Commons Ibid. made a Protestation against all Impeachments, other than in their House, for any thing *there* said or done.

It was said by Mr. Justice Crook, *That regularly a Parliament-Man cannot be compelled, out of Parliament, to answer Things done in Parliament, in a Parliamentary Course.* If it be done in a Parliamentary Course, what Occasion can there be to answer for it? But who shall judge what is a Parliamentary Course, but a Parliament? Not Judges of the Common Law; for the Parliamentary Course differs from the Rules of the Common Law.

Id. 58.
Rush. Col.
Vol. 1.
f. 663.

See Sir R.
Atkins's
Argument, per
Totum.

27 *Eliz. 1584.* ordered, *That the Sergeant of this House do forthwith go to the Common Pleas Bar, and charge the Recorder, then pleading there, to make his present Repair unto this House for his Attendance.*

Sir Simon
d'Ewes
Jour. 347.
Col. 2.

See and Note the Case of Judge *Thorp*, who 25 *E. 3.* was condemn'd to Death, and to forfeit all his Lands and Goods for Bribery, *i. e.* receiving 20 *l.* from a Person who had a Cause depending before him.

Cottons
Rec. 74.
and 316.

Note in the Parliament 11 *R. 2.* commonly called, *The Wonder working Parliament,*

The Power of the House of
liament, all the Judges, as they were sitting in *Westminster-Hall*, were arrested, &c. by Order of Parliament. And the like happen'd to several Judges in the Convention Parliament upon the *Revolution*; but *Quere* if their Commitment was by the Lords and Commons, or by the Commons only?

Journal
of the
Commons
An. 1680.

See also the Journal of the House of Commons, *Anno* 1680, several Orders and Resolutions of the Commons, against divers of the Judges and others, for encouraging *Addresses*, &c. in Order to obstruct the Meeting and Sitting of that Parliament.

And see there *December* the 30th, the following Resolutions of that House, *viz.*

1. That the several Writings, Papers and Proceedings relating to such Members, of the late Long Parliament of Pensioners, who receiv'd Allowances out of the Monies appointed for secret Services, be produced to this House.

2. (*Nem. Contr.*) That no Member of this House, shall accept of any Office or Place of Profit from the Crown, without the Leave of this House; nor any Promise of any such Office or Place, during his being or continuing a Member of this House.

3. That all Offenders herein be expell'd this House.

See

See there also the Report and Censure of the the Proceedings of divers of the Judges of *Westminster-Hall*, *viz.* Sir *Francis North*, Sir *W. Scroggs*, Justice *Jones*, and Baron *Weston*; whereupon the House came to the following Resolutions, *viz.*

1. That the Discharge of the Grand Jury of the Hundred of *Ofulston*, in *Com. Middx.* by the Court of *B. R.* in *Trin. Term* last, before the last Day of the Term, and before they had finished their Presentments, was arbitrary and illegal, destructive to publick Justice, a manifest Violation of the Oaths of the Judges of that Court, and a Means to subvert the fundamental Laws of the Kingdom, and to introduce Popery.

2. That the Rule made by the Court of *B. R.* in *Trinity Term* last, against Printing of a Book, called, *The Weekly Pacquet of Advice from Rome*, is illegal and arbitrary; the Judges thereby usurping to themselves Legislative Power, to the great Discouragement of the Protestants, and countenancing of Popery.

3. That the Court of King's Bench, in the Imposition of Fines on Offenders, have of late Years acted arbitrarily, illegally and partially, favouring Papists, and Persons popishly affected, and excessively oppressing his Majesty's Protestant Subjects.

K 2

4. That

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4. That the refusing sufficient Bail in those Cases wherein the Persons committed wereailable by Law, was illegal, and a high Breach of the Liberties of the Subject.

5. That the Expressions in the Charge given to the Grand Jury by Baron *Weston*, were a Scandal to the Reformation, and tending to raise discord between His Majesty and his Subjects, and to the Subversion of the antient Constitution of Parliaments, and of the Government of this Kingdom.

6. That the Warrant mentioned in the Report (*i. e.* for *Harry Carrs* Commitment, &c.) was arbitrary and illegal.

See also
Ibid. Jan.
3.

And then follow the several Resolutions for Impeaching the Judges above-named, and the Articles against *Scroggs*, &c.—And,

Jan. 4. 1680, resolved (*Nem. Cont.*) That such Members of this House, who in this Time of imminent Danger, do absent themselves without Leave of the House, are to be reputed Deserters of their Trust, and Neglecters of that Duty they owe to this House and their Country.

27 *Eliz.* 1584, *John Bland*, a Carrier, for making dishonourable Reflections on the *House of Commons*, brought to the Bar, and pardoned upon his Submission, paying

Commons in particular Cases.

paying twenty Shillings Fee to the Serjeant, and taking the *Oath of Supremacy*.

Eodem An. A Warrant for a Writ of Priviledge awarded for setting at Liberty *John Pepler*, (Servant to Sir *Philip Sidney*, a Member of this House) now Prisoner for Debt in the *Compter* in London.

28, 29 *Eliz.* 1586, resolved by the whole Body of the House, *That the discussing and adjudging of Differences about Elections, only belonged to the said House: That tho the Lord Chancellor and Judges were competent Judges in their proper Courts, yet they were not (Judges) in Parliament.*

31 *Eliz.* 1588. *Thomas Drury* committed to the Serjeant's Custody, was brought to the Bar, and discharged, paying his Fees; for speaking Dishonourably of the Proceedings of the House.

23 *Eliz.* 1580. A Member of the House stood Indicted of Felony. Adjudged, That he ought to remain of the House till he were Convicted; for it may be any Man's Case, who is Guiltless, to be Accused, and thereupon Indicted of Felony, or a like Crime.

18 *Eliz.* 1575. *Edward Smalley* was upon the Question adjudged by the House to be Guilty of Contempt, and abusing the House by fraudulent Practise of procuring himself to be Arrested upon Execution

cution, of his own Assent and Intention, to be discharged as well of his Imprisonment, as of the said Execution. And *Matthew Kirtleton* adjudged Guilty of Confederacy with the said *Smalley*. Whereupon they were both Ordered to the *Tower*. And the said *Smalley* to remain there for a Month, and after, till he gave sufficient Assurance for Payment of a hundred Pounds to the Creditor, and forty Shillings for the Serjeant's Fees.

Id. 96. 4 *Ed. 6. Criketoft*, for the confederating in the Escape of one *Floyd*, was committed to the *Tower*, and afterwards discharged paying his Fees.

Id. 98. 1 *Jac. 1. Bryan Tash*, a Yeoman of his Majesties Guard, for keeping the Door of the Lobby of the upper House against several Members of the *House of Commons*, brought to the Bar of the House, and upon his Submission, and Confession of his Fault, dismissed, paying the ordinary Fees to the Clerk and Serjeant.

Id. 104. 20 *Jac. 1. Dr. Harris*, for mis-behaving himself in Preaching, and otherwise with respect to Election of Members of Parliament; call'd to the Bar as a Delinquent, and admonish'd to confess his Fault there, and in the Country, and in the Pulpit of his Parish Church.

3 *Car. 1. Mr. Burges* a Minister, for abusing his Function in the Duty of Gate-chiving, &c. sent for by a Messenger, committed to the *Tower*, and upon humble Submission deliver'd.

In the same Parliament, Sir *William Wray*, Mr. *Langton*, Mr. *John Trelawny*, and Mr. *Edward Trelawny*, Deputy Lieutenants for *Cornwal*, for assuming to themselves a Power to make Knights of the Shire, defaming such as stood to be chosen, sending for the Train'd Bands, menacing the Country, &c. were committed, some to the *Tower*, some to the Serjeant, till they made a Submission and Recognition in the House, and in the Country.

In the same Parliament, One *Levet*, for peremptorily exercising a Patent in Time of Prorogation, which was adjudg'd a Grievance by the House in the last Session, order'd to be sent for by the Serjeant at Arms.

As to the Powers exercised by the House of Commons, *Anno 1640*, in restraining the Excesses of *Episcopal Jurisdiction*, and redressing other Grievances arising from *Ecclesiastics*. See Mr. *Tindal's Translation of Rapin*, vol. 2. pa. 361. 363. &c.

C H A P. VIII.

See the precedent Chapter. p. 130 & 132. See *Scobell* 72

Of the Power of the House of Commons over their own Members.

TH^{O'} Freedom of Speech and Debates be an undoubted Priviledge of the House; yet whatsoever is spoken in the House, is subject to the Censure of the House; and where they find cause, Offences of this kind have been severely punish'd; by Calling the Persons to the Bar, to make Submission; Committing him to the Tower, (the usual Prison to which the Commons do send Delinquents) expelling the House, disabling him to be a Member during that Parliament, and sometime of any future Parliament.

Ibid. Vide *d'Ewes* Jour. 212. Vid. *Petyts Miscell. Parl.* 12, 13, &c.

17 *Maij* 1572. Upon sundry Motions made by divers Members of the House, it was ordered, *That* Arthur Hall, Esq; for sundry Speeches used by him in the House, and abroad, should be warned by the Serjeant to be at the House on Monday following, and at the Bar, to answer Matters charged against him; and all such Persons as had noted his Words, either in the House, or abroad, were forthwith to meet, and set down the same Words

over their own Members.

Words in Writing, and deliver the same to the Specker. On Monday Mr. Hall being brought to the Bar by the Serjeant, was charged with several Articles, and confessed his Folly, and humbly submitted himself to the House, and was remitted.

8 *Febr.* 1585. Peter Wentworth, Esq; Id 73. one of the Burgeses for Tregony in the County of Cornwall, was, for violence and wicked Words uttered by him in the House touching the Queen, sequester'd; and being brought to the Bar by the Serjeant (to whom he was committed) received this Judgment by the Mouth of the Speaker, *That he shou'd be committed close Prisoner to the Tower, till the House take further Consideration concerning him.* Vide Sir *Simon d'Ewes* Journal, 244. Col. 1

4 *Febr.* 1580. 23 *Eliz.* Complaint was made in the House against Arthur Hall, Esq; (spoken of before) who had caus'd a Book to be Printed, wherein were published the Conferences of the House; and in it was contained Matter of Reproach against some particular Members of the House, derogatory to the General Authority, Power and State of the House, and prejudicial to the Validity of the Proceedings of the same. The Matter was referr'd to a Committee to examine; and upon Report thereof, and bringing Mr.

Id 74, 75 Vide Sir *Simon d'Ewes* Jour. 296, 297, 298. Vid. *Petyts Miscell. Parl.* a.p. 20 ad p. 63. Ante 71.

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Mr. Hall to the Bar several Times to Answer, he was sentenced by the House to be committed to the Tower (as the Prison to this House) there to remain for the space of six Months, and so much longer, as until he shou'd himself willingly make a Retraction of the said Book, to the satisfaction of the House, or of such Order as the House shou'd make during that Session. *That the said Arthur Hall shou'd be fined to the Queen Five hundred Pounds for his said Offence: That he shou'd be presently severed and cut off from being a Member of this House, during this Parliament, and a Writ to Issue for Election of a new Burgeses for the Borough of Grantham in his stead: That the said Book shou'd be deemed and adjudged False and Erroneous.* Thereupon the said Mr. Hall was brought to the Bar, to whom Mr. Speaker, in the Name of the whole House, pronounced the said Judgment, in Form aforesaid, and the Serjeant was commanded to take Charge of him, and to convey him to the Tower, and deliver him to the Lieutenant of the Tower, by Warrant of this House, to be signed by the Speaker.

Vide post. 143. and Bohun's Coll.

Ibid.

Note, It appeareth by the *Journal* 21 Nov. 1586. That he was disabled for ever to serve in Parliament. *Quere post.* 141. 146.

17 Dec.

over their own Members.

17 Dec. 1584. 27 Eliz. A Bill against *Jesuits and Seminary Priests* pass'd upon the Question. Dr. Parry only gave a Negative, and after inveighed in violent Speeches against the whole Bill; affirm- ing it to favour of Treason, to be full of Blood, Danger, Despair, and Terror or Dread to the *English* Subjects of this Realm, our Brethren, Uncles, and Kinsfolks. Upon which he was sequestred from the House into the outer Room, into the Hands of the Serjeant, and not to confer with any, while the House was in Debate of that Business. Afterward he was brought to the Bar, and there kneeling, he was told by the Speaker, If he thought fit, the House was content to hear his Reasons; but he refusing, was committed to the Serjeant's Ward. The next Day he was brought to the Bar, and kneeling, confessed he had unduly behaved himself, and had rashly and unadvisedly uttered those Speeches he had used, and was with all his Heart very sorry for it; alledging withal, he had never been of the House till that Session, and so could not so well know the Orders of the House, as he shou'd do, and that he would not henceforth willingly offend the House, nor any one Man in it, and so humbly prayed their good Favour toward him. Wherupon being again sequestred

Id. 76. Vide Sir Simon d'Ewes Jour. 340. 341, 342.

Of the Power of the House

questred out of the House, after some Arguments and Debates it was resolved, upon this Acknowledgement of his Fault, and his humble Submission, he shou'd be received into this House again, as a Member thereof, and take his Place, as before, so that he would still afterward behave himself in good sort, as he ought to do; and thereupon being call'd again to the Bar, and there Kneeling, and directly reiterating his former Confession of his Fault; and humble Submission, with promise of better Demeanor, he was admitted.

Sir Simon
d'Ewes
Jour. 352.
Col. 2

18 Febr. 1584. 27 Eliz. Upon a Motion by Mr. Diggs, That the same Dr. Parry, a late unworthy Member of this House, and now Prisoner in the Tower, hath since his Submission and Reconciliation, so mis-behaved himself as deserveth the said Imprisonment: Resolved by the House, *That he be disabled to be any longer a Member of this House, and that a Warrant be directed for choosing another Burgess in his stead.*

18 Jac. 1. Sir Giles Mompesson, for being a * Monopolist, and for other great and insufferable Crimes by him Committed, to the Abuse of his Majesty, and grievous Oppression of the Subjects; was turn'd out of the House, committed to the Tower, and after Impeached before the Lords, who gave Judgment upon him.

*Vid. Post
Comysby's
Case.

1. To

over their own Members.

1. *To be degraded of the Order of Knighthood.* Petyt's Miscel. Par. 91, 92
2. *To stand perpetually in the degree of a Person Out-lawed for Misdemeanors and Trespasses.*
3. *His Testimony never to be received in any Court, nor to be of any Inquisition or Jury.*
4. *To be excepted out of all General Pardons.*
5. *That he should be Imprisoned during his Life.*
6. *Not to approach within twelve Miles of the Courts of the King, or Prince, nor at the King's High Court usually held at Westminster.*
7. *That the King should have the profits of his Land for Life, and all his Goods and Chattels.*
8. *That he should be fined at 10,000 l.*
9. *He was also disabled to hold or receive any Office under the King, or for the Common-wealth.*
10. *And lastly, Ever to be held an infamous Person.*

19 Jac. 1. Sir John Bennet, for receiving Bribes, &c. Ordered by the Commons House to be safely kept by the Sheriffs of London; to be put out, and no longer continue a Member of the House; and a Warrant for a Writ for a new choice.

In

Id. 93.

In the same Parliament, Sir Robert Floyd, for being a Projector of a Patent for a *Monopoly*; resolved *una voce*, That he was a Person unworthy to continue a Member of this House, and adjudged presently to be put out.

Id. 94, 95.

3 Car. 1. Mr. John Barbour, Recorder of Wells, for subscribing a Warrant for the Quartering of Soldiers; suspended the House, and sequestred, till the Pleasure of the House be known.

Id. 77, 78.
79.

13 Febr. 1606. Upon a Report made in the House of the Remembrances formerly set down of the Particulars of a Conference; the Speaker offering to read the Paper, and being interrupted by some Motions, and Disputes, *Whether they shou'd be read one by one, and so debated, or all at once*: In that Difference, one of the Knights for *Buckinghamshire*, with a loud Voice (not standing up Bare-Headed, as the Order is) pressed to have them Read. The House observing his earnestness, and manner of Sitting and Calling, for Order's sake, urged him to stand up, and speak: He stood up, and pretending to offer some Reasons, fell into an Invective against the *Scots*, much distasting the House; yet out of a common Care to expedite the weighty Business then in Hand, his Speech was neglected, without Tax or Censure. But on *Monday* following

ing it was remembred, and his Words of Offence recited in particular: The Gentleman being absent, was sent for by the Serjeant. The Serjeant having brought the Offender, it was moved he might be heard at the Bar, which was assented to, and after he had spoken, he was commanded to retire; and not long after was call'd in again to the Bar, where Kneeling, Mr. Speaker acquainted him, Since the Offence was so apparently heinous, the House did not hold it fit that any Particulars shou'd be named, or to give any Reason of their Judgment; but the Order was, *That he shou'd be carry'd to the Prison of the Tower, and there remain, during the Pleasure of the House; and that he shou'd be dismiss'd from his Place of Knight of the Shire for Bucks, and a new Writ to issue for a new Choice.*

15 Febr. 18 Jac. 1. A Bill being read Id. 79. the second Time, for the better Observation of the Sabbath, one of the Members made an Invective against it, and something which seem'd to reflect on a Member of the House, who presented it, as favouring a Puritan, and factious Spirit; Exceptions were taken at the Words. After he had explained himself, he was ordered to withdraw out of the House; and Debate being had, he was call'd to the Bar, and upon his Knees he received the

Of the Power of the House

the Judgment of the House pronounced by the Speaker, *That he should be discharged from the Service of the House; with an Intimation that his Judgment was very merciful, for that the House might, for so exorbitant an Offence, have Imprison'd, and further punish'd him.*

Id. 80. 3 Apr. 1604. In a Debate upon a Bill, a Member of the House utter'd some Speeches highly distasting the House; but no Notice was taken of it till the Bill was Committed; and then the Words being repeated, he was call'd to the Bar, where he made his Excuse, and was Pardon'd.

Ibid. 26 Apr. 1641. Great Offence was taken by the House, at Words spoken by Mr. J. H. He was first heard to explain himself, and then commanded to withdraw; and was call'd to the Bar, and suspended the House, during that Session of Parliament.

Ibid. 27 Maij 1641. A Paper was brought in, containing Words spoken by Mr. Taylor a Member of the House, concerning the Passing the Bill of Attainder of the Earl of *Strafford*; who being heard to explain himself, and then commanded to withdraw; after some Debate in the House, it was Resolved, *That he should be expell'd the House, be made incapable of ever being a Member of this House, and*

Anto 139.

over their own Members.

and should forthwith be committed Prisoner to the Tower, there to remain, during the Pleasure of the House, and to make an acknowledgment of his Offence, both at the Bar and at Windsor publickly. And he was call'd to the Bar, and there Kneeling, Mr. Speaker pronounced the Sentence accordingly.

13 Maij, 12 Jac. 1. Complaint was made, that some Indignities were offer'd to Sir R. Owen, when he was in the Chair at the Committee (about the Bill for the due Observation of the Sabbath Day) by Sir W. H. who told him, *He was Partial*; and by Sir R. K. who took him by the Hand, and told him, *He would pull him out of the Chair, that he should put no more Tricks upon the House.* Sir W. H. being present, made an Acknowledgment of his Error, which upon the Question was taken for a good Satisfaction. Sir R. K. was ordered by the House to Acknowledge his Error at the Bar.

Id. 82.

19 Jac. 1. Some Speeches passing in the House privately between two Members, and some Offence taken, which seems was not intended to be given; one of them in going down the Parliament-Stairs, struck the other; who thereupon catch'd at a Sword in his Mans Hand to strike with it. Upon Complaint made of

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Of the Power of the House

it to the House, they were both order'd to attend the House; being come, he who gave the Blow was call'd in, and standing (not at the Bar, but) by the Bar, was Examined by Mr. Speaker, confessed the giving the Blow, insisted on the Provocation, and withdrew: The other was also call'd in to relate the Truth. After he had made the Relation, and was likewise withdrawn, and Testimony given by a Member of the House, who heard the Words; the House proceeded to Sentence against Mr. C. who struck the Blow. He being brought to the Bar, there on his Knees he received Judgment, which was pronounced by the Speaker, *That he should be committed to the Tower, during the Pleasure of the House.*

Nelson's Introduction 61. 2 Nelson 513

1626. Mr. Moor sent to the Tower for speaking out of Season.

Novemb. 1641. Ordered, *That Mr. Fitz-Williams Conisby, shall be Expell'd this House, he being a Monopolist, and that the Speaker issue out a Warrant to the Clerk of the Crown for a Writ for a new Election for a Member to serve for the County of Hertford in his Place.*

Id. 596.

Mr. Hugh Benson, a Member of the House, having granted many Protections for Money, taking for some sixteen, seventeen, forty shillings, and twenty for ten shillings a piece. Resolved upon the

Question

over their own Members.

Question, *That Mr. Hugh Benson, is unworthy and unfit to be a Member of this House, and shall sit no longer as a Member of this House. That he be forthwith sent for as a Delinquent, by the Serjeant at Arms attending on this House.*

Mr. Jervase Hollis, Expell'd the House for a Speech (made with great strength of Reason and Courage, but more Heat than the Times would bear) was restored to his Place, to sit as a Member of the House of Commons.

Sir William Widdrington, and Sir Herbert Price, sent to the Tower, for bringing in Candles against the Desire of the House.

23 Eliz. 1580. Order'd and Resolved by the House, *That every Knight for the Shire that hath been Absent this whole Session of Parliament, without Excuse allow'd by this House, shall have a Fine set upon him to her Majesties use; and upon every Citizen and Burges for the like, ten Pounds.*

Sir Simon d'Ewes Jour. 309. Col. 2.

1 Jac. 1. 1603. Mr. Lawrence Hide, (pretending Business of his Clients, &c.) made known to the House, *That he would goe out of Town, and so took his Leave in open Audience, without the Assent or Leave of the House, which was Taxed (Censured) by the House, and Mr. Speaker ordered to write to him.*

Petyt's Miscel. Parl: 147.

L. 2

It

Ib. 149.

It was also moved and Resolved, That Mr. Speaker should write another Letter to other Lawyers being gone down in the same Circuit where Mr. Lawrence Hide was, advising them to Return and attend the House.

March
173-4

Hither may be referred, The Case of the several Lawyers, Members of the House, &c. Committed by the House, for appearing as Council in the Case of *Ashby* and *White*, touching the Election for *Aylesbury* in the County of *Bucks*.

Bolton's
Col. of
Debates,
&c. p. 331.
and See
there p.
354. Mr.
Hungerford
expell'd
for a like
Cause.

12. Mar. 1694. Resolved by the House, That Sir *John Trevor*, Speaker of this House, in receiving a Gratuity of one thousand Guineas from the City of *London*, after passing of the Orphans Bill, is guilty of a High Crime and Misdemeanor.

And a few Days after he was only Expelled the House; too mild a Punishment for so flagrant a Crime! King *Edw. 3.* would have Hang'd him as well as Judge *Thorp*: But Times change by great Examples. And we have seen greater Crimes since Escape scot Free.

CHAP. IX.

Concerning Elections of Members.

Vid. of
this Mat-
ter, Lit.
rep. 327.
8. 9. 30.
&c.
5 R. 2 St.
2. c. 4.

ALL Persons and Commonalties who shall be summon'd to the Parliament, shall come, as hath been accustomed of old Time, and he that cometh not, having no reasonable Excuse, shall be amerced, and otherwise punish'd.

The King sendeth Writs to the Sheriffs of every Shire, to admonish the whole Shire to choose two Knights of the Parliament, in the Name of the Shire, to hear, and reason, and to give their Advice and consult in the Name of the Shire, and to be present at the Day.

Arc. Parl.
4.
Vide the
Form of
the Writ.
Sir Simon
d' Ewes
Jour. 37.

At every County, after the Delivery of the Parliament Writ to the Sheriffs, Proclamation shall be made in the full County, of the Day and Place of the Parliament; and that all Men shall attend for the Election of the Knights for the same County for that Parliament.

Hakewel
47.
Vide
Crompton's
Juris. 3.

Where the Parliament Writ speaks *de qualibet Civitate Comitatus illius*, this is intended where the City is not a County in it self. If it be, the Writ shall be directed to them, &c. as it is to Sheriffs of other Countries.

Arc. Parl.
22.
Vide
Crompt. 3.

Concerning Elections of Members.

Sir Simon
d'Exwes
Four. 396.
397.

28 Eliz. 1586, resolved, That the House of Commons are the only competent Judges concerning Elections, which are duly made, and which not.

Pcyyt's
Miscell.
Parl. III.

18 Jac. 1, The Mayor of Winchelsey, for mis-behaving himself at the Election of Parliament Men for that Town, and making a false Return, ordered to be committed to the Serjeant, and to make a Submission at the Bar, and an Acknowledgment in the Town, before the new Election.

Id. 112.

20 Jac. 1, The Mayor of Arundel, for mis-behaving himself in the Election, by putting the Town to a great deal of Charges, not giving a due and general Warning, and packing a Number of Electors; ordered to be sent for, and adjudged to pay the Charge to be set down by three of the Members.

Ar. Parl.
4.
Smith's
Common-wealth, 76

Likewise to every City and Town, which of antient Time hath been wont to find Burgeses of the Parliament, so to make Election of their Members, that they might be present there at the first Day of the Parliament.

4 Inst. 10.
2 Inst. 169.

In 7 Hen. 4, it is enacted, That Elections should be freely and indifferently made, notwithstanding any Prayer or Commandment to the contrary, sine Præce, vel Pretio without any Prayer or Gift, and sine Præcepto, without Command-

Concerning Elections of Members.

the King by Writ, or otherwise, or of any other.

The King, de advisamento Concilii, 4 Inst. 4. resolving to have a Parliament, doth out of the Court of Chancery send out Writs of Summons, at the least forty Days before the Parliament begin.

The third Estate is the Commons of the Realm, whereof there be Knights of the Shires, or Counties; Citizens of Cities, and Burgeses of Boroughs. All which are respectively elected by the Shires or Counties, Cities and Boroughs, by Force of the King's Writ, ex debito Justitiæ, and none of them ought to be omitted.

These represent all the Commons of the whole Realm, are entrusted for them, and are in Number at this Time, now 558, viz. 513 for England, and 45 for Scotland.

Whosoever is not a Lord of Parliament, and of the Lord's House, is of the House of Commons, either in Person, or by Representation, partly coagmentative, and partly representative.

Every Member of the House being a Counsellor for the Kingdom, should have three Properties; First, to be without Malice or Envy. Secondly, to be constant and inflexible. Thirdly, to be of ripe and perfect

perfect Memory, as appeareth in Parliament Roll, *Rot. Parl. 3 H. 6. n. 3.*

Avc. Parl. The Knights of the Shire are chosen by all the Gentlemen and Yeomen (*i. e.* Freeholders) of the Shire, present at the Day assign'd for the Election: The Voice of any absent is to be counted for none.

Concerning the Writs for summoning the Knights and Burgeses; and the Return of the Sheriff thereupon *Vide Crompton's Juris. 1. 2.*

Avc. Parl. Every *Englisman* is intended to be there present, either in Person, or by Procuracy and Attorney; and the Consent of the Parliament is taken to be every Man's Consent.

Id. 10. These meeting at one Day, the two who have most of their Voices, are chosen Knights of the Shire for that Parliament. Likewise by the Plurality of the Voices of the Citizens and Burgeses, the Citizens and Burgeses are elected.

4 Inst. 48. The Election ought to be in full County, between Eight and Nine (says the Statute of 23 *Hen. 6. c. 15.*) No Election can be made of any Knight of the Shire, but between Eight and Eleven of the Clock in the Forenoon, says the Lord *Coke*. But if the Election be begun within the Time, and cannot be determined within those Hours, the Election may be made after.

Any

Any Election or Voices given, before *Id. 49.* the Precept be read and published, are void and of no Force; for the same Electors, after the Precept read and published, may make a new Election, and alter their Voices, *Secundum Legem & Consuetudinem Parliamenti.*

For the Election of the Knights, if *Id. 48.* the Party or Freeholders demand the Poll, the Sheriff cannot deny the Scrutiny, for he cannot discern who be Freeholders by the View; and tho the Party would wave the Poll, yet the Sheriff must proceed in the Scrutiny.

The Knights shall be returned into Chancery by Indenture seal'd betwixt the Sheriff and the Choosers of Knights for the Parliament. *St. 8 H. 6. c. 7. 7 H. 4. c. 1. 23 H. 6. c. 15. Vide Crompton's*

Jan. 1641, in the Case of Mr. *Downs*, return'd a Burgess for *Arundel*, order'd, *That he be presently sworn and admitted as a Member into the House, until such Time as the Election be determin'd.* *Juris. 3. Nalson 870.*

A Burgess elected for two several Boroughs, may choose for which he will serve. *Sir Simon d'Eaves Jour. 430, 622. &*

21 Jac. 1, *Edward Ingry*, Under-Sheriff of *Cambridgeshire*, for refusing the Poll (declaring that *Sir Thomas Steward* promised to defend him against *Sir John Cutts*) was brought to the Bar, and kneeling upon his Knees, adjudg'd to be committed. *passim. Petyt's Miscel. Parliament. 112, 113.*

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committed to the Serjeant's Custody, and to make a Submission at the Bar, and at the next Quarter-Sessions, and to acknowledge his Faults.

Id. 113. to 120.

3 Car. 1, *Thomson*, Sheriff of *York*, for his hasty and precipitate Judgment of an Election, and denying the Poll, being requir'd; and Alderman *Henlow* for advising and abetting the same; adjudged to stand committed to the Serjeant during Pleasure, to acknowledge their Offences at the Bar, to pay all due Fees, to defray the Charge of Witnesses, to be assessed by four of the Committee, to acknowledge their Faults on their Knees at the Bar, and to read a Submission.

Id. 49.

After the Precept of the Sheriff directed to the City or Borough for making an Election; there ought, *secundum Legem & Consuetudinem Parliamenti*, to be given a convenient Time for the Day of Election, and sufficient Warning given to the Citizens and Burgeses that have Voices, that they may be present; otherwise the Election is not good, unless such as have Voices do take Notice of themselves, and be present at the Election.

Hobart 15. *Dunganon's Case in Ireland.*

When there is a Corporation made by Charter; and by the same an Ordinance, that the Provost and Burgeses only shall choose, &c. the Law shall vest this Priviledge in the whole Corporation in Point

Concerning Elections of Members. 155

mandment of Point of Interest, tho the Execution of it be committed to some Persons, Members of the same Corporation.

The King cannot grant a Charter of Exemption to any Man, to be freed from Election of Knight, Citizen, or Burgeses of Parliament (as he may do of some inferior Office or Places) because the Election of them ought to be free, and his Attendance is for the Service of the whole Realm, and for the Benefit of the King and his People; and the whole Commonwealth hath an Interest therein.

18 Eliz. 1575, resolved, *That any Person being a Member of the House, and being either in Service of Ambassage, or else in Execution, or visited with Sicknes, shall not in any wise be removed from their Place in this House, nor any other to be, during such Time of Service, Execution, or Sicknes, elected.*

Sir Simon d'Ewes, 244. Col. 2. Vide contra Sir Simon d'Ewes Jour. 281, 282.

Nota Bene, By the Claim of Right, made on the Abdication of King *James* the 2d, it was declared, *That all Elections of Members to Parliament, ought to be free*; and twas enacted accordingly. See the Statute, and also the following Chapter.

St. 1. W. & M. 2. c. 2.

CHAP. X.

Who may be Electors.

Electors are to attend to Elect Knights of the Shires, on Proclamation to be made at the next County Court, after the Delivery of the Writ to the Sheriff, and to proceed to (in) the Election freely and indifferently, notwithstanding any Command to the contrary.

Electors of such Knights, after the Election to seal an Indenture, containing the manner of the Persons chosen, which is to be annexed to the Writ, and be the Sheriffs Return, and none to Elect who cannot Expend 40s. by the Year.

Electors of Knights of the Shires, to be only of such Persons as are resident and dwelling within the said Shire at the Date of the Writ.

No Person shall be an Elector of the Knights for the Parliament, except he hath Freehold Lands or Tenements within the same County, to the value of Forty Shillings *per Annum* at the least, above all Charges.

The Sheriff hath Power given him by the said Statute to examine upon Oath every such Chooser, how much he may expend

Knights of the Shire. St. 7. H. 4. c. 15.

Ibid. & St. 8. H. 6. c. 7.

St. 1. H. 5. c. 1. 8. H. 6. c. 7. 10. H. 6. c. 2.

St. 8. H. 6. c. 7. 10. H. 6. c. 1. 33. H. 8. c. 1. in Ireland.

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expend by the Year, if he doubt the value of it.

Every Freeholder (electing such Knights) to be Sworn before admitted to Poll, if so required by any Candidate, or other Person that hath Right to Elect. Note, the said Oath by Sta. 10 *Anna* is thus. *You shall Swear that you are a Freeholder within the County of—and have Freehold Lands or Hereditaments, lying, or being at—in the County of—of the yearly value of 40s. above all Charges, payable out of the same; and that such Freehold Estate hath not been made, or granted to you fraudulently, on purpose to qualifie you to give your Vote, and that the Place of your Aboad is at—in (the County) —and that you have not Polled before at this Election.—* So help you God.

Trustees or Mortgagees, are not to be Electors unless in Possession, or Receive the Rents of the Estate; but the Mortgagor or Person to whose use the Trust is may.

Conveyances of Houses, Lands, &c. in Parcels to several Persons, in order to multiply Votes to be Void; and no more than one Vote admitted for one Tenement, nor any to be an Elector under 21 Years.

That Persons refusing the Oaths, or being *Quakers*, subscribing the Declaration

Crompt. Jurisdiction. 3.

St. 7. 8. W. 3. c.

25. St. 10. A. c. 23.

The Freeholder's Oath. See

the Candidate's

Oath. c. 10

and the Oaths of

Allegiance and

Supremacy, &c.

post. and this Oath

altered 10

Anna infra

St. 7. 8. W. 3. c.

25.

Ibid.

St. 7. 8. W. 3. c.

27. that

Who may be Electors.

tion of Fidelity, not to be admitted to Vote, &c.

St. 10. A. c. 23. That all collusive Estates and Conveyances made to qualify Electors for Knights of the Shire (i. e. Subject to a conditional Determination, or Reconveyance, &c.) shall be taken and held as Free and Absolute against the Grantor; and all Bonds, Covenants, &c. for Restoring, or Reconveying thereof, are declared Null and Void; and the Maker, Advifer, and Voter shall each (every) of them forfeit 40*l.* with full Costs to any that will Sue in any Court at *Westminster*, and no Essoign, &c.

Also none to Vote for such Knights in right of any Lands not assessed to the publick Taxes, Church Rates and Parish Duties, in proportion to other Lands of 40*s.* per *Annum* in the same Parish; and for which he shall not be entitled to 40*s.* Rent before the Election, unless it come to him by Descent. And Voting otherwise, forfeits 40*l.* one Moiety to the Poor where the Lands lye, and the other to the Prosecutor.

And note, This Act repeals only so much of the Statue 7 *W.* 3. as concerns the Oath to administred to Freeholders, and therefore this Statute further Enacts.

That if any *Quaker* (during the continuance of an Act passed 7 *W.* 3. That
the

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the Solemn Affirmation and Declaration St 10. A. of the People called Quakers, shall be c. 23. accepted instead of an Oath, &c.) shall Quaker's Affirma- on such Election if required by any Can- tion. didate, Declare the Effect of the said Oath on his solemn Affirmation as directed by that Act, the Sheriff, &c. is required to accept the same instead of the said Oath. But if such *Quaker* shall be after Convicted, to have Wilfully, Falsly, If false, and Corruptly, Affirmed or Declared; he guilty of Perjury, is to incurr the same Penalties and For- vid. infra. feitures, as Persons Convicted of Wilful and corrupt Perjury. *Vide infra.*

That the said Act 10 *Anna*, shall not St. 12. A. Extend to Restrain any Person from Vot- Seff. 1. c. ing, in Right of any Rents, Tythes, or Rents Tythes other incorporeal Inheritances, or any Incorpo- Messuages or Lands in Extraparochial real Inhe- Places; or any Chambers in the Inns of ritances. Court, or Inns of Chancery; or to any in Inns of Messuages or Seats belonging to any Of- Court or fices, or in Right of any other Messuages Chancery. &c. or Lands that have not been usually Charged and Assessed to all and every the publick Taxes, Church Rates and Parish Duties. Provided such Messuages Proviso. or Lands have been usually Charged or Assessed, to some one or more of the said publick Taxes, or Duties, in such Pro- portion as other Messuages or Lands of 40*s.*

Who may be Electors.

40s. *per Annum*. within the same Parish or Township, are usually Charged.

St. 10. A: Note, The Form of the Freeholders Oath c. 23. required by the 7, 8, W. 3. was abolished by this Statute, and the following Form Substituted, viz.

Freeholder's Oath *You shall Swear (or being a Quaker, you shall in the presence of Almighty God, Declare) that you are a Freeholder in the County of— and have Freehold Lands, or Hereditaments, lying, or being at—in the County of— of the yearly value of 40s. above all Charges payable out of the same. And that such Freehold Estate hath not been made, or granted to you Fraudulently, on purpose to qualife you to give your Vote; and that the Place of your Aboad is at—in the County of— And that you have not been Polled before at this Election.*

The Form of the Oath to be taken by Freeholders, &c. (on an Objection made) by Statute 12 *Annæ*, viz.

Freeholder's Oath by St. 12. Ann. *I. A. B. Doe in the presence of God Swear, (or if a Quaker, Declare) That the Lands and Estates of— for which I claim to give my Vote in this Election, are not conveyed to me in Trust, or for the*

and of their Rights.

the behoof of any Person whatsoever: And I do Swear (declare) before God, that neither I, nor any Person to my Knowledge, in my Name, or by my allowance, hath given, or intends to give any Promise, Obligation, Bond, Back-Bond, or other Security, for re-disposing, or re-conveying the said Lands and Estate, any manner of way whatsoever; and this is the Truth as I shall Answer to God.

The Freeholders Oath appointed to be taken, by Statute 2 *Geo. 2.* if Demanded by either of the Candidates, or any two of the Electors. By St. 2. Geo. 2. c. 24. Sect. 1.

I. A. B. Doe Swear (or being one called a Quaker) doe solemnly affirm, That I have not received, or had by my self, or any Person whatsoever in Trust for me, or for my Use, and (or) Benefit, directly or indirectly, any Sum or Sums of Money, Office, Place or Employment, Gift or Reward, or any Promise, or Security for any Money, Office, Employment, or Gift, in order to give my Vote at the Election, and that I have not before been Polled at this Election.

But note, This Oath seems intended for other Voters, besides Freeholders; 2.

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Who may be Electors,

for by Sect. 2. of the same Stat. 'Tis Enacted, That such Votes, &c. Ante. p. 132.

St. 23. H. Citizens and Burgeses within Cities and
6. c. 15. Burroughs, to Elect Citizens and Burgeses of the same; and the Sheriff is to direct his Precept accordingly.

St. 2. W. That the Nomination, or Recommendation,
M. c. 7. to the Electors of one of the Barons of each Cinque Port, the two anti-
Sec 1 W. rons of each Cinque Port, the two ancient Towns, and their Members claimed
M. Sefs. 2. by the Lord Warden is contrary to Law, and Void.
c. 2. Supra

Claim of Right. By the claim of Right made on the Abdication of King James the II. All Elections of Members of Parliament ought to be Free, and it was Enacted accordingly. See the Stat. Et vide post.

St. 5. W. No Collector, Supervisor, Gauger, or
M. c. 20. other Officer, or Person whatsoever, Concerned or Employed in the Charging, Collecting, Levying or Manageing the Duties of Excise, or any Branch, or Part thereof, shall by Word, Message or Writing, or in any other manner, persuade any Elector to give, or dissuade any Elector from giving his Vote, for the Choice of any Person to be a Knight of the Shire, Citizen, Burgess, or Baron of any County, City, Burrough or Cinque-Port; and every Officer, or other Person offending herein, to forfeit 100l. one Moiety to the Informer, and the other
Penalty.

and of their Rights.

to the Poor, where the Offence is committed; to be recoverd by him that Sues for it by Action, of Debt, Bill, Plaint or Information, in any Court of Record at Westminster. And no Essoign, Protection, Privilege, or Wager of Law, or more than one Imparlance; and the Party Convicted to be for ever Incapacitated to bear any Office, or Place of Trust under the Crown.

No Commiſſioner, Collector, Comptrol-
ler, Searcher, or other Officer, or Person
concerned, or imployed in Discharging,
(chargeing) Collecting, Levying, or
Managing the Customs, or any Branch, or
thereof, shall by Word, Message, or
Writing, &c, (as above for the Excise)
Officers, with the like Penalty, Incapacity, &c.

In many Cafes Multitudes are bound
by Acts of Parliament, which are not
Parties to the Elections of Knights, Citizens, and Burgeses; as all they that have no Freehold, or who have Freehold in ancient Demefne, and all Women having Freeholds, or no Freehold, and Men within the Age of One and twenty Years, &c.

Every Inhabitant chooſing or electing
in any other manner (than is preſcribed
by the Statute) to forfeit an hundred
Shillings, half to the King, and half to
him that will Sue for it.

M 2

If

Incapacity.
St. 12. 13.
W. 3. c.
10 Offi-
cers of the
Customs.

4 Inst. p.
5
St. 33. H.
8. c. 1. Ire-
land.

Who may be Electors,

Av. Parl. 25.

If any Man keeps a Household in one County, and remains in Service with another Family in another County, yet he may be at the choosing of Knights of the Shire where he keeps his Family; for it shall be said in Law a Dwelling in either of those Counties.

Crompton's Juril. 3. b.

St. 23 H. 6. c. 15. Vid Crompt. Jur. 3. b. 4. 2.

If the Mayor and Bailiffs (or other Officer, where no Mayor is) shall return other than those which be chosen by the Citizens and Burgeses of the Cities or Boroughs where such Elections be, shall incur and forfeit to the King forty Pounds; and moreover, shall forfeit to every Person hereafter chosen Citizen or Burges to come to Parliament, and not by the same Mayor, or Bailiff, &c. Return'd; or to any other Person that will Sue for it, forty Pounds.

St. 2. G. 2. c. 24. ibid. Sect. 2. What Votes shall be deemed legal.

That such Votes shall be deemed legal, which have been so declared by the last Determination in the House of Commons; which last Determination concerning any County, Shire, City, Borough, Cinque-Port, or Place, shall be final to all Intents and Purposes, any Usage to the contrary.

Sect. 4. Persons convicted of perjury never capable to vote.

That no Person convicted of wilful and corrupt Perjury, or Subornation of Perjury, shall, after such Conviction, be capable of Voting in any Election of any

and of their Rights.

any Member or Members to serve in Parliament.

That if any Elector shall ask, receive, or take any Money, or other Reward, by way of Gift, Loan, or other Device, or agree or contract for any Money, Gift, Office, Imployment, or other Reward whatsoever, to give his Vote; or to refuse or forbear to give his Vote; or if any Person by himself, or any imployed by him, shall, by any Gift or Reward, or by any Promise, Agreement, or Security for any Gift or Reward, corrupt or procure any Person to give his Vote, or to forbear to give his Vote, in any such Election, such Person shall for every such Offence forfeit the Sum of five hundred Pounds, with full Costs of Suit; and every such Person after Judgment obtained against him in any Action of Debt, Bill, Plaint, or Information, or summary Action, or Prosecution, or being any otherwise lawfully Convicted thereof, shall forever be disabled to Vote in any Election to Parliament, and also to hold, exercise, or enjoy any Office or Franchise, to which he and they then shall, or at any time afterwards may be intitled, as a Member of any City, Borough, Town Corporate, or Cinque-Port, as if such Person was naturally Dead.

Sect. 4. Persons taking Money or Reward for their Vote, &c.

On Conviction Forfeits 500l

And disabled to Vote, or to enjoy any Office or Franchise.

Who may be Electors,

Sect. 5. Offenders in 12. Months after the Election discovering others indemnified.

