A

REVIEW, &c.

[PRICE TWO SHILLINGS.]

ERRATA.

Fo. 3. l. 19, *dele the*

Fo. 31. laſt line but four, read *preſerved* inſtead of *perceived*

Fo. 36. l. 5 and 8, place the words, "except in the caſe of Impeachments" in the fifth line, inſtead of where they ſtand.

A REVIEW OF THE ARGUMENTS IN FAVOR OF THE CONTINUANCE OF IMPEACHMENTS, NOTWITHSTANDING A DISSOLUTION.

BY A BARRISTER.

LONDON:
Printed for W. CLARKE, PORTUGAL-STREET, LINCOLN'S INN;
AND
J. STOCKDALE, PICCADILLY, 1791.

A

REVIEW, &c.

THE queſtion which is the ſubject of the preſent Pamphlet, has been decided after ſo full and enlightened a diſcuſſion in the Houſe of Commons, that no one who was preſent at thoſe debates can expect to meet with much novelty in this publication; and the reader would immediately perceive, even were the author not inclined to confeſs it, that the greateſt part both of the facts and arguments which it contains, are drawn from that ſource; he wiſhes, therefore, to be conſidered as little more than a compiler; and as, in this character, he muſt forewarn his reader, not to expect a diſplay of ingenuity, induſtry or any other quality that might recommend a literary production, he cannot forbear apologizing, in

ſome degree, for the publication itſelf, and for the time at which it is brought forward —His apology is ſhortly this:

Whenever a great conſtitutional queſtion ariſes, it is of ſome importance that the grounds and arguments upon which it may be ſuppoſed to have been decided, ſhould be laid before the public, in ſome more connected form, than the unfaithful reports of various ſpeeches in different debates can preſerve. A publication of this ſort, therefore, would not be entirely without its uſe, even if it appeared ſubſequent to the final deciſion, of the legiſlature.

But in the preſent caſe, the ſubject is far from being at reſt by the reſolution of the Houſe of Commons. And, as the attention of the public will be neceſſarily directed to it again, by the ſubſequent proceedings, the author truſts that this connected ſtatement of the facts and arguments reſpecting it, will not be deemed either unintereſting or uſeleſs. He is, however, deſirous of being underſtood as not pro-

profeſſing to ſtate *every* argument that was urged in the Houſe of Commons, or as attempting to do more, than to give the mere ſkeleton of *any*; nor can he promiſe either to himſelf, or to the public, that he ſhall not, in the courſe of writing, introduce ſome remarks or obſervations of his own: ſo far, and ſo far only, they may be aſſured, that he will not intentionally depart from that general line of reaſoning which appeared to be adopted by the principal ſpeakers in the debate.

Before I enter into an examination of the queſtion itſelf, permit me to premiſe (in conſequence of the nature of the oppoſition it has met with, and the quarter from whence it came) that I cannot poſſibly conceive any reaſon, why perſons of that the profeſſion, to which I have the honour of belonging, ſhould be more fully qualified to form a correct judgment upon this ſubject, than men of any other deſcription, who ſhare an equal portion of natural underſtanding. The precedents ſo much referred to, are to be found in books that are not more in the hands of Lawyers,

than of any other Members of Parliament; and the illuſtration of thoſe precedents is to be drawn from hiſtories to which every one can have the eaſieſt acceſs, and which other people are, to the full as much, in the habit of conſulting, as profeſſional men. The arguments, indeed, which the opinions of great law-authorities afford, are undoubtedly to be found in thoſe books, which are particularly the ſtudy of the profeſſion. But theſe, ſurely, muſt be conſidered merely as collateral proofs, which the cauſe would do very well without; and ſeem to have been introduced more as *argumenta ad homines* (anſwers to the Lawyers themſelves) than as forming any ſolid and fundamental ground which was neceſſary for the ſupport of the queſtion.

But the weight of the argument which ariſes out of this conſideration, that the end and object of all judicial proceedings is the judgment, and that a criminal trial, when once inſtituted, ought not to be terminated by any thing ſhort of the acquittal or conviction of the accuſed, any man

man of plain, unſophiſticated underſtanding muſt feel; that ſtrong parliamentary ground alſo which ſtands upon general reaſoning on the nature of impeachments, and the effect which a diſſolution of parliament has upon buſineſs that is then depending, it undoubtedly requires no technical turn of mind, no quality that a legal education particularly produces to underſtand; while the reaſons which theſe conſiderations ſupply, ſeem to be ſo ſtrong, that nothing ſhould be permitted to counter-balance them, but a clear, continued, uninterrupted ſeries of incontrovertible precedents. Such a ſeries, indeed, might evidence in ſo ſtrong a manner, what the law was upon the ſubject, as to leave us nothing elſe to do, but to wonder at the indiſcretion of our anceſtors, who had left the conſtitution ſo ſtrangely defective, and to endeavour, with all poſſible expedition, to ſupply ſo dangerous an omiſſion.

If, however, it can be ſhewn upon a fair examination of the precedents themſelves, that the point has already been decided, and that thoſe precedents afford clear authority

thority to ſupport the continuance of impeachments notwithſtanding a diſſolution, this muſt of neceſſity remove all doubt, and terminate the queſtion. Or if (giving all the weight that can poſſibly be claimed by the moſt ſtrenuous advocate, to the precedents which have the leaſt leaning the other way) it ſhould appear upon them to be, at moſt, a matter of doubt, and if it ſhould be proved upon principle and upon analogy, to the nature of other proceedings in the ſame Court, that impeachments muſt ſo continue; and that the arguments which endeavour to except this as an anomalous caſe, out of the general rules of the Houſe of Lords reſpecting their judicial proceedings, either prove too much, by overturning clear and unqueſtionable principles, or elſe prove nothing, and are conſequently unſatisfactory and incomplete; it will then ſurely be deemed a fair concluſion, that this propoſition is demonſtrated—that impeachments brought up by the Commons in one Parliament, continue notwithſtanding a diſſolution, *in the ſame ſtate in which they were left, when laſt in agitation.*

The

The entry on the Lords Journals which ſtands firſt in order to be examined is that in 1672.

" Die Martis 11° Die Martii.

" Ordered by the Lords Spiritual and " Temporal in Parliament aſſembled, that " it be referred to the Lords Committees " for Privileges to conſider whether an ap- " peal unto this Houſe (either by writ of " error or petition) from the proceeding " of any other court being depending and " not determined in one Seſſion of Parlia- " ment, continue *in ſtatu quo*, to the next " Seſſion of Parliament, without renewing " the writ of error or petition; and re- " port their opinion to the Houſe."

" Die Sabbati 29° Die Martii 1673.

" Upon report made by the Lord Wi- " drington from the Lords Committees " for Privileges, &c.

" That in purſuance of the matter re- " ferred to their Lordſhips by order of the " eleventh inſtant (viz.) whether an ap-

" peal

" peal to this Houſe (either by writ of er-
" ror or petition) *or any other buſineſs where-*
" *in their Lordſhips act as in a court of judi-*
" *cature and not in their legiſlative capacity,*
" being depending and not determined in
" one Seſſion of Parliament, continue *in*
" *ſtatu quo* unto the next Seſſion of Parlia-
" ment without renewing the writ of er-
" ror or petition, *or beginning all anew,*
" their Lordſhips conſidered ſeveral pro-
" ceedings both ancient and modern,
" which were produced to their Lord-
" ſhips at the Committee, viz.

" 1. In general, Crompton Parl. 20, a
" general rule for writs of error depending
" to be continued to the next Parliament
" and the writ of *ſcire facias* to be made
" then returnable.

" 2. In particular, &c." They then pro-
ceed to ſtate a number of precedents (ſome of which it may perhaps be neceſſary to refer to in the ſubſequent obſervations; and if it is, they ſhall be ſo ſpecified on the reference that the correctneſs of the

citation may be eaſily aſcertained) and the Lords cloſe their report thus:

" Upon the conſideration of theſe pre-
" cedents, and of ſeveral others mentioned
" at the Committee, their Lordſhips came
" to a reſolution, and *accordingly declared*
" *it their opinion*, that *buſineſſes* depending
" in one Parliament or Seſſion of Parlia-
" ment have been continued to the next
" Seſſion of the ſame Parliament, and the
" proceedings thereupon have remained
" in the ſame ſtate in which they were
" left when laſt in agitation.

" The Houſe taking the ſaid report in-
" to their conſideration do approve there-
" of, and order it accordingly."

Now as far as the queſtion depends upon precedents, theſe proceedings and this order of the Houſe of Lords ſeem extremely important and deſerving all poſſible attention, and more particularly ſo for that very reaſon which is much objected to it in its application to the preſent matter of

debate; namely, that it has no *direct* reference to impeachments; becauſe from that circumſtance it ſtands clear from every objection of party violence, political prejudice, or any other improper motive which might be ſuppoſed to have influenced the judgment and which in a conſiderable degree diminiſh the authority of thoſe precedents, that have an immediate and pointed application to this ſubject.

In this inſtance, you ſee the Houſe of Lords proceeding to examine and *declare* (and not as will afterwards be more fully urged) to *enact* the law, reſpecting the effect of a prorogation of Parliament upon writs of error and appeals that were not determined in the former Seſſion: it appears evidently to have been the province of the Committee of Privileges to conſider, not whether it is expedient that writs of error and appeals *ſhould* continue *in ſtatu quo* notwithſtanding the intervening prorogation; but whether in point of eſtabliſhed law, upon reference to ancient caſes, they are found actually ſo to continue. The Committee

mittee in the courſe of their enquiry ſeem to have found it impoſſible to diſtinguiſh between writs of error and other judicial proceedings, and therefore go a little beyond the words of their commiſſion, but not an iota, as it ſhould ſeem, beyond the ſpirit of it; and in reciting the nature of the Lords directions add to the words "writs of errors or appeals" the words "*or any other buſineſs in which their Lordſhips act as in a court of judicature and not in their legiſlative capacity.*" And then proceed to ſtate many of the precedents which they found (probably moſt of them) and cloſe their report with declaring it as their opinion (the reſult of their reſearches), "*that buſineſſes depending in one Parliament or Seſſion of Parliament have been continued to the next Seſſion of the ſame Parliament, and the proceedings thereupon been taken up in the ſame ſtate in which they were left when laſt in agitation,*" which report the Houſe approves, and orders accordingly.

The uſe to be made of this order, is to ſhew that it is an eſtabliſhed principle of

 clear

clear law, by the judgment of the Houſe of Lords, that their proceedings, as in a court of judicature, are not affected by a *prorogation*; that buſineſſes of a judicial nature, once lodged in their court, do not die with the Seſſion. This point being eſtabliſhed it will be matter of future obſervation to diſcover what effect it ought to have upon the argument before us.

To this it has been objected, that it is true the law is ſo now, and has been ſo ever ſince this order in 1673, but that it never was ſo before, and that the Houſe of Lords made that law on this very occaſion. The report of the Committee itſelf is ſufficient anſwer to this objection; for in that report they declare after ſearching into the fact (for whether ſuch and ſuch proceedings *have been* determined, is a queſtion of fact, while whether they *ought to have been* ſo determined is a queſtion of law) that buſineſſes *have been* continued to the next Seſſion of the ſame Parliament. But it may be more ſatisfactory to go further, and obſerve that they report the very facts and preciſe

preciſe inſtances which they found ſo to continue; and that it appears upon conſulting their report, to be the common and ordinary practice to make the *ſcire facias* (the *proceſs*) returnable in the next Parliament; that Lord Coke ſays in 4 Inſt. 21. talking of a writ of error in Parliament, "when errors are aſſigned a *ſcire facias* iſ-"ſues againſt the party returnable in the "ſame or a ſubſequent Parliament"; that in a caſe reported in Dyer 375, the *ſcire facias* is expreſſly ſtated to have been made returnable *ad prox. Seſſ. Parliamenti.* And that the Lords themſelves, never ſeem to have had the inclination, or expreſſed a thought that they had the power, to *make* the law upon this caſe, but only to *declare* it.

