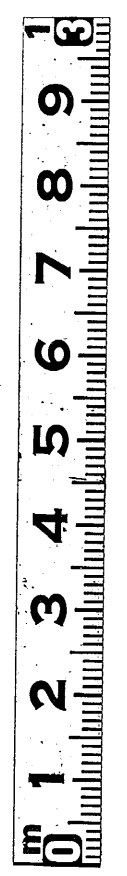
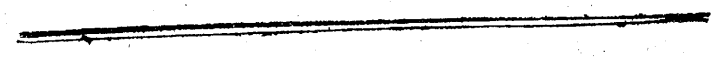


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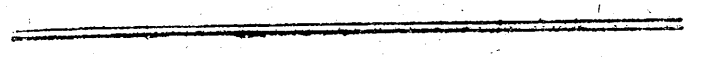
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Et. Et. Et.



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A
L E T T E R
ON THE
CONTINUATION
OF
IMPEACHMENTS
AFTER A
DISSOLUTION
OF
P A R L I A M E N T.

LONDON:
PRINTED FOR J. DEBRET,
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M.DCC.XCI.

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L E T T E R, &c.

DEAR SIR,

I N conversation the other day on the continuation of Mr. H——'s Impeachment in a new Parliament, I happened to remark, that the lawyers in the House of Commons seemed to make a worse figure in a late debate on that question even than they usually do on constitutional points. You then mentioned a Pamphlet written by one of their Body* as having given general satisfaction on

* " An Examination of Precedents and Principles, from which it clearly appears, that an Impeachment determines by a Dissolution of Parliament. By a Barrister."

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the subject.—I return you that Pamphlet which you were so good to lend me, accompanied with a few observations upon it.

The Author begins by endeavouring to prove with great gravity, that proceedings in Impeachments ought to be carried on according to the Law of Impeachments, and seems to pique himself upon this discovery.

He then proceeds to shew (and that is not quite so easy) what the Law of Impeachments is.

The only part of the law of the land on which proceedings in Impeachments can depend, is confessedly the Law of Parliament; and the Law of Parliament being founded chiefly on ancient usage and precedent, he very properly produces

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duces all the cases in any way relevant to the abatement or continuation of Impeachments; and the result is, that this Writer (though he afterwards endeavours to make a case), is himself obliged to allow, that no *material case* could be discovered after forty years serious attention. In fact, these cases and precedents are so contradictory and inconclusive, that no series of precedents, nor even one strong-directing precedent can be drawn from them. Such however as they are, they clearly tend to favour the continuance of all Processes in the Lords after a Dissolution. Writs of Error are fully determined to continue over to the next Parliament, and this goes a great way to establish *the principle*. On the 19th of March 1678,

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the House resolved (as it should seem unanimously) " That the Dissolution of
 " the last Parliament doth not alter the
 " state of the Impeachment brought up
 " by the Commons in that Parliament."

On the 22d of March, 1685, this order was reversed upon a division and a protest. Notwithstanding which, in 1690, the Earl of Peterborough was kept prisoner in the Tower after a Dissolution had intervened; and was bailed at the bar of the House upon the opinion of the Judges (not that the proceedings had abated by the Dissolution), but that he came within the general act of pardon, which he pleaded accordingly.

This Author not finding precedents much to his purpose, is reduced to endeavour " *to fortify precedents by principles;*"

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and his chief argument is undoubtedly a very curious one.—Anciently at common law all actions abated by the demise of the King; but this being found injurious to public justice, even in case of that rare event, was remedied by 1 Ed. VI. c. 7. where it is enacted, that no process shall be discontinued by the grant of a new commission; therefore, says the learned gentleman, that rule of proceeding which was found so inconvenient in the common law as to call for the remedy of a statute, ought by all means to be adopted in Impeachments (where no such rule has ever been established), because this rule is analogous to a law which it has long since been found necessary to abrogate!

He would then endeavour to persuade

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us, that the two Houses of Parliament are *Commissioners*, deriving their sole authority under the *King's commission*; and observes, that the power which *creates* can at any time destroy. What can he mean by this jesuitical sophistry? Would not one suppose that the King could take away as well as *create* peerages! Does he not know, that the King is obliged by law to call a Parliament within a determined time, and to summon to it every Peer of the realm? And that he does not *create*, but assemble the two Houses? In another place he has recourse to the poor expedient of arguing to *generals* from extreme cases, which may be pleaded as exceptions, but can never be stated as examples. He supposes the House of

Lords

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Lords meeting after a Dissolution to consist wholly of new persons, because a plague or an earthquake are physically possible. Is this satisfactory? Is it even ingenious?

What does he mean by attempting to invalidate the authority of a Parliament because it was contended in the House of Commons that the King had no power to pardon a person impeached; and that Bishops could not vote in capital cases? Would not one suppose that these were illegal and unconstitutional doctrines? Could any person unacquainted with the fact possibly conceive, that the law has been declared to be (12 & 13 W. III. c. ii.) that no pardon under the great seal shall be pleaded to an Impeachment by the Com-

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mons of Great Britain in Parliament? and that it is an acknowledged fact that Bishops in no instance have ever *shown their mitred fronts* on trials for capital offences, or *even upon impeachments* or indictments in full Parliament*.

No, Sir; so far from shaking my opinion on the abatement of the present Impeachment, this Pamphlet has tended much to confirm it. I thought the case against it a very strong one, but till now I was not aware of all the weakness of the opposite opinion.