‘ And that if any Person offending against this Act, shall within twelve Months after such Election, discover any other Person offending against this Act, so that such Person be thereupon Convicted, such Person so discovering, and not having been before that time Convicted of any Offence against this Act, shall be indemnified, and discharged from all Penalties, which he shall then have incurred by any Offence against this Act.

Stat. 5. Annæ. c. 8. the Union Act.

Enacted that forty five shall be the number of the Representatives of Scotland in the House of Commons of the Parliament of Great Britain.

Members for Scotland

‘ Of the said Forty-five Representatives of Scotland, Thirty shall be chosen by the Shires, and Fifteen by the Royal Burghs (as follows, viz.) one for every Shire and Stenartry, (excepting the Shires of *Bute* and *Caitness*, which shall choose one by turns, *Bute* having the first Election; the Shires of *Nairn* and *Cromarty*, which shall also choose by turns, *Nairn* having the first Election; and in like mannet the Shires of *Clackmannan* and *Kinross* shall choose by turns; (*Clackmannan* having the first Election) and in case of the Death or legal Incapacity of the said Members

‘ from

and of their Rights.

‘ from the said respective Shires or Steu-^{Scotland.} artries, the Shire or Steuartry who elected the said Member, shall elect another Member in his Place. And that the said Fifteen Representatives for the Royal Burghs shall be chosen as follows, viz. That the Town of *Edinburgh* shall have Right to elect and send one Member, and that each of the other Burghs shall elect a Commiffioner in the same manner as usual to elect Commiffioners and Burghs (*Edinburgh* excepted) being divided into fourteen Classes or Districts, shall meet at such time and Burghs within their respective Districts, as her Majesty, her Heirs or Successors shall appoint, and elect one for each District, (viz.) the Burghs of *Kirkwall*, *Week*, *Dornock*, *Dingwall* and *Tain*, one: The Burghs of *Fortrose*, *Inverness*, *Nairn* and *Forress*, one; The Burghs of *Elgin*, *Cullen*, *Bamff*, *Inverary*, and *Kintore*, one: The Burghs of *Aberdeen*, *Inverbery*, *Montrose*, *Aberbrothock*, and *Brochine*, one: The Burghs of *Forfar*, *Perth*, *Dundee*, *Coupar*, and *St. Andrews*, one: The Burghs of *Craill*, *Kilrenny*, *Anstruther Easter*, *Anstruther Wester*, and *Pittenween*, one: The Burghs of *Dysart*, *Kirkaldie*, *Kinghorn*, and *Bruntland*, one: The Burghs

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‘ of

Who may be Electors,

Scotland.

of Innerkethen, Dunfermline, Queens-
 ferry, Culross, and Sterling, one: The
 Burghs of Glasgow, Renfrew, Rug-
 len, and Dumbarton, one: The Burghs
 of Haddington, Dunbar, North-Ber-
 wick, Lauder and Jedburgh, one: The
 Burghs of Selkirk, Peebles, Linlith-
 gow, and Lanerk, one: The Burghs
 of Dumfreis, Sanquhar, Anna, Lock-
 maben, and Kirkeudbright, one: The
 Burghs of Wigtown, New Galloway,
 Stranraver, and Whitehorn, one: The
 Burghs of Air, Irwin, Rothesay, Cam-
 bletown, and Inverary, one. And
 where the Votes of the Commissioners
 for the said Burghs met to choose Re-
 presentatives from their severall Districts,
 shall be equal, the President of the
 Meeting shall have a casting or decisive
 Vote, and that by and according to his
 Vote as a Commissioner from the Burgh
 from which he is sent; the Commissi-
 oner from the eldest Burgh presiding in
 the first Meeting, and the Commission-
 ers from the other Burghs in their re-
 spective Districts, presiding afterwards
 by turns in the order as the said Burghs
 (used to be) called in the Rolls of the
 Parliament of Scotland; and that in
 case any of the said fifteen Commission-
 ers from Burghs shall decease, or become
 legally incapable to sit in the House of
 Commons,

and of their Rights.

Commons, then the Town of Edin-Scotland.
 burgh, or the District which chose the
 said Member, shall elect a Member in
 his or their Place.
 That none shall be capable to elect
 (a Representative for any Shire or Burgh
 of Scotland) unless twenty one Years
 of Age complete, and Protestant, ex-
 cluding all Papists, or such who being
 suspect of Popery, and required refuse
 to swear and subscribe the Formula,
 contained in the third Act made in the
 eight and ninth Sessions of King Willi-
 am's Parliament (in Scotland) nor shall
 be capable to elect (a Representative to)
 a Shire or Burgh in the Parliament of
 Great Britain (for Scotland) except
 such as (were at the time of passing this
 Act) capable by the Laws of Scot-
 land) to elect as Commissioners for Shires
 or Burghs to the Parliament of Scotland.
 Enacted, &c. That when any Parlia-Stat. 6 A.
 ment shall at any time hereafter be sum- c. 6.
 moned or called, (on Notice to be forth-
 with given after Receipt of the Writs
 by the Shertff, or Stewart, of the time
 of Election for Knights of the Shire or
 Commissioners for Scotland) at such time
 of Election the severall Freeholders in
 the respective Shires, and Stewartries shall
 meet and convene at the head Burghs
 of their severall Shires and Stewartries,
 and

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Scotland.

and proceed to the Election of their respective Commissioners or Knights for the Shire or Stewartry; and the Clerks of the said Meetings shall respectively return the Names of the Persons Elected to the Sheriff or Stewart of the Shire or Stewartry (on a Precept in like manner to be directed by the Sheriffs of Edinburgh, to the Lord Provost of that City) and on Receipt of such Precept, the City of Edinburgh shall elect their Member, and their common Clerk shall certify his Name to the Sheriff of Edinburgh.

On Precepts in like manner to be directed by the Sheriffs or Stewarts of the several Shires or Stewartries, where the other fourteen Districts of Royal Burghs respectively are, reciting the Contents and Date of the Writ, and commanding them to elect each of them a Commissioner, as they used formerly to elect Commissioners to meet at the presiding Borough of their respective District, (naming it) on the thirtieth day after the Teste of the Writ, unless Sunday, and then the next day after, and then to choose their Burgefs for the Parliament. The common Clerk of the then presiding Borough, shall immediately after the Election, return the Name of the Person so Elected to the Sheriff

and of their Rights.

Sheriff or Stewart of the Shire, or Stewartry wherein such presiding Borough is. And in case a vacancy shall happen in time of Parliament, by the decease or legal incapacity of any Member, a new Member shall be Elected in his Room conformable to the method herein before appointed; and in case such Vacancy be of a Representative for any one of the said fourteen Classes, or Districts for Royal Boroughs, that Borough, which presided at the Election of the deceased or disabled Member, shall be the presiding Borough at such Election.

That from and after the Determination of this present Parliament, no Conveyance or Right whatsoever, whereupon Infeoffment is not taken, and Seisin registered One Year before the Teste of the Writs for calling a New Parliament, shall, upon Objection made in that Behalf, intitle the Person or Persons, so Infeoffed, to Vote at that Election, in any Shire or Stewartry in that Part of Great Britain called Scotland; and in case any Election happen during the Continuance of a Parliament, no Conveyance or Right whatsoever, whereupon Infeoffment is not taken One Year before the Date of the Warrant for making out a new Writ for such Election, shall, upon

2 St. 12. Anna.

Who may be Electors,

Scotland

upon Objection made in that Behalf, in-
title the Person or Persons so Infeoff, to
Vote at that Election; and that it shall
be lawful for any of the Electors pre-
sent, suspecting any Person or Persons
to have his or their Estates in Trust,
and for the Behoof of another, to re-
quire the *Præses* of the Meeting to
tender the Oath (in this Act contained)
to any Elector; and the said *Præses* is
hereby impowered and required to ad-
minister the same.

In case such Elector refuse to Swear,
and also to subscribe the said Oath, such
Person or Persons shall not be capable of
Voting at such Election.

Notwithstanding such Oath taken, it
shall be lawful to make such other Ob-
jections as are allowed by the Laws of
Scotland against such Electors.

No Infeoffment taken upon any re-
deemable Right (except proper Wad-
setts, Adjudications, or Apprisings al-
lowed by the Act of Parliament relate-
ing to Elections in One thousand six
hundred eighty one) shall entitle the
Persons so Infeoff, to Vote at any E-
lection in any Shire or Stewartry: And
no Person or Persons, who have not
been Enrolled, and Voted at former E-
lections, shall upon any Pretence what-
soever be Enrolled or admitted to Vote
at

and of their Rights.

at any Election, except he or they first
produce a sufficient Right or Title to
qualifie him or them to Vote at that E-
lection, to the satisfaction of the Free-
holders formerly Enrolled, or the Ma-
jority of them present; and the return-
ing Officers are hereby ordained to make
their Returns of the Persons Elected
by the Majority of the Freeholders en-
rolled, and those admitted by them, re-
serving always the Liberty of objecting
against the Persons admitted to, or ex-
cluded from the Roll, as formerl.

The Right of Apparent Heirs in
Voting at Elections by Virtue of their
Predecessors Infeoffments, and of Hus-
bands by Virtue of their Wives Infeoff-
ments, reserved.

Any Conveyance or Right, which
by the Laws of *Scotland* is sufficient to
qualify any Person to Vote in the E-
lections of Members of Parliament for
Shires or Stewartries, and whereupon
Infeoffment is taken on or before the
first Day of *June*, in the Year of our
Lord One thousand seven hundred and
thirteen, shall intitle the Person or Per-
sons so Infeoff, to Vote at the Electi-
ons of Members to serve in the next
ensuing Parliament.

No Husband shall Vote at any en-
suing Election by Virtue of their Wives
Infeoffments,

Wales.

‘ Infeoffments, who are not Heireffes, or
‘ have not Right to the Property of the
‘ Lands, on account whereof such Vote
‘ shall be Claimed.

St. 23. H.
6. c. 15.
Wide post.

‘ Ordained, &c. That every Sheriff,
‘ after the Delivery of any Writ (of E-
‘ lection) to him made, shall make and
‘ deliver without Fraud a sufficient Pre-
‘ cept under his Seal to every Mayor and
‘ Bailiff, &c. of the Cities and Boroughs
‘ within his County, commanding them
‘ by his Precept, if it be a City, to choose
‘ by Citizens of the same City, Citizens;
‘ and in the same manner and form if it
‘ be a Borough, (to choose a *Burges*s) by
‘ the Burgeses of the same, to come to
‘ the Parliament.

St. 23. H.
S. c. 26.
Wales.

‘ Enacted, &c. That the Dominion of
‘ *Wales* shall be, stand, and continue for
‘ ever from henceforth Incorporated, U-
‘ nited, and Annexed to and with the
‘ Realm of *England*; and that all and
‘ singular Person and Persons, *born and*
‘ *to be born*, in the said Principality,
‘ Country, or Dominion of *Wales*, shall
‘ have, enjoy and inherit *all and singular*
‘ *Freedoms*, Liberties, Rights, Privileges,
‘ and Laws, *within this Realm*, and o-
‘ ther the King’s Dominions, as other the
‘ King’s Subjects naturally Born within
‘ the same) have, enjoy, and inherit.

‘ For

Wales.

‘ For all Parliaments to be holden and
‘ kept for this Realm, two Knights to be
‘ elected to the same Parliament for the
‘ Shire of *Monmouth*, in the like Man-
‘ ner, Form, and Order, as Knights and
‘ Burgeses be elected and chosen in all o-
‘ ther Shires.

‘ And that one Knight shall be Elect-
‘ for every of the Shires of *Brecknock*,
‘ *Radnor*, *Montgomery* and *Denbigh*,
‘ and for every other Shire within *Wales*,
‘ and for every Borough being a Shire-
‘ Town within *Wales* (except the Shire
‘ Town of the County of *Merioneth*)
‘ one Burges, and the Election to be in
‘ like Manner, as Knights and Burgeses
‘ of the Parliament be Elected in other
‘ Shires.

‘ That the Burgeses of all and every
‘ Cities, Boroughs, and Towns (in the
‘ twelve Shires within *Wales* and County
‘ of *Monmouth*, not finding Burgeses for
‘ the Parliament themselves, and contri-
‘ butary to Wages of Burgeses of such
‘ Shire-Towns) shall be lawfully admo-
‘ nished by Proclamation, or otherwise,
‘ by the Mayors, Bailiffs, and other Head
‘ Officers of the said Towns, or by one of
‘ them, to come and give their Elections
‘ for the Electing of the said Burgeses,
‘ at such Time and Place, Lawful and
‘ Reasonable, as shall be assigned for the
‘ same

St. 35. H.
S. c. 11.

Who may be Electors,

Chester.

same intent by the said Mayors, Bailiffs, and other Head Officers of the said Shire-Towns, or by one of them, in which Elections the Burgeses shall have the like Voice and Authority to elect the Burgeses of every the said Shire-Towns, in such Manner, as the Burgeses of the said Shire-Towns have and use.

St. 34 & 35 H. 8. c. 13. *Chester.*

That the County Palatine of *Chester* shall have two Knights for the said County Palatine; and likewise two Citizens to be Burgeses for the City of *Chester*; the same Election to be made under like Manner and Form, to all Intents, Constructions, and Purposes, as is used within the County Palatine of *Lancaster*; or any other County or City within this Realm.

St. 25. c. 2. c. 9. *Durham*

That the County Palatine of *Durham* may have two Knights for the same County, and the City of *Durham* two Citizens to be Burgeses for the same City, for ever hereafter to serve in Parliament; the same Election from time to time to be made in Manner following, viz. The Elections of the Knights to serve for the said County Palatine, to be made by the greater Number of the Freeholders of the said County Palatine that shall be present at such Elections, as is used in other Counties,

and of their Rights.

ties, and that the Election of the said Burgeses from Time to Time, shall be made by the Major part of the Mayor, Aldermen and Freemen of the City, which shall be present at such Election. See also the Stat. 34 35 H. 8. c. 24. *Cambridge.* concerning the Payment of the *Wages* of the Knights of the Shire for *Cambridge.*

The Form of the Abjuration, as altered by Stat. 4 Ann. c. 8. and as the same is now to be taken.

I *A. B.* do truly and sincerely acknowledge, profess, testify, and declare in my Conscience, before God and the World, That our Sovereign Lord King *George* the Second, is lawful and rightful King of this Realm, and all other His Majesty's Dominions and Countries thereunto belonging. And I do solemnly and sincerely declare, That I do believe in my Conscience, that the Person pretended to be Prince of *Wales*, during the Life of the late King *James*, and since his Decease, pretending to be, and taking upon himself the Stile and Title of King of *England*, by the Name of *James* the Third, or of *Scotland*, by the Name of *James* the Eighth, or the Stile and Title of King of *Great Britain*, hath not any Right

Who may be Electors,

' Right or Title whatsoever to the Crown
 ' of this Realm, or any other the Do-
 ' minions thereto belonging: And I do
 ' renounce, refuse, and abjure any Alle-
 ' giance or Obedience to him. And I
 ' do swear, That I will bear Faith and
 ' true Allegiance to His Majesty King
 ' *George* the Second, and Him will de-
 ' fend to the utmost of my Power, a-
 ' gainst all Traiterous Conspiracies and
 ' Attempts whatsoever, which shall be
 ' made against his Person, Crown or Dig-
 ' nity. And I will do my utmost En-
 ' deavour to disclose and make known
 ' to His Majesty and his Successors, all
 ' Treasons and Traiterous Conspiracies,
 ' which I shall know to be against Him,
 ' or any of Them. And I do faithfully
 ' Promise, to the utmost of my Power,
 ' to support, maintain and defend the
 ' Succession of the Crown, against him
 ' the said *James*, and all other Persons
 ' whatsoever: As the same *Succession*, by
 ' *an Act*, entitled, *An Act for the fur-*
 ' *ther Limitation of the Crown, and*
 ' *better Securing the Rights and Liber-*
 ' *ties of the Subject*, is, and stands limi-
 ' ted to the Princess *Sophia*, Electress
 ' and Dutches Dowager of *Hanover*,
 ' and the Heirs of Her Body, being
 ' Protestants. And all these Things I
 ' do plainly and sincerely acknowledge
 ' and

and of their Rights.

' and swear, according to these express
 ' Words by me spoken; and according
 ' to the plain and common Sense and
 ' Understanding of the same Words, with-
 ' out any Equivocation, mental Evasion
 ' or secret Reservation whatsoever. And
 ' I do make this Recognition, Acknow-
 ' ledgement, Abjuration, Renunciation
 ' and Promise, heartily, willingly and
 ' truly, and upon the true Faith of a
 ' Christian.

So Help me God.

CHAP. XI.

Who may be Elected to Parliament.

4 Inst. 48. Sir Simon d'Ewes Jour. 39, 40.

BY Stat. 5. Eliz. c. 1. no Knight, Citizen, or Burgefs can fit in Parliament, before he hath taken the Oath of Allegiance and Supremacy; but Note, other Oaths are now appointed: Vide ante.

4 Inst. 10.

Because the Words of the Writ for Election of Knights, &c. were *duos Milites gladiis cinctos*, &c. it required an Act of Parliament, that notable Esquires might be eligible.

St. 23. H. 6. c. 15.

Therefore the Statute fays, *the Knights of the Shires for the Parliament must be notable Knights, or such Esquires, or Gentlemen, born of the same County, as be able to be Knights.*

St. 18 Ed. 4. c. 2. in Ireland.

Any Man may be chosen Knight, Citizen, or Burgefs, tho' he be not dwelling within the fame.

Every Knight, Citizen, and Burgefs shall be refiant and dwelling within the Counties, Cities, and Towns. Every Knight, Citizen, or Burgefs taking it upon him, and not chosen (in the manner prescribed by the Act of Parliament) to forfeit an hundred Pounds.

St. 33 H. 8. c. 1. in Ireland.

Si

Si home n'esteant Inhabitant, ne free de un Borough, il poit Eslier, s'il voit server a leur Election, ou nemy, pur le Borough.

If a Man be not an Inhabitant, nor free of a Borough, he may choofe if he will serve at their Election, or not, for the Borough.

By the Statute none ought to be chosen a Burgefs of a Town, in which he doth not inhabit; but the usage of Parliament is contrary. But if Information be brought upon the said Statute against such a Burgefs, I think that the Statute is a good Warrant for us to give Judgment against him, by *Whitlock*.

The King cannot grant a Charter of Exemption to any Man to be freed from Election of Knight, Citizen, or Burgefs of the Parliament.

A Person Outlawed in a Personal Cause may be a Burgefs. See *Bobun's Collection*, p. 278. 279.

If exception be taken to such an Election, and an Outlawry alledged to disenable him, the Stat. 23 Hen. 6. c. 15. will disenable most of this House, for they ought to be Burgefses resident.

Tho' the Common Law doth disenable the Party, yet the Priviledge of the House being urged, that prevaieth over the Law.

Moor fo. 551. n. 741

Rush. Col. Vol. 1. 689.

4 Inst. 49.

Townf. Col. 63, 64. Vide John Smiths Ca.

Sir Simon d'Ewes Jour. 48. Col. 2.

480. Col. 1. Vide Sir Simon d'Ewes Jour. 481. Col. 2.

& 482. Col. 1.

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Ibid.

A Man Attainted, Outlawed, or Excommunicated, or not lawfully elected, if he be returned, out of all doubt is a lawful Burges.

4 Inst. 46.

A Knight Banneret, being no Lord of Parliament, is eligible to be Knight, Citizen, or Burges of the House of Commons, being under the Degree of a Baron, which is the lowest Degree of the Lord's House.

Sir Simon d'Ewes Four. 244. Col. 2.

An Earl's Son may be a Member of the House of Commons.

4 Inst. 47.

One under the Age of one and twenty years is not eligible. Neither can any Lord of Parliament sit there till he be full one and twenty Years.

Ibid.

An Alien cannot be elected of the Parliament, because he is not the King's Liege Subject; and so it is, albeit he be made Denizon by Letters Patents, &c. But if an Alien be naturaliz'd by Parliament, then he is eligible to this, or any other Place of Judicature.

Pety's Miscell. Parl. 175. Ibid.

No Alien denized ought to sit here, per Sir Edward Coke. Note also the St. 4 An. c. 8. for settling the Succession, &c. excludes Aliens.

4 Inst. 47.

Resolved upon the Question, that the Election of Mr. Walter Steward, being no natural born Subject, is void, and a Warrant to go for a new Writ.

None of the Judges of the King's Bench, or Common Pleas, or Barons of the

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the Exchequer, that have Judicial Places, can be chosen Knight, Citizen, or Burges of Parliament, as it is now holden, because they are Assistants in the Lord's House. Yet read *Parl. Roll.* 31 H. 6.

But any that have Judician Places in other Courts Ecclesiastical or Civil, being no Lords of Parliament, are eligible.

None of the Clergy, tho' he be of the lowest Order, is eligible to be Knight, Citizen, or Burges of Parliament, because they are of another Body, viz. of the Convocation.

The Clergy of the Convocation-House are no Part or Member of the Parliament.

A Man Attainted of Treason or Felony, &c. is not eligible. For he ought to be *magis idoneus, discretus, & sufficiens.*

Mayors and Bailiffs of Towns Corporate are eligible.

At a Parliament holden 38. H. 8. it was admitted and accepted, that if a Burges of Parliament be made a Mayor of a Town, or have Judicial Jurisdiction, or is Sick, &c. that these are Causes sufficient to choose others.

Any of the Profession of the Common Law, and which is in Practice of the same, is eligible.

By special Order of the House of Commons, the Attorney General is not eligible

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gible to be a Member of the House of Commons. *Vide infra.*

Hor. rep.
551.
Sir Simon
d'Erwes
Jour. 441,
442.
Acor 551.

At the Parliament began in October 28. *Eliz.* and continued 'till the 29th. *Tho. Egerton*, Solicitor General, was by Writ commanded to attend in Parliament upon the Lords in the upper House, and after he had attended there three Days, he was chosen a Burgess for *Reading in Com. Berks* and upon the Return of him, the Commons went to the House of Lords, and demanded that he might be dismissed from further attendance there, and come into their House. But upon Consultation and Defence made by himself, the Lords retain'd him, and the main Reason was, because they were first possessed of him.

Mr. ut Sup.
Simon
d'Erwes
Jour. 121,
Col. 1, 2.

And in 5. *Eliz. Ouslow* being a Member of the lower House, upon a Prorogation of Parliament, was made Solicitor General, and when the Parliament met again, he was commanded by Writ, to attend the Lords House, tho' chosen Speaker of the House of Commons, but the Commons demanded him, and it was granted, because he was a Member of the lower House first; so that this was the difference between his, and the case above.

Journ.
Dom. Co.
21. Jac. 1.
10. Martij.
Vid. Petyts
Miscell.
Parl. 174.

Sir Dudley Diggs said, that in that Parliament, when *Bacon* Attorney was in Question, whether he ought to fit in the

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the House of Commons or no, twas overruled he ought not; but yet in favour of him he was suffered to sit there, and an Express order was made that never any other Attorney after should.

So careful were our Ancestors not to admit any to be a Representative of the People who was a Dependant on, or could be influenc'd by the Court, &c.

18 *Eliz. 1585.* Concluded by the House, *Sir Simon d'Erwes,* that *Mr. Serjeant Jeffreys*, being one of *Jour. 249.* the Knights returned for *Sussex*, may *Col. 1.* have Voice or give his Attendance in this House, as a Member of the same, notwithstanding his Attendance in the Upper House, as one of the Queen's Serjeants, for his Counsel there, where he hath no Voice indeed, nor is any Member of the same.

23 *Eliz. 1580.* *Popham* Solicitor General, upon demand made by the House, was restored to them by the Lords, 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 Upper House.

No Sheriff shall be chosen for a Knight of Parliament, nor for a Burgess; why? *Book of Entr. 41. 1. Crompton's Jur. 3.* because nominated by the Crown.

1. *Car. 1.* The Sheriff of the County of *Buckingham* was chosen Knight for the County of *Norfolk*, and return'd into the

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the Chancery; and had the Priviledge of Parliament allow'd to him, by the Judgment of the whole Houfe of Commons.

Vide de hoc Pro & Con, Sir Simon d'Ewes Journal 38, 436, 624, 625.

Scobel 96.

I Jac. 1. Sess. 2. Sir John Peyton, Kt. returned the last Sesson, and since chosen Sheriff; Resolv'd upon the Question, that he shall attend his Service here.

Rush. Coll. vol 1. 684, 685.

The Personal Residence and Attendance of Sheriffs is required within their Bailiwicks, during the time of their Sheriffwick. Mr. Walter Long, being Sheriff of Wilts, was after chosen Citizen for Bath; and for that Offence was committed, and fined (viz. because he fate and served in Parliament.)

Townf. Col. 185. Vid. de hoc. Sir Simon d'Ewes Jour. 38. Col. 1, 2. & 624. Col. 2.

Sir Andrew Noel, Kt. Sheriff of Rutland, returned himself Knight, and adjudged a void Return, and a Warrant ordered for a new Election. For (said Serjeant Harris) we know, in Law, that a Man cannot make an Indenture to himself; no more can he here, between himself and the County; for there are required two Persons. Yet Sir Edward Hobby said, That the House might well receive him, and vouched a Precedent, when the Bailiffs of Southwark returned themselves Burgeses, and were received. See also Bohun's Collection, 81. 143. 153. 188. 243. 253. 254.

The

Who may be Elected to Parliament.

The Fee for the Knight of any County is, four Shillings per Diem, and every Citizen or Burgets is to have two Shillings per Diem. England. 4 Inst. 46.

Where one Person is chosen and returned to serve in several Places, it is in his Election to make his Choice in the House in his own Person, for what Place he will serve, and wave the other Election, so as a Writ may issue for a new Election, that the Number may be full.

No Tallage or Aid shall be taken or levied by Us, or our Heirs, in our Realm without the Goodwill and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgeses, and other Freemen of the Land. St. So. E. I. c. 1. Of the Elected vide ante. 14. 21.

The King wills and commands, and it is assented in Parliament by the Prelates, Lords and Commons, That all Persons and Commonalties, which shall have the Summons of Parliament, shall come to the Parliaments in the Manner they are bound to do, and have been accustomed within the Realm of England, of old Times. Stat. 5. R. 2. c. 4. Persons and Commonalty summoned to attend, &c. as of old.

And if any Person of the same Realm, which shall have the said Summons (be Knight of the Shire, Citizen of City, Burgets of Borough, or other Person, Commonalty) do absent himself, and come not at the said Summons (except he Knights, Citizens, and Burgeses absenting to be a merced and punish'd as in Old he Times.

Who may be Elected to Parliament.

Englond. he may reasonably, and honestly excuse him to our Lord the King) he shall be amerced, and otherwise punished as in old Times hath been used, &c.

St. 1. H. 5. c. 1. That Knights of Shires, which shall be chosen in every Shire, be not chosen, unless they be resident within the same Shire, the Day of the Date of the Writ of Summons.

Knights of Shires to be elected of such only who reside within the Countries at the Dat. of the Writ.

Citizens and Burgeses to reside in, and be free of the Cities and Boroughs. And that the Citizens and Burgeses of the Cities and Boroughs be chosen Men, Citizens and Burgeses, resident, dwelling, and free in the same Cities and Boroughs, and no other in any wife.

Knights of Shires shall be such as have the majority of those that can expend 40s. a Year, or more, and be resident. That such as have the greatest Number of them that may expend 40 s. by the Year, and above, shall be returned (Knight of the Shire) &c. and that they which shall be chosen shall be dwelling, and resident within the same Counties.

St. 23. H. 6. c. 15. Citizens and Burgeses only to be elected by Citizens and Burgeses, Ordained, &c. That every Sheriff after the Delivery of any Writ (of Election) to him, shall make and deliver without Fraud, a sufficient Precept under his Seal to every Mayor and Bailiff, or to Bailiffs or Bailiff where no Mayor

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Who may be Elected to Parliament.

England. Mayor is, of the Cities and Boroughs within his County, reciting the said Writ, commanding them by his Sheriff to Precept, if it be a City, to choose, &c. Citizens; and in the same Manner if it be a Borough, to choose Burgeses.

And every Sheriff at every Time that he doth contrary to this, or any other Statute for the Election of Knights, Citizens and Burgeses, before made, shall forfeit and pay to every Person chosen Knight, Citizen or Burgeses in his County, and not duly returned, 100 l. whereof every Knight, Citizen or Burgeses so griev'd, severally shall have his Action of Debt against the said Sheriff, or his Executors or Administrators, to demand and have the said 100 l. with his Costs spent. And that the Defendant shall not wage his Law, or have any Essoign.

no Wager of Law, &c.

And if any Mayor and Bailiffs, or Bailiffs or Bailiff, where no Mayor is, shall return others than those which be chosen, &c. he shall forfeit and pay to every Person hereafter chosen Citizen or Burgeses, and not returned, 40 l. whereof every of the Citizens and Burgeses so griev'd, severally shall have his Action of Debt, against every of the

The like Action given against Mayor or Bailiffs, their Executors or Administrators for 40l. Debt and Costs, for returning others than such

Who may be Elected to Parliament.

England. the said Mayor and Bailiffs (or Bailiffs
 as are cho- or Bailiff where no Mayor is) or against
 sen Citi- their Executors, Administrators, to de-
 zens and mand and have of every of them, 40 l.
 Burgeses by Citi- with his Cofts in this Cafe expended.
 zens and Burgeses. And that in fuch Action of Debt,
 And no no Defendant fhall wage his Law, nor
 Wager of have any Effoign.
 Law, &c. Such Knt. Provided that every Knight, Citizen
 Citizen, and Burges in due Form chofen, and
 and Bur- not returned as aforefaid, fhall begin his
 ges to commence the Action within three Months after
 the Action within 3 Months after the Com-
 mence- ment of fuch Parliament, and proceed without Fraud.
 If any Knt. Ciri- And if any Knight, Citizen or Bur-
 zen, or gers hereafter returned by the Sheriff,
 Burges in Manner aforefaid, after fuch Return
 return'd, be by any Perfon put out, and another
 be put out, put in his Place, that fuch Perfon fo
 &c. 100 l. forfeited to the King by
 King by any Per- if he take upon him to be Knight, Ci-
 fon put in tizen or Burges at any Parliament,
 his place, fhall forfeit to the King 100 l. and
 and ferv- 100 l. to the Knight, Citizen or Bur-
 ing as fuch gers fo returned by the Sheriff, and af-
 And a like ter put out. And that the Knight,
 Action a- Citizen or Burges fo put out, fhall
 gainft him, have an Action of Debt of the fame
 &c. for 100 l. Debt and Cofts
 100 l. Debt to the par- tygrieved,
 and Cofts to the par- tygrieved,

0101

Who may be Elected to Parliament.

Place, his Executors or Administrators, *England.*
 provided he begin his Suit within three Months after the Parliament commen-
 ced, &c. And that no Defendant in fuch Action fhall wage his Law, nor
 be effoigned. And that fuch Procefs fhall be in the Actions aforefaid, as in a
 Writ of *Trefpafs againft the Peace*, at Common Law.

to be com-
 menced
 within 3
 Mo. after
 the Com-
 mence-
 ment of
 Parliam.
 No Wa-
 gers of
 Law, &c.

And like Procefs as in Trefpafs at common Law.

That the Knights of the Shires for Knts. of
 the Parliament, fhall be notable Knights of the
 of the *same Counties*, for the which of the
 they fhall be chofen, or otherwise fuch Counties
 notable Efquires or Gentlemen *born of* they fhall
 the fame Counties as fhall be able to be elected
 be Knights. And no Man to be fuch Efquires,
 Knight, which ftandeth in the Degree or Gentle-
 of a Yeoman, or under. men able
 to be Knts.
 and not
 Yeomen, &c.

That no Knights (of Shires) Citi- St. 6 H. 8.
 zens, Burgeses and Barons (of Cinque- c. 16.
 Ports) nor any of them that be elected Knts. Citi-
 to Parliament, do depart from the said zens, &c.
 Parliament, nor absent himfelf from the not to de-
 fame, till the said Parliament be fully part or be
 finished, ended, or prorogued, *except* absent
 he or they fo departing have Licence of without
 the Speaker and Commons in the said leave of
 Par- the Houfe
 to be en-
 tred in the
 Journal.

Who may be Elected to Parliament.

England.

Parliament assembled, and the same Licence entred of Record in the Book of the Clerk of the Parliament, appointed for the Commons House, &c.

St. 27 H.

8. c. 26.

The two

Knts. and

one Bur-

geses for

the Bo-

rough and

County of

Monmouth

to have like

Privilege, &c.

And Knt.

for each

County,

and Bur-

geses for

each Shire-

Town in

Wales, to

have like

Privileges

&c.

The two

Knts. for

the Coun-

ty, and

two Bur-

geses for

the City

of Chester,

to have

like Pri-

viliges,

&c.

That the two Knights to be elected to Parliament for the Shire of Monmouth (heretofore Part of Wales) and the one Burgeses for the Borough of Monmouth, shall have like Dignity, Pre-eminence and Privilege, as other Knights and Burgeses of Parliament. Privilege, &c. as other Knights and Burgeses.

And that the Knight which shall be elected for the Shires of Brecknock, Radnor, Montgomery and Denbigh, and for every other Shire within the Country or Dominion of Wales, and for every other Borough being a Shire-Town within the same, shall have like Dignity, Pre-eminence and Privilege, as other Knights of Parliament.

That the two Knights to be elected for the County Palatine of Chester, and two Citizens as Burgeses for the City of Chester, shall be Knights and Burgeses of the Court of Parliament, and have like Voice and Authority, to Intents and Purposes, as any other the Knights and Burgeses of the said Court have, use, and enjoy, &c. Vide ante 176.

That

Who may be Elected to Parliament.

England.

That the two Knights to be elected

for the County, and the two Citizens

as Burgeses for the City of Durham

(the Election of Knights of the Shire

to be by a Majority of Freeholders;

and the Burgeses by a Majority of the

Mayor, Aldermen, and Freemen pre-

sent at such Election) shall be Knights

and Burgeses of the High Court of

Parliament, to all Intents and Purposes,

and have and use the like Voice, Au-

thority and Places therein, to all In-

tents and Purposes, as any other the

Knights and Burgeses of the said Court,

and shall, have, use and enjoy all such

and the like Liberties, Advantages,

Dignities and Privileges concerning the

said Court, to all Intents, Constructions

and Purposes as any other the Knights

and Burgeses of the said High Court

have, had, used, &c. Vide ante 176.

That every Person which hereafter

shall be elected a Knight, Citizen or

Burgeses, or Baron for any of the Five

Ports, for any Parliament or Parliaments

hereafter to be holden, shall before he

enter the Parliament House, or have a-

ny Voice there, openly receive and pro-

nounce the Oath (*expressed in the

Oath of

Stat. Supremacy before the Lord Steward, or his De-

Stat. 25 C.

ch. 29.

ante.

The two

Knights

to be ele-

cted for

the Coun-

ty and two

Burgeses

for the Ci-

ty of Dur-

ham, by a

Majority

of Free-

holders,

and a like

Majority

of Mayor,

Aldermen

and Free-

men pre-

sent, to

have like

Privileges

&c.

Stat. 5.

Eliz. c. 1.

Knights,

Citizens,

&c. be-

fore their

sitting in

Parlia-

ment, to

take the

Oath of

Stat. Supremacy before the Lord Steward, or his De-

* The Oath of Supremacy mentioned in this Act, is abrogated by the Stat. 1 W. & M. ch. 1. and a new one appointed, which see, ante p. 177.

Who may be Elected to Parliament.

England. Stat. 1 Eliz. ch. 1. commonly called the Oath of Supremacy) before the Lord Steward (of the Queen's Household) or his Deputy or Deputies for that Time to be appointed, and that he which shall enter into the Parliament House without taking the said Oath, shall be deemed no Knight, Citizen, Burgess nor Baron for that Parliament, nor shall have any Voice, but shall be to all Intents, Constructions and Purposes, as if he had never been returned nor elected Knight, Citizen, Burgess or Baron for that Parliament, and shall suffer such Pains and Penalties, as if he had presumed to sit in the same without Election, Return or Authority.

Stat. 7. Jac. 1. c. 6. Knights, Citizens, &c. at any Parliament, or Sessions, to take the Oath of Allegiance before the Lord Steward, &c. ere they be permitted to sit.

That all and every the Knights, Citizens, Burgesses and Barons of the Five Ports of the Commons House of Parliament, at any Parliament or Session of Parliament, before he or they shall be permitted to enter into the said House (shall make, take and receive the Oath of Obedience mentioned in the Statute of 3 Jac. 1. ch. 4. commonly called the Oath of Allegiance*) before the Lord Steward (of the King's Household) his Deputy or Deputies.

That

* The Oath of Allegiance mentioned in this Act, is abrogated by the Stat. of 1 W. & M. c. 1. as aforesaid. post. 198.

Who may be Elected to Parliament.

That none which shall be a Member of the House of Commons, shall vote in the said House, or sit there during any Debate in the said House, after their Speaker is chosen, until such Member shall first take the severall Oaths of Allegiance and Supremacy, and make, subscribe, and audibly repeat the Declaration (in this Act contained, commonly called the Test) which said Oaths and Declaration shall be in this and every succeeding Parliament solemnly and publickly made and subscribed betwixt the Hours of Nine in the Morning and Four in the Afternoon, by every such Member at the Table, in the Middle of the said House, and whilst a full House of House is there duly sitting, with their Speaker in his Chair, and that the same be done in the House, in such-like Order or Method as the House is called over by.

England. St. 30 C. 2. c. 1. Members of the House of Commons shall not vote or sit there during any Debate after their Speaker chosen, until they have taken the Oaths of Allegiance and Supremacy, and subscribed the Test, between Hours of 9 and 4, in a full House.

If any Member of the House of Commons shall presume to do any thing contrary to this Act, every Member so offending shall from thenceforth be deemed and adjudged a Popish Recusant Convict, to all Intents and Purposes, and shall forfeit and suffer as a Popish Recusant Convict, and shall be disabled to hold

O 2

or Members acting contrary, shall be adjudged Popish Recusants, and suffer as such, and be disabled to hold any Office or Place

† These Oaths are abrogated by Stat. 1 W. & M. c. 1.

Who may be Elected to Parliament.

England. or execute any Office or Place of Profit or Trust, Civil or Military, in any of His Majesty's Realms of *England* or *Ireland*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, or in any of His Majesty's Realms, Islands, or Foreign Plantations to the said Realms belonging, and shall be disabled to fit or vote in Parliament, or to sue or use any Action, Bill, Plaint, or Information in course of Law, or to prosecute any Suit in any Court of Equity, or to be Guardian of any Child, or Executor or Administrator of any Person, or capable of any Legacy or Deed of Gift, and shall forfeit for every wilful Offence against this Act the Sum of 500 *l.* to be recovered or received by him or them that will sue for the same, and to be prosecuted by any Action of Debt, Suit, Bill, Plaint, or Information in any of His Majesty's Courts at *Westminster*, where no *Essoign*, Protection, or Wager of Law shall lie.

500 *l.* for every Offence to any that will sue by Action of Debt, &c. where no *Essoign*, &c.

Members obliged to take the said Oaths and subscribe the Test in the House of Commons, as often as they shall see Occasion, to order or cause all or any of the Members of Parliament openly in their House to take the said Oaths,

Who may be Elected to Parliament.

Oaths, and to make and subscribe the said Declaration, at such Times, and in such Manner, as they shall appoint. And if any Member of the House of Commons shall, contrary to such Order made by their House, wilfully presume to fit therein, without taking the said Oaths, and making and subscribing the said Declaration, every such Member so presuming to fit, shall be adjudged, and is declared to be incapable and disabled in Law, to all Intents and Purposes, to fit in the said House, or give any Voice therein during that Parliament.

And in Case any Member of the House, shall by virtue of this Act be disabled to fit or vote in the House, then, without any further Conviction, or other Proceedings against such Member, the Place for which he was elected, is hereby declared void, and a new Writ shall issue out of *Chancery*, by Warrant from the Speaker, and by Order of the said House, for the Election of a new Member, in the Place of such Member so disabled, to all Intents and Purposes, as if such Member or Members were naturally dead, &c.

During the taking the Oaths and subscribing the Test, all other Proceedings in Parliament to cease, and the Oath, Declaration and Subscription,

Who may be Elected to Parliament.

England.

with a Schedule of the Names of the Persons taking and subscribing them, to be entred and filed in Parchment Rolls provided by the Clerk of the House, and each Member to pay only 12 d. for every such Entry.

Stat. 1 W. & M. c. 1. Members of the House of Commons qualified to sit and vote by taking the Oaths of Allegiance and Supremacy appointed by this Act

(instead of the old ones, now repealed) and by subscribing the Test according to the Limitations, &c. of the preceding Statute 30 Car. 2

That the said Act 30 Car. 2. and all other Acts of Parliament, as to so much of the said Act or Acts only as concerns the taking the Oaths of Supremacy and Allegiance, or either of them in the said Acts respectively mentioned) by any Member or Members of the House, with relation to their sitting and voting in Parliament, are hereby repealed to all Intents and Purposes, any Thing in the said recited Act or Acts to the contrary. And

In all future Parliaments the Oaths (in this Act mentioned) and the Declaration in the Act 30 Car. 2. mentioned, shall be taken, made, subscribed and repeated by every Member of the House, within the Time, and in the same Manner and Form, and under the Penalties and Disabilities as the said Oaths of Allegiance and Supremacy, and the said Declaration by the said Act of Car. 2. are limited, ordained and appointed

Who may be Elected to Parliament.

England.

pointed (and not at any other Time, or in any other Manner) to enable them to sit and vote in Parliament, any Thing in the said Act or Acts to the contrary.

That Elections of Members of Parliament ought to be Free. That the Freedom of Speech and Debates on Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament. Enacted accordingly.

Stat. 1 W. & M. c. 2. The claim of Right.

That no Member of the House of Commons shall at any Time be concerned directly or indirectly, or any other in Trust for him, in the farming, collecting or managing any of the Duties, or other Aids that hereafter shall be granted by Act of Parliament (except the Commissioners of the Treasury, and the Officers, and Commissioners for managing the Customs and Excise, not exceeding the present Number in each Office, and Commissioners of the Land Tax. (Quere the Novelty of this Exception.)

Sta. 5 & 6 W. & M. ch. 7. Members of the House of Commons to be no ways concerned in Duties or Aids to be granted by Parliament, except Commissioners of the Treasury, Customs, Excise, and Land Tax.

That any Member or Members of the House of Commons, may be a Member or Members of the Corporation of the

Stat. 5 & 6 W. and M. c. 20. Members of the

Who may be Elected to Parliament.

England. House of Commons may be Members of the Bank.

Officers of the Excise not to intermeddle, &c.

tion (of the Governor and Company of the Bank of England.) That a Collector, Supervisor, Gauger or other Officer, or Person whatsoever concerned or imployed in the charging, levying or managing the Duties of Excise, or any Branch or Part thereof, shall by Word, Message or Writing, or in any other Manner endeavour to persuade any Elector to give, or dissuade any Elector from giving his Vote for the Choice of any Person to be a Knight of the Shire, Citizen, Burgess or Baron of any County, City, Borough or Cinque-Port, and every Officer, or other Person offending therein, shall forfeit the Sum of 100 l. one Moiety thereof to the Informer, the other Moiety to the Poor of the Parish where such Offence shall be committed, to be recovered by any Person that shall sue for the same, by Action of Debt, Bill, Plaint or Information in any of their Majesties Courts of Record at Westminster, in which no Essoign, Protection, Privilege, or more than one Imparlance shall be allowed, and every Person convict on Suit of the said Offence, shall be for ever incapacitated to bear any Office, or Place of Trust under the Crown.

That

Who may be Elected to Parliament.

England.

That no Persons hereafter to be elected to serve in Parliament for any County, City, Town, Borough, Port or Place within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, after the Teste of the Writ of Summons, or after the Teste, or issuing out, or ordering of the Writ or Writs of Election upon the calling, or summoning of any Parliament, or after any such Place becomes vacant, shall, or do hereafter by himself, or themselves, or by any other Ways or Means on his or their Behalf, or at his or their Charge, before his or their Election in England, Wales or Berwick, directly or indirectly, give, present or allow to any Person, having Voice or Vote in such Election, any Money, Meat, Drink, Entertainment or Provision, or make any Present, Gift, Reward or Entertainment, or shall make any Promise, Agreement, Obligation or Engagement to give or allow any Money, Meat, Drink, Provision, Present, Reward or Entertainment, to or for any such Person in Particular, or to any such County, City, Town, Borough, Port or Place in general, or to or for the Use, Advantage, Benefit, Employment, Profit or Preferment of any such Person or Place, in Order to be

St. 7. W.