That "a *ſcire facias* is returnable the "next Parliament"—is ſuppoſed to be an inaccurate phraſe that the writ muſt be returnable on a day certain, which could not be the caſe if the writ iſſues in one Parliament ſummoning the party to appear in the next, when it cannot be known at what

what time that next Parliament will meet; it is rather extraordinary, that the votes of Parliament ſhould ſo generally adopt inaccuracy, and that my Lord Coke ſhould do the ſame; and the firſt inclination of one's mind is rather to conceive the inaccuracy to be in the criticiſm, than in the authorities. If it is neceſſary that this writ muſt be returnable on a day certain, is it not poſſible that though *returnable* in the next Parliament, it may be retained in the office, and not be *iſſuable*, till the meeting of that Parliament is aſcertained? But be this as it may, the inaccuracy will not ſerve the purpoſe of the oppoſite argument; nor indeed can it be of the leaſt importance, as it is clear in point of fact from the precedents reported by this Committee, that the conſideration of writs of error appears to be poſtponed to the next Parliament; that the defendant in error is ſummoned to appear in that next Parliament; and the writ ſummoning him is called a *ſcire facias*; and this being the fact, one is a little at a loſs to diſcover in what reſpect the phraſe is inaccurate.

Thus

Thus much, however, muſt be allowed to the objection of novelty, urged againſt the order of 1673. That, during the long diſuſe of Parliaments, which had frequently occurred before this period, recourſe to this Court grew extremely inconvenient, and the Judges in Weſtminſter Hall, had, in conſequence, adopted a practice to prevent the great delay of juſtice, which muſt otherwiſe have reſulted from it—The practice, I mean, is briefly this*: A writ of error depending in Parliament, during a long prorogation, or a diſſolution, was held to be no longer a *ſuperſedeas*, and the party might have execution in the King's Bench—But the Parliament when it met might go on, and if they reverſed the judgment, the party would be reſtored to all that he had loſt. It ſeems always to have been a clear principle, that a writ of error, returnable at a diſtant day (*qui ad longue return*) was not a *ſuperſedeas*; this principle the Judges extended to caſes of a

* Vide 6th Reſolution in Lord Danby's Caſe. Skinner, 162.

pro-

prorogation or diſſolution. In doing which they did no more than exerciſe a diſcretion, which they ſtill exert, upon the effect to be allowed to a writ of error, as a *ſupercedeas to the judgment*. For no longer ago than Hil. 29 Geo. 3. (3 Term Rep. 79.) "In *Pool* v. *Charnoch*, cauſe was ſhewn "againſt a rule, for ſtaying the proceed-"ings againſt the bail, till the determi-"nation of a writ of error, brought by "the defendant in the principal cauſe, "and it appeared, on the plaintiff's affi-"davit, that the defendant, and his at-"torney, had declared, that they would "delay the plaintiff as much as poſſible, "by bringing a writ of error, if he did not "comply with certain terms propoſed.

"Lord Kenyon, Chief Juſtice, ſaid, the "Court *muſt exerciſe a diſcretion upon theſe* "*queſtions*; and if the parties confeſs that "the writ of error is brought purely for "delay, the Court will interfere, and not "permit them to abuſe the forms of "juſtice."

I cite

I cite this caſe to ſhew that the Court poſſeſſes a *diſcretionary power* of allowing to a writ of error the effect of a *ſuperſedeas*, upon any of its own judgments. In this caſe the writ of error certainly continued, the party might take advantage of it; the Houſe of Lords might proceed upon it; though the King's Bench would not in conſequence of it ſuſpend the execution.

The caſes in Ventris, Levens, and Siderfin, (which are the authorities mainly relied upon to prove, that writs of error abated upon a prorogation, before this reſolution in 1673, are much to the ſame point, and the Court in them muſt be only underſtood, as pronouncing the law upon the effect writs of error have upon the judgment, as ſuſpending the execution. This is the only light in which they could have come before the Court; and in any other their opinion is *extrajudicial* in the higheſt degree. Not only extrajudicial, as being upon a point which was not before them, but as being upon a point which was out of their juriſdiction; for ſurely it

must be admitted to be out of the juriſdiction of the King's Bench, to give any judgment upon the effect which a prorogation ſhould have upon a writ of error once lodged in the Houſe of Lords, or upon any other buſineſs which is there depending; though it may be clearly within their juriſdiction to ſtay or iſſue execution upon a judgment of their own, on any grounds which, in their diſcretion, may ſeem to warrant the one or the other. Such an interpretation of theſe caſes makes them conſiſtent with what appears (by the rolls, by my Lord Coke, by the caſe above cited from Dyer) to have been the practice reſpecting the return of the *ſcire facias*. And to ſuppoſe that this high Court ſhould be in the conſtant habit of iſſuing ſummons to parties *ad audiend. errores*, at a time, when from the known law of their Court, there would be no proceeding in exiſtence, and no errors to be heard, does ſeem an abſurdity, of which one cannot willingly ſuppoſe them to have been guilty.—But even granting, for the argument, that in theſe caſes alluded to above, the King's

Bench did intend to pronounce their opinion in a more extended ſenſe than I am inclined to underſtand it; yet at the moſt the argument derived from it can be only this; that the Court of King's Bench gave their judgment upon a point of *practice*, upon a rule of proceeding in the Houſe of Lords; which the Houſe of Lords did not allow to be law, and adjudged differently—which then ſhall be deemed the beſt judges of the practice of the Houſe of Lords, the Lords themſelves, or the judges of the King's Bench? And when it is conſidered, that all the doubt upon the ſubject grew originally out of the diſuſe of Parliaments, that this diſuſe of Parliaments was contrary to the ſpirit and ancient practice of the conſtitution, and contrary to ſo old a ſtatute as the 4 Ed. 3. c. 14; and moreover, that it was in order to look into the grounds of the doubt, which out of theſe circumſtances had grown into the law, that this Committee was appointed, and to remove it that this order was made; why ſhould we object to this declaration of the law? And what regard ſhould be

paid to arguments, drawn from the very caſes which gave occaſion to theſe doubts, when urged againſt the deciſion, which was made purpoſely to remove them? And why perſons ſhould chuſe to put ſo falſe a conſtruction upon the words and actions of this high Court; why, when the Committee reports, what has been the fact and the practice, and the Houſe of Lords recognizing that practice, declare it in their judgment to be the law; Why, I ſay, the ſame perſons ſhould chuſe to repreſent *this recognition of former practice*, to be *the enactment of new law*; Why they ſhould wilfully neglect to notice that maſs of authority which the ſame Committee by their reſearches have produced; Why they ſhould refuſe aſſent to that ſtrong argument, which reſults from the fact of the *ſcire facias* being returnable in the next Parliament; Why, when the old practice of the conſtitution reſpecting frequent Parliaments revived, the law conformable, and adapted to that practice, ſhould not revive too; Why all this ſhould happen, I muſt declare myſelf unable to diſcover, and leave it for others to explain.

We

We next come to the precedent in 1678, which, as it appears in the Journal, is as follows:

" Die Martis 11°. Die Martii, 1678.

" It being moved that this Houſe *would* " *declare*, whether petitions of appeal " which were preſented to the Houſe in " the laſt Parliament *be ſtill* in force to " be proceeded upon.

" It is ordered, by the Lords Spiritual " and Temporal in Parliament aſſembled, " that it be referred, and is hereby re- " ferred to the Lords Committees for Pri- " vileges, to conſider thereof, and report " their opinion thereupon unto this Houſe, " and that the Lords Committees do meet " on Thurſday next, at three o'clock in " the afternoon, for that purpoſe."

It ſhould ſeem that it occurred to the Houſe, ſubſequent to the appointment of this Committee, that there was another queſtion before them much connected with what they had already referred to it, and

there-

therefore they refer that alſo; but whatever their reaſon was, the fact undoubtedly appears to be, that, before the Committee have made their report upon this reference, there is another order made to the ſame effect as the former, with this additional direction, to enquire how the diſſolution affected the impeachments, which is in theſe words:

" Die Lunæ 17° Die Martii, 1678.

" Ordered, by the Lords Spiritual and " Temporal, in Parliament aſſembled, that " it be, and is hereby referred to the Lords " Committees for Privileges, to conſider " whether petitions of appeal, which were " preſented to this Houſe in the laſt Parliament, be ſtill in force to be proceeded " on; as alſo to conſider of the ſtate of " the impeachments, brought up in the " laſt Parliament, and all incidents relating thereto, and make report thereof to " the Houſe."

" Die

" Die Mercurii 19° Die Martii, 1678.

" The Houſe, this day, taking into " conſideration the report made from the " Lords Committees for Privileges, that in " purſuance of the order of the 17th inſtant to them directed, for conſidering " whether petitions of appeal (&c. reciting " the order) upon which the Lords Committees were of opinion, that in all " caſes of appeals, and writs of error, they " continue, and are to be proceeded upon " in *ſtatu quo*, as they ſtood at the diſſolution of the laſt Parliament, without " beginning *de novo*; and that the diſſolution of the laſt Parliament doth not " alter the ſtate of the impeachment, " brought up by the Commons in that " Parliament.

" After ſome time ſpent in conſideration " thereof, it is reſolved by the Lords Spiritual and Temporal, in Parliament aſſembled, that this Houſe agrees with " the Lords Committees in the ſaid report."

To

To conclude this precedent, the Lord Stafford, who had been impeached in the laſt Parliament, was tried on that impeachment, convicted and executed.

This precedent is avowedly as complete in point of fact, as is poſſible to be conceived; but the legality and the juſtice of it is denied (as of neceſſity it muſt be) by thoſe who contend that impeachments are put an end to by a diſſolution. And the grounds on which they object to it are theſe: 1. That it was made in times of turbulence and diſtraction. 2. That it is unprecedented and new. 3. That there is no appearance of any ſearch having been made for precedents. To obſerve upon all theſe objections in their order—As to the firſt, it muſt be allowed that there was at that time an apparent heat in both Houſes upon the ſubject of the Popiſh Plot, which may be well ſuppoſed to have diſturbed any judgment that had the leaſt reference to it;—but if the deciſion was right, it matters not in what times it was made; for though the temper of

of men's minds might have made them think wrong right; yet we who view the matter coolly, are not therefore to conclude that what they thought right muſt have been wrong—And thoſe who object the temper of the times, as an anſwer to the authority of this precedent, would do well to conſider how they will get rid of the ſame objection, when urged againſt their own favourite reſolution in 1685, by which this is *partially* reverſed. That it is new and unprecedented, that no caſe ever happened preciſely in point of an *impeachment* being continued from Parliament to Parliament, is, I believe, without any violation of truth, and I am certain, without any injury to the argument, to be admitted. That there was no particular ſearch for precedents with a view to this queſtion, does ſeem to be probable; but it is not only probable, but certain, that the report of precedents, by the Committee in 1673, contains caſes of criminal proceedings (if not impeachments) as well as of civil ſuits, which were continued from one Parliament to another: that the Journal of 1673, con-

taining that report is expreſsly referred to; and that thoſe caſes, ſo reported, juſtify the determination, that buſineſſes before the Lords, in their judicial capacity, continue from Parliament to Parliament, to the full as well, as they ſupport the opinion of their continuance from Seſſion to Seſſion; having therefore theſe precedents, which had been ſo lately ſearched for, and ſo recently reported, it would have been loſs of time, and waſte of diligence, to have repeated this work again. All then which the Lords have to anſwer for in this determination is, that they did not diſcover any ſatisfactory diſtinction between *impeachments* and other *criminal proceedings*, or indeed other *judicial proceedings of any kind*, which would warrant their excepting them out of the general rule, applicable indiſcriminately to all judicial proceedings in their Houſe. They find this rule laid down, without any exception, in 1673, with reſpect to prorogations, and they find it ſo laid down, upon authority which ſupports their more extenſive judgment, as completely, as it does the

the more narrow and confined one in 1673. Why then, it is aſked, did the Committee in 1673, forming their opinion upon theſe very identical precedents, confine their judgment and report to caſes of prorogation? Why did they not tell the Houſe what would be the caſe upon a diſſolution? For this plain reaſon, becauſe they were not aſked; they were only conſulted as to the effect of a prorogation, which was the caſe then before the Houſe, and ſatisfied every duty which could be expected of them, by anſwering the queſtion as it was aſked. If this ſhould be conſidered an inſufficient anſwer, as applied to the Committee of 1673, which in fact did go beyond the words of the queſtion which was put to them, I can only ſay, that it appears to me, that the queſtion propoſed for their examination and enquiry, was the effect of a *prorogation upon judicial proceedings generally*, in which writs of error and appeals were only named by way of example. This is the ſenſe in which they evidently interpreted the reference; in ſo doing, they only acted up to the ſpirit

without confining themſelves to the letter of their inſtructions, and the Houſe of Lords, by adopting their reſolution, approve, acknowledge and confirm the propriety of this conſtruction—But by no conſtruction of the queſtion could they poſſibly have ſuppoſed themſelves directed to give their opinion upon the effect of a diſſolution; when the caſe before them was only that of a prorogation, and when the event, itſelf, of a diſſolution, not having taken place for ſo many years, could never have been in the contemplation of the Houſe.