This Writer says that where precedents are not sufficient they must be fortified by recurring to principles. I should rather have considered precedents, which may be variable and con-

* Blackstone's Comment. B. IV. C. 19. 2.

tradictory,

tradictory, as subordinate to principles, which are fixed and unalterable. For principles derive from the nature of the object to be operated according to the rules of reason and sense; and not from feeble analogies or quaint technical opinions. Of the nature and object of Impeachments, he has wholly neglected to enquire; though this is in fact the only enquiry which could lead to any principle at all.

He allows, that an Impeachment is a proceeding *sui generis*; in many great points dissimilar and unanalogous to every other kind of criminal procedure. But instead of describing this peculiar *genus*, he runs off upon an expression of Lord C. J. Hale, and contents himself with shewing, that the title of the *solemn*

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Grand Inquest of the nation does not very accurately express the functions of the House of Commons when they impeach.

Impeachment is a right retained and asserted by the representatives of the people to arraign in the highest court of judicature public delinquents, whose crimes and misdemeanors are either not cognizable by the laws, or their persons covered by the pardon and protection of the Crown. And here we are to observe this essential difference between Impeachments and every other criminal process, that an Impeachment does not originate with the King; whereas every other criminal procedure states the offence to have been committed against the King, his crown and dignity.

dignity. In all law proceedings the King is considered as the head and fountain of justice. In Impeachments he is not mentioned at all. This fundamental difference is alone sufficient to preclude all analogy between proceedings derived from such different sources.

From this great leading circumstance, the following consequences may be drawn:

I. That Impeachments are confined to crimes and misdemeanors of a *public nature*; by which the state, the nation, the constitution are hurt or endangered; and their principle cannot be applied to crimes against the *executive power*; all which are or ought to be provided

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vided against by the common and statute law.

II. That Impeachments, existing only in the two Houses of Parliament, and subject to no superior or external control, must of necessity be directed and governed by such resolutions and orders (which in this case are laws) as the two Houses shall think fit to constitute each for the regulation of its separate part in the proceeding; and in framing these resolutions they neither are or can be bound by any law but the general rules of wisdom and equity.

III. That a new Parliament has therefore an undoubted right to consider and determine whether an Impeachment proceeded upon in a former Parliament shall continue or abate, or be taken up *de*

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novo. To every one of these considerations their powers are assuredly competent; and their deliberation seems solely to be guided by the circumstances of the case in question before them, and not by what other Parliaments have thought fit to do at other times and under other circumstances. This Author himself invalidates the precedent in Lord Danby's case from the violence of the times; and other precedents may be invalidated or disregarded for other reasons at the discretion of Parliament.

IV. That if Impeachments abated by a Dissolution, the *efficacy* of Impeachment would be *ipso facto* under the control of the Crown, and therefore in effect nugatory; but Impeachments have always made a part, and a valuable part of the

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constitution; therefore Impeachments do not necessarily abate upon the dissolution of Parliament.

V. That for the same reason, the King cannot pardon a person impeached. The 12 and 13 W. III. only *declare* what must upon the *principle* have always been the law; for, as has been before observed, the offence is stated not as committed against the King, but against the people.

Through the whole of this pamphlet, there appears an inclination to lower the dignity and consequence of Parliament, and to exalt and magnify the prerogative of the Crown. For what other purposes are we told that the House of Commons were no more than *humble petitioners* to the King and the Lords? or that the Parliament are no more than *Commissioners*,
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deriving all their power from *the King's Commission?* &c. &c.

This I am sorry for; not because I think this pamphlet likely to give any force to such doctrines, but because I understood from you that the Author is employed in a great seminary, to instruct youth in the principles of our laws and constitution.

This Writer considers it as a *monstrous doctrine* to assert that the proceedings in an Impeachment are not bound by the same rules of evidence which govern the inferior Courts; but if, as he allows, the whole process of an Impeachment is *sui generis*, dissimilar and unanalogous to every other kind of criminal procedure, why may not the rules of evidence differ also? The rules of evidence in the civil
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law differ from those of the common law; they differ in the Court of Chancery and the Court of King's Bench. In Impeachments they ought to be founded on principles the most likely to investigate the truth; to ascertain the innocence or guilt of the culprit; there is no reason that they should be rigidly the same which have been adopted in any of the Courts of the King's Commission, which have no connection, or any thing in common, with the proceeding upon Impeachment.

He has cautiously avoided drawing any argument from the great importance it may frequently be of to the well-being or safety of the nation that an Impeachment should be able to proceed to effect. The happiness of millions may be at stake;

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stake; but of this lawyers think little, provided their *craft* is not in danger.

I could not read without smiling this gentleman's conciliatory assurances that he has received no fee from the delinquent whose cause he acknowledges to plead. Perhaps he has never heard how, a few years ago, a great suspected character rewarded the spontaneous exertions of a most able advocate. Eminent services, in critical circumstances, are not likely to remain unpaid. If this learned gentleman could establish his doctrine, that Impeachments are carried on under the *King's Commission*, which *Commission* the King can *revoke* or *vacate* whenever he pleases, and that the delinquent may afterwards plead *autrefois convict* to any renewal of the process, he

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would have completely drawn the sting of this formidable enemy to oppression and peculation.

I have troubled you with these observations, because you seemed to say that this pamphlet was considered by the Public; which I should not much wonder at, from a kind of technical gravity about it, under the cloak of which lawyers or physicians may smuggle any nonsense upon the people.

I am, Sir, &c.

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