3. c. 4.

No Persons to be

electd

after the

Teste of

the Writ

shall by

themselves, or

any other

at their

charge,

before the

Election,

give, promise, or

oblige

themselves to

give any

thing to

any Person,

having a

Vote in

particular

or to any

County

or Place

in general

in order

to be elected.

England. be elected, or for being elected to serve in Parliament, for such County, City, Town, Borough, Port or Place.

Such Persons so giving, promising, &c. disabled to serve, as never elected or returned. And that every Person so giving, presenting or allowing, making, promising or engaging, doing, acting or proceeding, shall be, and are hereby disabled and incapacitated upon such Election to serve in Parliament for such County, City, Town, Borough, Port or Place, and shall be deemed and taken no Member in Parliament, and shall not act, sit or have any Vote or Place in Parliament, but shall be, and are to all Intents, Constructions and Purposes, as if they had been never returned or elected, &c.

Stat. 7 and 8. W. 3. c. 7. & continued by St. 12. & 13. W. 3. c. 5. False Returns of Knights, Citizens, &c. illegal and prohibited. That all false Returns willfully made of any Knight of the Shire, Citizen, Burgefs, Baron of the Cinque-Ports, or other Member to serve in Parliament are against Law, and are hereby prohibited.

An Action given to any duly elected against the Officer and Procurer of a false Return, or Return. The Party grieved (by any false return, and contrary to the last Determination of the Right of Election of the House of Commons, which is also adjudg'd a false Return) (to wit) every Person that shall be duly Elected to Parliament for any County, City, Bo- rough

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rough, Cinque-Port, or Place, by such false Return, may Sue the Officers and Persons making or procuring the same, and every or any of them, at his Election, in any of his Majesty's Courts of Record at Westminster, and shall recover double the Damages he shall sustain by reason thereof, together with his full Costs of Suit.

Damages, and full Costs.

And if any Officer shall willfully, falsely, and maliciously Return more Persons than are required to be chosen by the Writ or Precept on which any Choice is made, the like Remedy against him or them, and the Party or Parties that willingly procure the same, or any of them, by the Party grieved at his Election.

All Contracts, Promises, Bonds, and Securities whatsoever hereafter made or given to procure any Return of any Member to Parliament, or any thing relating thereunto, shall be adjudged void; and whoever makes or gives such Contract, Security, Promise, or Bond, or any Gift or Reward to procure such false or double Return, shall forfeit the Sum of 300l. one third part to his Majesty, another third part to the Poor of the County, City, Borough or Place

England. contrary to the last determination of the Right of Election in any Court at Westminster, with double

Like Action given the elected against Officer, &c. falsely, &c. making double Returns, and the Prosecutors of such Returns. Contracts Bonds, &c. given to procure the Return of any Members adjudged void, and such (Members) as make or give them to procure any false

Who may be Elected to Parliament.

England. concerned, and one third part to the Informer, with his Cofts, to be recovered in any Court of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no Effoign, Protection, or Wager of Law shall be allowed, nor more than one Imparlance. of the County, City, &c. and a third to the Informer, with his Cofts, to be recovered by Action of Debt, &c. wherein no Effoign &c. and but one Imparlance.

Clerk of the Crown to keep Books of Entry of Returns, &c.

The Clerk of the Crown to keep a Book of Entry of every fingle and double Return, and of every Alteration and Amendment in every fuch Return, where to all Perfons are to have access, and take Copies of fo much as defir'd at a reasonable Fee—The Parties profecuting fuch Suit (*Candidates*) may give fuch Book, or a true Copy thereof in Evidence, and have like Advantage as by producing the Record itfelf: And if the Clerk of the Crown makes not fuch Entry within fix Days after any Return, or alters any Return without Order of the Houfe of Commons, or gives a Certificate of any Perfons not returned, or wilfully neglects or omits his Duty herein, he fhall forfeit 500*l.* for each Offence to the parth griev'd (*Candidate*) to be recovered as aforefaid, and lofe his Office, and be for ever incapable of holding it.

Every

Who may be Elected to Parliament.

England. Every Information or Action upon this Statute, fhall be brought within two Years after the caufe of Action fhall arife, and not after.

Statute to be brought within 2 Years.

That upon every Election to be made of any Knight or Knights of the Shire (*in case a Poll fhall be requir'd*) the Sheriff or his Under-Sheriff fhall appoint for each Candidate fuch one Perfons as fhall be nominated to him by each Candidate, to be Inspectors of every Clerk who fhall be appointed for taking the Poll; and every Freeholder, before he is admitted to Poll at the fame Election, fhall, if required by the Candidates or any of them, firft take the Oath (*in this Act contained*) *Vide ante.*

And if any Perfons do unlawfully and corruptly procure or fuborn any Freeholder or Perfons to take the faid Oath in order to be Polled, whereby he fhall commit wilful and corrupt Perjury, and fhall be thereof convicted, he for every fuch Offence fhall incur the like Pains and Penalties as are in and by one Act made in the 5th *Elizabeth*, &c. enacted againft all fuch who fhall, &c. *Suborn or Procure* any Perfons to commit any

Candidates for Knights of the Shire may nominate Perfons to be Inspectors of the Poll, and may require each Freeholder to be sworn before admitted to Poll. Any Perfons procuring a Freeholder or other to take the Oath for the Poll, whereby he commits Perjury, and is convicted of fuch Subornation, for

England. every Offence (forfeits 40 l. and be incapacitated as a Witness till such Judgment reversed; and for want of 40 l. imprisoned half a Year and stand in the Pillory an Hour, per Stat. 5 Eliz. ch. 9.

Without the Candidates consent, the County Court not to be adjourned from the place of Election, nor the Poll discontinued. The said Sheriff, or in his Absence his Under-Sheriff, or such as he shall depute, shall not adjourn the County-Court from the Place of Election to any other Town or Place within the same County without consent of the Candidates, but shall duly and orderly proceed to take the Poll from Day to Day, and Time to Time, without any further or other Adjournment, without the Consent of the Candidates for such Adjournment.

Any Person may demand a Copy of any Poll, which the Sheriffs, Mayors, &c. are required to deliver, paying reasonably for writing it. To each Party grieved, Mayors, Every Sheriff, Under-Sheriff, Mayor, Bailiff, and other Officer, to whom the Execution of any Writ or Precept shall belong for the electing Members to Parliament, shall forthwith deliver to such Person or Persons as shall desire the same, a Copy of the Poll taken at such Election, paying only a reasonable Charge for writing: And every Sheriff, Under-Sheriff, Mayor, Bailiff, and other Officer, to whom the Execution of any Writ or Precept for electing Members to Parliament doth belong, for every wilful Offence contrary to this Act

England. Sheriffs, &c. for every wilful offence forfeit 500 l. to be recovered by him or them, his or their Executors or Administrators, together with full Costs of Suit, and for which he or they may Sue by Action of Debt, Bill, Complaint, or Information in any Court at Westminster, wherein no Essoign, Protection, Wager of Law, Privilege, or Imparance, shall be allowed. with full Costs, by Action of Debt, &c. wherein no Essoign, &c.

No Person shall be capable of being elected a Member to Parliament, who is not of the Age of 21 Years, and every Election or Return of any Person under that Age is declared Null and Void. And if any such Minor chosen shall presume to sit or vote in Parliament, he shall incur such Penalties and Forfeitures as if he had presumed to Sit and Vote in Parliament without being chosen or returned. None shall be elected under the age of 21 Years. The choice of any elected under that Age declared void; and such Minor fitting &c. in Parliament shall incur like Penalties as if sitting, &c. unchosen or returned.

The Sheriff of the County of Southampton, or his Deputy, at the request of one or more of the Candidates for Election of a Knight or Knights for that County, shall adjourn the Poll from Winchester, after every Freeholder er

Who may be Elected to Parliament.

England. er then and there present is Polled, to the end of the Poll at Winchester, an Adjournments to Newport in the Isle of Wight.

St. 7 & 8 W. 3. c. 27. Candi- dates may require the Sheriff or Chief Officer on the Poll, at any Election, to administer the Oaths of Allegiance and Supremacy to Electors, (and if Quakers, the Declaration of Fidelity) and on refusal, not to admit them to Vote.

St. 11. & 12. W. 3. c. 2. Members of the House of Commons while such by Enacted, &c. That if any Member of the House of Commons, during the time of his being a Member of Parliament, by his Deputy, or any other in trust for him or his benefit, take, enjoy, or execute any Office, Place, or Employment

Who may be Elected to Parliament. 209

employment touching or concerning the farming, managing, or collecting the Duty of Excise, or determining Appeals concerning the said Duty, or comptrolling or Auditing the Accompts of the same, such Person is hereby declared and enacted to be absolutely incapable of sitting, voting, or acting as a Member of the House of Commons in such Parliament.

England. themselves, Deputies, or Trustees, taking or executing any Office in the Excise, or Appeals thereof, declared incapable of sitting, &c.

That after the Limitation of the Crown to the Princess Sophia of Hanover, (by this Act) shall take effect no Person born out of the Kingdoms of England, Scotland, or Ireland, or the Dominions thereunto belonging, (although he be naturaliz'd or made a Denizen; except such as are born of English Parents) shall be capable to be a Member of the House of Commons.

Enacted, &c. That no Member of the House of Commons shall be capable of being a Commissioner or Farmer of the Customs, or of holding or enjoying in his own Name, or in the Name of any other Person in Trust for him, or for his Use or Benefit, Farmers

Members of the House of Commons incapacitated from being Commissioners or Farmers

Who may be Elected to Parliament.

England. of the Customs, or to hold in their own or others Names, or by others in trust, or execute by Deputies any Office in the Customs.

Members while such, so taking or executing any such Office, declared incapable of sitting, &c. If any Member of the House of Commons shall, during the time of his being a Member of Parliament, by himself, or his Deputy, or any other in Trust for him, or for his Benefit, take, enjoy, or execute any Office, Place or Employment, touching or concerning the Farming, Managing, or collecting the Customs, such Person is hereby declared and enacted to be absolutely incapable of Sitting, Voting, or Acting as a Member in such Parliament.

St. 13 & 14 W. 3. c. 6. Members of the House of Commons not to vote or sit there during any Debate, after their Speaker chosen, until they have taken and Enacted, &c. That none which shall be a Member of the House of Commons, shall Vote in the House of Commons, or Sit there during any Debate in the said House of Commons, after their Speaker is chosen, until such Member shall, from time to time take the Oath (mentioned in this Act, commonly called the Abjuration, and altered by Statute 1 Annæ ch. 22. again by Stat. 4 & 5 Annæ ch. 8. again by Stat. 6 Annæ ch. 7.) And subscribe the same

Who may be Elected to Parliament.

in manner following; (that is to say) the said Oath shall be in this and every other succeeding Parliament, solemnly and publickly made and subscribed between the Hours of Nine in the Morning, and Four in the Afternoon, by every such Member of the House of Commons, at the Table, in the middle of the said House, and whilst a full House is there duly Sitting with their Speaker in his Chair. And

If any Member shall presume to Vote, not having taken the said Oath, and subscribed the same as aforesaid, he shall from thence be deemed and adjudged a Popish Recusant convict to all Intents and Purposes, and shall forfeit and suffer as a Popish Recusant convict, and shall be disabled to hold or execute any Office or Place of Profit or Trust, Civil or Military, in England, Ireland, Wales, or in any of the Islands, Plantations belonging, and shall be disabled from thenceforth to sit or Vote in Parliament, or to use any Action, Bill, Plaint, or Information in course of Law, or to prosecute any Suit in Equity, or to be Guardian of any Child, or Executor, or Administrator of any Person, or capable of any Legacy or Deed of Gift, and shall forfeit for every wilful Offence against this Act 500 l.

Who may be Elected to Parliament.

England. ' to be recovered and received by him or them that shall Sue by any Action of Debt, Suit, Bill, Plaint or Information, in any Court at Westminster, wherein no Essoign, Protection, or Wager of Law shall lie. or capable of any Legacy or Deed of Gift, and to forfeit 500 l. to any that will sue by Action of Debt, &c. where no Essoign, &c. shall lie.

Stat. 2 & 3 ' That no Register (for the Registering Annae, c. 4. ' Memorials of Deeds, Conveyances and Wills) within the West-Riding in the County of York, or his Deputy for the Time being, be capable of being chosen a Member to Parliament. his Deputy, incapacitated. Vide post. p. 218.

St. 4 & 5 ' That no Person, who shall have in Annae, c. 8 ' his own Name, or in the Name of any NoCandi- ' Person or Persons in Trust for him or for date who ' his Benefit, any new Office, or Place shall have ' of Profit whatsoever, under the Crown, in his own ' which at any time hereafter shall be Name or ' created or erected, nor any Person who in trust for ' shall be a Commissioner or Sub-Com- him or his ' miffioner of the Prizes, Secretary or Benefit, ' Receiver of the Prizes, nor any Comp- any new ' troller of the Accompts of the Army, Officers or ' nor any Commissioner of Transports, Place of ' nor any Commissioner of the Sick and Profit ' Wounded, nor any Agent to any Regi- hereafter ' ment, nor any Commissioner for Wine to be cre- ' Licences ated, or be ' Secretary a Commi- ' fiffioner or Sub-Com- ' miffioner,

Who may be Elected to Parliament.

England. ' Licences, nor any Governor nor Deputy-Governor of any of the Plantations, nor any Commissioner of the Navy employed in any of the Out-Ports, nor any Person having any Pension from the Crown during Pleasure, shall be capable of being Elected, or of sitting or voting as a Member of the House of Commons. or Receiver of Prizes, Commissioner of the Armies Accounts, Commissioner of the Sick and wounded, Agent for any Regiment, Commissioner for Wine Licences, Governor or Deputy-Governor of any of the Plantations, Commissioner in any out-Port, or have a Pension from the Crown during Pleasure, shall be capable of being elected or sitting, &c. as a Member.

' If any Person being chosen a Member of the House of Commons shall accept of any Office of Profit from the Crown during such time as he shall continue a Member, his Election shall be and is hereby declared to be Void, and a new Writ shall issue for a new Election, as if such Person so accepting was naturally Dead. Nevertheless such Person shall be capable of being again Elected, as if his Place had not become Void as aforesaid.

Members chosen accepting any Office of Profit from the Crown, while they continue Members, their Election void, and a new Writ to issue, but capable of being again Elected.

' No greater Number of Commissioners shall be made for the Execution of any Office than have been employed in the

Who may be Elected to Parliament.

England. ' the Execution of any such Office from
' the first Day of the Session.

Members being Officers in the Navy or Army, receiving any New Commission in either, not incapacitated. ' Nothing herein contained shall extend to any Member of the House of Commons being an Officer in Her Majesty's Navy or Army, who shall receive any new or other Commission in the Navy or Army respectively.

Members hereby incapacitated, if returned, their Election void, and presuming to sit and vote forfeit 500*l.* to any that will sue by Action of Debt, &c. wherein no Effoin, &c. and but one Impar lance. ' If any Person hereby disabled or declared to be incapable to Sit or Vote in Parliament, shall nevertheless be returned as a Member to serve for any County, City, Town, or Cinque-Port in any such Parliament, such Election and Return are declared to be Void to all Intents and Purposes, and if any Person disabled or declared incapable by this Act to be Elected, shall presume to sit or vote as a Member of the House of Commons in any Parliament, such Person so fitting or voting shall forfeit 500*l.* to be recovered by such Person as shall Sue by Action of Debt, Bill, Plaint or Information, wherein no Effoin, Protection, or Wager of Law, shall be allowed, and only one Impar lance.

' Forty

Who may be Elected to Parliament.

' Forty five shall be the Number of the *G. Britain.*
' Representatives of Scotland in the *Stat. 5*
' House of Commons of the Parlia- *Annæ, c.*
' ment of Great-Britain. *8.*

' Every Member of the House of Com- *The Uni-*
' mons of the Parliament of Great- *on Act.*
' Britain (until the Parliament of
' Great-Britain shall otherwise direct)
' shall take the respective Oaths ap-
' pointed to be taken instead of the
' Oaths of Allegiance and Suprema-
' cy, by an Act of Parliament made
' in England in the First Year of the
' Reign of the late King William and
' Queen Mary (The new Oaths of Al-
' legiance and Supremacy) And make,
' subscribe, and audibly repeat the
' Declaration mentioned in an Act of
' Parliament made in England in the
' Thirtieth Year of the Reign of King
' Charles the Second (The Test) and
' shall take and subscribe the Oath
' mentioned in an Act of Parliament
' made in England in the First Year
' of Her Majesty's Reign. (The Ab-
' juration) At such time and in such
' manner, as the Members of both
' Houses of Parliament of England are
' by the said respective Acts directed
' to take, make, and subscribe the same,
' upon

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' upon the Penalties and Disabilities in the said respective Acts contained: And it is declared and agreed, that these Words (This Realm, The Crown of this Realm, and the Queen of this Realm) mentioned in the Oaths and Declaration contained in the aforesaid Acts, which were intended to signify the Crown and Realm of England, shall be understood of the Crown and Realm of Great-Britain, and that in that Sense the said Oaths and Declaration be taken and subscribed by the Members of the Parliament of Great Britain.

None capable to be elected for any Shire or Borough of Scotland under 21 Years, nor unless a Protestant Papists and such as refuse the Formula excluded. Like Incapacity on Candidates, not at this

' None shall be capable to be elected (a Representative for any Shire or Borough of Scotland) but such as are twenty one Years of Age complete, and Protestant, excluding all Papists, or such who being suspect of Popery, refuse to swear and subscribe the Formula contained in the third Act made in the 8th and 9th Sessions of King William's Parliament (in Scotland) nor shall be capable to be elected to represent a Shire or Burgh in the Parliament of Great Britain (for Scotland) except such as (were at the Time of passing this Act) capable by the Laws of (Scot-

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' (Scotland) to be elected as Commissioners for Shires or Boroughs to the Parliament of Scotland.

G. Britain. Time capable by the Laws of Scotland Stat. 6.

' A like Clause for incapacitating Persons to be elected, &c. Members of Parliament, and likewise for incapacitating Members of Parliament, with like Restrictions, Exceptions and Penalties (throughout the united Kingdom) as are contained in the Statute 4 & 5 Annæ, c. 8. relating to Candidates and Members for the Parliament of England.

An. c. 7.

' And further, That every Person disabled to be elected, or to sit or vote in the House of Commons of any Parliament of England, shall be disabled to be elected, or to sit, or vote in the House of Commons of any Parliament of Great Britain.

Candidates disabled to be elected or Members to sit, &c. in the Parliament of England,

under like Disabilities, as to any Parliament of Great Britain.

' Except the present Commissioners for disposing the Equivalent by the present or any other Commission.

' That every Person who shall refuse to take the Oath of Abjuration, or being a Quaker, shall refuse to declare the others

St. 6 Ann c. 23.

Candidates or the others

G. Britain. the Effect thereof upon his solemn Affirmation, as directed by an Act of Parliament made 7 *W. 3. to be administered by the Sheriff, President of the Meeting, or chief Officer taking the Poll at any Election of Members to serve in the House of Commons for any Place in Great Britain, or Commissioners for choosing Burgesses for any Place in Scotland, at the Request of any Candidate or other Person present, shall not be capable of giving any Vote for any Election of any such Member to serve in the House of Commons for any Place in Great Britain, or Commissioner to choose a Burgess for any Place in Scotland.*

may require the Sheriff, President of the Meeting, &c. on the Poll at any Election of Members in Great Britain, or of Commissioners for choosing Burgesses in Scotland to administer the Abjuration upon Oath (or Affirmation to *Quakers*) and Electors refusing it, incapable to vote.

St. 6 Ann. c. 35. That no Register for the Registering of *Memorials of Deeds, Conveyances, Wills, &c. within the East-Riding of the County of York, or the Town and County of Kingston upon Hull, or his Deputy for the Time being, be capable of being chosen a Member to serve in Parliament. Vide ante 212.*

St. 9 Ann. That no Person shall be capable to sit or vote as a Member of the House of Commons, for any County, City, &c. within that Part of *Great Britain* called

ed *England, &c.* who shall not have an *G. Britain.* Estate Freehold or Copyhold for his *House of Commons* own Life, or for some greater Estate, who have either in Law or Equity to his own *not an Estate, Freehold or Copyhold* Use, in Lands, Tenements or Hereditaments, above what will satisfy and clear all Incumbrances within that Part of *Great Britain* called *England, &c.* of the annual Value of six hundred Pounds above Reprizes, for every Knight of a Shire; and of three hundred Pounds above Reprizes for every Citizen, Burgess, &c. And if any Persons elected or returned to serve in any Parliament, as a Knight of a Shire, or as a Citizen, Burgess, &c. shall not, at the Time of such Election and Return, be seized of, or intitled to such an Estate before required, such Election and Return shall be void.

Nothing in this Act contained shall extend to make the eldest Son or Heir Apparent of any Peer or Lord of Parliament, or of any Person qualified by this Act to serve as Knight of a Shire, and fitting and voting as a Member of the House of Commons.

Nor extend to either of the Universities in that Part of *Great Britain* called *England*, but that they may elect and return Members to represent them

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G. Britain. them in Parliament, as heretofore they have done.

No Person qualified by Virtue of a Mortgage, unless in Possession of the mortgaged Premises for seven Years before his Election. No Person shall be qualified to sit in the House of Commons, by virtue of any Mortgage, whereof the Equity of Redemption is in any other Person, unless the Mortgagee shall have been in Possession of the mortgaged Premises for seven Years before the Time of his Election.

Candidates to be sworn to their Estates, if required by any other Candidate or two Electors. Every Person (except as aforesaid) who shall appear as a Candidate, or shall by himself, or any others, be proposed to be elected, shall, upon Request (at the Time of such Election, or before the Day to be prefixed in the Writ of Summons for the Meeting of the Parliament) by any other Person who shall stand Candidate at such Election, or by any two or more Persons having Right to vote at such Election, take a Corporal Oath in the Form (in this Act contained, which see ante.

Before the Sheriff or other Officer by whom the Poll is to be taken or Return made, or 2 or more The respective Oaths aforesaid shall be administered by the Sheriff or Under-Sheriff, for any County, or by the Mayor, Bailiff or other Officer or Officers for any City, Burrough, &c. to whom it shall appertain to take the Poll, or make the Return at such Election, or by

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by any two or more Justices of the Peace within England, &c. And if any of the said Candidates, &c. shall wilfully refuse to take the Oath, the Election and Return of such Candidate or Person shall be void.

Justices of the Peace. The Election and Return of Candidates refusing to take the Oath, void.

That from and after the Determination of this present Parliament, no Conveyance or Right whereupon Infeoffment is not taken, and Seisin registered one Year before the Teste of the Writs for calling a new Parliament, shall, upon Objection made in this Behalf, intitle the Person so infeoff, to be elected at that Election in any Shire or or Stewartry in Scotland; and in case any Election happen during the Continuance of a Parliament, no Conveyance or Right whatsoever, whereupon Infeoffment is not taken One Year before the Date of the Warrant for making out a new Writ for such Election, shall, upon Objection made in that Behalf, intitle the Person so Infeoff, to be elected at that Election; and that it shall be lawful for any of the Electors present, suspecting any Person or Persons to have his or their Estates in Trust, and for Behoof of another, to require the Praeses of the Meeting to tender the Oath

2 St. 12 Ann. No Conveyance or Right whereon Infeoffment is not taken, and Seisin registred a Year before the Teste of the Writs, shall intitle the Person to be elected in any Shire or Stewartry in Scotland. The like as to Infeoffments not taken a Year before the Date of the Warrant for a new Writ

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G. Britain. Oath (in this Act contained, intituled, *The Form of the Freeholders, &c. Oath to be taken (upon Objection made) by Stat. 12. Anna, and is the same mutatis mutandis*) to any Elector, and the said *Præses* is required to administer the same.

Any Elector present, suspecting Persons to have Estates in Trust, may require the *Præses* of the Meeting to swear such to their Estates.

On Refusal to swear and subscribe the Oath incapable to be elected. In case such *Electors (Electee 2.)* refuse to Swear, and also to subscribe the said Oath, such Person or Persons shall not be capable of being Elected at such Election.

Stat. 1 G. 1. c. 13. That after the 29th of *September*, 1715, no Person that now is, or hereafter shall be a Member of the House of Commons, shall Vote in the House of Commons, or sit there, during any

After 29 Sept. 1715 No Member to vote before taking the Oaths. Debate in the said House of Commons, after the Speaker is chosen, until such Peer or Member shall, from Time to Time respectively, take the Abjuration Oath (*which Oath see*) instead of the Oath of Abjuration which before by Law ought to have been taken, in such Manner, and together with such other Oaths, and Declaration against Transubstantiation, as the said former Oath of Abjuration ought to have been taken.

And

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And further, That if any Person that *G. Britain.* now is, or hereafter shall be a Member *Penalty* of the House of Commons, in this or any succeeding Parliament, and after *Vid. ante.* the said 29th of *September*, presume to vote, not having taken the said Oath, and subscribed the same as aforesaid, every such Member so offending shall be disabled to sue or use any Action, Bill, Plaint or Information in any Court of Law, or to prosecute any Suit in any Court of Equity, or to be Guardian of any Child, or Executor or Administrator of any Person, or be capable of any Legacy or Deed of Gift, or to be in any Office within this Realm of *Great Britain*, or to vote at any Election for Members to serve in Parliament, and shall forfeit the Sum of five hundred Pounds, to be recovered by him or them that shall sue for the same, to be prosecuted by Action of Debt, Suit, Bill, Plaint or Information, in any of His Majesty's Courts at *Westminster*, wherein no *Essoign*, Protection or Wager of Law shall lie, or any more than one *Impar lance*, and by Way of *sum- Note.* *mar Complaint* before the Court of *Ju- sticiary in Scotland.*

Enacted, That no Person having any Pension from the Crown for any Term or Number of Years, either in his own Name, *St. 1 G. 1. c. 56. Persons having Pensions*

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G. Britain. Name, or in the Name or Names of any other Person or Persons in Trust for him, or for his Benefit, shall be capable of being elected, or chosen a Member of, or for sitting or voting as a Member of this present or any future House of Commons which shall be hereafter summoned.

Penalty 20 l. per Day. Enacted, That if any Person who shall have such Pension as aforesaid, at the Time of his being so elected, or at any Time after, during such Time as he shall continue or be a Member of the House of Commons, shall presume to sit or vote in that House, then and in such Case, he shall forfeit twenty Pounds for every Day in which he shall sit or vote in the said House, to such as shall Sue for the same in any Court in Westminster-Hall; with full Costs, by Action of Debt, Bill, Plaint, or Information, in which no Essoign, Privilege, Protection, or Wager of Law, shall be allowed, and only one Imparlance.

Stat. 3 G. 1. c. 18. Enacted, That no Member of the Bank of England shall be disabled from being a Member of Parliament. See Stat. 5. 6. W. M. c. 20. ad idem.

Stat. 3 G. 1. c. 9. Enacted, That no Member of the South-Sea Company shall be disabled from being a Member of Parliament. Enacted,

from the Crown incapacitated.

Penalty 20 l. per Day.

Stat. 3 G. 1. c. 18. No Member of the Bank disabled.

Stat. 3 G. 1. c. 9. Nor of the South-Sea Company.

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Enacted, That no Governor, Director, or, or other Officer of the Corporations for Assurance of Ships, shall be disabled from being a Member of Parliament.

G. Britain. St. 6 G. 1. c. 18. Nor Governor, &c. of Corporations for Assurance of Ships.

Enacted, That the late Governor, Deputy-Governor, Directors, Cashier, and Accomptant of the South-Sea Company, and John Aislaibe, Esq; be disabled for ever to sit or vote in either House of Parliament.

St. 7 G. 1. c. 28. The late Governor and Director of the South-Sea Company disabled.

I. A. B. do swear, That I truly, and bona fide, have such an Estate in Law or Equity, to and for my own Use and Benefit, of or in Lands, Tenements, or Hereditaments (over and above what will satisfy and clear all Incumbrances that may affect the same) of the annual Value of Six hundred Pounds, above Reprizes, as doth qualify me to be elected and returned to serve as a Member for the County of according to the Tenor and true Meaning of the Act of Parliament in that Behalf; and that my said Lands, Tenements, or Hereditaments, are lying or being within the Parish, Township, or Precinct of Or, in the several Parishes, Townships, or Precincts of in the County of Or, in the several Counties of (as the Case may be)

The form of the Candidate's Oath to be taken (if required) by Stat. 9. Annæ.

The like Oath (Mutatis Mutandis) as to the Value of 300 l. per Annum to be taken by Candidates for a City, Borough, &c.

Q

CHAP.

CHAP. XII.

Of Returns of Sheriffs, &c. And Amendments of Returns.

Concerning the Punishment of Sheriffs for their Negligence in returning of Writs, or for leaving out of their Returns any City or Borough, which ought to send Citizens and Burgeses. See the Stat. hereafter. p. 229.

Every Sheriff, who doth not make true Return of Elections of Knights, Citizens and Burgeses, to come to Parliament, shall forfeit an hundred Pounds to the King, and an hundred Pounds to the Party injured, and be imprison'd for a Year without Bail or Mainprize. And every Mayor or Magistrate of a Town so offending, shall pay forty Pounds to the King, and forty Pounds to the Party. See the Stat. hereafter p. 236.

Note, This Action to be (by the Party) within three Months after the Parliament commenced, or (after) by any other Man who will.

If the Party do not, and prosecute his Suit with Effect and without Fraud; any other Man who will, may have the said Suit for the said hundred Pounds, as the Knight

5 R. 2. St. 2. c. 4.

St. 8 H. 6. c. 7. 23 H. 6. c. 15.

Vide Crompton's Juris. 3. Hakewel 48.

Hakewel 49. Vide Crompton's Juris. 3.

Knight had, and Cofts of Suit also shall be awarded to the said Knight, or any other who will Sue in his behalf.

The Sheriff shall make a good Return of his Writ, and of every Return of the Mayor and Bailiff, or Bailiffs, where no Mayor is, to him made.

The Burgeses of Leskard in Cornwall being Elected, the Town refused to deliver up their Indenture to the Sheriff; but the Party Elected made his Indenture, and deliver'd it to the Clerk of the Crown, who filed it with the rest of the Indentures returned by the Sheriff having endorsed it upon his Writ; but this Indenture was never executed by the Sheriff, nor returned; and yet this Return was held by the Committees to be good.

Jan. 1641. Ordered, That the High Sheriff of the County of Suffex, who has return'd two Indentures for the Town of Arundel, shall be summon'd to appear here at the Bar, to amend his Return.

35 Eliz. 1592. It was said by the Speaker, No Return can be amended in this House: For the Writ and the Return are in Chancery, and must be amended there. Sed aliter nunc.

Every Sheriff, or other Officer, returning any Knight, Citizen, or Burges chosen in any other Manner (than is prescribed

Q 2

Hakewel 51. Cornwall Towns. Col. 63.

Nalfon 870.

Sir Simon d'Exes, Jour. 490. Col. 2.

St. 33 H. 8. c. 1. in Ireland.

scribed in the Statute) to forfeit a 100*l.*
Vide Post.

4 Inst. 49.
It cites in
the Mar-
gin Rot.
Parl. 5 H.
4. n. 38.

If one be duly Elected Knight, Citi-
zen, or Burgeis, and the Sheriff Return
another; the Return must be reformed
and amended by the Sheriff, and he that
is duly Elected, must be Inserted; for
the Election in these Cases is the Founda-
tion, and not the Return.

Scobel 115.

18 Jac. 1. The Sheriff of *Leicester-*
shire having Returned Sir *Thomas Beau-*
mont; upon Report from the Committee
for Elections that Sir *George Hastings* was
duly chosen; the Sheriff was ordered to
Return Sir *George Hastings* to the Clerk
of the Crown, and he to accept it, and
file it.

Ibid.

21 Jac. 1. Upon Report from the
Committee of Privileges, That in the
Election of Mr. *John Maynard* for *Chip-*
pingham, *John Maynard* was Chosen,
but by a Mistake *Charles* was afterward
written in stead of *John*: It was Resolved,
The Return shou'd be amended, without a
new Writ, and that the Bailiff shou'd
do it, and not the Clerk of the Crown,
and that it shou'd be sent down to the
Bailiff in the Country, and he to Re-
turn John Maynard, Esq; the first Burgesis.

Ibid.

1. Febr. 1640. It being Resolved, *That*
the Election of Mr. Erle for one of the
Burgeses of Wareham, is a good Electi-
on.

on: Ordered, *That the Officer when the*
Return was made, or his Deputy, or the
Electors, shou'd amend the Return. But
the next Day it was Ordered, *That Ed-*
ward Harbin, the late Mayor of Ware-
ham's Deputy, shou'd come to the Bar of
the House, and amend the Return.

Ibid. 116.

20 Febr. 1640. The Bailiff of *Mid-*
hurst in *Sussex* came to the Bar (being
sent for by Order of the House) and a-
mended one of the Indentures of Return
of Burgeses for that Town, and the o-
ther was taken off the File.

If a Sheriff shall Return One for Knt. *Simon*
of the Shire, who was unduly, or not *d' Ewes*
at all Elected; yet he that is so Return'd, *Four. 283.*
remains a Member of the House till his *Col. 2.*
Election be declared Void.

Of double Returns, and new Writs Ex *England.*
Memorials of Parliament.

' That if any Sheriff be henceforth *St. 5 R. 2.*
' negligent in making his Returns of *c. 4.*
' Writs of Parliament, or that he leave *Sheriffs*
' out of the said Returns any Cities or *neglect-*
' Boroughs which be bound, and of old *ing to*
' Time were wont to come to the Parlia- *make Re-*
' ment, he shall be amerced, or other- *turns, or*
' wise punished in manner as was accus- *leaving*
' tomed in the said Case in times past. *out the*
of Cities
or Bo-
roughs,
Times.

shall be amerced, or otherwise punished, as in old Times.

Q 3

That

England.
St. 7. H.
4. c. 15.
Proclamation to be made at the next County-Court after the Delivery of the Writ to the Sheriff for the Election of knights of the Shires.

‘ That from henceforth (in order to (the Elections of Counties) at the next County after the Delivery of the Writ, Proclamation shall be made in full County of the Day and Place of the Parliament, and that all they that be there present, as well Suitors duly summoned for the same Cause, as other shall attend to the Election of the Knights for the Parliament; and then in the full County they shall proceed to the Election freely and indifferently, notwithstanding any Request or Commandment to the contrary.

Sheriff's Return after the Election shall be by Indenture (containing the Persons chosen) sealed by the Electors, and annexed to the Writ.

‘ And after they be chosen, the Names of the Persons so chosen (be they present or absent) shall be written in an Indenture under the Seals of all them that did choose them, and tacked to the same Writ, which Indenture so sealed and tacked, shall be holden for the Sheriff's Return of the said Writ touching Knights of the Shires.

‘ In Writs of Parliament hereafter to be made, this Clause shall be put; Et Electionem tuam in pleno Comitatu factam sub sigillo tuo, & sigillis eorum qui electioni illi interfuerant, nobis

‘ nobis in Cancellaria nra' ad diem England. ‘ § locum in brevi contentu' certifies ‘ indilate.

‘ Forasmuch as in the Statute (7 H. St. 11. H. 4. ch. 15.) no Penalty was ordained or limited in special upon the Sheriffs of the County, if they make any Returns contrary of the same Statute, It is ordained that the Justices assigned to take Affizes, shall have Power to inquire at their Affizes of such Returns made; and if it be found by Inquest and due Examination before the same Justices that any such Sheriff hath made, any Return contrary to the Tenor of the said Statute, the same Sheriff shall incur the Penalty of 100 l. to be paid to our Lord the King.

Of Returns made by Sheriffs, contrary to the Statute 7 H. 4. c. 15. Justices of Assize empowered to inquire, and on Inquest and Proof made thereof, such Sheriffs to pay 100 l. to the King.

‘ That all Sheriffs shall have their Answer and Traverse to Inquests and Offices, before any Justices, of Affizes hereafter to be taken, (upon the Stat. 7 Hen. IV. chapter 15. and 11 Hen. IV. ch. 1.) and the said Sheriffs shall not be endamaged unto our Lord the King, or his Successors, for any such Inquest taken, until they be duly convicted according to the Form of Law.

Q 4

‘ That

Returns of Sheriffs, &c.

England.
St. 8 H. 6.
c. 7.
See *Crompt.*
Juris. 3.
Hakewell
48.

That such are to be chosen Knights of the Shire as have the greatest Number of them that may expend 40 s. by Year and above, and shall be returned by the Sheriffs of every County, Knights for Parliament, by Indentures sealed betwixt the said Sheriffs and the said Choosers.

And every Sheriff of the Realm of England shall have Power to examine upon the Evangelists every such Chooser, how much he may expend by the Year.

And if any Sheriff return Knights to Parliament contrary to the said Ordinance, the Justices of Assizes, in their Sessions shall have Power thereof to inquire.

And if by Inquest the same be found before the Justices, and the Sheriff thereof be duly attainted, he shall incur the Penalty of 100 l. to be paid to our Lord the King, and also that he have Imprisonment by a Year, without Mainprize or Bail.

Quere.

And that in every Writ hereafter to go forth, mention shall be made of this Ordinance.

St. 23 H.
6. c. 15.
Sheriff,
after the

That every Sheriff, after the Delivery of any Writ (of Election) shall make

Returns of Sheriffs, &c.

make and deliver without Fraud, a Precept under his Seal to every Mayor and Bailiff (or to Bailiffs or Bailiff where no Mayor is) of the Cities and Boroughs within his County, reciting the said Writ, and commanding them if it be by a City, to choose by Citizens of the same City, Citizens, and if it be a Borough, a Burgess, by the Burgesses of the same, to come to the Parliament.
England.
Receipt of the Writ, to deliver a Precept under his Seal to every Mayor, Bailiff, &c. of the Cities and Boroughs within his County, reciting his Writ, and commanding them to choose, &c.

And that the same Mayor and Bailiffs, (or Bailiffs or Bailiff, where no Mayor is) shall return the Precept to the same Sheriff and them, to be made of the said Elections, and of the Names of the said Citizens and Burgesses by them so chosen; and thereupon every Sheriff shall make a rightful Return of every such Writ, and of every Return by the Mayors and Bailiffs, (or Bailiffs or Bailiff, where no Mayor is) to him made.
Mayors, Bailiffs, &c. to return the Precept to the Sheriff, by Indentures of the Election, and the names of the elected. Sheriffs to return the Writ, and

every Return made by such Mayors, Bailiffs, &c.

And that every Sheriff, at every time that he doth contrary to this Statute, or any other Statutes for the Election of Knights, Citizens and Burgesses, before this Time made, shall incur the Pain
Sheriffs acting contrary to this Statute, or any other Statute for Elections,

England. Pain contained in the Statute, made
 to pay the 8th Year (of the then King's Reign)
 100 l. to the King, (and suffer a Year's Imprisonment, without Bail,) every Person hereafter chosen Knight, Citizen or Burges in his County, and not duly returned, or to any other Person which in Default of such Knight, Citizen or Burges will sue, an hundred Pound, whereof every Knight, Citizen and Burges so grieved, severally, or any other Person which in Default will sue, shall have his Action of Debt against the said Sheriff or his Executors or Administrators, to demand and have the said 100 l. with his Costs spent, and that in such Action the Defendant shall not wage his Law or have any Essoign.

(per Stat. 8 Hen. 6 ch. 7.) and every Person chosen a Knight, Citizen, or Burges, and not duly returned, or to any other which in their Default, will sue, 100 l. to be recovered by Action of Debt against the Sheriff, his Executors or Administrators, with Costs wherein no Wager of Law, &c.

Mayors, Bailiffs &c. returning other than those chosen by Citizens and Burges, shall forfeit 40 l. to the King, and to every Person chosen a

And if any Mayor and Bailiffs (or Bailiffs or Bailiff, where no Mayor is) shall return other than those which be chosen by the Citizens and Burges of the said Cities or Boroughs, he shall incur and forfeit to the King 40 l. and moreover shall forfeit and pay to every Person so chosen Citizen or Burges, and not by the same Mayor and Bailiffs, or Bailiff (or Bailiffs where no Mayor

Mayor is) returned, or to any other Person, which in Default of such Citizen or Burges so chosen will sue 40 l. whereof every of the Citizens and Burges so grieved severally, or any other Person which in their Default will sue, shall have his Action of Debt against every of the said Mayor and Bailiffs (or Bailiffs or Bailiff where no Mayor is) against their Executors or Administrators, to demand and have of every of them 40 l. with his Costs expended.

England. Citizen or Burges, and not by them returned, or to any other that in Default of such Citizen or Burges will sue 40 l. (more) to be recovered by like Action of Debt, with Costs.

And that in such Action of Debt, no Defendant shall wage his Law nor have any Essoign.

And every Sheriff that maketh no due Election of such Knights in convenient Time (that is to say) every Sheriff in his full County, betwixt the Hour of Eight, and the Hour of Eleven before Noon, without Collusion; and that maketh not good and true Return of such Elections of Knights in Manner aforesaid, shall forfeit to the King an hundred Pound, and also incur the Pain of 100 l. to be paid to him that will sue him, his Executors or Administrators, by Way of Action of Debt, with his Costs expended, without Morning,

Sheriff not making Election of Knights of the Shire in a full County Court between 8 and 11 in the Morning,

England. without waging of Law or having Es-
 and a foign as aforesaid.
 good Re-
 turn accordingly, to forfeit 100 l. to the King, and 100 l. more to
 him that will sue, to be recovered by like Action of Debt with
 Costs.

Such Actions to be brought by such Knight, Citizen, and Burgeses within 3 Months after the Commencement of such Parliament, and to be proceeded in without Fraud.
 ' Provided always, That every Knight, Citizen and Burgeses chosen, and not returned as aforesaid, shall begin his said Action within three Months after the same Parliament commenced, to proceed in the same Suit effectually without Fraud. And if he doth not so, another that will sue shall have the said Action of Debt (as is before said) and shall recover the same with his Costs, and that no Defendant in such Action shall wage his Law nor be esfoign'd. And that such Process shall be in the Actions aforesaid, as in a Writ of Trespass done against the Peace at the Common Law.

And after that time by any other. See *Crompt. Jurif. 3. Hakewel 43.*

Like Process to be in such Actions as in Trespass at Common Law.
 ' That the Knights of the Shires shall be notable Knights of the same Counties for which they shall be chosen, or otherwise such notable Esquires or Gentlemen (*born*) of the same Counties, as shall be able to be Knight; and no Man to be such Knight which standeth in the Degree of a Yeoman and under.

That

Shires be Knights of the Counties they shall be elected for, or Esquires or Gentlemen, able to be Knights, and not Yeomen or under.

' That Elections shall be made for England.
 the Sheriffs and Boroughs in Monmouthshire (heretofore Part of Wales) and in Wales, in like Manner, Form and Order as Knights and Burgeses be elected in other Shires of this Realm.

England.
 St. 27 H. 8. c. 26.
 Duties of Sheriffs and other returning Officers in

Wales, like the same in England.

' That the County Palatine of Chester shall have two Knights for the said County, and two Citizens to be Burgeses for the City of Chester, to be elected and chosen by Process to be awarded by the Chancellor of England unto the Chamberlain of Chester, his Lieutenant or Deputy for the Time being, and so like Process to be made by the Chamberlain, his Lieutenant or Deputy, to the Sheriff of the said County of Chester, and the same Election to be made in like Manner and Form to all Intents, Constructions and Purposes, as is used within the County Palatine of Lancaster or any other County and City within England, which said Knights and Burgeses and every of them shall be returned by the said Sheriff into the Chancery of England in due Form, and upon like Pains

St. 34 and 35 H. 8. c. 13.
 Writ of Election under the Great Seal for Elections in Chester, to be directed to the Chamberlain, &c. of Chester, and his Precept thereon to the Sheriff of the County.

as

England. ' as is ordained that the Sheriff or Sheriffs of any other County should make their Return.