It is ſaid above, that the Lords found the rule laid down in 1673, reſpecting prorogations, upon authority which juſtified the extenſion of it to diſſolutions—As this is diſputed, a few words will be well employed in attempting to prove it.

In the report of the Committee of 1673, is found this precedent:

" 30 Ed. 1. p. 234. The caſe of Wil-
" liam de Breouſe and Walter de Peder-
" ton

" ton, Conſtable of Kermerdyn, touching
" the manor of Gower, for which Wil-
" liam was ſummoned in, to do ſuit and
" ſervice at the Caſtle of Kermerdyn; of
" which he *had* complained, and day had
" been given to all parties to appear *next*
" *Parliament:* and then it was not determined, but referred to a further hearing, at the *following Parliament*, which was
" to be held at Lyncolne, in *Octabis Hillarii*;
" and from thence, after ſome debatings
" and arguings, put off again to *this Par-*
" *liament*, in the 30th of the King in
" *Octabis St. Johannis Baptiſtæ*, where the
" buſineſs was more fully heard, and
" courſe taken in it."

In this precedent it appears, that the ſame buſineſs was continued through *four ſucceſſive Parliaments*; and though ſome of theſe may, perhaps, have been *different Seſſions* of the *ſame Parliament* (for I believe the words are uſed ſynonimouſly) it will be ſufficient for the argument to ſhew that any one of them was a new one. Now in the firſt Vol. of the Parliament Hiſtory, it appears

appears that a new Parliament was called to meet at Lincoln on the Eve of St. Hillary; in the 29th year of Ed. 1.—the ſubſtance of the writ itſelf, ſummoning the Parliament, is given pretty much at length.

The next precedent contained in the ſame report which I ſhall notice is this: "15 Ed. 3. N. 8. 43. 49. The Archbiſhop of Canterbury being arraigned in "Parliament, according to his own deſire, "before his Peers; the Biſhops of Durham, and Sarum, and the Earls of Northumberland, Arundel, Warwick, and "Saliſbury, were appointed to hear his "anſwer, the ſame to be debated the next "Parliament, and all things touching "his arraignment to remain with Sir William of Keldeſby, keeper of the privy "ſeal."

This arraignment of the Archbiſhop was in 15 Ed. 3. and in a Parliament or Seſſion of Parliament held two years afterwards (17 Ed. 3.) every thing touching the arraignment of the Archbiſhop is annulled

nulled and cancelled, as not being reaſonable or true—It is ſaid, there is reaſon to ſuppoſe this was all in one Parliament.* *That it appears from Prynne, that writs iſſued for a new Parliament teſted; An. 15 Ed. 3. apud Woodſtock, 3 die Martii; that his next writ is teſted; An. 17 Ed. 3. apud Kenelworth, 26 die Decembris: and it alſo appears from the Rolls of Parliament, that the Parliament in which the Archbiſhop complains, was held at Weſtminſter fifteen days after Eaſter; the Archbiſhop's arraignment is concluded in a Parliament held at Weſtminſter fiften days after Eaſter, in the 17 Ed. 3. the new writ does not iſſue till the 26th of December in that year:* from whence it is concluded, that the proceedings may have been in the ſame Parliament, continued by prorogations. But, the fact is, that there was a new Parliament called ſoon after Eaſter in that very year, though Prynne may not have perceived any writ for it. For in the 1ſt Vol. of Par. Hiſt. page 251, we find, the King called a Parliament to meet at *Weſtminſter*, April 23. 1343.

* Vide a Pamphlet on this Subject by Ed. Chriſtian, Eſq. 2d Ed. page 17.

in

in the 17th year of his reign. And alſo find, in the ſame place, the reaſons expreſſed in the writ for ſummoning it. "To "meet and adviſe with his great men, "what was beſt to be done in his preſent "affairs, particularly concerning the truce "lately made with his enemy of France, "and about the good government and "ſafety of his realm and people."

The only other precedent, reported by this Committee, which I ſhall mention is,

"1 R. 2. N. 28. The Earl of Saliſbu-"ry, William de Montacute, brings his "writ of error upon a judgment in the "King's Bench, by which Roger de Mor-"timer, Earl of March, father to Ed-"mond, had recovered from him ſome "lands in Wales. The record is brought "into the Houſe by the Chief Juſtice, "there to remain; and a *ſcire facias* "awarded, to warn Edmond, Earl of "March, to appear the next Parliament. "The next Parliament. 2 R. 2. N. 21. 22. "23. 24. the Earl of March appears; ſaith "the writ was not duly ſerved, for that there

"there was an error in the Sheriff's re-"turn; Edmond Mortimer his grand-"father being there ſaid to be an Earl, "which he never was. The Earl of Sa-"liſbury on the other ſide affirmed it to "be a good return. So there being diffi-"culty in the matter, and the Parlia-"ment drawing towards an end, day was "given to both parties till next Parlia-"ment, with all advantages; and the "matter to ſtand as it now doth".

By this precedent it appears, the ſame buſineſs was continued during three Parliaments, two of which were certainly diſtinct Parliaments, and not different ſeſſions of the ſame. For R. 2. began his reign 21 June, 1377; and there appears by the *Parliamentary Hiſtory*, to have been two Parliaments called in the firſt year of his reign, that is, before 21 June, 1378*. The firſt Parliament was ſummoned to meet 15 days after Michaelmas †, and diſſolved 18 November. The writs for

* Vide 1 Par. Hiſt. 336. & 344.

† 1. Par. Hiſt. 344

 the

the ſecond Parliament iſſued 16 February following, ſummoning a Parliament to meet 15 days after Eaſter—this was ſtill in the firſt year of R. 2. So it may therefore be allowed that this writ of error was brought in this ſecond Parliament, but it muſt have been in one of them. The third Parliament was ſummoned to meet 20 October, 2 R. 2. which muſt have been a new one, as we find in the ſame book, *fo.* 350, an account of the election of the Speaker.

I will not trouble the reader with any more, though there certainly are other caſes in the ſame report, which are continued beyond one Parliament, it is ſufficient that I have ſhewn theſe three inſtances one of a criminal, and two of a civil nature, upon which the Committee in 1673 formed their opinion of buſineſs ſurviving a prorogation, which ſupport the extenſion of the ſame opinion to the caſe of a diſſolution.

As a confirmation of the precedent in 1678, we find that Sir Wm. Scroggs, the Chief

Chief Juſtice of the King's-Bench, was impeached by the Houſe of Commons on the 7th of Jan. 1680. Parliament prorogued the 10th, and diſſolved the 18th of the ſame month.

21 March, 1680, a new Parliament met.

24. Sir W. Scroggs' anſwer was read, as alſo his petition deſiring a ſhort day for the Commons to reply; copies of which anſwer and petition were ſent to the Commons. But as no further proceedings were had againſt him, and as this was ſo ſoon after the determination above ſtated, I think it but juſt to lay no great ſtreſs upon it, but to acknowledge that they muſt both await the ſame fate; though he was not one of the Popiſh Lords againſt whom all this heat and animoſity was entertained, and though certainly, as far as it goes, it is a precedent in favor of the continuance of Impeachments notwithſtanding a diſſolution. I cannot diſmiſs the conſideration of theſe caſes, without making this ſingle remark, that whatever doubt may be entertained upon the effect a prorogation or

diſſolution had upon judicial proceedings then depending in Parliament, before the orders of 1673 and 1678, thoſe orders have completely ſettled it; from that time to this, the doubt has no where exiſted; but writs of error and other judicial proceedings have not abated upon either of thoſe events; except in the caſe of Impeachments; the origin of the doubt upon that point I now proceed to examine in the order of 1685, which appears thus upon the Journals;

" Die Veneris 22°. Die Martii, 1685.

" Upon conſideration of the caſes of the " Earl of Powis, Lord Arundel of Ward- " our, the Lord Bellaſis and the Earl of " Danby, contained in their petitions— " after ſome debate, this Queſtion was " propoſed, whether the order of the " 19th of March, 1678-9 ſhall be reverſed " and annulled as to impeachment.

" The queſtion being put whether " this queſtion be now put—it was re- " ſolved in the affirmative. Then the " queſtion

" queſtion was put, whether the order of " the 19th of March 1678-9 ſhall be re- " verſed and annulled *as to impeachments*— " it was reſolved in the affirmative."

Upon which the Lords Angleſey, Clare and Stamford enter this proteſt:

" 1. Becauſe it doth, as we conceive, ex- " trajudicially and without a particular " cauſe before us, endeavour an altera- " tion in a judicial rule and order of the " Houſe, in the higheſt point of their " power and judicature.

" 2. Becauſe it ſhakes and lays aſide an " order made and renewed upon long con- " ſideration, debate, report of commit- " tees, precedents and former reſolutions, " without permitting the ſame to be read " though called for by many of the Peers, " and againſt weighty reaſons, as we con- " ceive, appearing for the ſame, and con- " trary to the practice of former times.

" 3. Becauſe it is inherent in every " Court

" Court of Judicature to aſſert and pre-
" ſerve the former rules of proceedings
" before them, which therefore muſt be
" ſteady and certain, that the ſubject and
" all perſons concerned may know how to
" apply themſelves for juſtice. The very
" Chancery, King's Bench, &c. have their
" ſettled rules and ſtanding orders, from
" which there is no variation."

Many objections neceſſarily occur to the authority of this reſolution. Every argument which is objected to the proceedings in 1678, applies here with greater force. It was almoſt the firſt act, of the firſt parliament in a new reign, ingratiating themſelves into favor with a *popiſh* monarch, annulling proceedings againſt *popiſh* Peers, upon the ſuppoſed ground of a *popiſh* plot—added to the temper of the times, not a little is to be deducted from its authority on account of the apparent temper of the men themſelves who vote the reſolution; who in the moment when they are proceeding to annul a rule of law, (which, whether right or wrong, had certainly, in point

point of fact, obtained for ſome time, and had been acted upon by every branch of the legiſlature) would not even permit the precedents called for by the diſſenting Lords to be read, but " *in a ſpleen* " intemperately deſtroy it, without a wiſh themſelves to enquire, or an inclination that others ſhould know, upon what grounds that rule had originally been adopted.