Sheriff of Chester to make like Returns, and on like Pains as other Sheriffs.

Stat. 35 H. 8. c. 11. ' That the Burgeses of all Cities, Boroughs, and Towns (in the twelve Shires within Wales and County of Monmouth not finding Burgeses for the Parliament themselves and contributory to Wages of Burgeses of such Shire Towns) shall be lawfully admonished by Proclamation or otherwise by the Mayors, Bailiffs, and other Head Officers of the said Towns, or by one of them, to come and give their Elections for the Electing the said Burgeses at such Time and Place lawful and reasonable, as shall be assigned for the same by the said Mayors, Bailiffs, and other Head Officers of the said Shire Towns, or by one of them. those Towns themselves, to come to Elections.

St. 25 C. 2. c. 9. ' That the County Palatine of Durham may have two Knights for the same County, and the City of Durham two Citizens to be Burgeses for the same City, to be elected by Writ to be awarded by the Lord Chancellor or Lord Keeper to the Lord Bishop of Durham, or his Temporal Chancellor of

' of the said County, and a Precept to be thereupon grounded and made by the said Lord Bishop, or his Temporal Chancellor to the Sheriff of the said County; and the same Election to be made in Manner following, viz. the Elections of the Knights to be made by the greater Number of the Freeholders of the said County Palatine which shall be present at such Elections, as is used in other Counties of this Kingdom, and that the Election of the said Burgeses for the City of Durham, to be made by the major part of the Mayor, Aldermen, and Freemen of the said City, which shall be present at such Elections, which said Knights and Burgeses, so elected, shall be returned by the said Sheriff into the Chancery in due Form, and upon the like Pains as be ordained for the Sheriff or Sheriffs of any other County in like Cases.

England.

shop of Durham, &c.

and his Precept

thereon to the Sheriff

of that County.

Sheriff of Durham to

make like Returns,

and under like Pains,

as other Sheriffs.

St. 7 and 8

W. 3. c. 7.

continued by St. 12

and 13 W. 3. c. 5.

False Returns illegal and

prohibited

and all made contrary to

the last De-

' That all false Returns wilfully made of any Knight of the Shire, Citizen, Burgess, Baron of the Cinque-Ports, or other Members are against Law, and are hereby prohibited, and in case that any Person or Persons shall return any Member for any County, City, Borough, Cinque-Port, or Place, contrary to the last Determination in the House of Commons of the Right of Election

England. Election in such County, City, Bo-
 rough, Cinque-Port, or Place, such
 Return is hereby adjudged a false Re-
 turn.
 terminati-
 on of the
 Right of
 Election
 in the House of Commons adjudged a false Return.

Officers, ' The Party so grieved (*to wit*) He
 &c. mak- ' that shall be duly elected for any Coun-
 ing such ' ty, City, Borough, Cinque-Port, or
 false Re- ' Place, by such false Return may sue
 turn, li- ' the Officers and Persons making or pro-
 able to an ' curing the same, and every or any of
 Action at ' them at his Election, in any Court of
 the Suit of ' Record at *Westminster*, and shall reco-
 any duly ' ver double Damages with his full Costs.
 elected in ' Courts at
 any of the
 Courts at
*Westmin-
 ster* with double Damages and full Costs.

Officers, ' Any Officer that shall wilfully, fal-
 &c. falsly, ' sly, and maliciously return more Per-
 &c. mak- ' sons than are required to be chosen by
 ing double ' the Writ or Precept on which any
 Returns li- ' Choice is made, the like Remedy may
 able to the ' be had against him or them, and the
 like Acti- ' Party or Parties that willingly procure
 on. ' the same, by the Party grieved.

Contracts, ' All Contracts, Promises, Bonds, and
 Bonds, &c. ' Securities whatsoever hereafter made or
 given to ' given, to procure any Return of any
 procure ' Member, or any thing relating thereto,
 the Return ' be adjudged void, and that whoever
 of any ' makes or gives such Contract, Security,
 Member ' Promise, or Bond, or any Gift or Re-
 adjudged ' ward
 void, and ' such as

' ward to procure such false or double
 Return, shall forfeit 300*l.* one third
 Part to his Majesty, another third Part
 to the Poor of the County, City, Bo-
 rough, or Place concern'd, and one
 third Part to the Informer, with his
 Costs to be recovered in any Court of
 Record at *Westminster* by Action of
 Debt, Bill, Complaint, or Information,
 wherein no Essoign, Protection, or Wa-
 ger of Law allowed, nor more than
 one Impar lance.

&c. and a third to the Informer, with his Costs, to be recovered
 by Action of Debt, &c. wherein no Essoign, &c.

' *The Clerk of the Crown to keep a Book
 of Entry of every single and double Re-
 turn, and of every Alteration and A-
 mendment in every such Return, where-
 to all Persons to have Access, and
 take Copies of so much as desired at a
 reasonable Fee. And if the Clerk of
 the Crown makes not such Entry in Six
 Days after any Return, or alters any
 Return without Order of the House of
 Commons, or gives a Certificate of any
 Person not returned, or wilfully neg-
 lects or omits his Duty herein, to for-
 feit 500*l.* for each Offence to the Par-
 ty grieved, to be recovered as afore-*

R

' said,

England. *said, and lose his Office, and be for ever incapable of holding it.*

Information or Action brought upon this Statute, shall be brought within the Space of two Years after the Cause of Action shall arise.
Every Information or Action brought upon this Statute, shall be brought within the Space of two Years after the Cause of Action shall arise.

Stat. 7 & 8 W. 3. c. 25. Writs of Summons to Parliament to have forty Days between the Teste and Returns, and be issued with all Expedition, and delivered to the proper Officer to whom its Execution belongs, who shall indorse thereon the Day he received it, and within three Days issue out
That when any New Parliament shall at any Time hereafter be Summoned or called, there shall be forty Days between Teste and Returns of the Writs of Summons, and that the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the Time being, shall issue out Writs for Election of Members to serve in the same Parliament with as much Expedition as the same may be done. And that as well upon the calling or summoning any New Parliament, as also in case of any Vacancy in Parliament, the several Writs shall be deliver'd to the proper Officer to whom the Execution thereof doth belong or appertain, and to no other Person whatsoever. And that every such Officer, upon the Receipt of the same Writ, shall upon the back thereof indorse the Day he receiv'd the same, and shall forthwith, send his Precept or Precepts to each Borough, Town

England. *Town Corporate, * Port, or Place within his Jurisdiction, where any Member or Members are to be elected to serve in such New Parliament, or to supply any Vacancy in Parliament, and within three Days after the Receipt of the said Writ, shall by himself or proper Agent deliver or cause to be delivered such Precept or Precepts to the proper Officer of every such Borough, Town Corporate, * Port, or Place within his Jurisdiction, to whom the Execution of such Precept doth belong or appertain, and to no other Person. And every such Officer, upon the back of the same Precept, shall indorse the Day of his Receipt thereof in the Presence of the Party from whom he received such Precept, and shall forthwith cause Notice to be given of the Time and Place of Election, and shall proceed to Election thereupon within the Space of eight Days next after his Receipt of the same Precept, and give four Days Notice at least of the Day appointed for the Election.*

Neither the Sheriff nor his under Sheriff in any County or City, nor Mayor, Bailiff, Constable, Portreeve,

R 2

or Mayor, &c. of any Borough, Town, Port or Place to

* Proper Officer of the Cinque-Ports allowed six Days from the Receipt of the Writ for the Delivery by a subsequent Statute, 10 & 11 W. 3. c. 7.

England. whom the Execution of any Writ or Precept belongs, to pay or receive any Fee, &c. for making out, Receipt, Delivery, Return, or Execution of the same.

‘ or other Officer or Officers of any Borough, Town Corporate, Port or Place, to whom the Execution of any Writ or Precept for electing Members, doth belong or appertain, shall give, pay, receive or take any Fee, Reward, or Gratitude for making out, Receipt, Delivery, Return, or Execution of any such Writ or Precept.

Sheriff, for Election of Knights of the Shire, to hold his County Court where the same has been most usually kept for forty Years last, and proceed to the Election the next Court unless it happen within six Days after the Receipt of the Writ, or the same Day,

‘ Upon every Election to be made of any Knight or Knights of the Shire to serve in Parliament, the Sheriff of the County where such Election shall be made, shall hold his County Court for the same Election at the most publick and usual Place of Election within the said County, and where the same has most usually been for 40 Years last past, and shall there proceed to Election at the next County Court, unless the same fall out to be held within six Days after the Receipt of the Writ, or upon the same Day, and then shall adjourn the same Court to some convenient Day, given ten Days Notice of the Time and Place of Election; and in case the said Election be not determined upon the View with the Consent of the Freeholders there present, but that a Poll shall be required; the said Sheriff, or in

his Absence, the Under-Sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said Poll in some open or publick place or places, by the same Sheriff or his Under-Sheriff in his Absence, or others appointed for the taking thereof as aforesaid: And for the more due and orderly proceeding in the said Poll, the said Sheriff, or in his Absence his Under-Sheriff, or such as he shall depute, shall appoint such Number of Clerks as to him shall seem convenient, for the taking thereof, which Clerks shall all take the said Poll in the presence of the said Sheriff, or his Under-Sheriff, or such as he shall depute; and before they begin to take the said Poll, every Clerk so appointed shall by the said Sheriff, or his Under-Sheriff aforesaid, be Sworn truly and indifferently to take the same Poll, and to set down the Names of each Free-holder, and the Place of his Free-hold, and for whom he shall Poll, and to Poll no Free-holder who is not Sworn, if so required by the Candidates, or any of them (which Oath of the said Clerks, the said Sheriff or his Under-Sheriff, or such as he shall depute, are hereby impowered to administer) and the Sheriff or his Under-Sheriff shall appoint for each Candidate,

England. and then to adjourn giving ten Days notice of the Time and Place. If a Poll required, the Sheriff, &c. forthwith to proceed thereon publickly and appoint Clerks to take the Poll in his &c. Presence, who shall be sworn to take it indifferently, and set down each Free-holder's Name, the Place of his Free-hold, and for whom he polls, and to poll no Free-holder not sworn, if requir'd by any Candidate.

R 3 ‘ such

England. Sheriffs, &c. to appoint for each Candidate one Person nominated by such Candidate to be Inspectors of every Clerk of the Poll. And to swear each Free-holder before his Poll to be taken, if by any Candidate required, to his Freehold.

such one Person as shall be nominated to him by each Candidate to be Inspectors of every Clerk, who shall be appointed for taking the Poll, and every Free-holder before he is admitted to Poll at the same Election, shall, if required by the Candidates, or any of them, first take the Oath (*in this Act contained*) Which Oath the Sheriff by himself, or his Under-Sheriff, or such sworn Clerks by him appointed for taking the said Poll as aforesaid, are hereby authorized to administer.

Sheriff, &c. at the Place of Election to proceed to the Poll, and not adjourn the County Court to any other Place, without the Candidates Consent, nor without such Consent delay or discontinue the Poll.

The said Sheriff, or in his Absence his Under-Sheriff, or such as he shall depute, shall at the Place of Election proceed to the Polling all the Free-holders then and there present, and shall not adjourn the County Court then and there held to any other Town and Place within the same County, without the Consent of the Candidates, nor shall by any unnecessary Adjournment in the same Place of Election, protract or delay the Election; but shall duly and orderly proceed to take the said Poll from Day to Day, and Time to Time, without any further or other Adjournment, without the Consent of the Candidates,

England. Every Sheriff, Under-Sheriff, Mayor, Bailiff, and other Officer to whom the Execution of any Writ or Precept shall belong, for the electing Members to serve in Parliament, shall forthwith deliver to such Person or Persons as shall desire the same, a Copy of the Poll taken at such Election, paying only a reasonable Charge for writing the same; and every Sheriff, Under-Sheriff, Mayor, or, Bailiff, and other Officer to whom the Execution of any Writ or Precept for electing of Members doth belong, for every wilful Offence contrary to this Act, shall forfeit to every Party so aggrieved the Sum of five hundred Pounds, to be recovered by him or them, his or their Executors or Administrators, together with full Costs, for which they may sue by Action of Debt, Bill, Complaint, or Information, in any Court at Westminster, wherein no Essoign, Profection, Wager of Law, Privilege, or Impar lance shall be allowed.

Every Return of any Person under the Age of twenty one Years, is hereby declared to be null and void.

England.
 County Courts for *Yorkshire* and others used to be held on a *Monday*, to be called and held on a *Wednesday*.

‘ All County Courts for the County of *York* or any other County Courts, which heretofore used to be held on a *Monday*, shall be called and begun up on a *Wednesday*, and not otherwise, any Custom or Usage to the contrary.

Sheriff, &c. of *Hampshire*, at the Request of any Candidate, to adjourn after the End of the Poll at *Winchester* to *Newgate* in the *Ile of Wight*.

‘ The Sheriff of the County of *Sou-thampton*, or his Deputy, at the Request of one or more of the Candidates for Election of a Knight or Knights of that County, shall adjourn the Poll from *Winchester*, after every Freeholder then and there present is polled, to *Newport* in the *Ile of Wight*, for the Ease of the Inhabitants of the said *Ile*, any thing in this Act to the contrary.

St. 7 & 8. W. 3. c. 27.
 Sheriffs, &c. on the Poll at any Election to administer the Oaths of Allegiance and Supremacy to Electors (and if *Quakers*)

‘ That no Person which shall refuse to take the Oaths (of *Allegiance and Supremacy*) directed by an Act made in the first Year of His present Majesty and the late Queen *Mary*, or being *Quakers*, shall refuse to subscribe the Declaration of Fidelity directed by one other Act of Parliament made in the said first Year of the Reign of His present Majesty and the late Queen (which Oaths and Subscription respectively the Sheriff

‘ Sheriff or chief Officer taking the Poll, at the Request of any one of the Candidates are required to administer) shall not be admitted to give any Vote for the Election of any Knight of the Shire, Citizen, Burgeses or Baron of the Cinque-Ports to serve in Parliament.

England.
 the Declaration of Fidelity) at the Request of any Candidate, and on Refusal not to admit them to vote.

‘ That the Sheriff or other Officer having the Execution and Return of any Writ to Parliament, shall on or before the Day that any future Parliament shall be called to meet, and with all convenient Expedition, not exceeding fourteen Days after any Election made by virtue of any new Writ, either in Person, or by his Deputy, make Returns of the same to the Clerk of the Crown in Chancery, to be read, &c. and pay to the Clerk of the Crown 4 s. for every Knight of the Shire, and 2 s. for every Citizen, Burgeses, &c. which the Sheriff, &c. shall charge to the King, and have allowed upon his Account.

St. 10 & 11 W. 3. c. 7.
 Sheriffs, &c. by themselves or Deputies, on or before the Day any Parliament shall be called to meet, and not exceeding fourteen Days after any Election made, to make his Return to the Clerk of the Crown, &c.

‘ The proper Officer of the Cinque-Ports shall be allowed six Days from the Receipt of such Writ for the Delivery very

(See the Stat. &c. 7 & 8. W. c. 25. p. 107.)

G. Britain. every of the Precept according to the Purport of the Act (7 and 8 W. III. c. 25.) any thing in the said Act, or any other Law, Statute or Usage to the contrary.

Sheriffs, &c. not making Returns accordingly, to forfeit for each Offence

500 l. one Moiety to the King, the other to him that will sue by Action of Debt, &c. Every Sheriff or other Officer aforesaid who shall not make the Returns according to the true Intent and Meaning of this Act, shall forfeit for every such Offence the Sum of 500 l. one Moiety to His Majesty, and the other Moiety to him or them that will sue for the same, to be recovered by Action of Debt, Bill, Plaint, or Information, in any Court at Westminster, wherein no Effoign, Protection, or Wager of Law allowed, nor more than one Imparlance.

St. 6. Annæ c. 6. Writs to issue to the respective Sheriffs or Stewarts, for choosing the 45 Representatives of Scotland to Parliament. Sheriffs, &c. there-

That when any Parliament shall hereafter be summoned or called, the Forty five Representatives of Scotland in the House of Commons in the Parliament of Great Britain, shall be elected and chosen by Authority of the Queen's Writs, under the great Seal of Great Britain, directed to the several Sheriffs and Stewarts of the respective Shires and Stewartries, and the said several Sheriffs and Stewarts shall, on Receipt of such Writs, forthwith give notice of

G. Britain. of the Time of Election for the Knights or Commissioners for their respective Shires or Stewartries: And the Clerks of the said Meetings, immediately after the said Elections are over, shall respectively return the Names of the Persons elected to the Sheriff or Stewart of the Shire or Stewartry, who shall annex it to his Writ, and return it with the same into the Court out of which the Writ is issued.

on, forthwith to give Notice of the Time of Election for the Shires. Clerks of the Meetings forthwith to return the Names of

the elected to the Sheriff, who is to annex and return it with his Writ.

And as to the Manner of Election of the fifteen Representatives of the Royal Boroughs, the Sheriff of the Shire of Edinburgh shall, on Receipt of the Writ directed to him, forthwith direct his Precept to the Lord Provost of Edinburgh, to cause a Burgess to be elected for that City, and their Common Clerk shall certify the Name of the Member elected to the Sheriff of Edinburgh, who shall annex it to his Writ, and return it with the same into the Court, from which the Writ issued.

Sheriff of Edinburgh, on Receipt of his Writ, forthwith to direct his Precept to the Lord Provost, for electing the Burgess for that City. Common Clerk of Edinburgh to certify

the Name of the elected to the Sheriff, who is to annex and return it with the Writ.

And as to the other Royal Burghs Sheriffs, divided into fourteen Classes or Districts, to direct

&c. in like Manner

Returns of Sheriffs, &c.

G. Britain. their Pre-
 cepts to
 the Royal
 Burghs,
 for the e-
 lecting a
 Commis-
 sioner for
 each, and
 the Com-
 missioners
 of each
 District to
 meet at
 the presi-
 ding Bo-
 rough (by
 name) for
 each Di-
 strict on
 the thir-
 tieth Day
 after the
 Teste of
 the Writ,
 unless Sun-
 day, and
 then Mon-
 day, to
 their Bur-
 gers.
 Common
 Clerk of
 such presi-
 ding Bo-
 rough
 forthwith
 to return
 the Name
 of the ele-
 cted to
 the She-
 riff, &c.
 in whose

stricts, the Sheriffs or Stewarts of the
 several Shires and Stewarties shall, on
 the Receipt of their several Writs,
 forthwith direct their several Precepts
 to every Royal Burgh within their res-
 pective Shires or Stewarties, reciting
 therein the Contents of the Writ and
 the Date thereof, and commanding them
 forthwith to elect each of them a Com-
 missioner as they used formerly to elect
 Commissioners to the Parliament of
 Scotland, and to order the said respe-
 ctive Commissioners to meet at the pre-
 siding Borough of their respective Di-
 strict (naming the said presiding Bo-
 rough) upon the thirtieth Day after
 the Day of the Teste of the Writ,
 unless it be upon the Lord's Day, and
 then the next Day after, and then to
 choose their Burgeses for the Parlia-
 ment: And the Common-Clerk of the
 then presiding Borough shall immedi-
 ately after the Election return the
 Name of the Person so elected to the
 Sheriff or Stewart of the Shire or Stew-
 artry wherein such presiding Borough
 is, who shall annex it to his Writ, and
 return it with the same into the Court
 from whence the Writ issued. And in
 case a Vacancy shall happen in Time of
 Parliament, by the Decease or legal In-
 capacity of any Member, a new Mem-
 ber

Returns of Sheriffs, &c.

G. Britain. ber shall be elected in his Room, con-
 formable to the Method herein before
 appointed; and in Case such a Vacancy
 be of a Representative for any one of
 the said fourteen Classes or Districts of
 the said Royal Boroughs, that Borough
 which presided at the Election of the
 deceased or disabled Member, shall be
 the presiding Borough at such new E-
 lection.

In Writs
 to Sheriffs
 the Ele-
 ction of a
 Knight to
 be omit-
 ted, if the
 Shires
 (where a
 Royal
 Burgh is)
 have not
 then a
 Turn to elect.

Vacancy in Parliament Time, by Decease or Incapacity of a
 Member; and if for a Burgh the presiding Burgh at the first to
 preside at the new Election.

Provided always that upon the issu-
 ing of the Writs of Summons for the
 electing of a Parliament, if any Shire
 or Stewartry where a Royal Borough is,
 hath not then a Turn or Right to elect
 a Commissioner or Knight of the Shire
 or Stewartry for that Parliament, that
 then it shall be omitted out of the Writ,
 &c.

That every Person who shall refuse
 to take the Oath (of Abjuration) or
 being a Quaker, shall refuse to declare
 the Effect thereof upon his solemn Af-
 firmation, as directed by an Act made
 7. W. 3. which Oath or Declaration
 the Sheriff, President of the Meeting,
 or Members

G. Britain. or chief Officer taking the Poll at any Election of Members for any Place in *Great Britain*, or Commissioners for choosing Burgeses for any Place in *Scotland*, at the Request of any Candidate or other Person present at such Election, (which they are to administer) shall not be capable of giving any Vote for the Election of any such Member, for any Place in *Great Britain*, or Commissioner to choose a Burgeses for any Place in *Scotland*.

the Abjuration Oath (or Affirmation to *Quakers*) and Electors refusing it disabled to vote.

St. 9 An. ch. 5. Candidate to be sworn to his Estate, if required by any other Candidate, or two Electors.

Enacted, That every Person (except the eldest Son or Heir Apparent of a Peer, or of a Person qualified by this Act to serve as Knight of a Shire, or such as shall be elected for each of the Universities of England) shall upon Request, at the time of the Election, or before the Day to be prefixed in the Writ of Summons for the Meeting of (any Subsequent) Parliament, by any other Person who shall stand Candidate at such Election, or by any two or more Persons having a Right to Vote at such Election, take a Corporal Oath in the Form, (in this Act contained,) *Vide aute.*

The

The respective Oaths aforesaid shall be administered by the Sheriff or Under-Sheriff for any County, or by the Mayor, Bailiff, or other Officer or Officers for any City, Borough, &c. to whom it shall appertain to take the Poll, or make the Return at such Election, or by any two or more Justices of the Peace within *England*, &c. and the said Sheriff, Mayor, Bailiff, or other Officers; and the said Justices of the Peace respectively are hereby required to certify the taking thereof into Chancery, or the Queen's Bench, within three Months after the taking the same, under the Penalty of forfeiting one hundred Pounds, one Moiety to the Queen, and the other to such Person or Persons as will sue for the same, to be recovered with full Costs, by Action of Debt, Bill, Plaint, or Information, in any Court of Record at *Westminster*.

be recovered by Action of Debt, &c. half to the Queen, and half to him that sues, with full Costs.

No Fee or Reward shall be taken for administering any Oath, or making, receiving, or filing the Certificate thereof, except one Shilling for administering the Oath, and two Shillings for making the Certificate, and two Shillings for receiving and filing the same, under the Penalty

1 s. only to be paid for the Oath, 2 s. for making, and 2 s. for filing the Certificate, under 20 l.

G. Britain. Forfeiture, to be recovered and divided as above.

Penalty of twenty Pounds to be forfeited by the Offender, and to be recovered and divided as aforesaid.

St. 10. An. ch. 23. Sheriff, &c. to swear each Freeholder, if by any Candidate or Voter required. Sheriff, &c. shall enter the Place of the Elector's Freehold, of his Abode, and Jurat against the Name of every Voter sworn, and within twenty Days after the Elections deliver the Poll-Books upon Oath to the Clerk of the Peace &c.

That upon every Election to be made of a Knight of a Shire within England, every Free-holder before he is admitted to Poll, shall, if required by the Candidates, or any of them, or any other Person having a Right to Vote, first take the Oath (in this Act contained) which Oath the Sheriff, &c. is to administer: And in taking the Poll, the Sheriff, &c. shall enter not only the Place of the Elector's Freehold, but also the Place of his Abode, and Jurat against the Name of every Voter, who shall be tender'd and take the Oaths hereby required; and the Sheriff, or returning Officer, shall within twenty Days after such Election, deliver over upon Oath (to be administered by the two next Justices of the Peace, one of the Quorum) unto the Clerk of the Peace of the same County, all the Poll-Books of such Elections, and in Counties where there are more than one Clerk of the Peace, the Original to one, and attested Copies to the rest, to be kept among the Records of the Sessions of the Peace for the County: And if

G. Britain. Sheriff, &c. to admit any Quaker to vote during the Act 7 W. 3. and accept his Affirmation to the Effect of the Oath, according to the said Act, instead thereof; and enter Affirmat' against the Name of such Quaker.

of an Act, (7 Guil. III.) Intituled, An Act that the solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath in the usual Form) shall upon such Election, if required by the Candidates or any of them, declare the Effect of the said Oath upon his solemn Affirmation in such Manner and Form as is directed by the said Act, every such Quaker shall be capable and admitted to give his Vote for the Election of any such Member within England; and every Sheriff, &c. is hereby authorized and required to accept such Affirmation instead of the said Oath, and shall enter Affirmat' against the Name of every such Quaker.

2 St. 12 Annæ Præses of the Meeting upon Request of any Elector of a Shire or Stewartry in Scotland to swear either Elector or Candidate to their Estates.

That any of the Electors present, suspecting any Person or Persons (either Electors or Candidates for Shires or Stewartries in Scotland) to have his or their Estates in Trust, and for the behoof of another, may require the Præses to the Meeting, to tender the Oath (in this Act contained) and the said Præses is required to administer the same.

S Returning

G. Britain. Returning Officers are ordained to make their Returns of the Persons elected by the Majority of the Freeholders inrolled, and those admitted by them, reserving always the Liberty of objecting against the Persons admitted to, or excluded from the Poll, as formerly.

Return- ing Offi- cers to re- turn Per- sons ele- cted by a Majority of Free- holders inrolled, and those admitted by them, with Liberty of objecting, &c.

Sheriffs and Stew- erts under 50 l. Pe- nalty, half to the Queen, half to him that sues be- fore the Court of Session, &c. to make pub- lick Inti- mation at the Parish Churches within their Jurisdictions three Days before the Diet of Elections.

All Sheriffs of Shires and Stewarties shall, under the Pain of 50 l. Sterling, one Moiety whereof shall be to the Queen, Her Heirs and Successors, and the other to the Person or Persons who shall sue for the same, to be recovered before the Court of Session, by any Action summarily, without abiding the Course of the Roll, make the publick Intimations required by the Laws of *Scotland*, at the several Parish Churches within their respective Jurisdictions, at least three Days before the Diet of Elections.

St. 2 G. 2. ch. 4. Presiding Officer to administer the Oath or Affir- mation, on Forfei-

That the Oath or Affirmation (*which see ib.*) the Officer or Officers presiding, or taking the Poll at such Election, is and are hereby impowered and required to administer *gratis*, if demanded, upon Pain to forfeit the Sum of Fifty Pounds

Pounds of lawful Money of *Great G. Britain*, to any Person that shall sue for the same, to be recovered, with full Costs, by Action of Debt, Bill, Complaint or Information in any Court of Record at *Westminster*, wherein no Es- soign, Protection, Wager of Law, or more than one Imparlance; and if the said Offence shall be committed in that Part of *Great Britain* called *Scotland*, then to be recovered, together with full Costs, by summary Action, or Com- plaint before the Court of Session, or by Prosecution before the Court of Ju- sticiary there, for every Neglect or Refusal so to do; and no Person shall be admitted to poll, till he has taken and repeated the said Oath in a pub- lick Manner, in Case the same shall be demanded as aforesaid, before the re- turning Officer or such others as shall be legally deputed by him.

If any Sheriff, Mayor, Bailiff or other returning Officer shall admit any Per- son to be polled, without taking such Oath or Affirmation, if demanded, as aforesaid, such returning Officer shall forfeit One hundred Pounds, to be re- covered as aforesaid, together with full Costs; and if any Person shall vote or poll at such Election, without having first taken the Oath, or, if a *Quaker*, having

G. Britain. [~] having made his Affirmation as aforesaid, if demanded, such Person shall incur the same Penalty, which the Officer is subject to for the Offence above mentioned.

Voters to incur the like Penalty.

Returning Officer, after reading the Writ, to take the following Oath.

That every Sheriff, Mayor, Bailiff, Headborough or other Person, being the returning Officer of any Member to serve in Parliament, shall, immediately after the Reading the Writ or Precept for the Election of such Member, take and subscribe the following Oath (which see ante.)

Which Oath any Justice or Justices of the Peace of the said County, City, Corporation or Borough, where such Election shall be made, or, in his or their Absence, any Three of the Electors, are hereby required to administer; and such Oath so taken, shall be entered among the Records of the Sessions of such County, City, Corporation and Borough as aforesaid.

Penalty of wilful Perjury.

If any returning Officer, Elector or Person taking the Oath or Affirmation herein before mentioned, shall be guilty of wilful corrupt Perjury, or of false affirming, and be thereof convicted by due Course of Law, he shall incur and suffer the Pains and Penalties, which by Law are enacted or inflicted in Cases of wilful and corrupt Perjury.

That

That all and every the Sheriffs, Mayors, Bailiffs and other Officers, to whom the Execution of any Writ or Precept for electing any Members belongs, shall, at the Time of such Election, immediately after the Reading of such Writ or Precept, read, or cause to be read, openly before the Electors there assembled, this present Act, and every Clause therein contained; and the same shall also openly be Read once in every Year at the General Quarter Sessions of the Peace after Easter, for any County or City, and at every Election of the chief Magistrate in any Borough, Town Corporate, or Cinque-Port, and at the annual Election of Magistrates, and Town Counsellors for every Borough in Scotland.

G. Britain.

The Act to be read by the Sheriff, &c. after reading the Writ,

and at the Quarter Sessions after Easter, and on electing Magistrates, &c.

That every Sheriff, Under-Sheriff, Mayor, Bailiff and other Officer, to whom the Execution of any Writ or Precept for the electing of Members doth belong, for every wilful Offence, contrary to this Act, shall forfeit 50 l. to be recovered with full Costs as before directed.

Wilful Offence forfeits 50 l.

Provided, That no Person shall be made liable to any Incapacity, Disability, Forfeiture or Penalty, by this Act, unless Prosecution be commenced within two Years after such Incapacity,

Prosecution to commence within two Years,

‘ *Ec.* incurred, or in Case of a Prosecu-
‘ tion the same be carried on without
‘ wilful Delay; any Thing herein to the
‘ contrary.

St. 6. G.
11. C. 23.

After a Recital of the St. 7. 8. W. 3.
and the Inconveniencies of County Courts
being adjourned to *Mondays, Fridays* or
Saturdays, it enacts, That no County
Court in *England*, shall be adjourn’d to
a *Monday, Friday* or *Saturday*, and all
Adjournments and Acts done at such
Courts so adjourn’d, to be null and void,
any Law, Custom or Usage, to the con-
trary.

Provided, That any County Court be-
gun, holden on, or adjourned to any Day
(not prohibited by this or the said former
Act) for electing any Knight of the
Shire for any County, or for hearing and
determining Causes, or for such other
Matters and Business as are usually trans-
acted at County Courts, may be adjourn-
ed over from Day to Day, tho’ the same
may happen to be on a *Monday, Friday*
or *Saturday*, until such Election or o-
ther Matters be fully finished, any thing
therein to the contrary, *Ec.*

CHAP. XIII.

Election of the Speaker.

THE Speaker is he that doth prefer
and commend the Bills exhibited
to the Parliament, and is the Mouth of
the Parliament.

It is true, the Commons are to choose
their Speaker; but seeing that after
their Choice the King may refuse him;
for avoiding of expence of Time and Con-
testation, the Use is (as in the *Conge-
d’Ester* of a *Bishop*) that the King doth
name a discret and learned Man, whom
the Commons elect.

But without their Election no Speaker
can be appointed for them, because he is
their Mouth, and trusted by them, and
so necessary, as the House of Commons
cannot sit without him.

And therefore a grievous Sicknes is a
good Cause to remove the Speaker, and
choose another. So in 1 *Hen. 4.* Sir *John
Cheyny* discharged; and so *William Stur-
ton.* So in 15 *Hen. 6.* Sir *John Tyrrel*
removed. So *March 14. 1694.* Sir *John
Trevor.*

The first Day each Member is called
by his Name, every one answering for
what

Arc. Parl.
3. Smyth’s
Common-
wealth 75.

4 Inst. 8.
Smyth’s
Common-
wealth 75.
See *Bo-
hun’s Coll.*
352. con-
tra.

4 Inst. 8.

Id. 8.

*Modus in-
mend. Pal.*
35.

Election of the Speaker.

what Place he serveth: That done, they are willed to choofe their Speaker, who (tho' nominated by the King's Majesty) is to be a Member of that Houfe. Their Election being made, he is presented by them to the King fitting in Parliament. 35. So Sir Thomas Gargrave 1 Eliz. So Christopher Wray 13 Eliz. So Robert Bell 14 Eliz. So John Puckering 27 Eliz. So George Snagg 31 Eliz. So Edward Coke 35 Eliz. So Yelverton 39 Eliz. So John Crook 43 Eliz. So Sir Thomas Crew 19 Jac. 1. So Sir Heneague Finch 1 Car. 1. cum multis aliis.

See Bo-
hun's Coll.
352, 353.

Townf.
Coll.
174.

The Speaker ought to be religious, honest, grave, wise, faithful, and Secret. These Virtues must concur in one Person able to supply that Place.

Elfyng. 154

The long Use hath made it so material, that without the King's Commandment or Leave, they cannot choofe their Speaker. (Sed aliter ab Antiquo.)

Id. 155.

Surely the Election of the Speaker was antiently free to the Commons, to choofe whom they would of their own Houfe; which appears in this, that the King never rejected any whom they made Choice of.

Vide contra Sir Simon d'Ewes Journ. 42. Col. 1. where he saith, That 28 Hen. 6. Sir John Popham was discharg'd by the

Election of the Speaker.

the King (i. e. on his excuse); and thereupon the Commons chose and presented William Tresham Esq; who made no Excuse. See the like of Paul Foley, in Bohun's Collection, 353.

The Cause of Summons being declared by the King or Chancellor; the Lord Chancellor confers first with his Majesty, and then in his Name, commands the Commons to assemble in their Houfe, and to choofe one of their Members to be their Speaker, and to present him to his Majesty on a Day certain.

Elfyng. 151
Cook 12,
115.
Smyth's
Common-
wealth 79.

Upon which the Commons shall presently assemble themselves in the Lower Houfe, and he is to be a Member of their Parliament.

Co. 12.
115.

The Commons being thereupon assembled in their Houfe; one of the Commons puts the rest in mind of their Charge given in the Upper Houfe, touching the choofing of a Speaker; and then doth of himself commend one unto them, and desires 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.

Elfyng. 152
Vid. Town-
Coll. 174.
See Bo-
hun ut Su-
pra.

Some Person (when the generality of Members are come, and fit) doth put the House in mind, that for their better proceeding in the weighty Affairs they are

of Scobel 3.
Vid. Town-
174.
Vide Sir
S. d'Ewe's
Journ. pas-
come
him.

Election of the Speaker.

come about, their first Work is to appoint a Speaker; and re-commends to the House some Person of Fitness and Ability for the Service and Dignity, which usually hath been one of the long Robe.

Scobel 3.

If more than one Person be named for Speaker, and it be doubtful, who is more generally chosen; sometime one of the Members standing in his Place, doth by Direction or Leave of the House, put a Question for determining the same, or the Clerk at the Board.

Scobel 4.

So it was in the first Session 1 *Jac. 1.* when Sir *Edward Philips* the King's Serjeant at Law was first named by Mr. Secretary *Herbert* as fit for that Place; and the Names of others were mention'd, but the more general Voice run upon Sir *Edward Philips*; and a Question being put, he was by general Acclamation chosen Speaker.

Co. 12.

When the Speaker is chosen, he in his Place, where he first shall sit down, shall disable himself, and shall pray, That they would proceed to a new Election.

115. Vid. Towns. 175. Vid. Sir S. d'Erwe's Four. partim.

When it appeareth who is chosen, after a good Pause he standeth up, and sheweth what Abilities are required in a Speaker; and that there are divers among them well furnish'd with such Qualities, &c. disableth himself, and prayeth a new Choice to be made; which is commonly answered

Elfyng. 153

Vid. Town.

175.

Vide Sir

S. d'Erwe's

Four. partim.

Sim.

Election of the Speaker.

answered with a full Consent of Voices upon his Name.

If the House generally give a Testimony of their Approbation, two of the Members (which for the most Part were of the Council, or chief Officers of the Court) going to the Gentleman named, and agreed to be Speaker, take him from his Place, and lead him unto the Chair (*Elfyng* says, take him by the Arms, and lead him to the Chair) where being set, they return to their Places.

After a while he riseth, and uncover'd with humble Thanks for their good Opinion of him, promiseth his willing Endeavours to do them Service.

After he is put into the Chair, then he shall pray them, that with their Favors, he may disable himself to the King, that so their Expectations may not be deceived. See *Bohun ut Supra.*

Then some (and commonly he that first spake) puts them in mind of the Day to present him, &c. *Elfyng. 153.* So it was done by Sir *William Knowls* the Controller in the 43 *Eliz.*

And the next Day, or 2 or 3 Days after the Commons shall present the Speaker in the Upper House to the King, where he shall disable himself again to the King, and in most humble manner shall intreat the King

Co. 12.

115. Rusb.

Coll. 480.

Smyth's

Commonwealth 80.

Election of the Speaker.

King to command them to choofe a more sufficient Man. *Vide ante 265. aliter.*

Elsyng. 156
Vid. Towns.
175.

At the Day appointed, his Majesty fitting 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 Obeysance to the Bar, and so presented at the Bar to his Majesty.

The *Speaker* having made his Excuse, the *Lord Chancellor* confers with the King, and then telleth him, *That his Majesty doth approve the Commons Choice, and will not allow of his Excuse.* Then the *Speaker* proceeds to his *Speech.* But anciently he made first a Protestation; as you may read in *Elsyng. 159, 160.*

Co. 12. 115.
Vide
Rush. Coll.
117.

After he is allowed by the King, then he shall make an Oration, and in the Conclusion, shall pray the four usual Petitions.

Vi. Smyths
Common-
wealth 80.
Elsyng. 164

The *Speaker's* *Speech* is what it pleaseth himself (having no Direction at all from the Commons touching the same) making Petition to the King on behalf of the Commons, some in general Words for all their ancient Priviledges, and some in particular.

4 Inst. 8.
Vi. Towns.
Coll. 4. & 54
Rush. Coll.
484.

The Protestation of the *Speaker* consists of three Parts. First, *That the Commons in this Parliament may have free Speech,*

Election of the Speaker.

Speech, as by Right and of Custom they have used, and all their ancient and just Priviledges and Liberties allow'd to them. Secondly, *That in any Thing he shall deliver in the Name of the Commons (if he shall commit any Error) no Fault may be arrected to the Commons, and that he may resort again to the Commons for declaration of their true Intent, and that his Error may be pardoned.* Thirdly, *That as often as necessity for his Majesties Service, and the Good of the Commonwealth shall require, he may by Direction of the House of Commons, have Access to his Royal Person.*

Vide El-
syng. 164.

Some add a Fourth, *That they may have Power to Correet any of their own Members that are Offenders.*

Modus te-
nend Parl.
35.

And some make a Fifth, *That the Members, their Servants, Chattels, and Goods necessary, may be free from all Arrests.*

Id. 62.

Tho' the *Speaker* does (upon his being approv'd of by the King) make it his humble Petition to have Liberty of *Speech* allow'd the Commons; from whence Dr. *Heylin* and Sir *Robert Filmer*, and others infer, That the Commons enjoy that Liberty by the King's Grace and Favour: yet they are clearly answered by the words that accompany that

Sir R. At-
kin's Ar-
gument,
&c. 33.

Election of the Speaker.

that humble Petition, he prays, *That they may be allowed that Freedom, as of Right and Custom they have used, and all their ancient, and just Priviledges, and Liberties.* So that this from the *Speaker* is a Petition of Right.

Elfing. 165

The *Speaker* having ended his Oration, the *Lord Chancellor* confers again with the King, and makes Answer thereunto in his Majesties Name, granting his Requests, &c.

Sir R. Atkin's Argument 33.

That humble and modest way of the Peoples addressing to their Sovereign, either for the making Laws, which has been very ancient, or for granting Priviledges (by the *Speaker* of the Commons) shews great Reverence, and becomes the Majesty of the *Prince* so to be addressed to: but let it not be made an Argument, that either the Laws thereupon made, or the Priviledges so allow'd, are precarious, and merely of Favour, or may be refused them (of Right.)

Co. 12 115. 4 Inst. 10.

The Oration being answered by the *Lord Chancellor*, and his Petitions allow'd, the *Speaker* and the Commons shall depart to the House of Commons, where the *Speaker* in the Chair shall request the Commons, *That inasmuch as they have chosen him for their Mouth, they would assist him, and favourably accept his Proceedings, which do proceed*

Election of the Speaker.

ceed out of unfeign'd and sincere Heart to do them service.

The first Business in the House is ordinarily to read a Bill that was not pass'd in the last Parliament preceeding, or some new Bill, as in that of 10 *Jac. 1.* But on that Day, before that was done, there was a Motion made for Priviledge of *Sir Thomas Shirley*, who was chosen a Member to serve in that Parliament, but detained by an Arrest. Upon which a *Habeas Corpus* was awarded; and the Serjeant that Arrested him, and his Yeoman sent for, and a Committee for Elections and Priviledges chosen.

See the Form and Manner of Electing *Paul Foley*, Esq; to be Speaker, after the Censure of *Sir John Trevor*, for a High Crime and Misdemeanor, in receiving a Gratuity (or Bribe) of 1000 Guineas of the City of *London*, on passing the Orphans Bill.

Scobel 5. Vide Sir Simon d'Ewes Jour. 43.

Bohun's Collection of Debates p. 350 to 354

CHAP.

CHAP. XIV.

Business of the Speaker.

Elfyng. 153 THE Mace is not carried before the Speaker, until his Return, being presented to the King, and allow'd of.

Modus tenend. Parl. 36. *Smith's Commonwealth,* 84. The Speaker sits in a Chair placed somewhat high, to be seen and heard the better of all; the Clerks of the House sit before him in a lower Seat, who read Bills, Petitions, &c.

Modus tenend. Parl. 37. *Smith's Commonwealth,* 86. The Speaker's Office is, when a Bill is read, as briefly as he may, to declare the Effects thereof to the House.

Hakewel 138, 139. *Sir Simon d'Ewes Four.* 43. 44. That Day that the Speaker, being approved by the King, cometh down into the Commons House to take his Place, the Custom is, to read for that time only one Bill left unpass'd the last Sessions, and no more; This is done, to give him *Seisin*, were, as it of his Place.

Scobel 19. I *Jac. I.* Sir *Edward Philips* was chosen Speaker, and the same Day (before he was presented to the King) he signed a Warrant as Speaker, by *Command* of the House, for Election of another Person in the Place of Sir *Francis Bacon*, being chosen in two Places.

Note.

A

A general Order hath usually been made in the Beginning of the Session, to authorize the Speaker to give Warrants for new Writs in Case of Death of any Member, or of double Returns, where the Party makes his Choice openly in the House during that Session.

Where such general Order is not made, Writs have issued by Warrant of the Speaker, by Vertue of special Order, upon Motion in the House.

Oftentimes on the first Day of the Meeting of the House, as soon as the Speaker hath been approv'd, and sometime before, such Persons as have been doubly return'd, have made their Choice.

43 *Eliz.* Mr. *Johnson* said, *The Speaker may, ex Officio, send a Warrant to the Clerk of the Crown, who is to certify the Lord Keeper, and so make a new Warrant.*

The Speaker said, *That I may inform you of the Order of the House, the Warrant must go from the Speaker to the Clerk of the Crown, who is to inform the Lord Keeper, and then to make a new Writ.*

This Proposition I hold, That our Speaker is to be commanded by none, neither to attend any, but the Queen, per Sir *Edward Hobby*.

T

The

Business of the Speaker.

Sobel 20. Vid. Tow. Col. 216. 217.
 The Warrant is to be directed to the Clerk of the Crown in Chancery, by Order of Parliament 13 *Novemb. 1601.*
Vide Sir S. d' Eaves Four. pas. fm. Sobel 65. Pety's Miscell. Parl. 140.
 May 1604. Resolved, *That no Speaker from henceforth shall deliver a Bill, of which the House is possessed, to any whosoever, without Leave and Allowance of the House, but a Copy only.* It is no Possession of a Bill, except the same be delivered to the Clerk to be read, or that the *Speaker* read the Title of it in the Chair.

Rush. Col. 660.
 5 *Car. 11. 1628.* The *Speaker* being moved to put the Question then proposed by the House, he refused to do it, and said, *That he was otherwise commanded from the King.* 2 *Martij*, The *Speaker* was urged to put the Question; who said, *I have a Command from the King to adjourn till the Tenth of March, and to put no Question;* and endeavouring to go out of the Chair, was notwithstanding held by some Members (the House foreseeing a Dissolution) till a Protestation was publish'd.

Townf. Col. 263. Vide Sir S. d' Eaves Four. 659. Col. 1. 2.
 When the Queen made an Answer to the *Speaker's* Speech, he, with the whole House, fell upon their Knees, and so continued, till she bid them stand up.

Townf. Col. 61.
 35 *Eliz.* Mr. *Speaker* was sent for to the Court, where the Queens Majesty her

Business of the Speaker.

her self gave him Commandment what to deliver to the House.

The *Speaker* was commanded upon his Id. 63. Allegiance not to read any Bills touching Matters of State or Reformation in Causes Ecclesiastical.

16 *Car. 1. 1640. Apr. 16.* The *Speaker* received Command from the King, *That His Majesties Speech shou'd be entered in the Journal of the Commons House of Parliament:* Whereupon the House passed a declarative Vote, *That they did not expect that this shou'd be performed by other Speakers, but upon the like special Command, or by the Order of the House.*

Eodem Die, Resolved, *That it was a Breach of Priviledge of the House, for the Speaker not to obey the Commands of the House;* and that it appeared the *Speaker* did adjourn the House by the Command of the King, without the Consent of the House, which is also a Breach of the Priviledge; it was therefore ordered, that this should be presented to His Majesty.

1 *Jac. 1. 1603.* Ordered, *That it shou'd be precisely registred as the Judgment of the House, that no Speaker from henceforth shou'd deliver a Bill, whereof the House stands possessed, to any whomsoever, without Allowance and Leave:*

Business of the Speaker.

But that he had Power, and might either shew it, or deliver a Copy (if it seems meet to him.)

Id. 142. But yet it was admitted, that a Copy may be delivered, or it may be shewed to His Majesty.

Hakerwel 145. If upon Division of the House, it appear that the Members are equal; the Speaker hath always the casting Voice upon all Questions.

Townsh. 321. 322. Vide Sir S. d'Erves Jour. 683. Col. 2. 44 Eliz. upon the Question, *Whether Mr. Speaker had a Voice.* It was said by Sir Walter Raleigh (and confirmed by the Speaker himself) *That the Speaker is foreclosed of his Voice, by taking of that Place, which it had pleased them to impose upon him, and that he was to be indifferent to both Parties.* He was seconded by Mr. Secretary Cecil.

Arc. Parl. 18. Smyth's Commonwealth 86. Rusb. Col. 3. p. v. I. P. 35. The Speaker hath no Voice in the House, nor will they suffer him to speak in any Bill, to move, or disswade it.

It was resolved by Vote in the last Parliament (says Mr. Harbottle Grimston, in his Speech Nov. 9. 1640.) That the Speaker refusing to put the Question, being thereunto requir'd by the House; or to adjourn the House upon any Command whatsoever, without the Consent and Approbation of the House it self; were Breaches and Violations that highly impeached our Priviledges.

Ordered

Business of the Speaker.

Ordered, That Mr. Speaker be intreated to be here this Afternoon (*viz.* 10 Nov. 1640. *to sit by*, at the great Committee of *Irish* Affairs; and if there be Cause, to resume the Chair.

Nov. 20. 1640. This Day the House ordered the Speaker should sit in the Afternoon. Id. p. 53.

Note, The Speaker is said to be not only the Mouth, but the Eyes and Ears of the House. And hence it was, That when King Charles I. commanded the Speaker on his allegiance to discover certain Transactions, &c. in the House; he justly reply'd. That he had neither Eyes to See, Ears to Hear, nor Mouth to Speak, but as the House shall direct him.

See also several Letters, Messages, &c. of that Prince to and by the Speaker to the House in Rapin's History, Vol. II. Numb. 57, &c.

CHAP.

CHAP. XV.

Order to be observed in the House.

Townf. 54. THE Litany is read the first Thing, after the Speaker is set in the Chair. So agreed upon the Motion of Mr. Speaker 13 Eliz. 1571.

Scobel. 6. When the Speaker is set in his Chair, every Member is to sit in his Place, with his Head covered.

Ibid. No Member in coming into the House, or in removing from his Place, is to pass between the Speaker, and the Member then speaking; nor may cross, or go overthwart the House, or pass from one Side to the other while the House is sitting.

Sir Simon d'Eaves, Jour. 282. Col. 2. 23 Eliz. 1580. Upon a Motion made by Sir John Croft, Comptroller of her Majesty's Household, and allowed of by the whole House, That Mr. Speaker and the Residue of the House of the better sort of Calling, do alway at the rising of the House depart, and come forth in comely and civil sort, for the Reverence of the House, in turning about with a low Courtesie, as they make at their coming into the House, and not unseemly to thrust, and throng out.

No

No Member is to come into the House with his Head covered, nor to remove from one Place to another with his Hat on, nor is to put on his Hat in coming in, or removing, until he be set down in his Place.

39 Eliz. None to enter the House with his Spurs on; nor until he pay the Serjeant's Fees.

While the House is sitting, no Man ought to speak or whisper to another, to the End the House may not be interrupted, when any are speaking; but every one is to attend unto what is spoken; in which Case Penalties have been imposed.

When any Member intends to speak, he is to stand up in his Place uncover'd, address himself to the Speaker; who usually calls such Person by his Name, that the House may take Notice who it is that speaks.

Mr. Downold going about to speak about a Bill, the Speaker interrupted him, and arose, without further hearing him, which he took in great Disgrace, and told him, He would complain of him the next Sitting.

If any Man in this House speak wisely, we do him great wrong to interrupt him: if foolishly, let us hear him out, we shall

T 4 have

Order to be observed in the House.

have the more Cause to tax him, per Secretary Cecil.

Scobel. 7.
Vide Sir
S. d' Ewes
Four. 434.
Col. 1, 2.

If more than one stand up at once, the Speaker is to determine who was first up; and he is to speak, and the other sit down, unless he, who was first up, sit down again, and give way to the other; or that some other Member stand up, and acquaint the House, that another up before him, whom the Speaker calls, and the House adjudge it so.

Ibid.
Vid. Town.
Coll. 205.

While one is speaking, none else is to stand up, or interrupt him, until he have done speaking, and be set down, and then the other may rise up and speak, observing the Rules.

Ibid.

21 Junij 1604. It was agreed for an Order, *That when Mr. Speaker desires to speak, he ought to be heard without interruption, if the House be silent, and not in Dispute.*

Ibid.

When the Speaker stands up, the Member standing up, ought to sit down.

Scobel. 8.

27 April 1604. Agreed for a Rule, *That if any Question be upon a Bill, the Speaker is to explain; but not to sway the House with Arguments or Dispute.*

Scobel. 8.
Vide Sir
S. d' Ewes

Four. 335.
Col. 1. 640.
Col. 2.

4 Junij 1604. Agreed for an Order, *That whosoever hisseth, or disturbeth any Man in his Speech, by coughing, spitting, &c. shall answer it at the Bar.*

7 Maij

Order to be observed in the House.

7 Maij 1607. Ordered upon the Que-
stion, *That in going forth, no Man shall stir, until Mr. Speaker do arise and go before, and then all the rest to follow after him.*

He, who first stands up to speak, he shall first speak, without any Difference of Persons.

If in Debate Words be let fall, that give Offence, Exceptions shou'd be taken the same Day, and before such Member go out of the House: or he, who is offended, may move, that such Person may not go out of the House 'till he hath given Satisfaction in what was by him spoken. And in such Case, after the present Debate is over, the Words must be repeated by the Person excepting: and in case he desire, or the House command him, he is to explain himself, standing in his Place; which if he refuse to do, or the House be not satisfy'd with such Explanation, then he is to withdraw.

43 Eliz. 1601. It was said by Secretary Cecil, *If any that sit next the Door, be desirous to sit next the Chair, to give his Opinion; I will not only give him my Place, but thank him to take my Charge: We that sit here, take your Favours out of Courtesie, not out of Duty.*

Tho' Freedom of Speech and Debates
be an undoubted Priviledge of the House,

yet

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yet whatsoever is spoken in the House, is subject to the Censure of the House.

Townsh. Coll. Febr. 19. 1592. 35 *Eliz.* After the Names of the Knights, Citizens and Burgessees were read and declared to the Clerk of the Crown, and entered in his Book, they entered into the House.

Vide Sir S. d' Ewes Jour. paf. The House being set, the Earl of Derby, High-Steward for this Parliament, came into the House to take their Oaths. All being removed into the Court of Requests, the Lord High-Steward sitting at the Door, called the Knights and Burgessees of every County, according to the Letters of their Names in the Alphabet. Alphabetically every one answered, as he was call'd, and having answer'd, departed thence to the Parliament House Door, and there took the Oath of Supremacy, given him by one of the Queen's Privy-Counsellors.

Town. Coll. 51. The Fee for entering his Name into the Serjeant's Book is Two shillings, the Rewards to the Door-Keepers, Three shillings and Eight-pence, the Fee for returning the Indenture, Two shillings.

Id. 15. Febr. 7. 1588. 31 *Eliz.* This Day the House was call'd over, and all those that did then sit in the House, and were present at the calling of the same, did thereupon severally answer to their Names, and

Order to be observed in the House. 283

and departed out of the House, as they were called.

31 *Eliz.* 1588. By Consent of the House (upon the Motion of Sir *Edward Hobby*) Admonition was given given by Mr. Speaker, *That Speeches used in this House by the Members of the same, be not any of them made or used as Table Talk, or in any wise delivered in Notes of writing to any Person or Persons whatsoever, not being Members of this House, for that they are the Common-Council of this Realm.*

It was declared in the House in 10 Nov. 1640. 16 *Car.* 1. that at the naming a Committee, if any Man rise to speak about the same, the Clerk ought not to write down any more Names, whilst the Member standing up, is speaking.

It was the same Day declared in the House, that when a Business was begun and in debate, if any Man rise to speak to a new Business, any Member may, but Mr. Speaker ought to interrupt him.

Whosoever shall go forth of the House in confused Manner, before Mr. Speaker, shall forfeit 10 s. and that the Reporters ought to go first, to take their Places at Conferences. 11 Nov. 1640.

Ordered, that when any Message is to go up to the Lords, none shall go out of the

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the House before the Messenger. 25 Nov.
1640.

Id. 61. Nov. 26. That neither Book nor Glove
may give any Man Title or Interest to
any Place, if they themselves be not here
at Prayers.

Id. 83. Ordered, Dec. 4. 1640. that whofo-
ever does not take his Place when he
comes into the House, or removes out of
his Place to the Disturbance of the House,
shall pay 12 *d.* to be divided between the
Serjeant and the Poor: and whosoever
speaks so loud in the House, when any
Bill or other Matter is reading, as to di-
sturb the House, shall pay the like For-
feiture.

Id. 84. Dec. 4. 1684. Ordered, that no Bills
have their second reading, but between
nine and twelve.

Id. 92. Dec. 10. Declared for a constant Rule,
that those who give their Votes for
the Preservation of the Orders of the
House, should stay in; and those who
give their Votes otherwise, to the intro-
ducing of any new Matter, or any Alte-
ration, should go out.

Id. 283. 'Tis a Rule of Order, that there ought
to be no Heats nor Distempers within the
House.

CHAP. XVI.

Other Orders of the House.

2 Maij. A Member speaking, and his *Scobcl. 32.*
1610. Speech, seeming impertinent,
and there being much hissing and spitting,
it was conceived for a Rule, *That Mr.*
Speaker may stay impertinent Speeches.

18 Maij 1604. It was Resolved, *That* *Ibid.*
eight ingrossed Bills should be read the
next Day, half an Hour after Eight.
The next Day about that Time, a Mem-
ber entering into a long Discourse, *De*
mera Fide, & sola Fide, &c. was inter-
rupted; and the Question offered, *Whe-*
ther he shou'd go on, in respect of the
Order. But it was agreed for a Rule,
That if any Man speak not to the Mat-
ter in Question, the Speaker is to mo-
derate.

April 1604. He that digresseth from *Idem 31.*
the Matter, to fall upon the Person, ought *Vid. Town-*
to be suppressed by the *Speaker.* *Coll. 276.*

17 April 1604. If any superfluous Mo- *Ibid.*
tion or tedious Speech be offer'd in the
House, the Party is to be directed, and
order'd by the *Speaker.*

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Smith's
Common-
wealth, 85,
86.

No reviling or nipping Words must be used, for then all the House will cry, *It is against the Order.* And if any speak unreverently or seditiously against the Prince, or the Privy-Council, I have seen them not only interrupted, but it hath been moved after in the House, and they have sent them to the Tower.

Scobel. 33.

If any Man speak impertinently, or beside the Question in Hand, it stands with the Orders of the House, for Mr. *Speaker* to interrupt him, and to know the Pleasure of the House, *Whether they will further bear him.*

Id. 31.
Vide Sir
S. d' Eaves
Jour. 283.

24 Jan. 23 Eliz. Mr. *Carleton* endeavouring to speak contrary to the Sense of the House, was interrupted: and offering to speak again, urging it was for the Liberty of the House; the *Speaker* and the House did stay him.

Id. 21.

When a Motion has been made, the same may not be put to the Question, until it be debated, or at least seconded by one or more Persons standing up in their Places: and then the same may be put to the Question, if the Question be call'd for by the House, or their general Sense be known; which the *Speaker* is to demand, unless any Member stand up to speak.

Ibid.

When a Motion has been made (and seconded) that Matter must receive a Determination

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termination by the Question, or be laid aside by the general Sense of the House, before another be entertain'd.

28 June 1604. A Motion being made, *Ibid.* another interposed a Speech tending to another Business: but it was answer'd, *That there was no Precedent for that Speech to be used, before the other Motion, which was made before, had received an Answer, and an End.* And the House accordingly determine the first Motion in the first Place.

4 Dec. 1640. Ordered, *That till the* *Scobel. 22.* *Business in Agitation be ended, no new Motion of any new Matter shall be made without leave of the House.*

If the Matter moved do receive a De- *Ibid.* *bate pro & contra*, in that Debate none may speak more than once to the Matter: and after some Time spent in that Debate, the Speaker collecting the Sense of the House upon the Debate, is to reduce the same into a Question, which he is to propound, to the End the House in their Debate afterward may be kept to the Matter of the Question, if the same be approved by the House to contain the Substance of the former Debate.

After such Question is propounded, *Ibid.* any Member may offer his Reasons against that Question in whole, or in part; which may

Other Orders of the House.

may be laid aside by a general Consent of the House, without a Question put.

Scobel. 23

But without such general Consent, no part of the Question propounded may be laid aside, or omitted: and tho' the general Debates run against it, yet if any Member before the Question put (without that part) stand up, and desire that such Words or Clause may stand in the Question, before the main Question is put: a Question is to be put, *Whether those Words, or that Clause shall stand in the Question.*

Ibid.

The like Method is observed when any other Alteration is debated upon, to be made in a Question propounded: but upon putting a Question for such Addition, Alteration, or Omission, any Person, who hath formerly spoken to the Matter of the Question, may speak again, to shew his Reasons for, or against such Alteration, Addition, or Omission, before such Question be put.

Ibid.

When the Speaker (the House calling for a Question) is putting the same, any Member that hath not spoken before to the Matter, may stand up before the Negative be put.

Ibid.

13 Junij 1604. A Bill touching a Subsidie of Tunnage and Poundage having been formerly upon a third Reading recommitted, was return'd: and a *Proviso*

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Proviso being tendered for *Chester*, which was twice read, the Question was put for Commitment, in the Affirmative, after which, the Negative was put, which was admitted to be so orderly, because it is no full Question without the Negative part be put, as well as the Affirmative.

Every Question is to be put first in the Affirmative, and then the Negative: to which Question every Member ought to give his Vote one way or other: and the Speaker is to declare his Opinion, whether the *Yea's* or the *No's* have it; which is to stand as the Judgment of the House. But if any Member, before any new Motion made, shall stand up and declare, that he doth believe that the *Yea's*, or the *No's* (as the Case shall be) have it, contrary to the Speaker's Opinion, then the Speaker is to give Direction for the House to divide, declaring whether the *Yea's* or the *No's* are to go forth.

Upon the dividing of the House, those are to go forth, who are for varying from, or against the constant Orders of the House (as, that a Question shall not be put, or not be now put; it being the Course of the House, that after a Debate the same shou'd be determin'd by a Question, or the like) or against any positive Order made by the House; or for the passing any new Thing, and for reading a Petition,
U or

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or Bill, and committing, ingrossing, or passing such Bills, or the like.

Id. 52. Those that are for the new Bill (if there be a Question of Voices) shall go out of the House; and those who are against the Bill, and for the common Law, or any former Law, shall sit still in the House, for they are in Possession of the old Law. Yet in 1604. those for the Bill sate, and those against it went out. So 7 Aug. 1641.

Memorials in Hakewel, 25. Vide Sir S. d'Eaves Jour. 505. 10 Dec. 1640. It was declared for a constant Rule, That those that give their Votes for Preservation of the Orders of the House shall stay in; and those who give their Votes otherwise, to the introducing any new Matter, or for any Alteration, shall go forth.

Memorials ut supra. 24 Mart. 21 Jac. 25. The House being divided upon a Question about Election of Members; it was over-ruled by the House, that the No's should go forth.

Ibid. This is also the Course upon any Question to agree with a Report in Favour of the Opinion of a Committee.

Id. 26. Upon dividing the House, the Speaker is to nominate two of those that are in the Affirmative, and two of the Negatives, to count the House; which four (each of them having a Staff in his Hand) are to count the number of the Persons who

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who remain sitting in the House: and then to stand within the Door, two on the one Side, and two on the other, and to count the Number of them who went forth, as they come in.

While the House is thus divided, or dividing, no Member may speak, nor (unless it be to go forth upon the Division) remove out of his Place.

When the House is thus told, those two of the Tellers, who are of the Number of those who have the major Votes, standing on the right Hand, and the two other on the left Hand at the Bar (the rest being all set in their Places) are to come from thence up to the Table together (making the usual Obeysance to the House three Times; once at the Bar, again in the middle of the House, and again when they are come to the Table) and that Person who stands on the right Hand, is to declare to the Speaker the Number of the Yea's (who sat, or went out, as the Case is) and of the No's: and then with like Reverence to depart into their Places; after which, Mr. Speaker is to report the same to the House.

If the Affirmative have the major Votes by the Judgment of the Speaker, or (in case of Division) upon the Division; the Clerk is to enter the Vote, Resolved. If the Negatives, then he is to enter it

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thus—*The Question being put* (setting down the Words of the Question) it pass'd in the Negative.

Ibid.

Upon the Division, if the Members appear to be equal, then the Speaker is to declare his Vote, whether he be a *Yea*, or a *No*, which in this Case is the casting Voice: but in other Cases the Speaker gives no Vote.

Ibid.

1 *Maij* 1606. Upon a Question, whether a Man saying *Yea*, may afterward sit and change his Opinion, a Precedent was remembered by the Speaker, of Mr. *Morris*, Attorney of the Wards, in 39 *Eliz.* that in like case changed his Opinion.

Id. 28.

If upon a Debate it be much controverted, and much be said against the Question; any Member may move, that the Question may be first made, whether that Question shall be put, or whether it shall be now put; which usually is admitted at the Instance of any Member, especially if it be seconded, and insisted on: and if that Question being put, it pass in the Affirmative; then the main Question is to be put immediately, and no Man may speak any thing further to it, either to add, or alter. But before the Question (whether the Question shall be put) any Person, who hath not formerly spoken to the main Question, hath liberty to speak for

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for it, or against it; because else he shall be precluded from speaking at all to it.

If in a Debate there arise more Questions than one, and it be controverted, which Question should be first put; the Question first moved and seconded is regularly to be first put, unless it be laid aside by general Consent. If the first Question be insisted on to be put, and the major Part seem to be against it, the Question is to be, whether that Question shall be now put: if that pass in the Negative, then the other Question may be put, if desired: nevertheless any Person may speak to it again, before it be put. If in the Affirmative, then it is to be put without any Addition or Alteration, as before: and after the Question is put, if any Member move to have the other Question put, every one hath leave to speak to it again, as if it were a new Question.

If a Matter be received into Debate, and a Question grow, whether the House shall proceed in that Debate at this time, and it fall out, that the House be divided; in such Case the *No's* are to go forth (it being contrary to the Course of the House, that any Business shou'd be laid aside 'till it be determined by a Question) if the Question be for an Adjournment of a Debate

bate, the *Yea's* are to go forth upon the same Reason.

Ibid. After a Question is propounded, no Man may speak more than once to the Matter; but having spoken to the Matter, when the Question comes to be put, he may speak to the Manner or Words of the Question, keeping himself to that only, and not ravelling into the Merits of it.

Ibid. If a Question upon a Debate contain more Parts than one, and the Members seem to be for one Part, and not for the other; it may be moved, that the same may be divided into two, or more Questions: as *Dec. 2. 1640.* the Debate about the Election of two Knights was divided into two Questions.

Id. 30.
Vide
*Smyth's
Common-
wealth* 85.

No Member in his Discourse in the House may mention the Name of any other Member then present, but to describe him by his Title or Addition (as *that Noble Lord, that worthy Knight*; or by his Office, as *Judge, Serjeant, Gentleman of the long or short Robe*; or by his Place, as *the Gentleman near the Chair, near the Bar, or on the other side*; or *that Gentleman that spake last, or last save one, or the like.*)

Memorials
at *supr.* 30. During any Debate any Member, tho' he have spoken to the Matter, may rise up, and speak to the Orders of the House,

House, if they be transgressed, in Case the Speaker do not: but if the Speaker stand up, he is first to be heard, and when he stands up, the other must sit down, 'till the Speaker sit down.

But if any Person rise up to speak to the Orders of the House in the midst of a Debate, he must keep within that Line, and not fall into the Matter itself: if he do, he may be taken down by the Speaker, or any other Member, calling to the Orders of the House.

While a Member is speaking to a Debate or Question, he is to be heard out, and not taken down, unless by Mr. Speaker (as in some Cases he may) or that he speak of such Matter as the House doth not think fit to admit.

A Matter upon Debate having been once finally determined by a Question, ought not to be again brought into Dispute.

27 Martij 1604. Sir Edward Coke Attorney-General, and Dr. Hone bring a Message from the Lords, desiring a Conference about the Case of Sir Francis Godwyn. Upon this Message it was argued, *That now the Judgment having pass'd the House, it could not, nor ought to be reversed by them:* and upon the Question it was resolv'd, *There shou'd be no Conference.*

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Ibid.

2 Apr. 1604. A Vote having passed some Days past, *That no Conference shou'd be admitted with the Lords*, the same Question was again moved, but was carried in the Negative. And it was then urged for a Rule, *That a Question having been once made, and carried in the Affirmative, or Negative, cannot be questioned again, but must stand as the Judgment of the House.*

Id. 45.

4 Junij 1604. Agreed for a Rule, *If two stand up to speak to a Bill, He who first stood up (if it be known by Demand or otherwise) is to be first heard.*

Id. 69.

11 Nov. 1640. It is declared, as a constant Order of the House, *That if a Witness be brought to the House, the House sitting, the Bar is to be down; otherwise, if the House be in a Committee.*

Id. 70.

In a Debate about an Election, it was Resolved, *That the Party concern'd shall be heard to inform the House, and then he is to go forth.*

Id. 71.

When any Complaint is made against a Member, or Exceptions taken to any Thing spoken by him (after he hath been heard to explain himself, if he desire, or the House command it, which is usually done by him standing in his Place) if the House be not satisfied, but fall into Debate

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bate thereof, such Member is to withdraw.

The Members of the lower House ^{Town. Coll.} came to the Lords, upon a Conference, ^{311.} as they were sitting at the Table, and going to the upper End thereof, spake.

When any Bills or Messages are brought ^{Town. 95.} from the lower House to be presented to ^{Vide Sir S. d' Ewes} the upper House, the Lord Keeper, and ^{Jour. 585.} the rest of the Lords are to rise from their Places, and to go down to the Bar, and there meet such as come from the lower House, and from them to receive in that Place their Messages or Bills.

But when any answer is to be deliver'd ^{Ibid.} by the Lord Keeper in the Name and behalf of the upper House, to such Knights and Burgeffes as come from the lower House, the said Knights and Burgeffes are to receive the same, standing toward the lower End of the House; and the Lord Keeper is to deliver the same with his Head covered, and all the Lords are to keep their Places.

In the Answer of the Commons House ^{Memorials} of Parliament to King James his Objec- ^{at supra,} tion in Sir Francis Goodwyn's Case ^{33, 34.} (3 Apr. 1604.) the Objection being, *That they refuse Conference with the Lords.* The Answer is in these Words, *Concerning our refusing Conference with the Lords; there was none desired, 'till after*

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ter our Sentence passed: and then we thought, that in a Matter private to our own House (which by Rules of Order might be by us revoked) we might without any Imputation refuse to confer.

Orders and Resolves of the House, taken out of the third Volume of Mr. Rushworth's Collections. Part 1.

Id. 71. 2 Apr. 1604. A Rule, that a Question being once made, and carried in the Affirmative or Negative, cannot be questioned again, but must stand as a Judgment of the House; the Case of Sir Francis Goodwyn, and Sir John Fortescue; See at the End of the House of Commons Proceedings about the *Aylesbury-men*.

Id. 38. 9 Nov. 1640. Ordered, that the general Order for those that are double returned, shall not bind Mr.— now *extra Regnum*.

Id. 41. 10 Nov. 1640. Declared in the House, that at the naming a Committee, if any Man rise to speak about the same, the Clerk ought not to write down any more Names, whilst the Member standing up, is speaking.

Id. 42. *Ibid.* Declared, that when a Business was begun and in Debate, if any Man rise to speak to a new Business, any Member

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ber may, but Mr. Speaker ought to interrupt him.

11 Nov. 1640. That whosoever shall go forth of the House to a Conference in a confused manner, before Mr. Speaker, shall forfeit 10 s. and that the Reporters ought to go first, to take their Places at Conferences.

25 Nov. 1640. Ordered, that when any Message is to go up to the Lords, none shall go out of the House before the Messenger.

26 Nov. 1640. That neither Book nor Glove may give any Man Title or Interest to any Place, if they themselves be not here at Prayers.

28 Nov. 1640. Ordered, that if any one be chosen a Member of this House, and his Writ not yet returned, he may notwithstanding be admitted to the Sacrament to Morrow, delivering a Ticket of his Name, and the place for which he serves.

4 Dec. 1640. Ordered, that whosoever does not take his Place when he comes into the House, or removes out of his Place to the Disturbance of the House, shall pay 12 d. to be divided between the Serjeant and the Poor; and whosoever speaks so loud in the House when any Bill or other Matter is reading, as to disturb the House, shall pay the like Forfeiture.

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feiture. And it is further ordered, that the Business then in Agitation being ended, no new Motion of any new Matters shall be made, without leave of the House.

Id. 84. 5 Dec. 1640. Ordered, that no Bills have their second Reading, but between Nine and Twelve.

Id. 92. 10 Dec. 1640. Declared for a constant Rule, that those that give their Votes for the Preservation of the Orders of the House, shou'd stay in; and those that give their Votes otherwise, to the introducing of any new Matter, or any Alteration, should go out.

Id. 392. 8 Sept. 1641. See how far an Order of this House is binding.

Ryfb. Coll. vol. 1. 513. In March 1627. Resolved, that is the ancient and undubitable Right of every Freeman, that he hath a full and absolute Property in his Goods and Estate; that no Tax, Tallage, Loan, Benevolences, or other like Charge ought to be commanded, or levied by the King, or any of his Ministers, without common Consent by Act of Parliament.

Id. 513. March 1627. Resolved, that no Freeman ought to be detained, or kept in Prison, or otherwise restrained by the Command of the King or Privy-Council, or any other, unless some Cause of the Commitment, Detainer or Restraint be expressed,

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expressed, for which by Law he ought to be committed, detained, or restrained.

Resolved, that the Writ of *Habeas Corpus* Id. 513. may not be Detain'd, Deny'd, but ought to be granted to every Man that is committed, or detained in Prison, or otherwise restrained, tho' it be by the Command of the King, the Privy-Council, or any other, he praying the same.

Resolved, that if a Freeman be committed, or detained in Prison, or otherwise restrained by Command of the King, the Privy-Council, or any other, no Cause of such Commitment, Detainer, or Restraint being expressed, for which by Law he ought to be committed, detained, or restrained, and the same be returned upon a *Habeas Corpus*, granted for the said Party, then he ought to be delivered or bailed.

2 April 1628. Resolved, that no Freeman Id. 523. ought to be confined by any Command from the King, or Privy-Council, or any other, unless it be by Act of Parliament, or by other due Course, or Warrant of Law.

King James I. having in 1621. imprisoned Sir *Edward Sandys*, a Member, for some Words spoken by him in the House, it occasioned a Remonstrance of the Commons to the King, (therein) complaining of Breach of *Privilege*, and asserting their Liberty

Rapin Vol. 2. No. 54. P. 208. 209.

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Liberty of *Speech* and Debate, to be *their antient and undoubted Right and Inheritance, receiv'd from their Ancestors, &c.*

This they sent to the King, by twelve Members, at the Head of whom, they (affectedly) set Sir *R. Weston*, a Privy-Counsellor, one whom they conceiv'd had incens'd the K. against them, who were receiv'd very *roughly*, and their Remonstrance rejected.

But some Days after, the K. sends 'em a long Answer in Writing, wherein, towards the Conclusion, he objects against the stiling their Privileges, *their antient and undoubted Right and Inheritance*, and wishes they had said (*i. e.* commands 'em to acknowledge) that their *Privileges were derived from the Grace and Permission of him and his Ancestors.*

Id. p. 211.

The Commons Protestation in Vindication of their Privileges. Ibid. p. 211. 212.

The House, on reading this Answer, plainly perceiv'd the King's *Aims, &c.* and knowing the Parl. was going to be prorogued or dissolv'd, drew up a Protestation, in Order to vindicate their Privileges, *viz.*

The Commons now assembled in Parl. being justly occasion'd thereunto, concerning fundry Liberties, Franchises and Privileges of Parliament, amongst others here mentioned, do make this Protestation following; *That the Liberties, Franchises, Privileges and Jurisdiction of Parliament, are the antient and undoubted Birth-right*

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Birth-right and Inheritance of the Subjects of England; and that the arduous and urgent Affairs concerning the King, the State, and the Defence of the Realm, and of the Church of England, and the Maintenance and making of Laws, and Redress of Mischiefs and Grievances which happen daily within this Realm, are proper Subjects and Matter of Counsel and Debate in Parliament: And that in the handling (debating) and proceeding in those Businesses, every Member of the House of Parliament hath, and of Right ought to have Freedom of Speech to propound, treat, reason and bring to Conclusion the same; and that the Commons in Parliament have like Liberty and Freedom to treat of these Matters in such Order, as in their Judgment shall seem fittest; and that every Member of the said House hath like Freedom from all Impeachment, Imprisonment and Molestation (other than by Censure of the House it self) for or concerning any speaking, reasoning or declaring of any Matter or Matters touching the Parliament or Parliament-Business; and that if any of the Members be complained of and questioned for any Thing said or done in Parliament, the same is to be shewed to the King, by the Advice and Assent of the Commons assembled in Parliament, before the King give

See of the Terms Parliament and Prerogative. Id. p. 213.

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give Credence to any private Information.

But the K. being inform'd of this Pro-
testation, call'd a Council, and sending for
the Commons Journal, (in Presence of
the Judges, &c.) with his own Hands tore
it out of the Journal, and in a few Days af-
ter dissolved the Parliament; but this did
not deter the Commons from insisting on
their Claim: And in his Son's Reign it was
asserted with a Witness, and is now con-
firm'd by the *Claim of Right*, and other
Statutes.

Journal
Dom. Com.

Mar. 12. 1700. the House, on a Report
of that Part of the K's Speech which relat-
ed to the *Hanover* Succession, agreed with
the Committee in these Resolves, viz.

1. That all Things relating to the well
governing of this Kingdom, which are pro-
perly cognizable in the *P. Council*, shall be
transacted there; and all Resolutions taken
thereupon, shall be sign'd by the *P. C.*

2. That no Person whatsoever that is not
a Native of *England, Scotland* or *Ireland*,
or of the Dominions thereunto belonging,
or who is not born of *English* Parents be-
yond the Seas (altho such Person be natu-
raliz'd or made a Denizen) shall be capable
to be of the *P. C.* or a Member of either *H.*
of P. or to enjoy any Office of Place or
Trust either Civil or Military.

P. Council.

3. That

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3. That no such Person, &c. shall be ca-
pable of any Grant of Lands, Tenements
or Hereditaments from the Crown to him-
self or any other in Trust for him.

4. That upon the further Limitation of
the Crown, in Case the same shall come to
any Person not being a Native of this
Kingdom of *England*, this Nation be not
oblig'd to engage in any War for the De-
fence of any Dominions or Territories not
belonging to the Crown of *England*, with-
out the *Consent of Parliament*.

5. That whoever shall hereafter come to
the Possession of this Crown, shall join in
Communion with the Church by Law es-
tablish'd.

6. That no *Pardon* shall be pleaded to
any Impeachment in Parliament.

7. That no Person who shall hereafter
come to the Possession of this Crown, shall
go out of the Dominions of *England, Scot-
land* or *Ireland*, without Consent of Parl.

8. That no Person who has any Office
under the King, or receives a *Pension* from
the Crown, shall be capable of serving as a
Member of the House of Commons.

Note;

With divers other Resolves, for better
securing the Rights and Liberties of the
People, on which the Stat. 12. and 13. *W.*
3. c. 2. was made.

X

CHAP.

CHAP. XVII.

Passing of Bills.

See for this a MS. Discourse penes W. Bohun. Journal Dom. Com.

ON the 27th of July 1660, it was represented to King Charles the Second, That by the constant Course of Parliament, they have used to receive Acts of Grace, and such Bills as concern the Redress of Grievances, and Confirmation of the Subjects Liberties, before they present Bills of Aid or Supply; but now in Confidence of His Majesty, &c, they tender a Money-Bill, &c. i. e. before a Redress of Grievances.

Hob. III. 33. H. 6. 18. Bro. tit. Parl. 86. tit. Relation. 35. Plow. 79. Town. Col. 209.

All Bills take effect and work from the Beginning of the Parliament or Session, except it be otherwise ordained by the Act itself.

43 Eliz. 1601. while there were divers Disputes about a Bill, Mr. Fleming the Queen's Solicitor, took the Bill to look a Word in it; after he had done, and laid it on the Board, one stood up and said, Mr. Speaker, after a Bill is ingrossed, you ought to hold it in your Hand, and let no Man look into it; which was confessed by all. And so the Speaker took it.

When

When a Bill is read, the Speaker doth open the Parts of the Bill; so that each Member of the House may understand the Intention of each Part of the Bill.

Such Bills, as being first passed in one House, are sent unto the other, are always sent in Parchment fairly ingrossed.

Publick Bills are in due Course to be preferred in Reading and Passing before Private: And of Publick, such as concern the Service of God, and Good of the Church. Secondly, such as concern the Commonwealth, in which are included such as touch the Person, Revenue or Household of the King, Queen, &c. and they ought especially to be preferred in Passing. Lastly, Private Bills are to be offer'd to be read, and passed in such Order as they were preferred. And they that carry them, to give some brief Com- mendation of them.

Any Member of the House may offer a Bill for Publick Good, except it be for imposing a Tax; which is not to be done, but by Order of the House first had.

If any Member desire, that an Act made, and in Force, may be repealed or altered, he is first to move the House in it, and have their Resolution, before any Bill to that Purpose may be offer'd; and if upon the Reasons shew'd, for repeal-

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ing or altering such Law, the House shall think it fit, they do usually appoint one or more of the Members to bring in a Bill for that Purpose.

Hakewel 136.

But the *Speaker* is not precisely bound to any of these Rules, for the preferring of Bills to be read or passed; but is left to his own good Discretion (except he be specially directed by the House to the contrary) and tho he be earnestly pressed by the House for the reading of some one Bill; yet if he have not had convenient Time to read the same over, and to make a *Breviat* thereof for his own Memory; the *Speaker* doth claim a Priviledge to defer the Reading thereof to some other Time.

Hakewel 137.

The *Clerk* being usually directed by the *Speaker* (but sometime by the House) what Bill to read, with a loud and distinct Voice first reads the Title of the Bill, and then, after a little Pause, the Bill it self; which done, kissing his Hand, he delivereth the same to the *Speaker*; who standeth up uncover'd (whereas otherwise he sitteth with his Hat on) and holding the Bill in his Hand, saith, *The Bill is thus intituled*, and then readeth the Title; which done, he openeth to the House the Substance of the Bill, which he doth, either trusting to his Memory, or using the Help, or altogether the

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the Reading of his *Breviat*, which is filed to the Bill.

Sometimes reading the Bill it self, especially upon the Passage of a Bill, when it hath been much alter'd by the Committees, so that thereby it differeth very much from the *Breviat*.

Hakewel 137. Vide Scobel 42.

When he hath open'd the Effect of the Bill, he declareth to the House, *That it is the first Reading of the Bill*, and delivereth the same again to the *Clerk*.

The Bill containing the King's General Pardon hath but one Reading in the Lords House, and one below: The Reason is, because the Subject must take it as the King will give it, without any Alteration; and yet many times Exceptions are taken at the Reading thereof, for that it is not so favourable as in former Times.

Id. 138. Vid. Town. Col. 29, 44, 126. Vide Sir Simon d'Ewes Jour. 91, Col. 2.

The like of a Bill of Subsidies granted by the *Clergy*.

Hakewel Ibid.

The usual Course is to spend the Morning, before the House grow full, in the first Readings, and to defer the second or third Reading till the House grow full.

All Men of Law know, that a Bill, which is only expository, to expound the Common Law, doth enact nothing, neither is any *Proviso* good therein.

Town. Col. 238.

Passing of Bills.

Col. 12.
116.

No Knight, Citizen or Burgeſs, ought to ſpeak above once to one Bill in one Day, unleſs ſometime by Way of Ex- plication.

Hakewel
139.

At the firſt Reading of the Bill, it is not the Courſe for any Man to ſpeak to it, but rather to conſider of it, and to take Time till the ſecond Reading; unleſs it carry Matter of apparent Hurt to the Commonwealth, and ſo to be reje- cted.

Ibid.

Nor for any Addition, for thereby it is imply'd, That the Body of the Bill is good, which till the ſecond Reading, doth not regularly come to the Trial.

Id. 140.
Scobel 42.

If any Bill originally begun in the Commons Houſe, upon the firſt Reading happen to be debated too and fro, and that upon the Debate, the Houſe do call for the Queſtion; it ought to be, not *Whether the Bill ſhall be read the ſe- cond Time* (for ſo it ought to be in ordi- nary Courſe) but *whether it ſhall be re- jected*.

Hak. Ibid.

If a Bill coming from the Lords be ſpoken againſt, and preſſed to be put to the Queſtion, upon the firſt Reading; the *Speaker*, in Favour and Reſpect there- to, ſhou'd not make the Queſtion for Rejection (as in the former Caſe) but ſhou'd firſt make the Queſtion for the ſecond Reading; and if that be deny'd, then

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then for Rejection. But uſually when any ſuch Debate is, the *Speaker* doth forbear to make any Queſtion at all there- upon, except he be much preſſed there- to, it being better to conſider of it be- fore it be put to ſuch a Hazard.

If the Queſtion for Rejection be made, Id. 141.
Scobel 42. and the greater Voice be to have it reje- cted, the *Clerk* ought to note it rejected in his *Journal*, and ſo to indorſe it on the Back of the Bill; and it ſhall be no more read: If the Voice be to have the Bill retained, it ſhall have his ſecond Reading in Courſe.

It is againſt the ordinary Courſe that Ibid. the ſame Bill ſhou'd be read more than once in one Day, but for ſpecial Reaſons it hath been ſuffer'd, that private Bills have been in one Day read twice.

It is likewise done ſometimes, when Hakewel
142. the Houſe lacketh other Buſineſſes where- in to employ themſelves, eſpecially if the Bill be of no great Importance, howſo- ever it is never but upon Motion and ſpe- cial Order.

When ſpecial Committees appointed Ibid. for the drawing of ſome one ſpecial Bill, preſent the ſame ready drawn to the Houſe, it hath been often ſeen, that the ſame Bill hath not only been twice read, but order'd alſo to be engroſſed the ſame Day.

Ibid. It is not without Precedent that a Bill hath been thrice Read, and passed in the same Day. But this is a President that standeth alone. Q. the D. of *Monmouth's* Attainder.

Sir *Simon d'Ewes* *Four.* 90. *Co.* 1. A Bill was read the fourth Time, before it pass'd the House, and tho there want not other Presidents, yet it is rare and worth the Observation.

Id. 335. *Col.* 1. A Bill was put to the Question, upon the first Reading, and rejected; but it is not usual for a Bill to be put to the Question upon the first Reading.

Id. 337. *Col.* 2. 415. *Col.* 2. 27 *Eliz.* 1584. A Bill was committed upon the third Reading, having been formerly committed upon the second; which is not usual.

Hakewel 143. A Bill may be preferr'd to be secondly read the next Day after the first Reading; but the usual Course is to forbear for two or three Days, that Men may have more Time to consider upon it, except the Nature of the Business be such, that it requireth haste.

Ibid. After the Bill is secondly read, the *Clerk*, as before, in humble Manner delivereth the same to the *Speaker*; who again readeth the Title and his *Breviat*, as he did upon the first Reading; which done, he declareth, *That it was a second Reading of the Bill.* And then he ought to pause a while, expecting whether any of

of the House will speak to it; for before the *Speaker* hath so declared the State of the Bill, no Man shou'd offer to speak to it; and then, and not before, is the Time when to speak.

If after a pretty distance of Time, no Man speak against the Bill for matter or Form, he may make the Question for ingrossing thereof, if it be a Bill originally exhibited into the Commons House.

So likewise if divers speak for the Bill, without taking Exception to the (Matter or) Form thereof, he may make the same Question for the ingrossing.

The like Question for the ingrossing ought to be made, if the greater Voice be, *That the Bill should not be committed*: for it were to End further delay in the proceeding of the Bill, if there be no Exception taken to the matter or Form thereof: but upon the second Reading, and after the *Speaker* hath deliver'd the State thereof, the House doth usually call for committing of the Bill; and then if any Man will speak against it, either for Matter or Form, he ought to be heard.

After the first Man hath spoken, the *Speaker* ought to rest a while, expecting whether any other Man will speak there-to: so ought he likewise to do after every

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every Speech ended : when he perceiveth that the Debate is at an End, he ought then to make the Question for the committing thereof, in this sort :

Id. 145.

As many as are of Opinion that this Bill shall be committed, say Yea.

And after the Affirmative Voice given,

As many as are of the contrary Opinion, say No.

And he ought by his Ear to judge which of the Voices is the greatest : if that be doubtful, the House ought to be divided.

Ibid.

If upon Division of the House it appear that the Numbers are equal, the *Speaker* hath the casting Voice upon all Questions.

Ibid.

If it appear that the Affirmative Voice be the greater, then ought he to put the House in Mind touching the naming of Committees, which is done thus.