It is ſaid in anſwer to this, allowing the impropriety and indecency of the proceeding, *that it is* however *a rule laid down by a court for the regulation of its own proceedings (which is nothing more than what all courts are competent to do) and as long as it ſtands unrepealed, it is binding upon the court which made it, and continues to acknowledge it by continuing its exiſtence. The King's Bench have this power, why deny it to the Houſe of Lords?*

I would firſt anſwer, that if it be allowed, that the Houſe of Lords have the power of annulling any of their rules for the purpoſe of the moment, and the more conveniently to adapt the general law of

 their

their proceedings to the ſtate and circumſtances of any particular proceeding at that time before them; they may exerciſe this power in 1791, as warrantably as they could in 1685, and the Houſe of Commons are ſurely juſtified in ſuppoſing, that if they could in *bad times* reverſe a *good rule* of their Court, for the purpoſe of *ſtopping* a proſecution, and *impeding the courſe of juſtice*, they will not heſitate in *good times*, to reverſe this reverſal and re-eſtabliſh the former rule, for the purpoſe *of promoting the ends of juſtice*, and forwarding an enquiry whereby the guilt of the accuſed may be detected, or his innocence be eſtabliſhed and his character reſtored.—So much upon the ſuppoſition that they have ſuch a power; which I now venture with all deference to deny. But to avoid being miſunderſtood upon this delicate ground, let me ſtate and explain my opinion as accurately as I can. It is this, that it is not within the Juriſdiction of the Houſe of Lords to *order by a rule* of their Court, that impeachments, or any other judicial proceedings *ſhall* or *ſhall not* abate upon a diſſolution of

of Parliament, though I admit, that it is within their juriſdiction, and they are bound in duty *to decide* (when a caſe comes before them in which that deciſion is neceſſary) whether any impeachment, or other judicial proceeding *is*, or *is not ſo abated*; and their judgments ſhould be guided in this, as in all other judicial queſtions, by the authority of former caſes, or, if they are wanting, recourſe muſt be had to principle, to analogy, and ſuch other ſources of legal information and reaſoning, as all judgments are founded upon in this country.

This perhaps may, at firſt appear to be an idle difference, merely in *words* and not in *ſubſtance*; that what they can allowedly do by a *judgment*, they muſt be ſuppoſed to have the power of doing by a *rule of their Court*, and that the diſtinction, if there be any, is not worth contending for. But a very little examination will, I think, ſhew, that there is the moſt ſubſtantial and ſolid diſtinction between the two; and that it is this diſtinction which makes

what they did in 1673 and 1678 right, and what they did in 1685 wrong.—If they had the right to make the law in 1673 and 1678, upon a particular caſe which was then before them, it is not eaſily ſeen, how it can be denied, that they had the ſame right in 1685, or as has been before ſaid, that they have it and may exerciſe it now. But though they had a right to *declare* what the law *was*, upon the queſtion then before them, in 1673 and 1678, (and it has been already ſhewn, that they attempted to do no more) it will by no means follow that they had a right in 1685 to *alter* that law, which they evidently meant to do, by partially reverſing and annulling the order of the 19th of March 1678-9.

To explain a little more, if it wants further explanation, the difference between a *judgment* and *a rule* of any Court;—the former is clearly a *judicial* act, the latter a *legiſlative* one; the exerciſe of a legiſlative power, with which to certain purpoſes, and within certain limits, all Courts are wiſely,

wiſely, if not neceſſarily, intruſted. The Court in making *a rule*, act upon their diſcretion of what they think the law *ought to be*; in giving their judgments they act upon their conviction of what they think the law *is*; in the one, arguments of expediency are almoſt alone attended to, in the other they are totally diſregarded; a *rule of Court*, making the law, ſpeaks *de futuro*; a *judgment* ſpeaks for the preſent time, and for the caſe which happens then to be before them. Perhaps all this may be granted; but it will be aſked, whether this is not one of thoſe points to which a rule of Court will apply? And then, tho' the rule were iniquitous in its application to my Lord Danby, &c. in 1685, yet it is juſtly binding on all future proceedings.

To this I anſwer, that it is not one of thoſe points to which a rule of Court will apply; it is not one of thoſe points over which any Court is neceſſarily, wiſely, or at all intruſted with the exerciſe of this ſpecies of legiſlative power. For this is not a rule to *regulate* proceedings, but to

put an end to them; this is not a rule which declares that a certain event depending upon either of the parties (the effect of which, forwarned by the rule, he muſt know, and might avoid) it is not a rule, I ſay, which declares that ſuch an event ſhall defeat his ſuit; but it is a rule which defeats the ſuit upon an event which neither party can prevent or foreſee.

To illuſtrate by an inſtance which is rather more familiar, what a Court can, and cannot do by a rule; I will remark that the King's Bench may well regulate the number of days a defendant may have to put in his anſwer, or a plaintiff to reply. But what would have been thought of a rule of this Court (before the ſtat. 1 Ed. 6. c. 7. and 1 Ann. c. 8.) which ſhould have ordered, that actions and proſecutions ſhould not abate upon the demiſe of the Crown? or what would be thought (to bring the inſtance rather more home to the preſent argument) if after thoſe ſtatutes, and in the teeth of the proviſions they contain, the Court ſhould now make a rule,

a rule, that they ſhall abate upon that event? if it be anſwered, that they cannot make ſuch a rule, becauſe it is in direct oppoſition to expreſs acts of Parliaments. There is no lawyer but will admit that the obligation of the Common Law is to the full as ſtrong as an expreſs Act of Parliament. And in this caſe, if there was not an expreſs law, there was ſomething as near it as can well be imagined; there was a deciſion of a Court of *competent juriſdiction*, and not only an *acquieſcing Legiſlature*, but a Legiſlature in all its branches concurring in it, adopting it, and acting upon it; a deciſion of a Court of competent juriſdiction, upon which the *Houſe of Commons* proceed with their impeachment; on which the *Houſe of Lords* proceed through the trial to the judgment; and to which the King aſſents by ſuffering the execution—againſt ſuch a deciſion declaratory of the law, ſo recognized by all the branches of the Legiſlature, the Houſe of Lords can have no right to oppoſe their ſingle will, and annul it by a vote.

But

But we muſt not be diverted by having conſidered this anſwer, from obſerving (what it was the ſole purpoſe of introducing the inſtance to eſtabliſh) that the alteration of the continuance or diſcontinuance of judicial proceedings upon events of this nature, is not within the juriſdiction of Courts *to regulate*, but of Parliament *to enact*.

Having thus examined the competency of the Houſe of Lords to make ſuch a rule, it remains to be ſeen what idea they entertained themſelves of their own law by reference to hiſtory and cotemporary facts; as alſo to enquire what effect was given to it by the Judges in Weſtminſter Hall.

In the firſt place, * Rapin tells us (after having mentioned the circumſtance of the Commons voting the ſame revenue to King James for his life, that his brother had enjoyed) "that the Commons having given "the King ſo real a demonſtration of "their zeal and affection, the Lords were "willing likewiſe to ſhew him, how much

* 15 Vol. fo. 25

"they

"they were devoted to him in any thing "that lay within their power; to that "end the King having ſent a warrant to "the Attorney General to enter a *noli proſequi*, upon the indictment againſt the "popiſh Lords, who had been priſoners "in the Tower for the Plot, and againſt "the Earl of Danby, the Houſe of Peers "annulled their order of the 19th of "March 1678-9, and entirely diſcharged "theſe Lords who had been let out only "upon bail."

When the Lords had releaſed the popiſh Peers, and annulled the reſolution under which the Lord Stafford was convicted; they brought in a bill to reverſe the attainder of that nobleman; which bill was thrown out by the Houſe of Commons. From this it appears, either that the bill did not proceed upon the illegality of Lord Stafford's conviction, or that the Commons did not adopt the new law of the Lords; becauſe it is impoſſible, that any one who admits the principle, that impeachments cannot legally be continued from

from Parliament to Parliament, ſhould refuſe his aſſent to this conſequence, that the Lord Stafford was illegally convicted; and that therefore his attainder ſhould in juſtice be reverſed: But the Commons did not recognize that reſolution to be law; and what is ſtill more remarkable, the Lords themſelves do not ſeem to have thought that it would bear examination. For it appears, by the bill itſelf, that the ſole reaſon alledged for this reverſal was in theſe words * "Whereas it is now mani-" feſt that William Lord Viſcount Staf-" ford was *innocent of the treaſon* laid to his " charge, and the *teſtimony* whereby he was " found guilty *was falſe*, be it enacted, " &c."—And the proteſting Lords among other matters, aver *that they have* † *no ground to believe the aſſertion of the preamble*; and there does not appear one word either in the bill, or in the proteſt, that has the leaſt reference to the irregularity of proceeding upon an impeachment, after diſſolution. Can it now be conceived, that if

* Rapin 15 Vol. fo. 25.
† Ibid fo. 26.

the

the Lords had the leaſt idea that the reſolution they had juſt voted, carried with it any authority, or deſerved the leaſt attention, they would have omitted to inſert it in the preamble of this bill; when it would neceſſarily have afforded a moſt unanſwerable argument for paſſing it into a Law.

Let us next ſee what degree of weight was allowed to this reſolution by the Judges in Weſtminſter Hall.

The Earl of Saliſbury had been impeached 26 of October, 1689. and, upon the impeachment, committed to the Tower by the Lords, where he continued till the Parliament was diſſolved, a new Parliament ſummoned, and after a long Seſſion * adjourned for two Months. † Under theſe circumſtances he applies to the Court of King's Bench to be bailed, and for that purpoſe the Lord Danby's caſe was cited, who was bailed (35 and 36 Car. 2.)

* By the Journals it appears to have been a prorogation.
† Carthew 132.

though committed by the Peers in Parliament. " *Sed per curiam*—the Earl of Salif-
" bury was not bailed ; becauſe there was
" a very ſhort adjournment of the preſent
" Parliament. And that is the proper
" place for him to make application to be
" bailed.

" That the chief reaſon for bailing
" Lord Danby was becauſe the then Par-
" liament was prorogued, and the time
" uncertain for their meeting again, and
" ſo no proſpect of an opportunity to ap-
" ply himſelf that way ; beſides, he was
" denied to be bailed until the *Chief Juſ-*
" *tice Jefferies* came in.

" And the *Court cited* * *Lord Stafford's*
" *caſe who was committed* by the Houſe of
" Peers, and notwithſtanding that Parlia-
" ment was diſſolved, by which he was
" committed, yet he was continued a pri-
" ſoner, and afterwards tried upon the
" ſame Impeachment, convicted, and exe-
" cuted ; *which fully proves*, that commit-

* Ray, 381.

" ments

" ments by the Peers in Parliament, are
" not made void by the prorogation or
" diſſolution of the ſame Parliament.

" Beſides, the Lord Danby was *bailed* to
" appear at the *next Seſſions of Parliament*,
" which was *an affirmance of the commitment*,
" and a plain proof of the opinion of the
" Court, at that time, that the commit-
" ment was not avoided, or diſcharged by
" the prorogation of the Parliament.

" And for theſe reaſons the Lord Salif-
" bury was remanded to the Tower."

It muſt here be obſerved, that this caſe happened E. 2. W. & M. in 1690, only five years after the date of this very reſolution ; when the very man, who had been counſel for my Lord Danby (upon whoſe caſe among others this reſolution was come to, and who conſequently could neither be ignorant of the reſolution itſelf, nor of the degree of weight which from all its circumſtances belonged to it) when Lord Holt himſelf was preſiding in the Court of

King's-Bench. And yet no regard whatever is paid to this reſolution, no reference made to it, but the Lord Stafford's caſe is referred to, as an *exiſting* and *deciſive* authority; though if there be any force in this reſolution the authority of that caſe is completely done away.

After examining this reſolution in theſe various lights, let me aſk any candid and intelligent man, what authority is due at this day, to a reſolution of the Houſe of Lords (one branch of the legiſlature) which *partially annuls and reverſes*, declared and acknowledged law, out of compliment to a Popiſh monarch, in the firſt moments of his acceſſion; which themſelves are at the ſame time aſhamed to acknowledge, which the Commons diſcountenance, and the Courts of Weſtminſter Hall diſregard? And I would further aſk, whether ſuch a reſolution, from the mere circumſtance of its being later in its date, can be put in competition with a reſolution of the ſame Court, *declaring its judgment* of what the law is, upon reference to precedent, and conſiſtent

conſiſtent with principle and analogy, which the two other branches of the legiſlature act upon, and which the Courts of Weſtminſter Hall conſider as declaratory of the law, and concluſive upon the ſubject.

I have dwelt the longer upon this reſolution becauſe objectionable as it ſeems upon every ground, and in every poſſible light in which it can be viewed; rotten as it is in the whole and in all its parts; yet is it the ſtrongeſt; not to ſay the only ground on which the aſſertors of the doctrine of abatement can build any argument at all.

For as to the caſe in 1690 of the Lords Saliſbury and Peterborough—let any man take fairly into conſideration the whole of what the Lords do upon that occaſion; the queſtion they put to the judges; the anſwer of thoſe judges; the reſolution of the Houſe itſelf, and the proteſt of the diſſenting Peers, and it is next to impoſſible but he muſt allow (if not that they were diſcharged upon the act of Grace *alone)*

alone) that this act, and not the authority of the resolution in 1685, constituted the main inducement to that vote.

The precedent itself is as follows:

" *26 Oct. 1689. The Earl of Salisbury " and Earl of Peterborough were im- " peached of High Treason, in departing " from their allegiance and being recon- " ciled to the See of Rome, by message " from the Commons."

Both committed to the Tower.

" 27th of January following the Parlia- " ment was prorogued and dissolved by " proclamation the 6th of February fol- " lowing.

" A new Parliament met, 20th of " March 1689.

" 5th of April 1690, an order was " made, to take into consideration, whe-

* This is taken from the Report of the Committee in Lord Oxford's Case.

" ther

" ther Impeachments continue from Par- " liament to Parliament, on the Wednes- " day following.

" 8th and 10th of the same month, " consideration of that matter was ad- " journed.

" 7th July 1690. The Parliament was " prorogued.

" 2d October, 1690. Earl of Peterbo- " rough petitioned to be discharged, ha- " ving been kept prisoner in the Tower " for almost two years, notwithstanding a " dissolution, and several prorogations had " intervened, as also an act of free and * " general pardon; whereupon the judges " were ordered to attend, to give their " opinions whether he be pardoned by " that act. The judges were also ordered " to give their opinions, on the same mat- " ter, upon the Earl of Salisbury's peti- " tion, praying likewise to be discharged.

* Passed the last Session.

" 6th

" 6th of the ſame month, the Judges " according to order delivered their opi- " nions, as follow, viz. That if the ſaid " Earl's crimes and offences were commit- " ted before 13th of February 1688, and " not in Ireland nor beyond ſeas, they " were pardoned by the ſaid act; and it " was reſolved, that the ſaid Earls ſhould " be admitted to bail; and a Committee " was appointed to inſpect and conſider " precedents, whether Impeachments con- " tinue *in ſtatu quo* from Parliament to " Parliament.

" 7th October, the ſaid Earls were both " bailed at the bar.

" 30th of the ſame October, report " was made from the Committee, ap- " pointed the 6th of the ſame October, " of ſeveral precedents brought to their " Lordſhips by Mr. Petyt from the " Tower; and alſo that they had exa- " mined the Journals of this Houſe, " which reach from the 12th of Henry " 7th, and all the precedents of Impeach-

" ments,

" ments, ſince that time were in a liſt " now in the clerk's hands; among *all* " *which*, none are found to continue from " one Parliament to another except the " Lords who were lately ſo long in the " Tower. After conſideration of which " report, and reading the orders made " 19th March $167\frac{8}{9}$, and 22nd May 1685, " and long debate thereon and ſeveral " things moved.

" The queſtion was propoſed whether " James Earl of Sarum and Henry Earl of " Peterborough ſhall be now diſcharged " from their bail?

" Then this previous queſtion was put, " whether this Queſtion ſhall be now " put?

" It was reſolved in the affirmative.

" Then the main queſtion was put, " whether James Earl of Saliſbury and " Henry Earl of Peterborough ſhall be " now diſcharged from their bail?

" It was reſolved in the affirmative.

Upon which eight Lords enter the following proteſt.

" 1. Becauſe we conceive it is a queſtion " not at all relating to the real debate be- " fore us; but urged upon us *not for the* " *ſake only of the two Lords mentioned.*

" 2. Becauſe we ought to have *examined* " *precedents of pardons*, to ſee how far an " impeachment was concerned, before we " had adjudged the Lords diſcharged; " or whether an impeachment could be " pardoned without particular mention " *of an act of Grace*, and what difference " there is between an act of Grace and " an act of Indemnity.

" 3. Becauſe we did not hear the Houſe " of Commons, *who are parties*, and who " in common juſtice ought to have been " heard before we paſſed this vote."

From what has been ſtated, it ſurely appears that if theſe Lords were not diſcharged

charged ſolely on the ground of the act of Grace, yet it was done by ſuch a ſweeping and complicated vote, as involved in it this queſtion, whether the act of Grace did put an end to their impeachments; and as no mention whatever is made in the proteſt of the effect of a diſſolution; as the Houſe of Commons are called parties, which could not be if the ſuit no longer exiſted; it ſhould ſeem as if the act of Grace were the principal, if not the only ground on which they were diſcharged.

It has been ſaid, that the Committee to ſearch for precedents was appointed in another caſe; namely, the impeachment of Sir Adam Blair—I am afraid it would be a difficult matter to prove this aſſertion; but if it could be proved, ſo much the better for our argument, and the worſe for their's who attempt to prove it; becauſe, if the judges were conſulted upon the effect of an act of Grace in the caſe of theſe Lords; and the precedents were not looked into on the ground of their

impeachments, but on account of the other; the argument here contended for holds ſtill ſtronger, that the Lords were diſcharged, not on the point of law reſpecting diſſolutions, but ſolely in conſideration of the act of Grace.

It ought not here to be forgot, that it appears on the Journals of the Houſe of Lords "12 Nov. 1690 (not a fortnight after the "diſcharge of theſe Lords) upon motion "that a day be appointed for the explana-"tion of the Votes of the 30th of Octo-"ber laſt, it was ordered to take the ſame "into conſideration on the 18th of the "ſame November, and all the Lords to be "ſummoned, on which day the Houſe "ſat; but it doth not appear by the jour-"nals that any thing was done in pur-"ſuance of that order."

This perhaps may not be thought to prove much; but it ſurely ſeems to prove this, that the Lords, at the time they appointed this day, &c. for explaining theſe votes,

votes, imagined they did want explanation, and were not ſatisfied with what appeared upon their Journals reſpecting them.

There are two other authorities to be adduced in ſupport of this conſtruction of the vote, which confirm the propriety of attributing it wholly to the effect of the act of Grace,—Mr. I. Foſter in his Crown Law, p. 157—and Chief Baron Comyns in the 4th Vol. of his Digeſt, p. 364.—In ſhewing that the office of High Steward is not eſſential to the Court, the Chief Baron ſays (as one inſtance of their proceeding without that officer) "that the Court "has allowed priſoners the benefit of acts "of general pardons, without the ap-"pointment of a High Steward," and cites among others, *Lord Saliſbury's caſe*.—Mr. I. Foſter makes the ſame uſe of the ſame caſe. But it is ſaid, that as he expreſſly declares, that the only uſe he makes of this caſe is to prove that the Houſe of Lords have claimed and exerciſed a right of judicature without a High Steward, ſince that point would be equally well proved

proved by this caſe, if they diſcharged him on the ground of the intervening diſſolution, as the act of Grace, therefore the authority of his opinion is nothing either way. It muſt, at leaſt, be conſidered an unfortunate circumſtance for this obſervation, that theſe two authorities, Mr. I. Foſter and Chief Baron Comyns, ſhould cite my Lord Saliſbury's caſe, inſtead of my Lord Peterborough's, as an inſtance wherein the Court have exerciſed their judicial power without a High Steward; when in point of fact, Lord Saliſbury *did not in his petition mention the intervening diſſolution* as a ground which might entitle him to his diſcharge, but confines himſelf to the act of Grace; though my Lord Peterborough it is true mentioned *both the one ground and the other*—but excluſive of this obſervation, theſe two Judges don't cite this caſe, *generally*, as an inſtance of the exerciſe of this judicial power, but they ſpecify and point out the particular ſubject on which it was exerciſed; namely, in allowing priſoners the *benefit of an act of Grace*. And all the uſe we can wiſh to make of their authorities,

thorities, is, to ſhew, that this conſtruction of what the Lords did in that caſe, is not only *now*, for the firſt time, put upon it, for the purpoſe of the preſent argument; but that theſe two great lawyers, when they could have no ſuch object, ſaw it in the ſame light, and read it in the ſame ſenſe.

With the aſſiſtance of theſe obſervations, let us revert to the precedent itſelf, and review it in all its leading circumſtances; upon the petition of theſe Lords to be diſcharged (one of whom, Lord Saliſbury, does not ſo much as mention the diſſolution as a ground for ſuch diſcharge) the Lords refer to the Judges to know "whether they are pardoned by "the general act of Grace which had "paſſed in the laſt Seſſions." To which the Judges anſwer, "that if the ſaid Earl's "crimes and offences were committed "before the 13th of February 1688, and "not in Ireland, nor beyond the Seas, "they were pardoned by the ſaid acts." Now when it is conſidered that the crime for which theſe Lords were impeached, was that of being reconciled to the See of Rome,

Rome, and that the religious opinion of theſe Peers was probably no ſecret in the preceding reign, when the profeſſion of Popery was meritorious and the road to power; it is more than probable that the notoriety of their religion would leave moſt of the Lords little room to doubt that their crime *muſt be pardoned by this act of Grace*, if the opinion of the Judges were to be adopted. Upon this what is done by the Lords? Do they reſolve to abide by the reſolution of 1685? Do they vote that impeachments are diſcontinued by a diſſolution? nothing like it. They reſolve, generally (eſtabliſhing no principle, and pointing out no ground for the reſolution) *that theſe Lords ſhould be diſcharged.* Then comes the proteſt of the diſſenting Lords, which turns (as we may fairly conclude from it, the debate turned) ſolely upon the act of Grace; and to all this muſt be added the ſubſidiary authority of Chief Baron Comyns, and Mr. I. Foſter, who having no particular object in view, no favorite doctrine to advance, upon reading this caſe quietly and temperately in their

their ſtudies, conſider it as an inſtance in which the Lords have allowed a priſoner *the benefit of an Act of Grace*, without the appointment of a High Steward. Yet this is the caſe which is generally aſſerted to be as decidedly in point for the abatement of impeachments by a diſſolution, as that in 1678 is for their continuance.

The next precedent which occurs is the Duke of Leed's caſe in 1695, and 1701.

"27th of April, 1695. The Duke of "Leeds was impeached of high crimes "and miſdemeanors, and articles were on "the 29th of the ſame month exhibited "againſt him. He put in his anſwer the "next day, and a copy of it was ſent to "the Commons.

"3d of May following, the Parliament "was prorogued, and diſſolved by pro-"clamation, dated 11th of October, 1695.

"24th June, 1701," (between which time and the 11th of October, there had been

two new Parliaments ſummoned and diſſolved), " the Houſe of Commons having " impeached the Duke of Leeds on the " 27th of April, 1695, and on the 29th " of the ſame month, exhibited articles " againſt him, to which he anſwered; " but the *Commons not proſecuting*, the ſaid " impeachment and articles were ordered " to be diſcharged."

Upon this precedent I would obſerve, that it is clearly an inſtance of the Lords proceeding upon an impeachment after a diſſolution; for the diſmiſſal muſt be conſidered as part of the proceeding, or at leaſt as an acknowledgment, that ſomething exiſted to be proceeded upon until it was diſmiſſed: it is a precedent (the authority of which I certainly do not overſtate, and much *underſtate* my opinion of it,) when I call it one which no ingenuity can convert into a confirmation of the vote in 1685; which upon any fair ground of reaſoning, is abſolutely in the teeth of it; which I may boldly oppoſe to any little remnant of authority which the precedent in

in 1690 may ſtill be ſuppoſed to poſſeſs; and which is perfectly concluſive againſt thoſe who argue, that the Houſe of Lords have always conſidered themſelves as bound, and are ſo ſtill, by the reſolution in 1685.

But it has been urged, in explanation of it, that in reading this judgment of the Houſe of Lords, where they expreſsly give their reaſon for diſmiſſing this proceeding in theſe words, " *The Houſe of Commons not* " *proſecuting*," we muſt ſupply to them, not *proſecuting in the Parliament in which they brought them up*: that is to ſay, that in fair and candid interpretation of this participle of the preſent tenſe *proſecuting*, we ſhould underſtand it to mean, *having proſecuted three Parliaments ago*. All the attention I ſhall pay to this argument is to ſtate it. For if the mere ſtatement of it does not refute it, I ſhould deſpair of doing ſo, as no argument, which I can advance, would deſerve to produce a greater effect.