Every one of the House that list may call upon the Name of any one of the House to be a Committee, and the Clerk ought in his Journal to write under the Title of the Bill the Name of every one

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so called on, at least of such whose Names (in that Confusion) he can distinctly hear; and this he ought to do without Partiality, either to those that name, or to the Party named.

He that speaketh directly against the Body of the Bill, may not be named a Committee : for he that would totally destroy, will not amend it.

When a convenient Number of Committees are named, then ought the *Speaker* to put the House in Mind to name Time and Place, when and where the Committees may meet; which the Clerk ought likewise to enter into his Journal-Book : and when the House is in silence, he ought with a loud Voice to read (out of his Book) the Committees Names, and the Time and Place of the Commitment, that the Committees may take Notice thereof.

After a Bill, which is sent from the Lords, is twice read, the Question ought to be for the Commitment : if it be deny'd to be committed, it ought to be read the third time, and the next Question ought to be for the Passage, and not for the Ingrossing (as it is where the Bill originally begins in the lower House) for Bills, which come from the Lords come always engrossed.

The

Hakewel
147.

The Question for the Passage shou'd in ordinary Course be then made, when the Bill is deny'd to be committed; but not till the Bill be read the third Time.

Co. 12. 116

In the debating of Bills in the House, no Man may speak twice in one Day (unless sometime by way of Explication) except the Bill be oftner read than once;

Hak. 148.

and then a Man may speak as often as the Bill is read. Otherwise it is at Committees, or when in the House the Debate ariseth upon some Motion concerning the Order of the House.

Id. 250.

After the Debate is ended, the Speaker ought to put the Question for Ingrossing.

Ibid.

If the greater Number of Voices be, that the Bill ought not to be ingrossed, the Clerk ought to make an Entry in his Journal, that the same was dash'd: and so he ought likewise to note upon the back of the Bill, and the Day when, If the Voice be to have it ingrossed, it is the Office of the Clerk to do it.

Ibid.

It is always to be observed, that when the Bill is engrossed, the Clerk ought to endorse the Title thereof upon the back of the Bill, and not within the Bill in any Case.

Ibid.

So ought likewise such Bills as come from the Lords to have Titles endorsed upon

upon the back of the Bill, and not within.

After a Bill hath been committed, and *Id. 151.* is reported, it ought not in an ordinary Course to be committed, but either to be dash'd or ingrossed: and yet when the Matter is of Importance, it is sometimes for special Reasons suffer'd; but then usually the Re-commitment is to the same Committee.

About two or three Days after the *Id. 152.* Bill is thus order'd to be engrossed, and is accordingly engrossed, it is offer'd by the Speaker to be read a third Time, for the Passage thereof.

For the most part the Speaker putteth *Id. 153.* not any one Bill to the Passage by itself alone, but stayeth till there be divers Bills ready engross'd for the third Reading; and when he hath a convenient Number (which may be five, or six, rather less than more) then he giveth Notice to the House, *That he purposeth next Day to offer up some Bills for the Passage, and desireth the House to give special Attendance for that purpose;* and then the Day following he doth accordingly put them to the third Reading. First private Bills, until the House be grown to some fulness; and then he offereth to be read the publick Bills, which are engrossed.

It

Ibid. It hath at some times been order'd, *That for the preventing of carrying of Bills with a few Voices, that no Bills shou'd be put to the Passage until Nine of the Clock, at which time the House is commonly full, or shortly after.*

Id. 153 When the Bill is read the third Time, the Clerk delivereth it to the Speaker, who reads the Title thereof, and openeth the Effect of the Bill, and telleth them, *That the Bill hath now been thrice read, and that with their Favours he will put it to the Question for the passing;* but pawseth a while, that Men may have Liberty to speak there-to; for upon the third Reading the Matter is debated afresh, and for the most part it is more spoken unto this Time, than upon any of the former Readings.

Id. 154. When the Argument is ended, the Speaker (still holding the Bill in his Hand) maketh a Question for the Passage, in this sort: *As many as are of Opinion that this Bill shou'd pass, say Tea, &c.*

Ibid. If the Voice be for the Passage of the Bill, the Clerk ought to make a Remembrance thereof in his Journal; if otherwise, then his Remembrance must be accordingly made.

Upon the Bill thus passed (if it be originally exhibited in the House of Commons)

Brook Abr.
f. Edit.
119 n. 4.

mons) the Clerk ought to write within the Bill on the top toward the right Hand, (*Soit baille aux Seigneurs.*) Let it be deliver'd to the Lords.

If the Bill passed be originally begun in the Lords House, then ought the Clerk to write underneath the Subscription of the Lords (which always is at the foot of the Bill) *A cest Bill les Commons sont assentus. i. e.* To this Bill the Commons have assented.

19 Dec. 1584. 27 Eliz. The House of Commons taking Exceptions about endorsing of Bills in the upper part of them, whereas it ought to be done at the neither and lower part; the Lords did very respectfully take away their said Grievance, by the alteration of the Indorsements aforesaid, according to the usual and ancient Form.

No Bill upon the third Reading, for the Matter or Body thereof, may be recommitted: but for some particular Clause or Proviso, it hath been sometimes suffered; but it is to be observ'd as a Thing unusual after the third Reading.

It hath been much doubted, whether when a Bill is in Debate for the Passage, it ought not to receive the Resolution of the House the same Day wherein it is first offer'd to the Passage; but Precedents

Brook 119.

4.

Sir Simon
d'Ewes
Jour. 344.
Col. 2.

Hak. 156.

Hakewel
157.

Passing of Bills.

dents are, where the Case being of some Importance, and the Debate growing long, the Argument hath been put over to the next Day: In which Case he that hath already spoken to the Bill the first Day, may not again speak the Second, no more than he may speak twice in one Day, where the Argument is not deferred to another Day.

Id. 158. If a Bill be rejected, the same Bill may not be offer'd to the House again the same Session; but if it be alter'd in any Point material, both in the Body, and in the Title, it may be receiv'd the second Time.

Ibid. In the Time of the Reading of a Bill, the House should not be interrupted with any other Business; and yet in 1. Eliz. the House adjourn'd itself till the next Day after the Bill for Sealing Clothes was half read, only to be present at the Conference about Religion in Westminster-Abby.

Ibid. Sometimes the House conceiving much Offence against some Bills, doth not only order them to be rejected, but to be torn, &c. in the House.

Id. 159. When a Bill is thrice read, and pass'd in the House, there ought to be no further Alteration thereof in any Point.

When

Passing of Bills.

When the Speaker hath in his Hands a convenient Number of Bills ready pass'd, as five or six, or thereabouts, he then putteth the House in Mind of sending them up to the Lords, and desireth the House to appoint Messengers; who accordingly do appoint some one principal Member of the House for that Purpose; to whom the Bills are delivered in such Order, as he ought to present them to the Lords; which is done by Direction of the Speaker, except the House be pleased to give special Direction therein.

The Order which hath usually been observed in ranking them, is, First, To place those that came originally from the Lords. Secondly, Those that being sent up to the Lords from the Commons House, were sent back to be amended. Thirdly, Publick Bills originally coming from the Commons House, and these to be marshalled according to their Degrees in Consequence: Lastly, Are to be placed private Bills, in such Order as the Speaker pleaseth.

Many Times the House (with a Purpose especially to grace some one Bill) sendeth it alone, with a special Recommendation thereof: The Messenger for this Purpose is usually attended by thirty or forty of the House, as they please, and are affected to the Business.

Y

The

Passing of Bills.

Id. 177.

The principal Messenger, who delivers the Bills to the Lords, coming in the first Rank of his Company to the Bar of the Lords House with three Congies, telleth the Lords, That the Knights, Citizens, and Burgesses of the Commons House, have sent unto their Lordships certain Bills; and then reading the Title of every Bill, as it lieth in Order, he to delivereth the same in an humble Manner to the Lord Chancellor; who of Purpose cometh to receive them.

Ibid.

Bills sent from the Lords to the Commons House, if they be ordinary Bills, are sent down by Serjants at Law, or by two Doctors of the Civil Law, being Masters of the Chancery, and Attendants in the Upper House, accompanied sometimes with the Clerk of the Crown, an Attendant there.

Id. 178.

Bills of greater Moment are usually sent down by some of the Judges Assistants there, accompanied with some of the Masters of the Chancery; who being admitted Entrance, do come up close to the Table where the Clerk sits, making three Congies, and there acquainting the Speaker, That the Lords have sent unto the House certain Bills, doth read the Titles, and deliver the Bills to the Speaker; and so departeth, with three Congies. When they are out of the House, the Speaker holds

Passing of Bills.

holds the Bills in his Hands, and acquaints the House, That the Lords by their Messengers have sent to the House certain Bills; and then reading the Title of every Bill, delivereth them to the Clerk to be safely kept, and to be read, when they shall be called for.

When Bills are thus passed by both Houses, upon three several Readings in either House, they ought, for their last Approbation, to have the Royal Assent; which is usually deferred till the last Day of the Session.

The Royal Assent is given in this sort: Id. 181. After some Solemnities ended, the Clerk of the Crown readeth the Title of the Bills in such Order as they are in Consequence: After the Title of every Bill is read, the Clerk of the Parliament pronounceth the Royal Assent, according to certain Instructions given him from his Majesty in that Behalf.

To the Subsidy Bill, because it is the meer Gift of the Subject, the Queen's Consent is not required for the passing of it, but as it is implied in her thankful Acceptance: Nor to the Bill of Pardon; because it is originally her free Gift, no other Circumstance is required than that the thankful Acceptance thereof by the Lords and Commons be likewise expressed; it being but once read in either House, before

fore it comes at last to be thus expedited. To all other Bills either Private or Publick, the *Queen's* express Consent, though in different Words, is always requisite.

Id. 127. February 9. 1597. 39. *Eliz.* Her Majesty gave her *Royal Assent* to twenty four publick Acts, and nineteen private; and refused forty eight, which had passed both Houses.

Townf. 13. If it be a publick Bill, to which the King assenteth, the Answer is, *Le Roy le veult*; in *English*, The King wills it.

If a private Bill, allowed by the King, the Answer is, *Soit fait come il est desire*; i. e. Be it done as is desired.

If a publick Bill, which the King forbears to allow, *Le Roy se aviserá*; i. e. The King will consider.

Id. 12. To the *Subsidy Bill*, *Le Roy remercie ses loyaux Sujets, accept leur Benevolence, & ainsi le veult*; i. e. The King thanks his loyal Subjects, accepts their Benevolence, and so wills it.

Townf. Col. 13. 49. Sir Simon d'Ewe's Four. 467. Col. 2. To the *General Pardon*; The Assent is thus, *Les Prelates, Seigneurs, & Commons en cest Parliament assemble au nom de toutes vous autres Sujets remercient tres humblement vostre Majestie, & prient à Dieu que il vous donne en sante, bon vie, & longue*; The Prelates, Lords, and Commons, in this Parliament assembled, in the Name of all other your Subjects, do most humbly

humbly thank your Majesty, and do pray God to give you Health, and a good and long Life.

A private or particular Act is always filed, but never enrolled Sir R. Atkin's Argument, 57. Arc. Parl.

Every Bill that passeth the *Parliament*, shall have Relation to the first Day of the *Parliament*, though it come in at the End of the *Parliament*, unless a Time be specially appointed by the Statute when it shall commence.

If a Bill be admitted to be read, it is to be presented fairly written, without any Razure or Interlineation, together with a *Breviat* of the Heads of the Bill; and unless it be so tendered, the *Speaker* may refuse it.

Until the Bill be open'd, no Man may speak to it. Id. 42.

An Act was read, to which no Man offered to speak. Whereupon Mr. *Speaker* stood up, and said, *That if no Man speak, it must be ingrossed, i. e. Silence gives Consent.* Townf. Co. 187.

It is the usual Rule of the Law, That where the Numbers of the Affirmative and Negative are equal, *Semper presumetur pro negante*, The Negatives by Custom are to carry it; i. e. That the former Law is not to be changed. Townf. Col. 134.

When Votes are digested into a Bill, and that comes to be read, or passed, it

is lawful to debate or argue against all, or any Part thereof, to alter or reject it: Because Votes in order to a Bill are no further binding, but that the Bill is to be presented containing those Votes; and because the Bill gives Occasion of a more large Debate, before it can pass into a Law, every Member hath Liberty to offer his Reasons against it, as well as give his Vote, as often as it comes to a Question.

Ibid.

When a Bill has been read the second Time, and opened, any Member may move to have it amended, but must speak but once to it; and therefore must take all his Exceptions to it, and every Part of it, at one Time; for in the Debate of a Bill no Man may speak but once the same Day, except the Bill be read any more than once that Day, and then he may speak as often as it is read.

Id. 58.

23 Junii, 1604. It was agreed for a Rule, *If a Bill be continued in Speech from Day to Day, one may not speak twice to the Matter of the same Bill.*

Hist. Refor
Vol. I. p.
144.

Note. *A Bill was read in the House of Lords four Times. Quere, if in one Day?*

C H A P.

C H A P. XVIII.

Concerning Committees.

A Committee of either House ought not by Law to publish their own Results, neither are their Conclusions of any Force without the Confirmation of the House, which hath the same Power of controuling them, as if the Matter had never been debated.

Rush. Part.
3. Vol. 2.
p. 74.

Committees are such as either the Lords in the Higher House, or Commons in the Lower House, do choose to frame the Laws upon such Bills as are agreed upon, and afterward to be ratified by the same Houses.

Sir Tho.
Smyth's
Common-
Wealth, 75.

The Proceeding in a Committee is more honourable and advantageous to the King and the House; for that Way leads most to the Truth. And it is a more free and open Way; where every Man may add his Reason, and make Answer upon the hearing of other Mens Reasons and Arguments.

Rush. Col.
557.

Y 4

For

Sir Simon
d'Ewe's
Four. 186.

For Referring a Bill to *Committees*, it is chiefly for Amendment or Alteration thereof, after it hath been penned, and put into the House by some one or more private Men.

Nelson
319.

June 1641. In the Afternoon, it being a considerable Time before there were forty Members to make a House: Ordered, That so soon as the House sits, and that the Serjeant comes to any Committee then sitting, to signify to them that the House is sitting, that the Chair-Man shall immediately come away to attend the Service of the House.

Townsh. Col.
61.

Sir Simon
d'Ewe's
Four. 476.

Col. 1.
Id. 189.

35 Eliz. 1592. It was held to be against the Order of the House, That a Bill should be committed before it was read.

43 Eliz. 1601. By Order of the House agreed, When a Bill is return'd from Commitment, the Words must be twice read, which are amended, before the ingrossing thereof.

Id. 190.

Eodem tempore. By Order of the House it was agreed upon, That a Committee once made, and agreed upon, there shall not hereafter be more Committees joined unto them for the same Bill; but for any other there may.

Id. 198.
Vid. Sir S.
d'Ewe's
Four. 630.
Col. 1.

Eodem. Sir Walter Raleigh speaking at a Committee, Sir Edward Hobby told him, He should speak standing, that the House

House might hear him. To which Sir Walter Rawleigh replied, That being a Committee, he might speak sitting or standing.

Eodem. It is a Rule in the House, Id. 208. That they, who have given their Voice against the Body of the Bill, cannot be Committees. And it was said by Mr. Wiseman, That by committing of a Bill, the House allowed of the Body thereof, though they disallow of some Imperfections in the same; and therefore committed it to some chosen Men in Trust, to reform and amend any Thing therein which they found imperfect. And it is presumed, that he who will give his No to the committing of a Bill at the Commitment, will be wholly against the Bill; and therefore the House allowing of this Bill to be committed, are, in my Opinion, to disallow any that will be against the Body of the Bill, for being Committees. And so Resolved upon the Question.

Eodem. Resolved upon the Question, Townsh. 208. If any Committee speak against a Bill at the Commitment, he may speak again at the Ingrossing thereof in the House, and have his free Voice. Sir Simon d'Ewe's Four. 135. Col. 1.

11 Nov. 1601. Ordered, That any Member of this House that hath been, or shall be a Committee in any Bill, may afterwards speak or argue negatively to any such

330 Concerning Committees.

such Bill, without Impeachment or Imputation of Breach of former Order.

Scobel, 44. Sometimes the House upon Debate doth pass some Votes to be the Heads of a Bill, or refer it to a *Committee* of the whole House to prepare such Heads.

Id. 46. If the Exceptions to a Bill be such, that it may not be amended at the Table, then the Question is for committing the Bill: But no Bill is to be committed without some Exceptions taken to it.

Townsh. Col. 138. In the *House of Commons*, as well as in the *Upper House*, after any Bill is committed upon the second Reading, it may be delivered indifferently to any of the said *Committees*.

Scobel, 46. No *Proviso* or *Clauses* are to be tendered to a Bill upon the second Reading; because if it be committed, it is proper to offer them to the *Committee*, without troubling the House; as 16 Jun. 1604. it was moved, *That sundry Proviso's, then tendered, be offered to the Committee.*

Ibid. If the Question for Commitment pass in the Negative, then the Question is to be put for the Ingrossing the Bill. But if the Question for Ingrossing the Bill pass in the Negative, then the Question is to be put for rejecting the Bill.

Id. 47. If the Question for committing the Bill pass in the Affirmative, then a *Committee* is

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is to be named: Of which all those that took Exceptions at any Particulars in the Bill (but not those who spoke against the whole Bill) are to be; and any Member that pleases, may name one apiece, but not more, to be of that *Committee*.

10 Nov. 1604. Declared for Rule, Ibid. *That at the naming of a Committee, if any Man rise to speak, the Clerk ought not to write.*

11 Nov. 1601. Resolved, and Ordered Ibid. upon the Question, *That such Member as declares himself against the Body or Substance of any Bill, upon any the Readings thereof, shall not hereafter be admitted to be of a Committee in any such Bill, according to former Order used in Parliament.*

Committees upon Bills have not usually Ibid. been less than eight, sometimes twenty, seldom more in former Times, which engaged them to attend it, and speed it.

12 April, 1604. Upon a Motion made Id. 48. touching the slow Proceedings and Dispatch of such Bills and Businesses as were depending in the House, which grew, as was said, by the Non-attendance of the *Committees*, Ordered, *That if eight of any Committee do assemble, they might proceed to a Resolution in any Business of the House.*

When

Ibid.

When a competent Number are named, the *Speaker* useth to put the House in Mind of appointing the Time and Place of their Meeting; at which Time the *Committee* are to meet, especially those who did make any Exceptions to the Bill: Eight of the Persons named must be present to make a *Committee*, (unless ordered otherwise in some Cases,) but five may adjourn.

Ibid.

In some Cases the House hath ordered a *Committee* to withdraw into the *Committee-Chamber* presently, and to prepare and bring it back, sitting the House.

Id. 49.

Any Member of the House may be present at any select *Committee*; but is not to give his Vote unless he be named to be of the *Committee*.

Sir Simon
d'Ewe's
Jour. 493.
Col. 2.

35 *Eliz.* 1592. Two or three stood up to speak, striving who might speak first. It was made a Rule, *That the Chair-Man shall ask the Parties that would speak, on which Side they would speak, whether with him that spake next before, or against him; and the Party that speaketh against the last Speaker, is to be heard first.*

Scobel, 49.

The *Committee* are first to read the Bill, and then to consider the same by Parts.

Id. 50.

The Preamble, if any be, is usually considered after the other Parts of the Bill; because upon Consideration of the Body of the Bill, such Alterations may therein be

be made, as may also occasion the Alteration of the Preamble; which will be best done last.

The *Committee* may not raze, inter-^{Ibid.}line, or blot the Bill itself; but must in a Paper by itself set down the Amendments in this Manner, (in such a *Folio*, and such a *Line*, between such a Word and such a Word, or after such a Word, insert these Words, or omit these Words.)

When the Amendments are all perfect-^{Ibid.}ed, every one being voted singly, all of them are to be read at the *Committee*, and put to the Question, *Whether the same shall be reported to the House*. When the Vote is to be put, any Member of the *Committee* may move to add to those Amendments, or to amend any other Part of the Bill.

4 *Junii*, 1607. The Bill touching the^{Id. 52.} Union between *England* and *Scotland* having been committed, when the Amendments were reported, the whole Bill was by Order of the House first read, and then Amendments by themselves. Which is a single Precedent used only in a Case of great Weight.

In the *Journal*, 4 *Junii*, 1607. the^{Ibid.} Entry is, *When a Vote is once passed at a Committee, the same may not be altered, but by the House*. Every Question upon the Voices of the *Committee* bindeth, and cannot

cannot be altered by themselves. And thus every Thing agreed to be reported ought to be reported.

Id. 51. If the Vote of the *Committee* pass for reporting the Amendments to the House, then he of the Members of the *Committee* (which is commonly the *Chair-Man*) who is best acquainted with the Bill, is to be appointed to make the Report; which being done, that *Committee* is dissolved, and can act no more without a new Power.

Ibid. 3 *Martii*, 1606. It was ordered, *That every Committee, when they proceed to the Amendment of any Bill committed to them, shall also amend the Breviat annexed, and make it agree with the Bill.*

Ibid. Reports are usually to be received daily in the first Place, after the House is full; except there be Bills ingrossed, which are to take Place, and publick Bills before private.

Id. 52. Hakewell, 148. The Reporter must first acquaint the House, *That he is to make a Report from such a Committee, to whom such a Bill was committed*; and standing in his Place, must read each of the Amendments, with the Coherence in the Bill; and opening the Alterations, and the Reasons of the *Committee* for such Amendments, until he hath gone through all; and then must (if he sit not in the Seat next the Floor) come from

from his Place to the Bar, and so come up to the Table, and deliver both the Bill and Amendments to the *Clerk*; by whom he is to stand, while they are twice read; which is to be done by him (without reading any Words that are to be omitted, but only such as are to be inserted) before any Man speak to any of them; and then the Bill, with the Amendments, is to be deliver'd to the *Speaker*.

After reading of the Amendments, any *Scobel*, 52. Member may speak against all, or any of the Amendments, and desire the Coherence to be read. But he is to make all his Objections at once to all the Amendments, without speaking again.

Exceptions may be taken, as well to Id. 53. what is omitted out of the Bill by the *Committee*, as to what is amended.

Amendments in Bills ought to be writ in *Paper*, not in *Parchment*, and without any Indorsement. *Sir Simon d'Ewe's, Four. 573, 574.*

Upon any Report from a *Committee*, *Scobel*, 53. the first Question ought to be for agreeing with the Report, unless the House generally dislike it.

Junii 1607. Agreed for a Rule, *That Id. 39. every Thing directed, and agreed to be reported, ought accordingly to be reported: But not every Thing spoken or debated at the Committee.*

Julii

Id.

28 Julii, 1641. Declared by the House, That no Committee ought by Votes to determine the Right or Property of the Subject, without first acquainting the House therewith.

Ibid.

6 Aug. 1641. Resolved, That no Vote pass'd at a Committee, and not reported, nor confirmed by the House, shall be any Rule or Direction for any Court of Justice to ground any Proceedings thereon.

C H A P. XIX.

The Order and Power of Grand Committees.

Scobel, 35.

A Grand Committee consists of as many Members (at least) as constitute the House; less may not fit, nor act as a Committee; who have general Power to consider of any Matter touching the Subject-matter referred, and to present their Opinions therein to the House, the better to prepare Matters of that Nature, or Bills thereon, for the House; which may better

better be prepared by the Liberty that every Member hath in a Grand Committee, as well as in other Committees, to speak more than once to the same Business, (if there be Cause,) which is not permitted in the House.

Bills of great Concernment, and chiefly Bills to impose a Tax, or raise Money from the People, are committed to a Committee of the whole House; to the End there may be Opportunity for fuller Debate: For that at a Committee the Members have Liberty to speak, as often as they shall see Cause, to one Question: And that such Bills being of general Concernment, should be most solemnly proceeded in, and well weighed.

Grand Committees have their Powers and Rules in other Circumstances given them in express Words by the House: As to send for Witnesses, to hear Counsel, or assign them on either Part, to send for (Persons, Paper, and) Records.

When any great Business is in Agitation that requires much Debate, or a Bill for a publick Tax is to be committed, the House doth use to resolve into a Grand Committee of the whole House; which is done by a Question; and then the Speaker leaves the Chair; and thereupon the Committee makes choice of a Chairman.

Z

If

scobel, 36. If more than one be generally call'd to the *Chair*, any Member may stand up, and by Consent of the *Committee* put a Question for one of those named to be the *Chair-Man*.

Ibid. 19 *Fac. 1.* A Dispute being in the *Committee*, which of two Members named shou'd go to the *Chair*, the *Speaker* was call'd to his *Chair*, and put the Question, *That Sir Edward Coke (one of the Persons named) should take the Chair;* and then the *Speaker* left his *Chair*.

Ibid. The *Chair-Man* of the *Grand Committee* is to sit in the *Clerk's* Place at the Table, and to write the Votes of the *Committee*.

Id. 38. If upon putting a Question, the *Chair-Man* (who is to judge the Voices) have deliver'd his Opinion, *That the Yea's have it,* and any Member stand up, and say, *He believes the No's have it,* (or contrariwise,) the *Committee* is to divide within the House, the *Chair-Man* directing the *Yea's* to one Side of the House, and the *No's* to the other; and then he is to appoint one of each to count the Numbers, and report them: Which is to be done in the same Order as in the House, saving that the Obeisance is only twice in the *Committee*, thrice in the *House*. If the Number be equal, the *Chair-Man* hath the casting

casting Voice; otherwise he hath none in the *Committee*.

When the *Committee* hath gone through *Ibid.* the Matter referred to them, the *Chair-Man*, having read all the Votes, is to put the Question, *That the same be reported to the House.* If that be resolved, he is to leave the *Chair*, and the *Speaker* being again called to the *Chair*, (or at the next Sitting of the House, if be then adjourned,) the *Chair-Man* is to report what hath been resolved at the *Committee*, standing in his usual Place; from whence (if it be not in the Seat next the Floor) he is to go down to the Bar, and so to bring up his Report to the Table.

If the *Committee* cannot perfect the *Ibid.* Business at that Sitting, they may not adjourn, as other *Committees*; but a Question is to be made for reporting to the House, and that Leave be asked, *That the Committee may sit at another Time on that Business.*

But if, as it sometimes falls out, the Mat- *Ibid.* ter hath received a full Debate in the *Committee*, and it is judged fit to be resolved in the House, the *Speaker* is again called to the *Chair* for that Purpose.

In other Things the Rules of Proceed- *Id. 39.* ings are to be the same as are in the House.

Ibid. 4 Junii, 1607. Agreed for a Rule, That every Question upon the Voices of a Committee bindeth, and cannot be altered by themselves.

Ibid. Every Thing directed, and agreed to be reported, ought to be accordingly reported; but not every Thing spoken or debated at a Committee.

Id. 36. 15 Maii, 22 Jac. 1. Upon Complaint from the Grand Committee for Grievances, That they had sent several Warrants for divers Persons to bring in their Patents, which they had not done, the House ordered the Serjant at Arms to send for them.

Id. 9. The Committee for Trade is sometimes made of a Grand Committee of the whole House, as in 21 Jac. 1. and now usually so.

Ibid. The Committees for Religion, Grievances, and Courts of Justice, are always Grand Committees of the House, which are to sit in the Afternoon upon such Days as the House doth appoint to them respectively.

Id. 36. 8 & 13 Martii, 21 Jac. 1. Upon Report from the Committee for Trade, (which then was a Grand Committee,) the House was moved for their Order to the Merchants Adventurers to bring in their Patents, and that the Inventor of the pretermitted Customs should attend the Committee.

The

The Commons, upon Debate of what ^{Rush. Col.} fell from his Majesty and the Lord Keeper, ^{225.} turned the House into a Grand Committee, order'd the Doors to be locked, and no Members to go forth; and that all Proceedings in all other Committees shall cease till the House come to a Resolution in this Business.

CHAP. XX.

Of Standing Committees.

THE Commons being the General ^{4 Inst. 11.} Inquisitors of the Realm, have principal Care, in the Beginning of the Parliament, to appoint Days of Committees, viz. of Grievances, (both in the Church and Commonwealth,) of Courts of Justice, of Privileges and Advancement of Trade.

In Parliament there have usually been five Standing Committees appointed in the Beginning of the Parliament, and remaining

^{Scobel, 9.}

Of Standing Committees.

maining during all the Session; other Committees are made occasionally, and dissolved after the Business committed to them is reported.

Ibid.

Standing Committees are for

- Privileges and Elections.
- Religion.
- Grievances.
- Courts of Justice.
- Trade.

4 Inst. 12.

These Committees when they meet, they elect one of them to sit in their Chair, in Likeness of the Speaker. The Committee may examine, and vote the Questions handled by them; and by one, whom they appoint, report their Resolutions to the House; and the House sitting, the Speaker to determine the same by Question.

Scobel, 9.

The Committees for Religion, Grievances, and Courts of Justice, are always Grand Committees of the House, which are to sit in the Afternoon, upon such Days as the House doth appoint to them respectively.

Ibid.

The Committee for Trade hath sometimes been a select Committee, particularly named; and all such Members as should come to it, to have Voices, as in Nov. 1640. Sometimes a Grand Committee

Of Standing Committees.

mittee of the whole House, as 21 Jac. 1.

The Committee for Privileges and Elections hath always had the Precedence of all other Committees; being commonly the first Committee appointed, and ordinarily the first Day after, or the same Day the Speaker doth take his Place.

This Committee is constituted of particular Numbers named by the House.

21 Jac. 1. Upon naming a Committee for Privileges and Elections, a Motion was made, That all that come should have Voices; but insisted on to be contrary to all former Precedents. A Question was put, Whether all that come should have Voices at the Committee, and passed in the Negative: Another being put, Whether the Persons nominated only should be of the Committee, it was resolved in the Affirmative.

In the Journal, 26 February, 1600. 42 Eliz. the Power anciently given to this Committee, is to examine and make Report of all Cases touching Elections and Returns, and all Cases for Privileges as may fall out, during the Parliament. But in other Parliaments, both before and since, that Power doth not appear to have been given them so absolutely; but Matters of Privilege were, upon Information to the House, there heard, and not in a Committee, unless in some

special Cafes, wherein there was Cause of Examination, or some Preparation of a Charge.

Id. 11. Council may be admitted at that Committee.

Id. 12. The Power of this Committee usually was (as it is entered in Nov. 1640.) to examine and consider all Questions which shall grow and arise in that Parliament about Elections, Returns, and other Privileges. Or (as in 1 Jac. 1.) this Committee are to examine all Matters questionable touching Privileges and Returns; and to acquaint the House with their Proceedings from Time to Time, so as Order may be taken according to the Occasion, and agreeable with ancient Customs and Precedents

Ibid. And to the End these Questions may be speedily determined, and the House may know their Members, Days are usually assign'd; beyond which there shall be no questioning a former Election.

Ibid. So in the Parliament 21 Jac. 1. it was ordered, That all Petitions about Elections and Returns should be preferred to the Committee of Privileges within a Fortnight, from that Day, or else to be silenced for that Session.

Id. 13. 16 April. 1640. Ordered, That those who would question Elections, should do it within ten Days by Petition.

L 4 6 Nov.

6 Nov. 1640. Ordered, That all such as will question Elections now returned, shall do it in fourteen Days, and so within fourteen Days after any new Return.

Some Questions have been (where there have been double Indentures returned for several Persons for the same Place) whether all, or any, or which shall fit. The general Rule and Practice hath been in such Case, That neither one nor other shall fit in the House, till it were either decided or ordered by the House.

17 April, 19 Jac. 1. Ordered, That no Petition shall be received by a Committee, but openly at a Committee; and read at the Committee, before the Party go that preferred it; and the Party's Name that preferred it be subscribed.

In the Parliament 21 Jac. 1. Resolved, That all Affidavits to be taken in any Court, concerning Elections, Returns, or any Thing depending thereupon, should be rejected, and not hereafter to be used.

Though the Committee examine not upon Oath, yet they may punish any that shall testify untruly; of which there was an Instance in the Case of one Dampport.

Sir Francis Popham being returned a Burgess for Chippenham by one Indenture, and another Person returned for the same Place

Place by another Indenture, it was moved he might be admitted into the House, till the Matter were determined. But he was not so admitted; and it was referred to the Committee for Privileges.

Id. 15.

21 Jac. 1. Two Indentures were return'd for *Southwark*; the one returned *Yarrow* and *Mingy*, the other *Yarrow* and *Bromfeild*. Upon a Report from the Committee of Elections it was resolved, That the Election and Return for *Yarrow* should stand good, and that he should sit in the House.

Ibid.

22 Martii, 21 Jac. 1. Sir *John Jackson* and Sir *Thomas Beaumont*, were both returned for one *Burges's* Place for *Pontefract*. Ordered, That the Committee take the Election into Consideration to Morrow, and that in the mean Time the Parties forbear to come into the House.

C H A P. XXI.

A Session of Parliament;
and of Prorogations and
Adjournments.

WHAT shall make a Session of Parliament. See 1 *Rob. R.* 29. *Hutton* 61. 4 *Inst.* 27. 1 *Siderf.* 457. 1 *Mod. Rep.* 151, 155.

If several Bills are passed at one and the same Parliament, none of them shall have Priority of the other; for they are made all in one Day and Instant, and each of them have relation to the first Day of the Parliament, though in several Chapters; and shall so be construed, as if they had been all comprehended in one and the same Act of Parliament. Sir *W. Jones Rep.* 22. *Hob.* III. *Bro. tit. Parl.* 86. and *Relat.* 35. *Plowd.* 79.6. *Levini z.* 9.
Crooke

Crooke says, That though in Fiction of Law a Statute shall have relation to the first Day of the Parlaiment, yet *revera* nothing is settled; nor is it a perfect Statute till the Parliament is ended. *Jones ut sup.* 370. *Vide cont. ibid.* 371.

Hales (Justice) said, That if the Parliament has severall Prorogations, and in the second or third Session an Act is made, this shall not have relation to the Day of the Beginning of the Parliament, that is to say, to the first Day of the first Session, but only to the first Day of the same Session in which it is made. *Plowd.* 79. 6.

In a Session of Parliament, though it continue never so many Weeks, yet there is nothing *prius aut posterius*, but all Things are held and taken as done at one and the same Time. *Rush.* Vol. I. Page 581.

Ibid. p. 687. *Jones* in the Case of Sir *John Elliot*, says, *We are Judges what shall be said a Session of Parliament.* Sed *Quere de hoc.*

4 Inst. 27. The Passing of any Bill or Bills, by giving the *Royal Assent* thereto, or the giving any Judgment in *Parliament*, doth not make a *Session*; but the *Session* doth continue till that *Session* be prorogued or dissolved: And this is evident by many *Presidents* in *Parliament* ancient and modern.

14 *Ed.*

14 *Ed.* 3. On the first *Monday* a Grant *Ibid.* of, &c. being given to the *King*, was made a Statute, and pass'd both Houses, and had the *Royal Assent* thereunto; yet after this the *Parliament* continued, and divers *Acts* made, and *Petitions* granted.

3 *Rich.* 2 Declared by *Act of Parliament*, That the killing of *John Imperial*, *Ambassador of Genoa* was *High Treason*; yet the *Parliament* continued long after, and divers *Acts* made, &c.

7 *Hen.* 4. An *Act* made for certain *Ibid.* Strangers departing the Realm, &c. yet the *Parliament* continued till *Dec.* 8. *Hen.* 4.

1 *Hen.* 7. The *Attainders* of such as *Ibid.* were returned *Knights*, *Citizens*, and *Burgesses*, were revers'd by *Act Parliament*, before they could sit in the *House of Commons*, and the *Parliament* continued, and divers *Acts* made.

33 *Hen.* 8. At the Beginning of the *Ibid.* *Parliament*, the *Bill of Attainder* against *Queen Catherine Howard* passed both Houses; yet the *Parliament* continued, and divers *Acts* passed.

Though *Bills* passed both Houses, and *Ibid.* the *Royal Assent* be given thereto, there is no *Session* until a *Prorogation*, or a *Dissolution*.

The

A Session of Parliament &c.

Ibid.

The Diversity between a Prorogation and an Adjournment, or Continuance of the Parliament, is, That by the Prorogation in open Court, there is a Session; and then such Bills as passed either, or both Houses, and had no Royal Assent to them, must at the next Assembly begin again.

Ibid.

Hutton, 61. Brook, tit. Parl. 86.

Every several Session of Parliament is in Law a several Parliament: But if it be but adjourned or continued, then there is no Session; and consequently all Things continue in the same State they were in before the Adjournment or Continuance.

4 Inst. 27.

The Titles of divers Acts of Parliament be, At the Session holden by Prorogation, or by Adjournment and Prorogation; but never by Continuance or Adjournment tantum. And the usual Form of Pleading is, ad Sessionem tentam, &c. per Prorogationem.

4 Inst. 28.

The Adjournment or Continuance is much more beneficial for the Commonwealth, for expediting of Causes, than a Prorogation.

Rush. Col. 537.

The King desired the House of Commons not to make a Recess in the Easter Holidays. This Message for Non-recess was not well pleasing to the House. Sir Robert Philips first resented it, and took Notice, That in 12 & 18 Jac. 1. upon the like Intimation, the House resolved, It was

A Session of Parliament, &c.

was in their Power to adjourn or sit. Hereafter, said he, this may be put upon us by Princes of less Piety. Let a Committee consider hereof, and of our Right herein, and to make a Declaration. Sir Edward Coke said, The King makes a Prorogation; but this House Adjourns itself. The Commission of Adjournment we never read, but say, This House adjourns itself. If the King writes to an Abbot for a Corody, for a Vallet, if it be ex rogatu, though the Abbot yeilds to it, it binds not. Therefore I desire that it be entered, That this be done ex Rogatu Regis.

And this Matter touching his Majesty's Pleasure about the Recess, was referred to a Committee, and to consider the Power of the House to adjourn itself.

The Sovereign may adjourn the Parliament, as well as the Parliament adjourns itself.

When a Parliament is called, and doth sit, and is dissolved, without any Act of Parliament passed, or Judgment given, it is no Session of Parliament, but a Convention.

18 Rich. 2. The Petitions of the Commons were answered, and a Judgment given in the King's Bench reversed; but no Act passed: Yet without Question it was

Rush. Col. 537.

Sir Simon d'Ewe's Four. 318. Col. 2.

4 Inst. 28. Hutton. 61. Vid. Sir

Simon d'Ewe's Four. 407. Col. 1.

4 Inst. 28.

was a *Session*; else the *Judgment* should not be of Force.

Ibid. Many Times *Judgments* given in *Parliament* have been executed, the *Parliament* continuing, before any Bill passed.

Hutton 61. If divers Statutes be continued till the next *Parliament*, or next *Session*, and there is a *Parliament* or *Session*, and nothing done therein as to Continuance, all the said Statutes are discontinued, and gone.

Hakewel 180. 8 April, 1604. In the last *Session* of the first *Parliament* of K. James the First, the House being desirous to have a Bill forthwith passed, declared, *That the Royal Assent to one Bill, or more, did not dissolve the Session, without some special Declaration of his Majesty's Pleasure to that Purpose.*

Ibid. 1 & 2 Phil. & Mar. The King and Queen came of Purpose into the *Parliament House*, to give their Assent to Cardinal Pool's Bill, and resolved upon the Question by the whole House, *That the Session was not thereby concluded, but they might proceed in their Business, notwithstanding the Royal Assent given.* But for more Security, it is usual to insert a *Proviso* to that Purpose.

Arc. Parl. 93. Crompean's Four. 7. 12. b. If there be divers *Sessions* in one *Parliament*, and the King signs not a Bill till the last, there all is but one and the same Day;

Day; and all shall have relation to the first Day of the first *Session*; and the first Day and the last are but one *Parliament*, and one and the same Day, unless special Mention be made in the Act when it shall take its Force.

See Touching the Commencement, *Prorogation*, and Dissolution of several Parliaments, from the Beginning of Edward III. to the End of Richard III. in Cotton's Records, per Totum; and from the Beginning of Edward VI. in Hale's Parliaments, pag. 107, to 110. and pag. 142, 143, &c.

Upon a *Prorogation* of the *Parliament*, 15 May, 1540. (32 Hen. 8.) to the 25th, a Vote passed, That their Bills should remain in the State they were in; and upon their next Meeting they went on accordingly.

On the 18th of February, 1666, the *Parliament* was prorogued till the 10th of October, 1667. (the King present.)

Memorandum, That his Majesty, by Proclamation, dated 26 June, 1667. Ann. 19. of his Reign, summon'd his *Parliament* to meet on the 25th of July following, (by Reason of the War against the Dutch then in Being.) On which Day they met, and adjourned at his Majesty's Appointment to

A a the

On a Pro-rogation, Bills to continue in Statu quo; Burnet's Reformation. Vol. I. pag. 276. Journal Dom. Comi

1 siderf. 338.

the 29th of the same Month ; on which Day (a Peace being then concluded,) the Parliament was by his Majesty's Appointment prorogued to the 10th of *October*, as aforesaid.

A Parliament may be summon'd (by Proclamation) to meet before the Day to which they are prorogued.

Rush. Vol. I. Anno Dom. 1628. 4 Car. 10 April. Pag 537.

Mr. Secretary *Cook* delivered this Message from the King, That his Majesty desired this House not to make any *Recess* these *Easter-Holidays*, that the World may take Notice, how earnest his Majesty and we are for the publick Affairs of *Christendom*; the which, by such a *Recess*, would receive Interruption. But,

This Message for *Non-recess* was not well pleasing to the House.

Post. 366. Sir *Robert Phillips* first resented it; and took Notice, that in 12 & 18 *Jac.* upon the like Intimation, the House resolved it was in their Power to adjourn itself, or sit. Hereafter, said he, this may be put upon us by Princes of less Piety. Let a Committee consider hereof, and of our *Right* herein, and make a Declaration. And accordingly, this Matter, touching his Majesty's Pleasure about the *Recess*, was referred to a Committee, and to consider the Power of the House to adjourn itself, to

to the End that it being now yeilded unto, in Obedience to his Majesty, it might not turn to Prejudice in Time to come.

Sir *Edward Coke* spoke to the same Purpose, and said, I am as tender of the Privileges of this House, as of my Life; They are the Heart-Strings of the *Commonwealth*. The King makes a *Prorogation*; but this House adjourns itself. The Commission of *Adjournment* we never read, but say, this House adjourns itself. If the King write to an *Abbot* for a *Corody* for a *Valet*, if it be *ex rogatu*, though the *Abbot* yeilds to it, it binds not. Therefore I desire that it be entered, that this is done *ex rogatu Regis*.

Hereupon a Message was sent to the King, That the House would give all Expedition to his Majesty's Service, notwithstanding their Purpose of *Recess*. To which Message his Majesty returned this Answer, That the Motion proceeded from himself, in regard of his Engagement in the Affairs of *Christendom*, wished them all Alacrity in their Proceedings, and that there be no *Recess* at all.

A Message from the King by the Speaker, That his Majesty commands for the present they adjourn the House till To-morrow Morning; and that all Committees

Ibid. pag. 608. same Year.

mittees cease in the mean Time. And the House was accordingly adjourned.

On *Wednesday, February 25.* the same Year, both Houses, by his Majesty's Command, adjourned themselves until *Monday Morning the 2d of March.*

Ibid.
Pag. 66o.
and Ap-
pendix,
Pag. 9.

Monday, 2d of March, the Commons meet, and urged the Speaker to put the Question; who said, I have a Command from the King to adjourn till the 10th of *March,* and put no Question; endeavouring to go out of the Chair, was notwithstanding held by some Members (the House foreseeing a Dissolution) till a Protestation was published in the House.

Hereupon the King sent for the Sergeant of the House; but he was detained, the Door being locked: Then he sent the Gentleman-Usher of the Lords House, with a Message; and he was refused Admittance, till the said Votes were read. And then in much Confusion the House was adjourned till the 10th of *March,* according as it was intimated from his Majesty.

In Mr. *Mason* (of *Lincoln's Inn*) his Argument for Sir *John Elliot,* he said, the second Charge in the Information against him, was the Contempt to the Command of the King's *Adjournment, Jac. 18.* It was questioned in Parliament, whether the

the King can adjourn the Parliament (although it be without doubt that the King can prorogue it.) And the Judges resolved, That the King may adjourn the House by Commission; and *27 Eliz.* it was resolved accordingly.

But it is to be observed and wondered, that none was then impeached for moving that Question. And it is to be noted, that they resolved that the Adjournment may be by Commission; but did not resolve, that it may be by a verbal Command, signified by another; and it derogates not from the King's Prerogative, that he cannot so do, no more than in the Case of *26 H. 8 c. 8.* that he cannot grant one Acre of Land by *Parol.* The King himself may adjourn the House in Person, or under the Great Seal, but not by verbal Message, for none is bound to give Credit to such Message; but when it is under the Great Seal, it is *Teste meipso.* And if there was no legal Command, then there can be no Contempt in the Disobedience of that Command. In this Case no Contempt appears by the Information; for the Information is, that the King had Power to adjourn Parliaments. Then put the Case the Command be that they should adjourn themselves; this is no Pursuance of the Power which he is sup-

Rush. Vol. I.
in Ap-
pendix.
pag. 48.

posed to have. The House may be adjourned two Ways, to wit, by the King, *i. e.* by Writ, or by the House itself; the last is their own voluntary Act, which the King cannot compel; for *Voluntas non cogitur.*

Rulb.
3 Part,
Vol. I.
pag. 385.

Note, Under the Number of forty Members the House of Commons is not reputed a House, so as to make an Adjournment.

C H A P. XXII.

The proper Laws and Customs of Parliament.

4 *Inst.* 50.

THE *Laws, Customs, Liberties, and Privileges of Parliament,* are better to be learned out of the *Rolls of Parliament,* and other *Records,* and by *Precedents,* and continual *Experience,* then can be expressed by any one Man's Pen. If

If an Ordinance only be entered in the Parliament Roll, and it hath the Reputation and Use of an Act of Parliament, that makes it an Act of Parliament.

Sir William Jones
pag. 104.

If any doubt be conceived upon the Words or Meaning of an Act of Parliament, it is good to construe it according to the Reason of the Common Law.

Rulb.
Vol. 3.
pag. 77.

When Laws shall be altered by any other Authority, than that by which they were made, (says King Charles the First, in his Speech at Newark to the Inhabitants of Nottingham, 1642.) your Foundations are destroyed.

ibid.
pag. 653.

As every Court of Justice hath Laws and Customs for its Directions, some by the Common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs, &c. so the High Court of Parliament *suis propriis Legibus, & Consuetudinibus subsistit.*

It is *Lex & Consuetudo Parliamenti,* that all weighty Matters in any Parliament moved, concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged, and discussed by the Course of Parliament, and not by the Civil Law, nor yet by the Commons Laws of this Realm

ibid.

used in more inferior Courts; which was so declared to be *secundum Legem, & Consuetudinem Parliamenti*, concerning Peers of the Realm, by the King, and all the Lords Spiritual and Temporal; and the like *pari Ratione* is for the Commons, for any Thing moved or done in the House of Commons; and the rather, for that by another Law and Custom of Parliament, the King cannot take Notice of any Thing said or done in the House of Commons, but by the Report of the House of Commons; and every Member of Parliament hath a judicial Place, and can be no Witness. And this is the Reason that Judges ought not to give any Opinion of a Matter of Parliament, because it is not to be decided by the Common Laws, but *secundum Legem & Consuetudinem Parliamenti*; and so the Judges in divers Parliaments have confessed. And some hold, That every Offence committed in any Court, punishable by that Court, must be punished (proceeding criminally) in the same Court, or in some higher, and not in any inferior Court; and the Court of Parliament hath no higher.

Id. 14.

By the ancient Law and Custom of Parliament, a Proclamation ought to be made against being armed, against Games, Plays, and strange Shews, &c. during the Parliament, that the Parliament may not be

be disturbed, or the Members thereof (who are to attend arduous and urgent Business) be not withdrawn.

Dec. 15. 1597. Resolved, according to the ancient Custom of the House, That all the Members of the same, which did speak against passing of the Bill, should go forth of the House, to bring the Bill into the House again, together with the Residue of the Members which went out before with the passing of the said Bill. All the Members of the House being gone forth, except Mr. Speaker and the Clerk, Mr. Controller brought in the Bill in his Hand, accompanied with all the Members of the House, and delivered the said Bill to Mr. Speaker.

17 Dec. 1597. The same Ceremony on the like Occasion omitted, upon a Motion of the Speaker; and ordered accordingly upon the Question.

18 Dec. 1601. As the Speaker was coming to the House in the Morning, the Pardon was delivered unto him, which he took, and deliver'd it to the House; which they sent back again, because it was not brought according to Course.

The Subsidy of the Clergy was sent in a Roll, according to the usual Acts: To which Sir Edward Hobby took Exceptions, because it was not sent in a long Skin of Parchment under the Queen's Hand

Townsh. Col.

116.

Vide. Sir

Simon

d'Ewe's

Four. 505.

Col. 1.

Id. 117.

Sir Simon

d'Ewe's

Four. 574.

Col. 2.

Townsh. 332.

Id. 333.

Hand and Seal; so it was sent back, and then the other was sent.

Brook
119. 4.
Crompt. 8.

Si les Commons grant Poundage pur quatre Ans, & les Seigneurs grant nisi pur deux Ans; le Bill ne serra re-bayl al Commons, mes si les Commons grant nisi pur deux Ans, & les Seigneurs pur 4 Ans, la ceo serra redeliver al Commons. Et in cest case les Seigneurs doivent fair un Scedule de leur Entent, ou d'endorcer le Bill en cest Form, Les Seigneurs ceo assentont, pur durer pur quatuor Ans: Et quant les Commons ont le Bill arere, & ne volent assenter a ceo, ceo ne poet estre un Act; mes si les Commons volent assenter, donques ils endorce leur Respons sur le Margent de bas deins le Bill en tiel Form; les Commons font assentuz al Scedule les Seigneurs, a mesme cestuy Bill annex; & donques serra bayl al Clerk del Parliament.

If the Commons grant Poundage for four Years, and the Lords grant it but for two Years, the Bill shall not be sent back to the Commons; but if the Commons grant but for two Years, and the Lords for four Years, there it shall be re-delivered to the Commons. And in that Case the Lords may make a Schedule of their Intent, or Endorse the Bill in this Form; The Lords do assent to the continuing for four Years. And when the Commons

Commons have the Bill again, and will not assent to it, that cannot be an Act: But if the Commons will assent, then they endorse their Answer on the Margin below within the Bill in this Form, The Commons do assent to the Schedule of the Lords annexed to this Bill; and then it shall be sent to the Clerk of the Parliament.

The Custom and Privilege of this House hath always been, first, to make Offer of the Subsidies from hence; then to the Upper House, except it were that they present a Bill unto this House, with Desire of their Assent thereto, and then to send it up again. And Reason it is, that we should stand upon our Privilege, seeing the Burden resteth upon us as the greatest Number; per Francis Bacon, 35 Eliz. 1592.

Vide Sir
Simon
d'Ewe's
Four. 483.
Col. 2.

The Lord Chancellor in Parliament offered the Commons a Writ to deliver their Burgefs; but they refused it, as being clear of Opinion, *That all their Commandments and Acts were to be done and executed by their Serjeant, without Writ.*

Petyt's
Miscel.
Parl. 4.
in Margin.

It is the Law and Custom of Parliament, *That when any new Device is moved on the King's behalf in Parliament, for his Aid, or the like, the Commons may answer, That they tender the King's Estate*

4 Inst.
14. 34.
Rot. Parl.
13 E. 3. n.
Cot. Records f. 17.
n. 6, 9.

Proper Laws and

Estate, and are ready to aid the same, only in this Device they dare not agree, without Conference with their Countries: Whereby it appeareth, That such Conference is warrantable by the Law and Custom of Parliament.

Journal, Dom. Com.

Mar. 19. 1677. It was conceived by the Commons, that according to the antient Course and Method of Transactions between the two Houses, when a Bill with Amendments is sent from either House to the other by Messengers of their own, the House that sends them gives no Reasons of their Amendments; but the House to whom it is sent, if they find Cause to disagree, do use to give Reasons for their Dissent to every particular Amendment; every one of them is supposed to carry the Weight of its own Reason with it, until it be objected against.

Ibid.

May 28. 1678. A Paper of Reasons against a Bill (viz. for wearing Woollen) being printed, and delivered at the Door, was committed, it being irregular for Reasons to be printed and published against a publick Bill, before a Petition be exhibited to the House against the Bill.

4 Inst. 14.

It is to be observed, though one be chosen for one particular County, or Borough, yet when he is return'd, and sits in Parliament, he serveth for the whole Realm; for

Customs of Parliament.

for the End of his coming thither (as in the Writ of his Election appeareth) is general, ad faciendum, & consentiendum, &c.

If Offences done in Parliament might 4 Inst. 17. have been punished elsewhere, it shall be intended, that at some Time it would have been put in Ure.

As Usage is a good Interpreter of Laws, Coke Lit. so Non-usage, where there is no Example, 81. b. is a great Intendment that the Law will not bear it,

Not that an Act of Parliament by Non-user can be antiquated or lose his Force, but that it may be expounded or declared how the Act is to be understood. Coke Lit. 81. b.

There is no Act of Parliament but must 4 Inst. 25. have the Consent of the Lords, the Commons, and the Royal Assent of the King; and whatsoever passeth in Parliament by this threefold Consent, hath the Force of of an Act of Parliament.

The Difference between an Act of Par- Ibid. liament, and an Ordinance in Parliament, is, for that the Ordinance wanteth the threefold Consent, and is ordained by one or two of them.

Some Acts of Parliament are introduc- Ibid. tory of a new Law; and some be declaratory of the ancient Law; and some be of both kinds, by addition of greater Penalties,

Ibid. ties, or the like. Some Acts are general, and some private, or particular.

33 H. 6. f. 18. a. 33 H. 8. Brook
Parl. 86 & Relation 35.
4 Inst. 28. Vide Sir Simon d'Ewe's Four. 550. Col. 1, 2.
All Acts of Parliament relate to the first Day of Parliament, if it be not otherwise provided by the Act.

The House of Commons is to many Purposes a distinct Court; and therefore is not prorogued or adjourned by the Prorogation or Adjournment of the Lords House; but the *Speaker*, upon the Signification of the King's Pleasure, by the Assent of the House of Commons, doth say, *This Court doth Prorogue or Adjourn itself.* And then it is prorogued or adjourn, and not before.

39 Eliz. 1597. Nov. 5. Through a meer Mistake and Error of the *Speaker* and themselves, the House conceived themselves to have been Adjourned by the *Lord Keeper*, the first Day of this Parliament, to this present Day.

Ibid. When it is dissolved, the House of Commons are sent for up to the Higher House, and there the *Lord Keeper*, by the King's Commandment, dissolveth the Parliament, and not before.

Hutton, 62. A Parliament cannot be discontinued or dissolved but by Matter of Record; and that by the King alone.

4 Inst. 28. The King at the Time of the Dissolution ought to be there in Person, or by Representation; for as it cannot begin without

without the Presence of the King, either in Person, or by Representation, so it cannot end or be dissolved without his Presence either in Person, or by Representation.

Nibil enim tam Conveniens est naturali aequitati, unumquodque dissolvi eo ligamine quo ligatum est. Bracton.

By the Statute of 33 H. 8. c. 21. it is declared by Act of Parliament, *That the King's Letters Patents under his Great Seal, and signed with his Hand, and declared and notified in his Absence to the Lords Spiritual and Temporal, and Commons assembled in the House of Parliament, is, and ever was, as good Strength and Force, as if the King's Person had been there personally present, and had assented openly and publickly to the same.*

In the Lords House, the Lords give their Voices from the *puisne Lord seriatim*, by the Word of [Content] or [Not Content.] The Commons give their Voices upon the Question, by *Yea*, or *No*.

Every Lord Spiritual and Temporal, and every Knight, Citizen, and Burges, shall upon Summons come to the Parliament, except he can reasonably and honestly excuse himself, or else he shall be amerced, &c. that is, respectively, a Lord by the Lords, and one of the Commons by the Commons.

By

Ibid. *Crompton*, 4. b. By the Statute of 6 Hen. 8. c. 16. no Knight, Citizen, or Burges of the House of Commons shall depart from the Parliament without Licence of the *Speaker* and Commons; the same to be entered of Record in the Book of the Parliament, upon Pain to lose their Wages.

4 Inst. 8. Sicknes is no Cause to remove any Knight, Citizen, or Burges of the House of Commons.

Sir *Simon d'Ewe's* *Four.* 244. Col. 2. 18 Eliz. 1575. Resolved by the House, That any Person being a Member of the same, and being either in Service of Ambassage, or else in Execution, or visited with Sicknes, shall not in any Ways be amoved from their Place in this House, nor any other to be during such Time of Service, Execution, or Sicknes, elected.

Id. 439. 31 Eliz. 1588. It was assented to by the whole House, That none after the House is set, do depart before the rising of the same House, unless he do first ask Leave of Mr. Speaker, on pain of paying Six Pence to the Use of the Poor.

4 Inst. 44. If a Lord depart from Parliament without Licence, it is an Offence done out of the Parliament, and is finable by the Lords. And so it is of a Member of the House of Commons; he may be fined by the House of Commons.

It

It doth not belong to the Judges to judge of any Law, Custom, or Priviledge of Parliament. 4 Inst. 50. Rot. Parl. 31 H. 6. n. 27.

Cardinal *Wolsey* coming to the Lower House of Parliament, told them, That he desired to reason with them who opposed his Demands. But being answered, That it was the Order of that House to hear, and not to reason but among themselves, the Cardinal departed. Heber's Hen. 8. 136.

If any sit in the House, who are not returned by the Clerk of the Crown in Chancery, it is accounted a great Crime; and severely punished. Scobel, 84.

5 Mar. 1557. 4 & 5 Ph. 6 Mar. For that *Christopher Pern* affirmed, That he is returned a Burges for *Plimpton* in Devon, and hath brought no Warrant thereof to the House, nor is returned hither by the Clerk of the Crown, by Book, or Warrant, he is awarded to be in the Custody of the Serjeant, till the House have further considered. Ibid.

13 Eliz. 1571. The House was called; and thereupon *Edward Lewknor*, *John Bullock*, *Nicholas Plumtree*, *Edward Goodwyn*, and *John Garnons*, were commanded to attend the Order of this House To-morrow; for that the House being this Day called, they had entered into the House, and had not as then been returned by the Clerk of the Crown; Sir Simon d'Ewe's Four. 156. Col. 1, 2.

B b

except

except *Garnons*, whose Case is, for that he is said to be excommunicated.

Scobel, 85. 9 Jan. 1562. For that it seemed to the House, being very full, that there were a greater Number than was returned, therefore the Names were immediately called over, and as they were called, departed out of the House.

Ibid. 7 Feb. 1588. The House was called, and every one answered to his Name, and departed out of the House as they were called.

Ibid. Chiefly the Calling of the House is, to discover what Members are absent without Leave of the House, or just Cause; in which Case Fines have been imposed.

Ibid. If the House be called, the Manner has been to call over the Names, and each Member to stand up at the Mention of his Name, uncovering his Head. Such as are present are marked, and the Defaulters called over again the same Day, sometimes the Day after, sometimes summon'd, sometimes sent for by the *Serjeant*.

Ibid. Upon calling the House, if the Person be present, he riseth up bare-headed, and answereth; if absent, he is either excused (and so entered, *Licentiatum per speciale Servitium, excusatur ex gratia, or aegrotat,*) or if none excuse him, he is entered *Deficit*.

That

That no Man may sit in the House, till he be legally returned, appears by several Instances of Persons who were not Members; and for coming into the House, were brought to the Bar; and some committed, and some sworn, before they departed, to keep secret what they had heard there.

5 April, 1571. 13 Eliz. *Thomas Clerk* and *Anthony Bull*, of the *Inner Temple, London, Gent.* were by this House committed to the *Serjeant's Ward*, until further Order should be taken with them, for that they presumed to enter into this House, and were no Members of the same, as themselves at the Bar confessed.

18 Eliz. 1575. *Charles Johnson*, of the *Inner Temple, Gent.* committed to the *Serjeant's Ward*, till further Order be taken by this House, for coming into this House this present Day, the House sitting, confessing himself to be no Member of this House.

27 Eliz. 1584. *Charles Morgan* Gent. Servant to Sir *George Cary*, Knight of a Shire, being himself no Member of this House, was found to be standing within the House next to the Door; and as it was thought of meer Ignorance and Simplicity, without any evil Purpose or Meaning, and yet was committed by Order of the House to the *Serjeant's Ward*.

B b 2

30 Nov.

Ibid. Col. 1. 30 Nov. *Eodem An.* Richard Robinson being found to be sitting in the House by the space of two Hours, (while several Speeches were made) was stripp'd to his Shirt, and his Pockets searched; and being brought to the Bar, was censured by the House, (after taking the Oaths,) to suffer Imprisonment in the *Serjeant's Ward* till *Saturday* next; and then (having sworn to keep secret what he had heard) to be released.

Id. 394. Col. 2. 28 *Eliz.* 1586. Edmund Mocr and John Turner presumed to come into the House, being no Members; and upon their Submission discharged, because it was done of Simplicity and meer Ignorance. *Id.* 394. Col. 2. So John Legg, *Vide Id.* 486. Col. 2. So Matthew Jones, *Id.* 511. Col. 1. So William Hanner, *Id.* 288. Col. 2

Scobel, 87. Petitions are usually presented by Members of the same County. If they be concerning private Persons, they are to be subscribed; and the Persons presenting them called in to the Bar, to avow the Substance of the Petition, especially if it be a Complaint against any.

Ibid. 18 Nov. 1640. One *Vivers* presenting a Petition in the Name of the Mayor, Aldermen, Burgeses, and other Inhabitants of *Banbury*, was called in, and did acknowledge the Hand to the Petition to be

be his, and that he did deliver it by Order, and on Behalf of the Town of *Banbury*; and thereupon it was committed.

The like in the same Parliament, upon *Ibid.* reading the Petition of one *Ward* of *Salop*; and likewise on reading the Petition of *Henry Hogan*.

Though Freedom of Speech and De- *Scobel,* 72. bates, be an undoubted Privilege of the House, yet whatsoever is spoken in the House is subject to the Censure of the House.

Though the Committee examine not *Id.* 17. upon Oath, yet they may punish any that shall testify untruly.

In the Parliament, if the greatest Part *Hakewel* of the Knights of the Shire do assent to ^{93.} the making of an Act of Parliament, and the lesser Part will not agree to it, yet this is a good Act or Statute to last in *perpetuum*, and that the Law of *Majoris partis* is so in all Councils, Elections, &c. both by the Rules of the Common Law, and the Civil.

Tenants d' ancient Baronies sont dis- Moor, fol. charge de Contribution al Gages de Chevaliers del Parliament; quia lour Seigneurs servent pur eux in Parliament. 768.

* Tenants of ancient Baronies are discharged from Contribution to the Wages of Knights of Parliament, because their ^{* i. e. Tenants in ancient Demeasns} Lords serve for them in Parliament.

Scobel, 14. April, 1640. It was ordered by the Commons, *That if any sit in that House, that are returned by more Indentures then usual, they should withdraw till the Committee for Privileges had farther ordered.*

Id. 40. In the Beginning of every Parliament, some Persons have been appointed to consider of such Laws as had Continuance to the present Session, whether they were fit to be continued, or determined, as also of former Statutes repealed or discontinued, whether fit to be revived, and what are fit to be repealed.

Ibid. Any Member of the House may offer a Bill for publick good, except it be for imposing a Tax; which is not to be done, but by Order of the House first had.

Id. 41. A private Bill that concerns a particular Person, is not to be offered to the House till the Leave of the House be desired, and the Substance of such Bill made known, either by Motion or Petition.

Hakewel, 135. It hath at some Times been ordered, *That every one that preferreth a private Bill should pay five Pounds to the Poor, as in 43 Eliz.* towards the End of the Parliament, when they were troubled with much Business; but it holdeth not in other Parliaments.

Scobel, 41. Nevertheless the *Speaker* had Liberty to call for a private Bill to be read every Morning;

Morning; and usually the Morning is spent in the first Reading of Bills untill the House grow full.

If any publick Bill be tendered, the Person who tenders the Bill must first open the Matter of the Bill to the House, and offer the Reasons for admitting thereof; and thereupon the House will either admit, or deny it.

7 Martii, 1606. Mr. Hadley being assigned of a Committee to confer with the Lords, desired to be spared, he being in Opinion against the Matter itself. And it was conceived for a Rule, *That no Man was to be employed in any Matter that had declared himself against it;* and the Question being put, it was resolved Mr. Hadley was not to be employed.

Presidents reported by Mr. Pryn, about the Method of Proceeding upon the Impeachment of the Lord Mordant.

28 May, 1624. In the Lords Journal, which is entered in *hæc verba*, and allows Council in all Cases.

1 & 2 Car. 1. A great Dispute, if the Earl of Bristol, impeached for High Treason, should be allowed Council. The Lords then stood on the Order above recited: The King objected to that Order, that the Judges and his Council had not assented thereto; yet the King consented (to avoid being thought rigorous,) that the Earl of

28 Jan. 1666.

Council to be allowed Impeachment.

Bristol should be allowed Council, so it were not drawn into Precedent.

Council was allowed to *Sir George Bynion*.

Council allowed to *Garney*, Lord Mayor of *London*, impeached for High Crimes and Misdemeanors, 5 & 11 July 1642. and 1 & 2 August.

Sept. 30. 1645. An Impeachment of of the Earl of *Strafford*.

H. Poulton, &c. for striking *Sir Arthur Haselrig*.

Upon all which the House did acquiesce in the Lord *Mordant's* having Council.

As to his fitting within the Bar: The Lords insisted on it, on the Precedents of 18 Jac. the Bishop of *Landaff*, and 1645. the Lord *Stamford*.

Litt. Rep. 330.

Seignor Coke, Elect. 1 Car. 1. *Vifcount de Bucks*, & *Chivaler de Norfolk*, Comment que ill abstein de la maison, uncore il avoit privilege versus la Dame *Cleer*.

May's Hist. Parl. 1.3. p. 27. Sir Robert Atkin's Power of Parliaments, 36.

The Privileges of Parliament consist in Three Things: First, as they are a Council to advise; Secondly, a Court to judge; Thirdly, a Representative Body of the Realm, to make, repeal, or alter Laws.

Rush. Col. Vol. 1. 663.

Upon some Questions propounded to the Judges, Anno 1629. 5 Car. 1. all the Judges agreed, That regularly a Parliament-

ment-Man cannot be compelled, out of Parliament, to answer Things done in Parliament in a parliamentary Course.

Their Rights and Privileges are the Birth-right and Inheritance, not only of themselves, but of the whole Kingdom, wherein every Subject is interested.

Rush. Col. Vol. 3. p. 1. 458.

The Violating of the Privileges of Parliament, is the Overthrow of Parliament.

Rush. Col. Vol. 3. p. 1. 475.

The Privileges of the House, says *Sir Edward Cook*, are the Heart-Strings of the Commonwealth; and therefore if the King desires a Nonrecess, I desire that this may be enter'd, That it is done *ex Regia Regis*.

Rush. Col. Vol. 1. p. 537.

The King (*viz. Charles II.*) in his Letter to the King of *Spain*, declares, That the Murder of his Father was not the Act of the Parliament or Kingdom of *England*, but of a little Company in the Kingdom, 23 Aug. 1660.

Journ. of House of Commons.

Expulsion from the House for Words.

Thursday, in the Morning, 27 May, 1641. Mr. *Taylor*, a Barrister, and Burges for *Old Windsor*, was brought upon his Knees in the House of Commons, for speaking some Words in Disparagement of the whole House, about the Earl of *Strafford's* Death, saying, *They had committed Murder with the Sword of Justice; and*

Diurnal Occurrences of Parliament, from Nov. 3. 1640. to Nov. 3. 1641. p. 111

Proper Laws and

and that he would not for a World have so much Blood lie on his Conscience, as did on theirs, for that Sentence. Which Words being proved against him by the Mayor of Windsor, (to whom he spoke them,) and some others, he was thereupon expelled the House, and voted incapable of ever being a Parliament-Man, committed to the Tower during Pleasure; to be carried down to Windsor, there to make Recantation for those Words; and to return back to the House of Commons, to receive further Sentence: And it was ordered, That a Writ should presently issue out for a new Election in his room.

The 2d of June he petitioned to be restored upon his Submission: But his Petition would not be hearkened unto.

Id. p. 116.
Id. the whole.
Rush. Col. part 3. vol. 1. fo. 278, & 280.

A Member sent to the Tower, for discovering what was said in the House in a former Parliament.

Rush. Col. part 3. vol. 1. fo. 169.

Mr. Francis Nevill, of Yorkshire, a Member of the House, was, February 4. 1640. 16 Car. 1. questioned for Breach of Privileges in the precedent Parliament, which met 13 Apr. 1640. by discovering to the King and Council what Words some Members did let fall in their Debate in that House. Whereupon Mr. Bellasis, Knight for Yorkshire, and Sir John Hotham,

Customs of Parliament.

tham, were committed by the Council-Board. And Mr. Nevill being brought to the Bar, was by the House committed to the Tower of London; and Sir William Savill, touching the same Matter, was ordered to be sent for in Custody.

C H A P. XXIII.

Privilege of Parliament.

THE Privilege of Tenants in Ancient Demeane, must be as ancient as their Tenure and Service; for their Privilege comes by Reason of their Service, and their Service is known by all, to be before the Conquest, in the Time of Edward the Confessor, and in the Time of the Conqueror.

Every Man must take Notice of all the Members of the House returned of Record, at his Peril.

Otherwise it is of the Servant of any of the Members of the House.

A

Sir R. Atkin's Argument, 18. Vide Coke 2 Rep. in Pref.

4 Inst. 23. 24.

Id. 24.

Privilege of Parliament.

Id. 42.
Hakewel
62.

A Member of Parliament shall have Privilege of Parliament, not only for his Servants, but for his Horses, &c. or other Goods distrainable.

Scobel, 88.

The Privilege is due *eundo, morando, redeundo*, for the Persons of Members, and their necessary Servants; and in some Cases, for their Goods and Estates also during the Time.

Ibid.

For their own Persons they have been privileged from *Suits, Arrests, Imprisonments, Attendance on Trials, Serving on Juries*, and the like, yea, from being summoned or called to attend upon any Suit in other Courts, by *Subpœna* served on them.

Hakew. 62.
Vide Dyer.
60.

He that doth arrest any Member of either House during the Session of Parliament, shall be imprisoned in the *Tower*, by the nether House of which he is, and shall be put to his Fine; and the Keeper also, if he will not deliver him when the *Serjeant at Arms* doth come for him by Command of the House.

Ibid.
Crompton's
Jurif. 11.

The Servants tending upon their Masters during Parliament, who are necessary, and also of such Officers as attend the Parliament, as the *Serjeant at Arms*, the *Porter of the Door*, *Clerks*, and such like, and also their Chattels and Goods necessary, are privileged; so that they shall not be taken, or arrested by any Officer, if

Privilege of Parliament.

if it be not in Case of *Treason* or *Felony*.

Generally the Privileges of Parliament do hold, unless it be in three Cases, *viz.* 4 Inst. 25. *Treason, Felony*, and the *Peace*.

No Privilege is allowable in Case of the Peace, nor in Case of Conviction, or disarming of Recufants. ^{2 Nalson.} 450.

No Minister of the Parliament, during forty Days before, and forty Days after the Parliament finished, shall be impleaded, vexed, or troubled, by no Means. ^{St. 3 Ed. 4. in Ireland.}

That every Minister, as well Lords Proctors, as Commons, be discharged and quitted of all Manner of Actions had or moved against them, or any of them, during the Time aforesaid; and this to endure for Ever.

Après que Members sont returns, leur personal Attendance est cy necessary al Parliament, que ils ne doivent pur ascun Business estre absents, & nul un Person poit estre bien mis, eo que il est un necessary Member; & pur ceo, si ascun morust devant le Parliament, un novel ser-ra eslieu en son lieu, issint que l'entire Number ne doit failer; & donque il ensue, que le Person de chescun tiel Member doit estre Privilege d'arrest al Suit d'ascun privat Person, durant vel temps que il est embusyd entour les Affairs del Roy, & son Realm; & tiel privilege ad estre tous foits grant per le Royales

Privilege of Parliament.

les Commoners al Request del Prolocutor del Parliament le primer Jour, &c.

After that the Members are returned; their Attendance is so necessary to the Parliament, that they ought not for any Business to be absent, and no one Person can well be mist, for that he is a necessary Member; and therefore if any die before the Parliament, a new one shall be chosen in his Place, so that the entire Number may not fail; and then it follows, that the Person of every such Member ought to be privileged from Arrest at the Suit of any private Person; during the Time that he is busied in the Affairs of the King and the Realm; and such Privilege has used to be granted at all Times by the King to the Commons, at the Request of the Speaker of the Parliament the first Day, &c.

Common Reason voit, que intant que le Roy, & tout son Realm ad un Intrest en le Corps de chescun de dits Members; il semble que le privat Commodity d'ascun particular home ne doit estre regard.

Ibid.

Common Reason will have it, that forasmuch as the King and his whole Realm have an Interest in the Body of every one of its Members, it seems that the private Commodity of any particular Man ought not to be regarded.

Cest Court de Parliament est plus haut Court,

Privilege of Parliament.

Court, & ad plusors Privileges que ascun auter Court del Realm; pur que semble que en chescun Case sans ascun Exception, chescun Burges est privilege, quant l'Arrest n'est forsque al Suit d'un Subject.

Ibid. Crompt. 7. b.

The Court of Parliament is the highest Court, and has more Privileges than any Court of the Realm; for which it seems that in every Case, without any Exception, every Burges is privileged when Arrest is only at the Suit of the Subject.

Coment que le Parliament erra in le grant del Brief de Privilege, uncore ceo n'est reversible en auter Court.

Id. 61.

Though the Parliament do err in the Grant of a Writ of Privilege, yet it is not reversible in another Court.

Fuit dit per Dyer, que si home soit condemne en Debt ou Trespass, & est eslieu un des Burgeses ou Chivalers del Parliament, & puis soit prise en Execution, il ne poet aver le Privilege del Parliament; & issint fuit tenus per les Sages del Ley en le Case d'un Ferrers en temps le Roy H. 8. & coment que le privilege à ceo temps fuit à luy allowe, ceo fuit minus juste. Sed vide Bohun's Collection and post contra.

Moor. f. 57. n. 163.

Crompton's Jur. p. 7. 8.

9. 10. 11. 34 H. 8.

It was said by Dyer, That if a Man be condemned in Debt or Trespass, and is chosen one of the Burgeses or Knights of Parliament,

Parliament; and afterwards is taken in Execution, he cannot have the Privilege of Parliament; and so it was held by the Sages of the Law, in the Case of one Ferrers, in the Time of King Henry the Eighth; and though the Privilege at that Time was allowed him, yet it was unjust.

Petyt's Miscel. Parl. p. 1. &c.

Dyer, 61. Pl. 28.

Hill & Stukely les Viscounts de Londres fueront commit al Tower pour leur Contemps; pur ceo que ils ne voil lesser George Ferrers, que fuit arrest sur un Execution, d'aler alarge, quant les Serjeants del Arms vient pur luy, sans aucun Brief.

Hill and Stukely, the Sheriffs of London, were committed to the Tower for their Contempts, for that they would not suffer George Ferrers, who was arrested upon an Execution, to go at large, when the Serjeant at Arms came for him, without any Writ.

Fitzherbert's Case. Moor, tol. 340. n. 461.

Le lower Meson del Parliament agreee, que entant que un fuit arrest, devant que il fuit eslie Burges, que il ne doit aver le privilege del Meson.

The Lower House of Parliament agreed, That in regard one was arrested, before he was chosen Burges, that he ought not to have the Privilege of the House.

Vide

Vide Fitz-Gerald's, Case, Anno 1640. Post 393. in Ireland. Vide 39 Hen. 6. Walter Clerk's Case, 5 Hen. 4. Richard Chidder, 38 Hen. 8. Tyneman's Case, 43 Eliz. Belgrave's Case, 39 Hen. 6: Ferrer's Case, in Holinshead, f. 1584.

Debt upon an Obligation, whereof the Condition was, That if A would render himself to an Arrest in such a Place, &c. A pleads Privilege of Parliament; and that being Servant to such a Member, he could not render himself to be arrested. Upon Demurrer, the Opinion of the Court was for the Plaintiff: For A might render himself; and let it be at their Peril, if they will arrest him.

Brownl 91. Jackson versus Kirton.

Magister Militie Templi petit, quod distringat Catalla unius de Concilio, tempore Parliamenti, pro Reditu unius Domus in London, Rex respondet, non videtur honestum, quod illi de Concilio suo distringantur Tempore Parliamenti; sed alio Tempore, &c.

4 Inst. 24.

Bogo de Clare, and the Prior of Trinity, for serving a Citation on the Earl of Cornwall in the Time of the Parliament, committed to the Tower; and Bogo, at whose Procurement it was done, fined in two thousand Marks to the King, and a thousand Pounds to be paid to the Earl.

Ibid. Townsh. Coll. 255. Sir Simon d'Enes's Jour. 675. Col. 1. f. 15. he was fined 20000 Marks

And yet the serving of the said Citation did not arrest or restrain his Body; and

4 Inst. 24.

and the same Privilege holdeth in Case of *Subpæna*, or other Process, out of any Court of Equity.

Ibid. *Rex mandavit Justiciariis suis ad Assisas, &c. quod supersedeant captioni eorundem, ubi Comites, Barones, & alii Summoniti ad Parliamentum Regis sunt Partes, quamdiu dictum Parliamentum duraverit.*

Ibid. A Citation shall not be served on any Member, nor *Subpæna*.

Vid. Sir Simon d'Ewe's Jour. 435. Col. 1. Divers Persons committed to Prison for serving a Citation on *John de Thorsby*, Clerk of the Parliament.

Ibid. Scobel, 110. 22 Febr. 6 Ed. 6. Ordered, If any Member require Privilege for himself or his Servant, upon Declaration thereof to the Speaker, he shall have a Warrant sign'd by the Speaker to obtain the Writ.

Scobel, 110. 22 Martii, 18 Jac. 1. It was resolved, That no Protection under any Man's Hand of this House, is good.

Id. 89. 29 Jan. 1557. 4 & 5 Ph. & Mar. *Thomas Ennys* Burgefs for the Borough of *Thrusk*, complained that a *Subpæna* was delivered him to appear in *Chancery*, and required the Privilege of the House; whereupon *Sir Clement Higham* and Mr. Recorder of *London*, were sent to the Lord Chancellor, to revoke the Process.

27 Eliz.

27 Eliz. One *Kyrl* having caused a *Subpæna* out of the *Star-Chamber* to be served on a Member of the House of Commons, and for want of Appearance, taken out an Attachment, and enforced the Payment of Money to discharge the same; the said *Kyrl* was committed, till he had paid Costs to the Party served, and made a Submission to the House on his Knees at the Bar.

15 Maii, 1604. The *Serjant* was sent to attach the Body of one who served a *Subpæna* on the Person of *Sir Robert Needham*, a Member.

7 May, 1607. The *Serjeant* was sent for *Edward Throgmorton*, for serving a *Subpæna* on *Sir Oliver Cromwel*.

14 Maii, 19 Jac. 1. Upon Complaint of the Service of a *Subpæna* on a Member of this House, *Sir Edward Coke* vouched a Precedent, 10 Ed. 3. That a *Subpæna* being served on the Clerk of this House, the Party was committed for breaking the Privilege of this House.

4 Maii, 1607. A *Subpæna* out of the *Exchequer* being served on *Sir R. Parwlet*, a Member, the House granted Privilege, and ordered the *Serjeant* by his Mace, to attach the Parties delinquent, and to bring them to the Bar, to receive the Judgment of the House. And the next Day Mr. Speaker writ a Letter to the

C c 2

Lord

Lord Chief Baron, That no further Pro-
cess do issue against the said Sir R. Paw-
let.

Ibid.

3 Dec. 19. Jac. 1 Upon occasion of a
Subpœna served on Mr. Brereton, it was
agreed by the whole House, That the serv-
ing of a Subpœna upon a Member of this
House, knowing him to be a Parliament-
Man, is a Breach of Privilege; and Napper,
who served the Subpœna, was commit-
ted.

Townf. Col.
209.
Vid. Sir
Simon
d'Ewe's
546. Col. 2.

39 Eliz. Mr. Combs and Mr. Henry
Powle, Members of this House, being
served with a Subpœna ad testificandum,
by Mrs. Ann Wye, the Serjeant of the
House was ordered to bring in the said
Ann to appear in this House, to answer
the Contempt.

Id. 212,
213, 214.

43 Eliz. 1601. A Subpœna ad testifi-
candum served on Mr. Johnson, and other
Members, Agreed, That the Serjeant be
sent to arrest all those to appear that had
procured the Subpœna, to answer their
Contempt with all Speed.

Id. 246.
Sir Simon
d'Ewe's
Jour. 651.
Col. 1.
Id. 257.

44 Eliz. 1601. Sir Edmond Morgan,
a Member of this House, was served with
a Subpœna at the Suit of one Lemney;
who was sent for by the Serjeant. And
because Christopher Kennel, who served
it, professed Ignorance, he was only ad-
judged to three Days Imprisonment in
the Custody of the Serjeant, and to pay his
Fees. The

The same Order with William Macker-
less, who served a Subpœna on Mr. Pem-
berton, a Member, at the Suit of one
Mackerness. Ibid.
Vid. Sir
Simon
d'Ewe's
Jour. 656.

44 Eliz. 1601. Mr. Philips, a Mem-
ber of the House, was served with a Privy
Seal out of the Court of Wards, by one
Thomas Dean, Servant to Mrs. Chamber-
lain a Widow. The House ordered that
she and her Servant should be sent for
by the Serjeant. Col. 1, 2.
Sir Simon
d'Ewe's
Jour. 655.
Col. 1, 2.

Vide plus de his Sir Simon d'Ewe's
Journal 637. & alibi passim.

33 Eliz. The Sheriffs of London were
fined by the Commons, and sent to the
Tower, for not delivering a Burgefs
arrested for Debt, sitting the Parlia-
ment. Scobel, 92.

6 April, 1593. The Serjeant at Mace, Id 927
who arrested Mr. Neal, a Member, upon
Execution, and Weblyn, at whose Suit
he was arrested, were brought to the Bar,
and both committed Prisoners to the
Tower; and the Serjeant at Arms at-
tending this House was ordered to deli-
ver them over to the Lieutenant of the
Tower. Vide Sir
Simon
d'Ewe's
Jour. 519.

13 Maii, 1607. Nicholas Allen an
Attorney, and Palmer, at whose Suit Mr.
Martin, a Member, was Out-law'd; or-
dered to be sent for by the Serjeant, and
brought to the Bar, to answer their Con-
tempt. Ibid. An

Ibid.

An Attachment for Contempt being taken out of *Chancery* against Mr. *Bellingham*, a Member, the House ordered to have Privilege, and a Letter to be sent to Mr. *Evelyn*, one of the six Clerks, to stay the Suit.

Id. 93.

Upon a Writ directed to the Sheriff to levy twenty Pounds Issues upon Sir *Robert Oxenbridge*, for Non-Appearance, it was ordered, *That if the Issues were not discharged before that Night, the Parties delinquent to be brought next Day to the Bar by the Serjeant.*

Ibid.

14 *Maii*, 1576. Sir *Edward Montague* a Member of the House, was warned to attend a Trial in *London*, which was to be had against him, and was by Order of the House privileged; and the Party that gave the Warning, was summoned to appear at the Bar next Morning.

Id. 94.
Wide Sir
Simon
& Ewe's
Jour. 436.
Col. 1, 2.

21 *Febr.* 1588. Ordered, *That those Members of the House who have Occasion of Privilege (Writs of Nisi prius being brought against them) do declare their Case to the Speaker, who thereupon shall direct the Warrant of this House to the Lord Chancellor, for awarding Writs of Superfedeas.*

Ibid.

3 *Martii*, 18 *Jac.* 1. Upon a Report from the Committee (appointed to consider of a Way of staying Trials against Members of the House) that by several Precedents the Custom appeared to be in such Cases

Cases, *That on Motions and Orders in the House, Letters were written to the Justices of Assize for stay of Trials against Members of the House; which Letters were entred in the Journal-Book; and that it belongeth to the Clerk to write the same:* It was thereupon Resolved, *That the former Course of writing Letters to Justices of Assize should be held according to former Precedents.*

10 *Junii*, 1607. Sir *Robert Johnson*, a Id. 95.

Member of this House, moved for a Letter to stay a Trial against him in the *Exchequer*. Which was granted (as appeareth by the Entry on the 13th Day, when a Petition of Sir *Robert Brett* was read against that Privilege.) The Privilege formerly granted was affirmed upon this Reason, *That no Man should have any Thing to withdraw him from his Service in the House.* The like 14 *Feb.* 18 *Jac.* 1.

The Privilege of the House is so much insisted on, that it hath been a Question, *Whether any Member of the House could consent, that himself might be sued, during the Session; because the Privilege is not so much the Person's, as the House's:* And therefore when any Person hath been brought to the Bar for any Offence of this Nature, the *Speaker* hath usually charged the Person in the Name

of the whole House, as a Breach of the Privilege of the House.

Ibid.

3 Junii, 1607. Sir Thomas Holcroft a Member of the House, had occasion to sue at Law; and was sued; with which he was content, and desired the Leave of the House. There was a Question, *Whether the House should give Leave for a Breach of Privilege; and it was resolved, The House might give Leave.*

Id. 96.

7 Maii, 1607. Sir Thomas Bigg and Sir Thomas Love being returned upon an Attaint in the *King's Bench*, it being moved, That in this Case they ought to have Privilege, it was so ordered; and the *Serjeant* sent with his *Mace* to deliver the Pleasure of the House to the Secondary, the Court sitting.

Ibid.
Vide Sir Simon d'Ewe's Jour. 560. Col. 2.

22 Nov. 1597. Sir John Tracey, a Member of this House, being at the *Common Pleas* Bar, to be put upon a Jury, the *Serjeant* at Arms was presently sent with his *Mace* to fetch him thence, to attend his Service in the House.

Scobel, 96.

April, 12 Jac. 1. Sir William Bampfield was committed by the Lord Chancellor for a Contempt after the Writ of Summons, but before the Election. Ordered, upon the Question, *That he shall have his Privilege by Writ of Habeas Corpus.*

1 Jac.

1 Jac. 1 Sess. 2. Sir John Peyton ^{Ibid.} returned Knight for *Cambridge* the last Session, and since chosen Sheriff, Resolved, *That he shall attend his Service here.*

28 Martii, 1542. During this Session ^{Herbert's Hen. 8. 539} of Parliament, some Wrong was offered to their ancient Privileges, a Burgefs of theirs being arrested. Whereof the King understanding, not only gave Way to their releasing him, but Punishment of the Offenders: Infomuch that the Sheriffs of *London* were committed to the *Tower*, and one Delinquent to a Place called *Little Ease*, and others to *Newgate*.

2 Martii, 1592. Upon a Report ^{Scobel, 112, 113.} from the Committee of Privileges, *That one Mr. Fitzherbet was returned a Burgefs, and excepted against, because he was alleged to be Outlaw'd, and detained upon such Outlawry; the House ordered, That Mr. Speaker should move the Lord Keeper for an Habeas Corpus cum Causa to bring up the Body and the Cause of Mr. Fitzherbert. But the Lord Keeper returned, That in regard of the ancient Liberties and Privileges of this House, the Serjeant at Arms be sent by Order of this House for Mr. Fitzherbert at his own Charge; by Reason whereof he may be brought, without Peril of being further arrested.* ^{Vide Moor. fo. 340. n. 461. Fitzherbert's Case. Vide Sir Simon d'Ewe's Jour. 479. 480. 490. Col. 2.}

arrested by the Way; which was approved of.

Scobel, 104, 105, 106, 107. Vid. Petyt's Miscel. Parl. 222, 123, 124, 125.