It has been urged alſo, in explanation of this precedent, that the Lords could not diſmiſs the impeachment, till the Parliament was at an end; not becauſe it did not fall with the Parliament, but becauſe they could not know till the laſt moment of its ſitting, that the Commons would not take it up and proceed upon it.—*Ingenuity* is here oppoſed to *fact*; for unfortunately for this ingenious argument, there is a fact on the Journals of the Houſe of Lords, of the very ſame day, which flatly contradicts it; for they had already on that day diſmiſſed *two impeachments for want of proſecution, which had been brought up in that very Parliament.

It has been further urged againſt this precedent, that the Houſe of Lords were in the *humor* of diſmiſſing impeachments on that day; and though it were not neceſſary, yet for the pleaſure they took in the thing, and to make clean work, they ſweep all away which they can find; and,

* Earl of Portland's and Lord Halifax's.

among

among the reſt, this againſt the Duke of Leeds, which it coſt them no additional trouble to remove. But it is to be remembered, if this famous rule of 1685, went for any thing, this impeachment would never have been found, as it would have been dead three Parliaments before. Beſides, why ſhould they give a wrong reaſon for what they do? and upon what rule of interpretation or principle of judicial reaſoning can it be maintained, that when a Court of Juſtice give one reaſon, they muſt be ſuppoſed to have acted upon another? To be ſure if perſons talk of grave Courts of Judicature, doing a grave act of judgment from the mere wantonneſs and itch for doing ſomething; when it is ſuppoſed that they diſmiſs impeachments ſolely for the amuſement of diſmiſſing them; the ſame perſons may probably not heſitate to ſay, that to make the manner of doing the thing correſpond with the thing done, and in order to be more *fanciful and pleaſant*, they expreſs themſelves *ironically*, and give one reaſon while they act upon another.

But

But to be rather more ſerious upon a ſubject that deſerves all ſerioufneſs, it is not to be preſumed, I had almoſt ſaid it is not to be *permitted*, that the Houſe of Lords (if I may uſe the expreſſion) ſhould be *bad Logicians*; that they ſhould admit or lay down premiſes, and then deny the inference and concluſion to be drawn from them. By this judgment, and by the reaſons they think proper to declare for it, they furniſh the ſuitors of their Court, with this principle, that though two Parliaments have intervened ſince an impeachment was brought up into their Court, it nevertheleſs ſubſiſts till they diſmiſs it; and further, that they only then diſmiſs it for want of proſecution by the Commons. It is not then to be preſumed, that they will deny the application of thoſe principles, and of the concluſion which fairly reſults from them, to any particular caſe where ſuch application may be neceſſary to be made. When they have admitted in 1701, that impeachments cannot be diſmiſſed after a diſſolution, but in default of proſecution, it is not to be preſumed that

that they will diſmiſs the preſent impeachment when the proſecutor is earneſt to proceed. If they act thus inconſiſtently with former deciſions, and recorded principles, the ſuitor has no tract to guide him, no light to direct him, and there is an end of all certainty in judgment. An arbitrary diſcretionary will would be raiſed into the ſeat where nothing but ſettled law ſhould preſide. And this diſcretionary will, let me add, would be then preſiding in that Court, where its effects might be moſt dangerous to the ſubject. For from the nature of that Court, the Judges are above the reach of Juſtice, for what they there judicially commit; and ſhame and popular cenſure, which come in aid of puniſhment, to deter men from the neglect of their duties, would, from the multitude of thoſe who are to ſhare in them, be ſo divided, each individual's portion be ſo inperceptibly ſmall, that they would ſcarce have any effect; or ſhould they produce any, it would be entirely counterbalanced and done away by the countenance and protection which each individual would derive

 from

from the whole body. But this is a ſpeculation perfectly unneceſſary, this is expatiating upon evils which can never exiſt; as they can only ariſe from that inconſiſtency in the judgment of this ſuperior Court, the probability of which is not only not to be expected, but the poſſibility not to be ſuppoſed.

In addition to the precedents already enumerated, there is that of my Lord Oxford's impeachment which continued over a prorogation; and there is alſo an authority to the ſame effect, which the preſent impeachment abundantly ſupplies;—But theſe caſes only ſeem to bear upon the argument in as much as a prorogation and a diſſolution have the ſame parliamentary effects.

I could have been well ſatisfied to have paſſed over my Lord Oxford's caſe with the above ſhort obſervation; but as his caſe, coupled with the proteſt of the diſſenting Lords, is much relied upon by thoſe who argue on the other ſide, ſome further notice muſt be taken of it.

Die

Die Sabbati, 35° Maii, 1717.

" The Lord Trevor (according to order)
" reported from the Committee to ſearch
" and report ſuch precedents, as may the
" better enable this Houſe to judge what
" may be proper to be done, on occaſion
" of the petition of the Earl of Oxford,
" and the caſe of the ſaid Earl as it now
" ſtands before this Houſe."

(They then report the caſes they had found)

" which report being read by the clerk
" it was propoſed, to reſolve, that the
" impeachment of the Commons againſt
" the Earl of Oxford is determined by
" the intervening prorogation;" and after debate thereupon the Queſtion was put and it was reſolved in the negative, the diviſion was 87 to 45.

" *Diſſentient* 1. Becauſe there ſeems to be
" no difference in Law between a prorogation and a diſſolution of a Parliament,
" which, in conſtant practice, have had
" the ſame effect, as to determination

 " both

" both of judicial and legiſlative proceed-
" ings, and *conſequently*, this vote may
" tend to weaken the reſolution of the
" Houſe, May 22, 1685, which was
" founded upon the law and practice of
" Parliament in all ages, without one
" precedent to the contrary, except in
" the caſes which happened after the
" order made the 19th March, 1678,
" which was reverſed and annulled in
" 1685, and in purſuance hereof the Earl
" of Saliſbury was diſcharged in 1690."

" 2. Becauſe this can never be extended
" to any but Peers, &c. &c." I do not trouble the reader any further with this proteſt, becauſe it is only from the firſt part of it that I have heard any argument produced by our opponents—this was ſigned by eleven Peers.

Now upon this precedent I would ſay that I agree with the reaſons of theſe diſſentient Lords. 1. That there *is no diſference between prorogations and diſſolutions: and*, 2. *that this vote does weaken the reſolution in*

1685, and I like it the better for that circumſtance—But it has been obſerved that there were 45 Lords who voted againſt the continuance of this proceeding after a prorogation—And ſo much is made of this great number that it really is not without it's uſe, juſt to remind perſons (of what in the zeal of argument they ſeem to have forgot) that however large the *minority* may have been, it muſt have been *leſs* than the *majority*; and in this caſe, that the majority was near two to one—But what with the minority, and their proteſt, this caſe is ſuppoſed to conſtitute an authority in point, againſt the continuance of impeachments after a diſſolution. This is managed by a ſort of *algebraical proceſs*, (the train of which is not very obſervable, and the reſult ſtill leſs concluſive) ſome how or other, by multiplying the minority into their own proteſt; that is, by multiplying the numbers which were out voted in the diviſion, into the reaſons which were over ruled in the debate, (as *minus* into *minus*, gives *plus*) they imagine

the product to be a majority in favor of their arguments.—An eaſy, and ingenious receipt to make a majority!

Let us now ſhortly examine the argument itſelf, it is ſaid that it appears from this proteſt, to have been admitted in the debate, that a diſſolution would put an end to the impeachment, and that their argument is, "It is admitted a diſſolution "puts an end to impeachment; but a "prorogation is equal to a diſſolution, "therefore a prorogation puts an end to "it"—The argument ſeems to be fairly retorted thus—"You admit a diſſolution "and a prorogation to be the ſame thing, "a prorogation does not put an end to "an impeachment, neither therefore "ſhould a diſſolution." But I anſwer the argument otherwiſe, and deny that it can be diſcovered by any fair mode of reaſoning, that ſuch an admiſſion was made, or that the proteſting Lords intended to ſay ſo—a vote is carried that a prorogation does not put an end to an impeachment, to which they are diſſentient—that is, they ſay; we think a prorogation does put an end

end to an impeachment, becauſe, a prorogation and a diſſolution is the ſame thing; and if a prorogation were not to put an end to it, neither ſhould a diſſolution; and conſequently *the vote may tend to weaken the reſolution of this Houſe in* 1685: theſe are their own words, this is the conſequence to which they wiſh to drive the majority by their arguments; and there is no word mentioned of an admiſſion on the part of that majority, of the validity and authority of that reſolution;—So that the argument which ſuppoſes the proteſt to be built upon the admiſſion, that a diſſolution does put an end to an impeachment, not only ſupplies to the proteſt, what it has not expreſſed; but expunges what it has.

The ſhort reſult from theſe obſervations is, that there are two precedents of impeachments, continued beyond the parliament in which they were brought up, (excluſive of Sir W. Scroggs's,) thoſe of my Lord Stafford and the Duke of Leeds; and that the only authority to the contrary

trary is the reſolution in 1685, which was but little regarded at the time, and has never been acted upon ſince; and which, though ſubſequent in point of date to the firſt, was antecedent to the laſt; for ſurely it is not aſſuming too much upon the argument to ſay, that if it be not clearly proved that the impeachment in 1690 was diſmiſſed, not on the ground of the intervening diſſolution, but ſolely upon the act of Grace, it is indiſputably made out, that the queſtion before the Houſe of Lords was ſo general, that this idea of the pardon muſt mix itſelf in the judgment; and leaving it uncertain on which point the Houſe decided, neceſſarily makes their deciſion of no authority on either.

Upon this review of the argument, which is giving more to the other ſide than they can prove, and as much as in candor they can require, it appears that the weight of the precedents, from their number, authority and date, is decidedly in favour of the continuance of impeachments; yet for the ſake of argument, I will ſuppoſe that they

they are ſo equally balanced that all is doubt upon the ſubject; and that the Houſe of Lords will now be called upon to give their judgment upon the queſtion, without being able to derive any aſſiſtance from theſe controverted precedents. Let it then be conſidered how the ſubject would, upon that ſuppoſition, appear.

Let the argument, in the firſt place, be diſencumbered of every thing, which, in ſuch a caſe, muſt of neceſſity be admitted. It muſt of neceſſity be admitted, at this day, that writs of error and appeals, and all matters in which the Lords act in their judicial capacity, except this in queſtion of impeachments, do not abate upon a diſſolution of Parliament, any more than upon a prorogation.

That impeachments do not abate upon a prorogation—And that all legiſlative proceedings do abate upon a diſſolution and a prorogation equally.

If then it were not for this caſe of impeachments, they would be able to furniſh them-

themſelves with three general rules reſpecting their proceedings:

1. That all judicial proceeding, when once lodged in their Houſe, remain in full force, not only from Seſſion to Seſſion, but from Parliament to Parliament.

2. That all legiſlative proceedings are terminated with the Seſſion. And,

3. As a corollary from theſe propoſitions, that a prorogation and a diſſolution (as far as they affect buſineſſes depending in their Houſe) are equivalent to each other, and the ſame thing.

But it is ſuppoſed, by the argument on the other ſide, that an impeachment forms a ſolitary exception to theſe rules: viz. that it is, *though a judicial proceeding*, terminated by a diſſolution; and that it is, though not affected when Parliament is prorogued, determined when it is diſſolved.

Being

Being therefore in poſſeſſion of theſe general rules, under which the caſe of impeachments would naturally be comprehended, it is incumbent upon thoſe who contend for the exception, to point out ſome ſatisfactory and diſtinguiſhing argument, by which that exception may be ſupported; they muſt ſhew why an impeachment, which is a judicial proceeding, is terminated by a diſſolution of Parliament, though in general ſuch an event does not put an end to ſuch a deſcription of proceedings; and they muſt ſhew why an impeachment, which is not affected by a prorogation, is determined by a diſſolution; though in general the effect of a diſſolution and prorogation is the ſame. And they muſt ſhew this too upon grounds and reaſons which do not apply with equal force to thoſe caſes which are avowedly within the obligation of theſe general rules. That is, they muſt ſhew that diſſolutions affect impeachments by ſome reaſon, and upon ſome principle which do not apply with equal force to all other judicial proceedings; and they muſt likewiſe ſhew,

that

that impeachments are affected by diſſolutions in ſome manner by which they are not affected by prorogations.