1 Jac. 1. The first Day of sitting Complaint was made, That Sir Thomas Shirley, chosen a Member of the House, was arrested four Days before the Sitting of this Parliament, a Warrant issued to the Clerk of the Crown for a Habeas Corpus to bring him to the House, being then a Prisoner in the Fleet; and the Serjeant and his Yeoman were sent for in Custody; who being brought to the Bar, and confessing their Fault, were remitted for that Time. 17 April, Upon hearing Council in the House at the Bar for Sir Thomas Shirley, and the Warden of the Fleet, it was ordered, That Simson, at whose Suit, and the Serjeant by whom the Arrest was made, should be committed to the Tower. 4 Maii, A Habeas Corpus was awarded to the Warden of the Fleet to bring Sir Thomas Shirley to the House. The Warden deny'd to execute it. For which, the 7th of May following, he was sent for by the Serjeant, and brought to the Bar; who denying to bring his Prisoner, a new Writ of Habeas Corpus was awarded, and the Warden was committed to the Serjeant, with this Order, That if that Writ were not executed, that then he should be delivered over to the Lieutenant of the Tower as the House's Prisoner. 8 Maii,

8 Maii, The Serjeant was sent with his Mace to the Fleet, the House sitting, to require the Body of Sir Thomas Shirley. But the Serjeant being deny'd, a Warrant was made to the Serjeant to deliver the Warden of the Fleet to the Lieutenant of the Tower, to be kept close Prisoner. 11 Maii, The Warden was again sent for, and brought to the Bar; and refusing to deliver up his Prisoner, he was committed to the Place called the Dungeon, or Little Ease in the Tower. 14 Maii, A new Warrant was ordered for a new Writ of Habeas Corpus; and that the Serjeant should go with the Writ; that the Warrant should be brought to the Door of the Fleet by the Lieutenant himself, and there the Writ to be delivered to him, and the Commandment of the House to be made known to him by the Serjeant, for the executing of it; that in the mean Time the Warden to be presently committed to the Dungeon, and after to be returned thither again. 18 Maii, The Warden did deliver Sir Thomas Shirley; and so was not put into the Dungeon. 19 Maii, He attending at the Door, was brought into the Bar; where, upon his Knees, confessing his Error and Presumption, and professing he was unfeignedly sorry he had so offended this Honourable House. Upon that Submission, by Direction of the House, the

the *Speaker* pronounced his Pardon and Discharge, paying ordinary Fees to the Clerk, and to the Serjeant.

Sir Simon d'Ewe's Jour. 688. Col. 1.

Mr. *Belgrave*, being a Member of the House of Commons had an Information exhibited against him in the Star-Chamber by the Earl of *Huntington*. And Order was entered, as the Act of that House. 43 *Eliz.* 601. *That he ought not to be molested in that Manner.*

Rush. Col. 653. Vid. Pety's Miscel. Parl. p. 107.

10 *Feb.* 4 *Car.* 1. Whilst the House was in Debate, the Warehouse of Mr. *Rolls* (Merchant and Member of the House then sitting in Parliament) was locked up by a Pursuivant, and himself called from the Committee, and served with a *Subpœna*. This gave Occasion of smart Debates in the House. After which the Attorney General writ a Letter, *That the serving a Subpœna was a Mistake, and prayed a favourable Interpretation.* Resolved, *That Mr. Rolls, a Member of the House, ought to have Privilege of Person and Goods.*

Id. 654.

Rush. Col. 659.

Memorials of the Method of Proceedings in Parliament 97. Vid. Sir Simon d'Ewe's Jour. 85. Col. 1.

16 *Feb.* 5. *Eliz.* Robert *Parker*, Servant to Sir *William Woodhouse*, Knight for *Norfolk*, being attached in *London*, at the Suit of one *Baker*, in *Trespass*, had a Warrant of Privilege, notwithstanding Judgment given against him for four hundred Marks.

20 *Febr.*

20 *Febr.* 18 *Eliz.* 1575. Upon the Question, and also upon Division of the House, *Edward Smaley*, Servant to *Arthur Hall* Esq; one of the Burgeffes for *Grantham*, being arrested upon an Execution, had Privilege.

Ibid. Vide Sir Simon d'Ewe's Jour. 251. Col. 1.

16 *Dec.* 44 *Eliz.* *Anthony Curwen*, Servant to *William Huddleston* Esq; one of the Knights of *Cumberland*, being arrested upon a *Capias ad Satisfaciendum*, out of the Common Pleas, for six Pounds Debt, and forty Shillings Damages, and detained in Execution, a *Superfedeas* was awarded, and he was delivered.

Ibid. Vid. Sir Simon d'Ewe's Jour. 680. Col. 1.

And the House awarded the Officer that arrested him should be discharged, paying his Fees; and that *Matthews* should pay them, and also his own Fees, and remain three Days in the Serjeant's Custody, for procuring the Arrest.

Townsh. Col. 326. Vid. Sir Simon d'Ewe's Jour. 680. Col. 1. 686. Col. 1.

11 *Maii*, 19 *Jac.* 1. The Under-Sheriff of *Middlesex* was called to the Bar, for causing *Alexander Melling*, Servant to the Chancellor of the Dutchy, to be arrested. He denied he knew him to be his Servant. Mr. *Speaker* let him know the House had ordered him to have Privilege; and therefore ordereth the Under-Sheriff to discharge him.

Memorials, &c. p. 98.

1 *Jac.* 1. *Sess.* 2. Sir *Edward Sandys* moveth a Breach of Privilege by Sir *Robert Leigh*, a Justice of the Peace, for con-

Ibid.

committing his Coach-Man to *Newgate*. Sir *Robert Leigh* was sent for by the Serjeant, and an *Habeas Corpus* for the Prisoner. Sir *Robert Leigh* being brought to the Bar, acknowledged his Fault, and was discharged; and so was the Prisoner.

Ibid. 3 *Martii*, 1606. *Valentine Syre*, Servant and Bag-Bearer to the Clerk of the Commons House, being arrested upon an Execution, was by Order and Judgment of the House enlarged.

Ibid. 99. Vid. *Townsh. Col.* 196, 206, 210. Vide Sir *Simon d'Ewe's Four.* 629. Col. 1. 7 *Sept.* 1601. *Woodal*, Servant of *William Cook Esq;* a Member of the House, being arrested, and in Prison in *Newgate*, the Serjeant at Arms was presently sent to *Newgate*, to bring him to the House *sedente Curia*. And being brought to the Bar with his Keeper, was discharged from his said Keeper, and from his Imprisonment.

Memorials, 99. 1 *Julii*, 1607. *John Pasmore*, the Marshal's Man, being sent for, and brought to the Bar, for arresting *John Jessop Waterman*, Servant to Sir *Henry Nevil*, a Member of the House. He denied that he knew he was Sir *Henry's* Servant, until afterward; notwithstanding he took an *Assumpsit* from him, to answer the Action. The House thought fit to commit him to the Serjeant till the House's Pleasure were further known, and till he had discharged the *Assumpsit*, and paid the Fees.

17 *Junii*,

17 *Junii*, 1609. Upon a Report from Ibid. the Committee for Privileges, That a menial Servant of Sir *Robert Wroth* was arrested eight Days before this Session; the Serjeant was sent for the Prisoner, and the Serjeant that made the Arrest, one *King*, who followed it, and *Fisher*, at whose Suit he was arrested.

4 *Junii*, 19 *Fac.* 1. *Johnson*, a Ser- Ibid. 100. vant to Sir *James Whitlock*, a Member of the Commons House, was arrested upon an Execution by *Moor* and *Lock*; who being told, That Sir *James Whitlock* was a Parliament Man; *Fulk*, one of the Prosecutors, said, *He had known greater Men's Men than Sir James Whitlock's taken from their Masters Heels in Parliament Time*. This appearing, *Lock* and *Moor* were called in to the Bar; and by the Judgment of the House were sentenced, First, *That at the Bar they should ask Forgiveness the of House, and of Sir James Whitlock, on their Knees*. Secondly, *That they should both ride upon one Horse bare-back'd, Back to Back, from Westminster to the Exchange, with Papers on their Breasts, and this Inscription, For arresting a Servant of a Member of the Commons House of Parliament. And this to be presently done sedente Curia*. Which Judgment was pronounced

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nounced by Mr. Speaker against them at the Bar upon their Knees.

Memorials, 100.

28 Apr. 22 Jac. 1. A Warrant was ordered to be issued by the Speaker for a Writ of Privilege, to bring up Andrew Bates, Servant to Mr. Richard Godfrey, of the House, in Execution with the Sheriff of Kent, at the Suit of one Hunt.

This Privilege doth take Place by Force of the Election, and that before the Return be made, as appears in the Case following.

Id. 107, 108. Vide Sir Simon d'Ewe's Four. 642. Col. 2. 643. Col. 1. Vid. Petyt. Miscel. Parl. 119.

19 Nov. 1601. Upon Information to the House, that one Roger Boston Servant to ——— Lanckton, Baron of Walton, who (upon credible Report of divers Members of the House, was affirm'd to be chosen a Burgefs for the Borrough of Newton in Lancashire, but not yet return'd by the Clerk of the Crown,) had been, during that Session of Parliament, arrested in London at the Suit of one Muscle; the said Muscle together with the Officer that made the Arrest, were sent for by the Serjeant, and brought to the Bar, and there charged by Mr. Speaker, in the Name of the whole House, with their Offence herein. And having been heard, Boston was ordered to have Privilege, and to be discharged of his Arrest and Imprisonment; and the Offenders for three Days committed to the Serjeant, and ordered

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dered to pay such Charges to Boston as the Speaker shall set down, and their Fees.

6 Martii, 1586. This Day William White, brought to the Bar for arresting Mr. Martin, a Member of the House, made Answer, That the Arrest was made above fourteen Days before the Beginning of the Parliament. The House thereupon appointed a Committee to search the Precedents. And, March 11. the Committee made their Report of Mr Martin, a Member of this House, arrested upon mean Process by White, above twenty Days before the Beginning of this Parliament, holden by Prorogation, (mistaken for Adjournment;) and in respect that the House was divided about it in Opinion, Mr. Speaker, with the Consent of the House, the sooner to grow to some Certainty of the Judgment of the House in this Cause, moved these Question to the House, viz.

Memorials, p. 108, 109. Sir Simon d'Ewe's Four. 410. Col. 1. 414. Col. 2.

First, Whether they would limit a Time certain, or a reasonable Time, to any Member of the House for his Privilege. The House answered, a Convenient Time.

Secondly, Whether Mr. Martin was arrested within this reasonable Time. The House answered, Yea.

D d

Thirdly,

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Thirdly, *If White should be punished for arresting Martin.* The House answered, *No.* Because the Arrest was twenty Days before the Beginning of the Parliament, and unknown to him, what would be taken for reasonable Time. But the principal Cause why Mr *Martin* had his Privilege, was, for that *White* the last Session (mistaken for Meeting) of Parliament, arrested Mr. *Martin*; and then knowing him to be returned a Burgess for this House, discharged his Arrest.

And then afterwards Mr. *Martin* again returning out of his Country to *London* to serve in this House, Mr. *White* did again arrest him; and therefore this House took in evil Part against him his second Arrest; and thereupon judged that *Martin* should be discharged of his second Arrest out of the *Fleet* by the said Mr. *White*.

Id. 102. 12 *Martii*, 1606. Complaint was made by Mr. *James*, a Burgess of Parliament, *That his Horse standing at his Inn, was taken by the Post-Master's Servant.* Both the Post-Master and his Servant were sent for, and brought to the Bar. *Moreton*, the Post-Master, appearing to be ignorant of what his Servant had done, and disavowing it, was by Order of the House discharged. But upon the Testimony of a Witness at the Bar, that he told the Servant

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vant, when he took the Horse, that a Member of Parliament was Owner of it, the Servant was committed.

In *Dec.* 1606. *Thomas Finch*, a Servant to Sir *Nicholas Sandys*, one of the Burgesses for *Quinborough*, was arrested during the Adjournment; which being conceived to be a great Contempt to the Privilege of the House, an *Habeas Corpus* was awarded to bring him to the House; and he was accordingly brought; and also one *Knight*, who procured the Arrest, and *Harrison* the Yeoman. The Excuse was, *That Finch was an Attorney at Law*; but it being avowed by Sir *Nicholas Sandys*, *That Finch lay in his House, solicited his Causes, and received Wages from him*; and it being insisted on, *That all menial and necessary Servants are to be privileged*; and Instance given of a Precedent of the Baron of *Walton's* Solicitor, and *Huddleston's* Solicitor in the Time of *Queen Elizabeth*. Upon the Question, *Finch* was privileged, and delivered according to former Precedents.

During the Adjournment, a Suit was prosecuted in the Court of Wards against *Nicholas Pots* Esq; and *Francis Wethered* Gent. Committees of a Ward which concerning Mr. *Nicholas Davys*, Servant to the then Speaker, as Assignee of the Ward. The Speaker writ a Letter to

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the Court, to make known, That he was one of his Clerks, and nearest Servants; and that the Privilege was now as warrantable as in the Time of sitting, and prayed the Court to take Notice of it.

Id. 103. During another Adjournment in March following, the Speaker (warranted by the general Order) at the Desire of Sir Edmund Ludlow, who was summoned to attend the Execution of a Commission out of the Chancery, writ a Letter to the Commissioners to excuse his Attendance, and that he should not be prejudiced by his Absence.

Ibid. In May 1607. during an Adjournment, the Speaker directed a Letter to the Lord President and Council at York, to stay Proceedings in a Suit there against Talbot Bowes, a Member of the House.

Id. 113. 29 Feb. 1575. One Williams, for assaulting a Burgess of this House, was upon Complaint sent for by the Serjeant, and brought to the Bar, and committed to the Serjeant's Ward.

Ibid. 23 April, 1 Mar. One Monington, for striking William Johnson a Burgess, was sent for, and confessing it, was committed to the Tower.

Ibid. Towns. Col. 259. Vide Sir Simon d'Ewe's Four. 678. Col. 1. 28 Nov. 1601. Complaint being made by Mr. Fleetwood, a Member of the House, That one Holland a Scrivener, and one Brook his Servant, had evil intreated and beaten

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beaten the Servant of the said Mr. Fleetwood in his Presence, they were both sent for by the Serjeant, and brought to the Bar, and for the said Offence committed for five Days to the Serjeant. And that they should pay double Fees.

12 Feb. 18 Jac. 1. Mr. Lovel, a Member of the House, informed, That one Darryel threatened his Person, that for a Speech spoken by him in the House, he should be sent to the Tower during the Parliament, or presently after. Darryel was sent for by the Serjeant, to answer it to the House; and upon Testimony of it, he was committed to the Serjeant till Thursday following, and then to acknowledge his Fault, or be committed to the Tower.

16 Jun. 1604. Complaint being made of one Thomas Rogers a Currier, dwelling in Coleman-Street, for abusing Sir John Savill in slanderous and unseemly Terms, upon his Proceedings at a Committee in the Bill touching Tanners, &c. he was sent for by the Serjeant at Arms to the Bar, to answer his Offence.

1 Car. 1. The Sheriff for the County of Buckingham was chosen Knight for the County of Norfolk, and returned into the Chancery; and having a Subpœna served upon him at the Suit of the Lady C. pendente Parlamento, upon Motion, he had

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the Privilege of Parliament allowed to him by the Judgment of the whole House of Commons.

Townf. Col. 195. Vide Sir Simon d'Ewe's Four. 629. Col. 1.

43 Eliz. 1601. This Day a Page was brought to the Bar, whom Sir Francis Hastings had caused to be committed; for that as he went down the Stairs, the Page offer'd to throng him. But upon Sir Francis Hastings his Intreaty, speaking very earnestly for him, and upon the Page's Submission upon his Knees at the Bar, he was discharged.

Townf. Col. 229. Vid. Sir Simon d'Ewe's Four. 643. Col. 2.

44 Eliz. 1601. Mr. William Morris, Burgeis for Beaumaris, coming on his Way to London, his Man was arrested at Shewsbury. Orderd, That the Bailiff, and he that procured the Arrest, and the Serjeant, be sent for.

Townf. Col. 225, 226.

44 Eliz. 1601. The Solicitor of one Langton, a Burgeis for Newton in Lancashire, was arrested at the Suit of one Musket a Taylor, and committed to the Compter. Agreed by the House, That both Musket and the Serjeant should pay the Solicitor's Costs and Damages, and be imprisoned three Days in the Serjeant's Custody, and to pay the Serjeant attending this House his Fees.

Rush. Col. 663.

The Parliament shall not give Privilege to any Member contra morem Parliamentarium, to exceed the Bounds and Limits of his Place and Duty. And all agreed, That regularly

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regularly he cannot be compelled out of Parliament to answer Things done in Parliament in a Parliamentary Course; but it is otherwise where Things are done exorbitantly, for those are not the Acts of the Court.

No Privilege is allowable in Case of the Peace betwixt private Men, much more in Case of the Peace of the Kingdom.

Privilege cannot be pleaded against an Indictment for any Thing done out of Parliament, because all Indictments are contra Pacem Domini Regis.

Privilege of Parliament is granted in regard of the Service of the Commonwealth, and is not to be used to the Danger of the Commonwealth.

All Privilege of Parliament is in the Power of Parliament, and is a Restraint to the Proceedings of other inferior Courts; but is no Restraint to the Proceedings of Parliament.

16 Car. 1 Resolved, That the Lords voting the propounding and declaring Matter of Supply, before it was moved in the House of Commons, was a Breach of Privilege of the House.

Dec. 1641: Resolved, That the setting of any Guards about this House, without the Consent of the House, is a Breach of the Privilege of this House; and that therefore such Guards ought to be dismissed.

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Id. 743.

Resolved upon the Question, " Nemine Contradicente, That the Privileges of Parliament were broken by his Majesty's taking Notice of the Bill for suppressing of Soldiers being in agitation in both Houses, and not agreed on."

Ibid.

Resolved upon the Question, Nemine Contradicente, That his Majesty, in propounding a Limitation and provisional Clause to be added to the Bill, before it was presented to him by the Consent of both Houses, was a Breach of the Privilege of Parliament."

Ibid.

Resolved upon the Question, Nem. Con. That his Majesty expressing his Displeasure against some Persons, for Matters moved in the Parliament, during the Debate, and Preparation of that Bill, was a Breach of the Privilege of Parliament."

2 Nelson, 223.

Whereas his Majesty, in his Royal Person, the 4th of Jan. 1641. did come to the House of Commons, with a great Multitude of Men, armed in a warlike Manner, with Halberts, Swords, and Pistols, who came up to the very Door of the House, and placed themselves there, and in other Places and Passages near to the House, to the great Terror and Disturbance of the Members then there sitting, and according to their Duty, in a peaceable and orderly Manner, treating

of

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of the great Affairs of both Kingdoms of England and Ireland; and his Majesty having placed himself in the Speaker's Chair, did demand the Persons of divers Members of the House to be delivered unto him.

It was thereupon declared by the House of Commons, " That the same is a high Breach of the Rights and Privileges of Parliament, and inconsistent with the Liberty and Freedom thereof; and therefore the House doth conceive, they could not with Safety of their own Persons, or the Indemnities of the Rights and Privileges of Parliament, sit there any longer, without a full Vindication of so high a Breach of Privilege, and a sufficient Guard wherein they might confide."

The Lords cannot proceed against a Commoner, but upon a Complaint of the Commons. *Steden's Jud.p. 84.*

But Note (as to Freedom from Suits and Arrests,) that in the Parliament of 12 & 13 William the Third, an Act passed, entitled, *An Act for preventing any Inconveniencies that may happen by Privilege of Parliament,* Which enacts,

Sett. I. That any Person may prosecute any Peer of this Realm, or Lord of

Privilege of Parliament.

of Parliament, or any of the Knights, Citizens, and Burgeses, of the House of Commons for the Time being, or their or any of their menial or other Servants, or any other Person entitled to the Privilege of Parliament in any of the Courts of Record at *Westminster*, or high Court of Chancery, or Court of Exchequer, or the Dutchy Court of *Lancaster*, and in the Court of Admiralty; and in all Causes Matrimonial and Testamentary in the Court of Arches, the Prerogative Courts of *Canterbury* and *York*, and the Delegates, and in all Courts of Appeal, from and after the Dissolution or Prorogation of any Parliament, until a new Parliament shall meet, or the same be reassembled. And from and after any *Adjournment of both Houses for above fourteen Days, until both Houses shall meet or reassemble.* And that the said Courts respectively, shall and may after such Dissolution, Prorogation, or Adjournment, proceed to give Judgment, and make final Orders, Decrees, and Sentences, and award Execution thereon, any Privilege of Parliament to the contrary notwithstanding.

Sect. II. Provides against subjecting the Person of any Knight, Citizen, or Burgeses, or any other intituled to the Privilege of Parliament, to be arrested during the Time of Privilege. Nevertheless allowing the

Privilege of Parliament.

the Liberty, that any Person, having Cause Action or Complaint against any Peer of the Realm, or Lord of Parliament, so that after any Dissolution, Prorogation, or Adjournment, as aforesaid, or (and) before any Session of Parliament, or Meeting of both Houses, as aforesaid, shall and may have such Process out of the Courts of *King's Bench, Common Pleas, and Exchequer*, against such Peer or Lord of Parliament, as he might have had against him out of the Time of Privilege. And if any Person having Cause of Action against any of the said Knights, Citizens, or Burgeses, or any other intituled to Privilege, after any such Dissolution, Prorogation, or Adjournment, or before any such Sessions or Meeting of both Houses *ut supra*; he shall and may prosecute such Knight, Citizen, or Burgeses, or other such privileged Person, in the said Courts of *King's Bench, Common Pleas, or Exchequer*, by original Bill and Summons, Attachment and Distress infinite, out of the same Courts, who are respectively impower'd to issue the same against him or them, until the Defendant shall enter a Common Appearance, or file Common Bail to the Action, according to the Course of each Court. And that any Person having Cause of Suit or Complaint, may in the Time aforesaid exhibit any Bill of Complaint against

Privilege of Parliament.

against any Peer of the Realm, or Lord of Parliament, or against any Knight, Citizen, or Burgess, or other Person so intitled to Privilege, in the *Chancery, Exchequer, or Dutchy Court*; and proceed thereon by *Letter* or *Subpœna*, as usual. And upon leaving a Copy of the Bill with the Defendant, or at his House or Lodging, or last Place of Abode, may proceed thereon; and for Want of an Appearance or Answer, or for Non-Performance of any Order or Decree, or for Breach thereof, may sequester the real or personal Estate of the Party, as is used and practised where the Defendant is a Peer of the Realm; but shall not arrest or imprison the Body of any of the said Knights, Citizens, or Burgesses, or other privileged Person, during the Continuance of Privilege of Parliament.

Sect. III. That where any Person, by reason of Privilege of Parliament, is stayed or prevented from prosecuting any Suit by him commenced, he shall not be barred by any Statute of Limitation, nor non-suited, dismissed, or his Suit discontinued, for want of Prosecution, but shall from Time to Time, on the rising of the Parliament, be at Liberty to proceed to Judgment and Execution.

*Sect.**Privilege of Parliament.*

Sect. IV. That no Action, Suit, Process, Order, Judgment, Decree, or Proceedings in Law or Equity, against the King's original and immediate Debtor, for Recovery, or obtaining of any Debt or Duty, originally and immediately due or payable to his Majesty, his Heirs, or Successors, or against any Accomptant, or Person answerable or liable to render an Account to his Majesty, his Heirs, or Successors, for any Part or Branch of their Revenues, or other original and immediate Debt or Duty; or the Execution of any such Process, Order, Judgment, Decree, or Proceedings, shall be impeached, stayed, or delayed, by or under the Colour or Pretext of Parliament. Yet so that that the Person of any such Debtor or Accomptant, or Person answerable or liable to account, being a Peer of this Realm, or Lord of Parliament, shall not be liable to be arrested or imprisoned, by or upon any such Suit, Process, Order, Judgment, &c. or being a Member of the House of Parliament, shall not, during the Continuance of the Privilege of Parliament, be arrested or imprisoned by or upon any such Order, Judgment, Decree, Process, or Proceedings.

Sect. V. Provided, That this Act, or any Thing therein, shall not extend to give any Jurisdiction, Power, or Authority,

thority, to any Court to hold Plea in any real or mixed Action, in any other Manner than it might have been done before the making of this Act.

*Bohm's
Collection,
pag. 27.*

Fovis, 13 Feb. 1700. Resolved, That no Member have any Privilege in any Case, where he is only a Trustee.

Resolved, Nem. Cont. That no Peer of the Realm hath any Right to vote in the Election of any Member to serve in Parliament. And,

Ibid.

Declared by the House as a standing Order, That no Member have any Privilege, except for his Person only, against any Commoner, in any Suit or Proceeding at Law or Equity, for any longer Time than the House shall be actually sitting for the Dispatch of Business in Parliament.

*Ibid.
pag. 230.*

Martii, 28 Nov. 1699. Resolved, That no Member of this House, acting as a Publick Officer, hath any Privilege of Parliament, touching any Matter done in Execution of his Office.

APPENDIX.

APPENDIX.

The Report of a Case happening in Parliament in the first Year of King James the First, which was the Case of Sir Francis Goodwyn, and Sir John Fortescue, for the Knights Place in Parliament for the County of Bucks.

Translated out of the French.

IN this Case, after that Sir Francis Goodwyn was elected Knight, with one Sir William Fleetwood, for the said County, which Election was freely made for him in the County, and Sir John Fortescue refused, notwithstanding that the Gentlemen of the best Rank put him up; the said Sir John Fortescue complained to the King and Council-Table, (he being one of them, *to wit*, one of the Privy Council) that he had been injuriously dealt with in that Election; which does not appear

pear to be true: But to exclude Sir *Francis Goodwyn* from being one of the Parliament, it was objected against him, That he was Outlawed in Debt; which was true; *scilicet*, he was outlawed for sixty Pound the 31st of Queen *Elizabeth*, at the Suit of one *Johnson*, which Debt was paid; and also the 39th of *Eliz.* at the Suit of one *Hacker* for sixteen Pounds, which Debt was also paid; and that (notwithstanding) this the King, by the Advice of his Council at Law, and by the Advice of his Judges, took Cognisance of these Outlawries, and directed another Writ to the Sheriff of the said County, to elect another Knight in the Place of the said Sir *Francis Goodwyn*, which Writ bore Date before the Return of the former.

N. B. Here the King assumes the Power of judging and determining the Qualifications of Members of Parliament. See *Quo Jure.*

And this Writ recites, That because the said Sir *Francis* was outlawed, *prout Domino Regi constabat de Recordo*, and for other good Considerations, which were well cognisant to the King, and because he was Inidonious for the Business of the Parliament, therefore the King commanded the Sheriff to elect one other Knight in his Room; which Writ was executed accordingly, and Sir *John Fortescue* elected.

And at last Day of the Return, to wit, the first Day of the Parliament, both Writs were return'd; the first with the Indenture sealed;

ed, between the Sheriff and the Freeholders of *Bucks*, in which Sir *Francis Goodwyn* and Sir *William Fleetwood*, were elected Knights for the Parliament; and also the Sheriff returned, (upon the Dorse of the Writ,) That the said Sir *Francis* was outlawed in two several Outlawries, and therefore was not a meet Person to be a Member of the Parliament House. The second Writ was returned with an Indenture only, in which it was recited, That Sir *John Fortescue*, by reason of the second Writ, was elected Knight.

Both these Returns were brought the third Sitting of the Parliament to the Parliament House by Sir *George Copping*, being Clerk of the Crown.

And after that the Writs and Returns of them were read, it was debated in Parliament, Whether Sir *Francis Goodwyn* should be received as Knight for the Parliament, or Sir *John Fortescue*.

And the Court of Parliament, after a long Debate thereupon, gave Judgment, That Sir *Francis Goodwyn* should be received: And their Reasons were these;

First, because they took the Law to be, That an Outlawry, in Personal Actions, was no Cause to disable any Person from being a Member of Parliament; and it was said, That this was ruled in Parliament

ment, 35th of Queen *Elizabeth*, in the Parliament House, in a Case for one *Fitz-Herbert*.

Another Precedent, was 39 *H. 6.*

Secondly, The Pardons of the 39th of Queen *Eliz.* and 43 *Eliz.* had pardoned those Outlawries; and therefore, as they said, he was a Man able against all the World, but against the Party Creditor, and against him he was not. But in this Case the Parties were paid.

Also, Thirdly, it was said, That Sir *Francis Goodwyn* was not legally outlawed, because no Proclamation was issued forth to the County of *Bucks*, where he was Comorant and Resiant: And therefore the Outlawry being in the Hustings in *London*, and Sir *Francis Goodwyn* being Comorant in *Bucks*, the Outlawry (no Proclamation issuing to the County of *Bucks*) was void by the Statute of the 31st of the Queen; which, in such Cases, makes the Outlawries void.

Fourthly, It was said that the Outlawries were,

1. Against *Francis Goodwyn* Esq;
2. Against *Francis Goodwyn* Gent.
And,
3. The Return was of *Francis Goodwyn* Knight.

Et

Et quomodo constant, that those Outlawries were against the said Sir *Francis Goodwyn*? For these Reasons also they resolved, That the Outlawries were not any Matter against Sir *Francis Goodwyn*, to disenable him to be a Knight for the County of *Bucks*.

Fifthly, It was said, That by the Statute of 7 *H. 4.* which prescribes the Manner of the Election of Knights and Burgeses, it is Enacted, *That the Election shall be by Indenture between the Sheriff and the Freeholders; and that the Indenture shall be the Return of the Sheriff.*

It was also said, That the Precedents do warrant this Judgment, *viz.*

1. One Precedent of 39 *H. 6.* where a Person outlawed was adjudged a sufficient Member of Parliament. Another 1 *Eliz.* and at that Time one *Gargrave*, who was a Man learned in the Law, was Speaker, and of the Queen's Council.

2. Another was the Case of one *Fludd*, in the 23d of the Queen, who, being outlawed, was adjudged, That he should be privileged by Parliament; and at that Time the Lord Chief Justice *Popham* was Speaker. And,

3. In the 35th of *Elizabeth*, there were three Precedents, *scil.* one of *Fitz-Herbert*; another of one *Killegrew*, being out-

E e 2 lawed

lawed in fifty two Outlawries; and the third of Sir *Walter Harecourt*, being outlawed in eighteen Outlawries.

But after this Sentence and Judgment of the Parliament, the King's Highness was displeas'd with it, because the second Writ *emanavit* by his Assent, and by the Advice of his Council.

Note, And therefore it was moved to the Judges in the Upper-House, *Whether a Person outlawed could be a Member of Parliament; who gave their Opinions that he could not.* And they all, except *Williams*, agreed, That the Pardon, without a *Scire facias* did not help him, but that he was outlawed to that Purpose, as if no Pardon had been granted.

And upon this the Lords sent to the Lower-House, desiring a Conference with them concerning this Matter; which Conference the Lower-House, after some Deliberation, denied, for these Reasons:

1. Because they had given their Judgment before; and therefore they could not have *Conference de re Judicata*; as in like Manner they did 27 Queen *Eliz.* upon a Bill that came from the Lords, and was rejected by Sentence upon the first Reading, Sir *Walter Mildmay* being then of the Privy Council, and of the House.

2. Because

2. Because they ought not to give any Account of their Actions to any other Person, but to the King himself.

This Answer the Lords did ill resent; and therefore refused Conference in other Matters concerning Wards and Respite of Homages and Purveyors; and also they sent to the King to inform him of it. But before their Messengers came to the King, two of the Privy Council, *scilicet*, Sir *John Stanhope*, and Sir *John Herbert*, were sent to the King by the Lower-House, to inform him that they had heard that his Grace was displeas'd with the House, for their Sentence given for Sir *Francis Goodwyn*, as well as in the Matter of the Sentence; which was, (as they heard) said to be against Law; as also for the Manner of their Proceedings, being done hastily, without Calling to it either Sir *John Fortescue*, or his Council, or without making his Grace acquainted with it.

And therefore they desired his Grace to understand the Truth of this Matter; and also told him, That they were ready, with his good Leave, with their Speaker, to attend his Majesty, to give him Satisfaction about their Proceedings.

But the King told them they came too late; and that it ought to have been done sooner, calling the House Rash and Inconsiderate

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considerate: But yet notwithstanding, he was content to hear their Speaker in the Morning at Eight of the Clock.

Upon this Message, Committees were chosen to consider of the Things and Matters aforesaid, which should be delivered to the King, in Satisfaction of the Sentence given by the House, (which afterwards were considered of, and digested by the Speaker and Committees,) in three Points, viz.

1. In the Reasons and Motives of their Resolutions.
2. In the Precedents, which were those I before have reported.
3. And in Matters of Law.

Which were those Matters of Law also before reported by me, with another Addition;

That in the Time of *Henry the Sixth*, the Speaker of the Parliament was arrested, in Execution, at the Suit of the Duke of *York*; and the Question being put to the Judges at that Time, *Whether the Speaker ought to have his Privilege*, it was said by them, *That they were Judges of the Law, and not Judges of Parliament.*

The Reasons and Motives were the free Election of the County; the Request of one

See Bo. hun's Col. P. 277.

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one of the House; the double Return of the Sheriff, with a Commemoration of the Length of the Time since the Outlawries; and with that the Payment of the Debts.

To this Report the King answered, That he now ought to change his Tune which he used in his first Oration, *scilicet*, Thanksgiving, to Grief and Reproof. But he said, That it was as necessary they should be reprov'd, as congratulated; and therefore he cited a parcel of Scriptures, wherein God had so done with his People *Israel*, nay, with King *David*, the People whom he tendered as the Apple of his Eye; and *David*, who was a Man after his own Heart.

He said, That since Sir *Francis Goodwyn* was received by the House upon Reasons and Motives inducing the House thereunto, so the King, upon Reason too, took Consideration of Sir *John Fortescue*, being one of the Council, an ancient Counsellor, a Counsellor not chosen by the King, but by his Predecessors, and so he found him; and therefore he endeavoured to grace him, being the only Man of them that had been disgraced, the King protesting that he would not for any Thing in the World, offer unjustly any Disgrace to any Man in the Nation. Besides, he did not proceed rashly, as they had proceeded,

It seems antiently, to be a Privy Counsellor, was incompatible with being a Member of Parliament or Publick Counsellor.

ceeded, but upon Deliberation, with double Advice, as well with that of his Council, as with that of his Judges.

Quere, If the King himself was not here, too overweening.

And in his answering the Precedents, he said, *That those were his own proper Records*; and to use them against himself was over-great Weenings: But in Precedents, he said, that they ought to respect Times and Persons; and therefore said, *That Henry the Sixth's Time* was troublesome, he himself Weak and Impotent. And as for the other Precedents, they were in the Time of a Woman, which Sex was not capable of Mature Deliberation; and so he said where Infants are Kings, whom he called Minors.

For the Law Part, he referred to the Answer of his Judges; who, by the Lord Chief Justice, gave these Resolutions: They all unanimously agreeing in them;

1. That the King alone, and not the Parliament House, had to do with the Returns of the Members of Parliament; for from him the Writs issued, and to him the Sheriff is commanded to make his Returns; but when a Man is returned and sworn, the Parliament-House hath to do with him, and the Sheriff ought to Return the Outlawry, if he knew it before his Return.

2. They resolved clearly, That an outlawed Person cannot by the Law be a Member

Member of the Parliament-House; but for that Cause the King might refuse the Return of him; and for that Cause he was removable out of the House. And therefore the Lord Chief Justice said, That in the 35th of *Henry the Sixth* it was so adjudged in Parliament; which answers the Precedents vouched by the Commons of that Time. And also he said, That in the first Year of *Henry the Seventh*, it was adjudged in Parliament, That Persons outlawed, or attainted, could not sit in Parliament, without Restitution by Act of Parliament. And he said, That though the Books do not warrant his Saying, yet the Parliament Roll (which he had seen) does warrant it, which any Man might see.

3. They resolved, at the Instance of the King himself, That the Party could not be discharged from the Outlawry without a *Scire Facias* sued against the Party Creditor, Plaintiff in Debt; and Justice *Windam* for that Purpose recanting his former Opinion, said, That he, upon perusing of his Books, and by Reasons of the Law, was of Opinion with his Companions.

4. As for the Statute of the 31st of the Queen, concerning Proclamation to be made in the County, &c. they all resolved, as before Times it had been resolved, That no Outlawry by that Statute was void

void until a Judgment, declaring, That there was no Proclamation issued forth to the County where the Party was Resiant at the Time of the awarding of the Exigent.

5. As for the Statute of 7 Hen. 4. which enacts, That the Indenture shall be only the Return of the Sheriff, the Judges said, That was true, that such was the Statute, and that that was his Return for so much; but that Statute doth not restrain the Sheriff from returning any other Thing material which disables the Parties chosen.

6. It was held, That the Indorsement of the Writ, comprehending the Matter of the Outlawry, was material, and not a Nugation.

7. And, lastly, they resolved, That by the Return of the Sheriff, it appeared that Sir Francis Goodwyn was the same Person who was outlawed 31 Eliz. by the Name of Francis Goodwyn Esquire; and 39 Eliz. by the Name of Francis Goodwyn Gentleman; and that by the Words of the Return, *scilicet, Idem Franciscus Goodwyn Miles Utlagatus existit, &c.* And they also agreed, That no Person outlawed ought to have his Privilege of the Parliament-House; and that all the Precedents vouched by the Commons were after the Parties were Members of the House,

House, and not before they were returned.

But notwithstanding these Resolutions, *scilicet*, the Resolution of the Judges, the Commons House hold clearly; That Sir Francis Goodwyn was well received into Parliament; and the King commanded them to confer together, and resolve, if they could, of themselves; and if they could not resolve, to confer with the Judges, and then to resolve; and when they were resolved, then to deliver their Resolution to his Council, not as Parliament-Men, but as his Privy Council, by whose Hands he would receive the Resolution; and for that Purpose he left them behind him, (he himself being to ride to *Royston* a hunting.) And to pursue the Commandment of the King, the Commons House clearly resolved, That what they had done, was well and duly done; and they were of Opinion clearly against the Judges, as to the Matter of the Outlawry, and that *Ratione* of the Precedents; And also that the Parliament only had to do with the Sheriff's Returns of Members of Parliament; and that the Returns ought not to be made till the first Day of the Parliament; and therefore They would not confer with the Judges: But they appointed a Committee to consider of the Reasons to be delivered to the Council for the Satisfaction

faction of the King; which Committee, by the Assent of all the House of Commons, sent to the Lords this Resolution following, *videlicet*,

As to what the King taxed the House for, That they meddled with the Sheriff's Return of Members of Parliament, being but one half of the Body, the Lords being one, and the principal Part of the Parliament's Body.

* As to that they answered; That all Writs for the Election of Members of Parliament were returned into the Parliament-House before 7 *Hen. 4.* (at which Time it was enacted, That all such Returns ought to be made in *Chancery*;) and that appeared by the Records from the Time of *Edward the First*, until the said Year of the Seventh of *Henry the Fourth*. And therefore the Parliament must of Necessity have only meddled with the Returns till the making of the said Statute of the Seventh of *Henry the Fourth*; at which Time the Place of the Return was altered, and enacted to be in *Chancery*; but yet that did not take away the Jurisdiction of the Parliament, to meddle with the Returns

* *Note.* This Resolution was written in Parchment, and so delivered to the Council of the King, not as Parliament-Men, but representing the King's Person; and, a Copy thereof was kept in the House.

turns of the Members of Parliament; but that remained as it was before. And this was manifest, as well by Reason as by Use: For that Court is to meddle with Returns, where the Appearance and Service of Members is to be made and used; but in the Parliament only the Appearance and Service are to be made and used, and therefore in the Parliament only are the Returns to be examined and censured.

Likewise, ever since the making of the said Statute of the Seventh of *Henry the Fourth*, the Clerk of the Crown attends the Parliament every Day till the End of it, with all the Writs and Returns; and at the End of the Parliament, he brings them into the Petty-Bag.

The Precedents also do warrant this intermeddling with Returns for the Parliament, as in the Twenty-ninth of the Queen, a Writ issued forth to the Sheriff of ——— who made a Return before the Day into *Chancery*; and the *Chancellor*, upon that Return containing such Matter, as this Writ now contains, sent a second Writ to the said Sheriff; who thereupon made a new Election; and that second Writ was also returned, and both the Writs and Returns brought into Parliament, and there censured by the Parliament, *That the first should stand; and that the second Election was void; and that*

that the *Chancellor* hath no Power to award a second Writ, nor to meddle with the Return of it; and divers other Precedents were shewn by the Commons to the same Effect, *videlicet*.

In the Nine and twentieth of Queen *Elizabeth* one.

And in the Three and fortieth of Queen *Elizabeth* another.

And in the Thirty fifth of the Queen two.

Whereof one was upon the Return of the Sheriff, that the Party first elected was Lunatick; and thereupon the Parliament examined it; and upon Examination thereof they found the Return true, and gave a Warrant for another Writ.

As to the Matter, That they were but one half of the Body; to that they said, That though in the making of Laws they were but an half Body, yet as to Censuring of Privileges, Customs, Orders, and Returns of their House, they were an entire Body; as the Upper House was for their Privileges, Customs, and Orders, which continual and common Usage hath approved of.

As to their Charge of having used Precipitancy and Rashness, they answered; That they used it in such a Manner as in all other Cases they were wont to do, *scilicet*,

To

To have first a Motion of the Matter in Controversy; and then they caused the Clerk of the Crown to bring the second Day the Writs and Returns; and they being thrice read, they proceed to the Examination of them; and upon Examination, gave Judgment; which was the true proper Course of the Place.

As to the House's not having used the King well, the Thing being done by his Command, they say, That they had no Notice before their Sentence, that the King himself took any special Regard of that Case; but only that his Officer, the *Chancellor*, had directed his second Writ, as formerly had been done.

As to the Matter of the Outlawry, they said, That they understand by his Royal Person more Strength and Light of Reason from it, than ever before; and yet it was without Example, That any Member of the House was put out of the House for any such Cause; but to prevent that, they had prepared a Law, That no outlawed Person, for the Time to come, should be of the Parliament; nor any Person in Execution, should have the Privilege of Parliament.

But they said further, That Sir *Francis Goodwyn* was not outlawed at the Day of his Election; for he was not *Quinto Exactus*, the five Proclamations never had been

been made; which Proclamations they in *London* always spare, except the Party, or any for him, require it; and that Exigent was never returned, nor any Writ of *Certiorari* directed to the Coroners to certify it, but after his Election; which was a Thing unusual, (the Money being paid, and the Sheriffs being long since dead,) to disenable the said *Goodwyn* to serve in Parliament; that the Exigent was returned, and the Names of the deceased Sheriffs put thereto. *Et ex hoc fuit*, without doubt that *Goodwyn* could not have a *Scire Facias*; for there was no Outlawry against him, and by Consequence the Pardons had discharged him.

And they farther shewed to the King, That if the *Chancellor* only could examine Returns, then upon every Surmise, whether it were true or false, the *Chancellor* might send a second Writ, and cause a new Election to be made; and thus the free Election of the County should be abrogated; which would be too dangerous to the Commonwealth.

For by such Means the King and his Council might make any Man, whom they would, to be of the Parliament-House, against the *Great Charter* and the Liberties of *England*.

It

is, a *House of Commons* every Way free and independent either of the Lords or Ministry, or, &c. *Free* in their Persons; *Free* in their Estates; *Free* in their Elections; *Free* in their Returns; *Free* in their assembling; *Free* in their Speeches, Debates, and Determinations; *Free* to complain of Offenders; *Free* in their Prosecutions for Offences; and therein *Free* from the Fear or Influence of others, how great soever; *Free* to guard against the Incroachments of arbitrary Power; *Free* to preserve the Liberties and Properties of the Subject; and yet *Free* to part with a Share of those Properties, when necessary for the Service of the Publick. Nor can he be justly esteem'd a Representative of the People of *Britain*, who does not sincerely endeavour to defend their just Rights and Liberties against all Invasions whatsoever. See further, touching the Rights and Duties of Parliaments, in *Rapin's History*. Vol. II. Book XXII. especially Page 583, and 595. *Sed quæ sunt Jura si non Libere Fruantur?*

F I N I S.

Books lately Printed.

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