As to the corollary, which is ſtated above, though it ſeems neceſſarily to reſult from the propoſitions themſelves, yet perhaps it is too much to expect that it ſhould be adopted without ſome few obſervations being offered to ſupport it. As however there cannot well be conceived any poſſible deſcription of proceedings before the Lords in Parliament, which is not either of a legiſlative or a judicial nature, and as we find the one equally affected by a prorogation and diſſolution, and the other equally unaffected by either, it does ſeem a fair inference, *that a prorogation and a diſſolution (as far as they affect buſineſs depending in the Houſe of Lords) are equivalent to each other and the ſame thing*. But if they are not the ſame thing, let thoſe who ſtand up for the difference prove it, let them point out (which has not yet been done, and I believe is impoſſible) any inſtance in which their effect is different; for it is not eaſy to

prove a negative; it is not eaſy, on the other ſide of the argument, to ſhow that there is no ſuch inſtance. But it can be ſhewn from Lord Coke that he thought ſo; for beſides ſaying (as has been before obſerved) in his 4th Inſt. 21. *That the ſcire facias on a writ of error is returnable in the ſame or a ſubſequent Parliament*, he ſays in the ſame book, fol. 27. that *every Seſſion of Parliament is in law a ſeveral Parliament*. It appears alſo by the old entries on the Parliament rolls, (as by referring to the reports of the Committees above-mentioned will appear) that the words next *Parliament* and next *Seſſion of Parliament* are convertible terms—uſe indeed has been made of this circumſtance by thoſe who ſupport the other ſide of this queſtion, to invalidate the authority, which ſome of thoſe precedents afford, for the continuance of criminal proceedings from Parliament to Parliament, by interpreting the next *Parliament*, in thoſe precedents, to mean the next *Seſſion*: whereas the fair argument ſeems to be, when two words are indiſcriminately and indifferently uſed; that on the occaſion, on

which they are ſo uſed, and as far as they affect the ſubject to which they are ſo applied, they are ſynonimous in their meaning, and equivalent in their effect.

With the aſſiſtance then which theſe propoſitions afford, and the knowledge of the law of this court which they furniſh, lut us proceed to examine what effect a diſſolution of Parliament can be ſuppoſed to have, either upon the court, the proſecutor, the proceedings, or the accuſed, which ought to be conſidered as ſufficient to diſcontinue an impeachment.

And the firſt and moſt forcible among the objections is that which ariſes out of the alteration, which either directly or collaterally, neceſſarily or incidentally, is or may be produced in the Houſe of Lords by this event. Under this head it is obſerved, that by the Scotch election ſixteen new Peers, perfect ſtrangers to any part of the proceedings, may be returned—And that in conſequence of the time likely to intervene between two Parliaments, many new Peers may

may be, by other means, introduced into the Houſe, either from the exertion of the prerogative of the Crown in new creations, or from the natural courſe of things by ſucceſſion. And upon this it is aſked, whether it is poſſible that the laws of this country, which affect to be founded in reaſon, can ſuffer the ſupreme Court of Judicature to be ſo abſurdly conſtructed, that its Judges may be called upon, or even permitted to pronounce judgment upon a trial, which they have not only not heard, but which they had no poſſibility of hearing? Before I anſwer this obſervation, it ſhould be firſt remarked, that no argument can be drawn one way or the other from the Scotch Peers: that it is perfectly clear whatever the law was before the Union, it muſt remain the ſame now, becauſe it is expreſſly provided by the Act of Union, that no alteration ſhall be collaterally or conſtructively produced upon the laws of either country by that event. The force of the obſervations then ſtands upon the poſſible or probable change that this lapſe of time may effect upon the other conſtituent

tuent parts of this Court, and one cannot but be curious to learn what effect the lapſe of ſix months between two Parliaments (ſeparated by a diſſolution) can produce, which would not be equally produced by a lapſe of the ſame length of time between two Seſſions, ſeparated by a prorogation. And if it is ſaid, that there may by poſſibility be near three years between two Parliaments, the ſame poſſibility may furniſh us with a prorogation or, at leaſt, with repeated prorogations of the ſame length.

But let us ſee the principle upon which this objection proceeds, it is this; that a Judge in this Court ought not to be permitted to pronounce judgment upon a trial, the evidence given on which (or any part of it) was not delivered in his hearing. Now is this a principle applicable to this Court? Certainly not—It is rather too extravagant a propoſition, for any man to contend that a trial before the Peers muſt be determined on the *ſame day* on which it was begun, or that, like a common Jury (when once impannelled) they

they may not ſeparate till their verdict is given. Yet it is the nature of this Court, and muſt of neceſſity belong to all bodies of men, in which hereditary ſucceſſion is one mode of preſerving their numbers, to be expoſed to a daily alteration of the individuals which compoſe them, from the death of the old member and the ſucceſſion of his heir. And if this principle could have any weight, it would go to exclude the heir who ſucceeds to his anceſtor's title and ſeat during a trial, that laſts for two days, as ſtrongly as it applies to each individual caſe among the more numerous inſtances which muſt neceſſarily ariſe in a longer lapſe of time. But no man will pretend to ſay that it has this effect, or that according to the legal conſtitution of this Court, a Peer, who comes to his title either by creation or by ſucceſſion to-day, is not equally competent, in point of law, to pronounce judgment upon evidence, that was heard yeſterday, as any other Peer who has, in his own perſon, enjoyed his honors for ever ſo long a period: that the law of the Court will

will not prevent him, though, perhaps, his own feelings might induce him to forbear. And further ſtill if this argument drawn from Juries is to be applied to impeachments, not only *new* Peers would be excluded from giving judgment, but even Peers who happened to be abſent during any part of the trial. And upon that ground I much doubt, if there could be found a ſingle Peer, not even excepting the Chancellor (for whom Lord Bathurſt ſat at leaſt one day) who would be competent to give his judgment upon the impeachment that is now before them. But the truth is, that the mode of proceeding adopted in this Court is particularly calculated to obviate the weight of this argument. Becauſe every ſyllable of the evidence given, as well as the queſtion which leads to it, is taken down by their own officers; and printed for the uſe of the Peers—and it ſo happens, that during this very trial the Court itſelf has come to a vote, which admits the inapplicability of this principle to trials by impeachment; for when it was moved that the evidence which

which was printed for the uſe of the Peers, ſhould only be delivered to thoſe Peers who were preſent at the trial on the day ſuch evidence was given, the motion was negatived; and upon what ground but this? that thoſe Peers who were abſent during any part of the trial, might be furniſhed with materials for forming their judgment upon that evidence which they were not preſent to hear. But it is a waſte of time and labour to refute this objection, becauſe if it proves any thing it proves too much; it proves that the trial before the Lords ſhould not only not be continued beyond a diſſolution, but not beyond a prorogation or, indeed, an adjournment.

Another objection to the competency of the Court to proceed upon a trial after a diſſolution is conceived in this way. The writ, ſummoning the Peers to Parliament, is ſuppoſed to be the commiſſion under which they derive their judicial authority, and as the legal efficacy of the writ is put an end to by a diſſolution, it is concluded that their judicial power ceaſes, and that

the new writs of ſummons, in the nature of a new commiſſion, grant new powers, inſtead of reviving and putting into action the old ones. And upon this a learned argument is very fairly adduced to ſhew, what effect at the Common Law the expiration of any judicial commiſſion had upon buſineſs depending before thoſe who acted under it. But there is no room for the argument till the premiſes are eſtabliſhed; and it will not be very eaſily ſhewn, that there is any near analogy between the caſe of a perſon, to whom the King chuſes, in his pleaſure, to direct a commiſſion; who has no right to the power this commiſſion gives him, but under the words of it, and who has no title to the commiſſion itſelf, but the accidental pleaſure of the King who grants it:—and him who has, inherent in himſelf, an hereditary right to a writ of ſummons to Parliament; whom the King cannot conſtitutionally omit to ſummon; and, who conſequently has, independent of this writ, a judicial character, an exiſting, hereditary, inextinguiſhable capacity to act as a Judge in

in this ſupreme Court of Judicature, which a new writ (though it revive its dormant powers) does in no ſenſe create; and which a diſſolution (though it ſuſpend its energy) cannot annihilate or deſtroy. * *The Court of Parliament opens with the Seſſion, as the King's Bench does with the Term,* and the writ of ſummons only appoints the commencement of the Term, in the Court of Parliament, which is fixed and ſettled in the inferior Courts. But this argument alſo is one that does not require an anſwer from me, becauſe the eſtabliſhed law of the Court itſelf anſwers it ſufficiently, for if the powers of their former commiſſion are ſo expired, that the buſineſs cannot be continued which was begun under it, writs of errors and appeals would be ſubject to the like fate—Yet they and all other judicial proceedings are known to ſurvive.

But the objections to the continuance of this trial do not merely ariſe from conſidering the nature of the Court; the ſtate of the proceedings alſo is ſuppoſed to fur-

* 4 Com. Dig. 364.

 niſh

niſh ſome arguments to the ſame effect. And upon this head, as it is impoſſible to find any tolerable reaſon why that part of the proceeding, which is technically called the Record, ſhould not be preſerved from Parliament to Parliament, a diſtinction has been taken, and relied upon, between the articles as preſented by the Houſe of Commons, and the anſwer put in by the accuſed (which are allowedly records) and the evidence taken upon the trial, which is not ſuppoſed to deſerve ſo dignified an appellation. But let us again advert to the manner by which this evidence is preſerved. The Houſe of Lords appoint *their own officer* to take down every particle of evidence which is delivered upon the trial; and theſe minutes are printed for the more convenient uſe, and reference, of the individual Lords.

That the Houſe of Lords appoint their officer to take down the evidence, I underſtand is denied; and it is ſtated, that there is no obligation upon him to minute the evidence, that he does it

it merely for his amuſement. That there is no order for him to take down the evidence, I admit; but there is that which is ſtronger; there is an order to print the evidence, which muſt ſurely preſuppoſe it to be his duty to take it. And if it be his duty to take it without an expreſs order, that duty muſt ariſe out of the ſtanding law of the Court itſelf; and then the taking of this evidence appears to be a conſtant eſſential part of their proceedings. The order to print, I ſay, preſuppoſes the duty to take it; becauſe it would be a groſs abſurdity for the Lords to direct their officer to print minutes of evidence, as an aſſiſtance to their judgment, when it depends upon his own pleaſure whether he takes them accurately, or whether he takes them at all.

Should it be aſked, whether theſe printed copies are to be conſidered as records? I ſhould anſwer, No. But why the original minutes ſhould not be conſidered as ſomething of that nature; why they ſhould not at leaſt be deemed authentic

tic documents of the evidence, I am much at a loſs to conceive. The nature of the Court is ſuch as to make it *neceſſary* to preſerve in ſome ſort of memorial, to which they may refer, the whole evidence upon the trial; as it is impoſſible from the conſtitution of the Court liable to ſuch frequent interruptions by other buſineſs (now ſitting in their judicial, and now in their legiſlative capacity) that the evidence ſhould be ſuppoſed to live in the memory of thoſe who are ultimately to judge upon it. To take and preſerve theſe minutes then becomes a *neceſſary* part of the proceedings in this Court; juſtice cannot in moſt trials be done without it; they are taken as it appears by an officer employed for that purpoſe; and though there is no caſe, in Common Law Courts, of evidence being recorded as it is given by the officer of the Court, becauſe in thoſe Courts there is no neceſſity for ſuch a practice; yet it is not a new thing for a Court of Juſtice to repoſe implicit confidence in the accuracy and fidelity of its officers. Beſides, wherever it does ſo happen, that evidence is taken

taken in a manner in which it can be preſerved, it is preſerved and relied upon as authentic—witneſs depoſitions in Chancery.

I admit indeed, that it would not be ſpeaking with the technical accuracy to call depoſitions in Chancery, records; but the ſame obſervation applies *generally to the proceedings* in that Court. Nor do I contend that theſe depoſitions are evidence in an action at law, if the witneſs himſelf can be produced; though if he cannot they are. And I would aſk (which is rather more to the point in queſtion) whether a Chancellor would require depoſitions, taken in the time of his predeceſſor, to be re-ſworn, before he would read them in evidence?

If what is admitted above, can be ſuppoſed to afford any ground of argument to thoſe who contend againſt the authenticity of theſe minutes. I would only obſerve, that the queſtion here is, not whether *other* Courts of Law, unconnected with the trial of an Impeachment, ſhould in *another* cauſe give credit to theſe minutes;

minutes; but whether the *ſame* Court ſhould heſitate to receive them in the further proſecution of the *ſame* trial? And whether from their *want of authenticity*, any argument can be drawn againſt the continuance of the trial itſelf?

To this muſt be added, that when it is neceſſary to have reference to the evidence which has been given upon a trial, the Judges notes are referred to; and though here again it would not be ſpeaking technically to call his notes or his report a record, yet has it at leaſt *one* of the qualities of a record, its authenticity; implicit deference is paid to it, and it is as much a cant phraſe among lawyers upon ſuch occaſions "not to go out of the report," as it is upon arguing a demurrer or a ſpecial verdict "not to go out of the re-"cord." And this report is not only referred to in civil cauſes, upon motions for new trials; but when defendants come up for judgment, the puniſhment is meaſured out to them, according to the enormity and complexion of their offences, as

they appear from their circumſtances given in evidence at the trial, and thus reported by the Judge, who tried them, to the Court.—The ſhort reſult of theſe obſervations, is, that it is by no means an *univerſal* propoſition, that evidence muſt be given in the preſence of thoſe who are to judge of its effect.

And let us conſider what in *common ſenſe* a record is, or what gives it its authenticity? What is it but a memorial of proceedings in a Court (neceſſary for ſome purpoſes to be preſerved) which is taken and preſerved in ſuch a manner as to exclude any likelihood of fraud, inaccuracy, or falſehood—And ſurely it will hardly be contended that theſe minutes would derive any authority in addition to what they now poſſeſs, from the circumſtance of their being engroſſed on parchment, inſtead of being written upon paper; for this would be giving to the accidental, though generally prevailing, form of records, the authenticity which you deny to that which conſtitutes the eſſence, the

ſpirit, the ſubſtance and the ſenſe of their authority. But here again let me aſk (what I have already often aſked and ſhall have frequent occaſion of repeating) what poſſible diminution can be made to the authority of theſe minutes, by a diſſolution of Parliament that is not equally affected by a prorogation? Theſe minutes are in the hands and cuſtody of a ſubſiſting officer, of a ſubſiſting Court, and are juſt as acceſſible after one ſpecies of vacation, one interval from buſineſs as another. I would not diſmiſs this part of the argument, without remarking, that it is not my intention to aſſert, or my object to prove that the minutes in queſtion, by means of theſe obſervations, appear to come under the *technical* definition of a record; but that they have theſe two qualities of records, *authenticity* and *durability*. That they are taken under ſuch circumſtances that the Lords may in ſafety, and ought in duty to rely upon them; and that they are preſerved in ſuch a manner as make them as acceſſible after a diſſolution as they can be after a prorogation of Parliament.

But

But it is further ſaid that theſe proceedings cannot be continued, becauſe the Houſe of Commons are not the ſame, the proſecutor is dead, and conſequently the ſuit muſt abate, as proſecutions by the King abated at the common law on the demiſe of the Crown. And further, if this argument ſhould be deemed inconcluſive, we are told that the preſent Houſe of Commons have no means of learning how far their predeceſſors had proceeded upon their Impeachment, or of furniſhing themſelves with materials on which to exerciſe their judgment, whether they ſhould proceed or not. Theſe arguments I am compelled particularly to anſwer, becauſe they are the only arguments which apply to Impeachments without affecting any other judicial proceedings, and which apply to diſſolutions without any reference to prorogations.

I would then firſt aſk whether it is clear that proſecutions at Common Law abated by the demiſe of the Crown, upon this idea that the King, a party to the ſuit was dead.—I know it is an axiom of the law

 that

that the King never dies. In natural philoſophy, when you find a cauſe, the operation of which is known and aſcertained in ſome inſtances, and is clearly ſufficient to produce a particular effect, we are enjoined by one of its fundamental maxims to be ſatisfied with that cauſe and not to hunt for another. I am afraid this maxim is not univerſally adopted in legal reaſoning, yet if I find a cauſe to which, I can attribute this effect, by which this effect muſt of neceſſity have been produced, though deprived of the aſſiſtance and co-operation of any other, and by which no maxim of law is violated, but a conſiſtency and uniformity is preſerved in judicial proceedings, I do feel an involuntary inclination to aſcribe this effect to that cauſe, in preference to the other, by which ſuch an acknowledged maxim of law is overturned.

It is clear that at Common Law not only proſecutions, but ſuits between ſubject and ſubject, abated on the demiſe of the Crown; upon what principle did they abate? Was the King a party to them? Clearly no; but they

they abated upon this principle (which as applicable to the ſubject of Impeachments has already been conſidered) that the Commiſſion giving authority to the Judges, who were to try the cauſe, was at an end compleatly on the demiſe of the Crown, and therefore the proceedings in the Court before them were at an end too.

And if this ſhould be retorted on me as an inſtance in which, in violation of the ſame maxim, that the King never dies, the King's death is in fact acknowledged, and a legal effect is produced by it. The diſtinction between the office and the officer, between the dignity and authority of the Crown, and the individual who happens at any particular period, to be inveſted with it, ſupplies, at leaſt to my idea, a ſufficient and complete defence—upon that diſtinction, thoſe acts which flow merely from the will of the individual, which are aſcribable to his pleaſure, and which (as is the caſe of all commiſſions, to perſons who adminiſter any authority under him, from his particular

ticular election and choice) are bottomed in the perſonal confidence which he individually repoſes in theſe ſelected objects of truſt; muſt reaſonably and neceſſarily be terminated when that will ceaſes to be active, when that pleaſure is at reſt for ever, and that confidence remains no longer a legitimate ſource of authority or power; while thoſe acts again, which are not aſcribable to the perſon of the King, but to his Crown and dignity, may ſuffer no abatement, diſturbance, alteration or interruption, by the ſucceſſion of another perſon, to adminiſter and ſupport the duties of his office.

This argument however I would be underſtood to offer not as concluſive, upon the queſtion, but as the grounds which lead me to doubt whether the demiſe of the Crown abated proſecutions upon the principle of the King's being a party. But if this anſwer is not deemed concluſive, let us examine the argument in another point of view—We are told that the Houſe of Commons, in an Impeachment, are to be conſidered in the ſame light, and hold the ſame

ſame place, as the King in common proſecutions. The diſſolution of their body is to put an end to the ſuit, in the ſame manner as his death—It muſt here be obſerved that in common proſecutions it is the King's peace, the King's crown, and the King's dignity that are ſuppoſed to be injured by thoſe offences, which therefore are proſecuted in his name—Does the likeneſs hold here? Is it any particular injury to the Houſe of Commons that an Impeachment complains of? or is it in their name alone that they proſecute? moſt certainly not.

The injury is to the whole country, and the proſecution is carried on by them, in the name of themſelves, and all the Commons of Great Britain—And if you muſt have analogy between impeachments and other criminal proceedings, before inferior Courts, the analogy will be found to be much more correct, if you conſider all the Commons of Great Britain as the injured nominal proſecutor (in the place of the King) and the Houſe of Commons in

in the light of the active proſecutor, who prefers the indictment; and will any lawyer aſſert, that the death of him who prefers the indictment in the name of the King, would abate the proſecution. The analogy perhaps would appear ſtill leſs ſtrained if we compare it with the caſe of proſecutions in the name of the King, by the information of the Attorney General, who, if he be removed from his office, pending the proſecution, leaves the proceeding unimpaired by his removal, to be carried on by his ſucceſſor—It ſeems then from theſe obſervations, that the real proſecutor remains the ſame unaffected by a diſſolution. And this argument derives no inconſiderable force from this circumſtance, that an Impeachment is almoſt the only proceeding in which the Houſe of Commons mention the name of the Commons of England, as if they meant particularly to aſcribe the proſecution to them.

The other branch of the objection to the Houſe of Commons proceeding on this

this trial, ariſes from the incurable ignorance they muſt be ſuppoſed to be under, with reſpect to the ſtate of the proceedings and the evidence which has already been given. In anſwer to this, it muſt be obſerved, that the minutes of the evidence preſerved by the Houſe of Lords are, as we have already endeavoured to prove, authentic documents of the proceedings before that Court, in the nature of records, with all the marks of authenticity that any records can have; and it is well known the Houſe of Commons have acceſs to the records of the Houſe of Lords; but if it is not known, we have the authority of the Houſe of Lords themſelves, who, in Lord Sommers' caſe, expreſſly ſay, that what the Lords intended to do appeared upon their records, which the Houſe of Commons might have taken notice of.—Or if theſe minutes would be deemed not to be records, why for the purpoſe of more expeditious juſtice, the Houſe of Lords ſhould keep them from their ſight, is not eaſily conceived; or why the Commons ſhould not be ſatisfied with the authenti-

city of thoſe documents, on which the Lords themſelves are afterwards in their judgment to rely?

But if theſe minutes are not records, to which the Commons can of right reſort, and if the Lords ſhould refuſe them to their inſpection, ſtill might the Houſe of Commons legally and juſtifiably proceed, for they have an indiſputable right, which they have frequently exerciſed, of voting and carrying up impeachments to the Lords, upon any ground which is ſufficient to ſatisfy their minds, without examining a tittle of evidence: and if the notorious exiſtence of guilt, without proof or examination, is ſufficient foundation for inſtituting an impeachment, ſurely the notorious pendency of an impeachment, the magnitude of the crimes *charged*, and the length of time ſpent by their predeceſſors before they voted it, all notorious to every individual member of the Houſe, will ſufficiently juſtify them in voting for its continuance.

But

But the objection now under conſideration is carried ſtill further; and it is ſtated to be a monſtrous and unjuſt propoſition, that a member of the preſent Houſe of Commons ſhould be called upon to demand judgment on this impeachment, without having heard any of the evidence which was given at the trial. In making this objection it muſt have been forgotten, that impeachments frequently are carried on at the bar of the Houſe of Lords, when not one member of the Commons, except the managers, are ſuppoſed to attend. And in all theſe caſes, a conſcientious member of Parliament would be precluded from demanding judgment from the Lords. The ſame principle would alſo extend with equal force to every Attorney General who ſhould come into office, after a verdict had been obtained in any criminal proſecution by his predeceſſor: in ſuch a caſe he would have no *record of the evidence* to apply to, no, nor *any authentic minute or memorial* of what had happened at the trial to conſult; and yet I imagine he would have no great difficulty in truſting to the verdict of the

Jury, given upon a proſecution which had been inſtituted by his predeceſſor, but with a free conſcience would proceed to demand judgment againſt the culprit. This is not the firſt, nor will it be the laſt inſtance, in which we have occaſion to diſcover the error and fallacy of an objection, by ſhewing, that if it is allowed to be of weight ſufficient to prove any thing, it muſt neceſſarily prove that which is contrary to conſtant practice and eſtabliſhed law.

Let it now be conſidered how the caſe ſtands with regard to the accuſed, and whether his ſituation affords any ground of argument for diſcontinuing the trial. It is ſaid, that it is a great hardſhip that a man ſhould continue under trial, with his character and fortune in jeopardy, for an unlimited and unlimitable period.—The firſt anſwer is the old one; is the hardſhip greater during the interval between two Parliaments, and an interval of equal length occaſioned by a prorogation?

And

And moreover, does not this objection go to demoliſh the whole proceeding by an impeachment? Does it not go to convert the complicated nature of a delinquent's crimes, the extent of his delinquency, into an indemnity? Does it not in effect turn the beſt ground and reaſon for the proceeding itſelf, (the difficulty there is in trying an extenſive and complicated charge of criminality by a Jury) does it not, I ſay, convert the beſt reaſon on which the proceeding by way of impeachment can be juſtified, into an argument for rendering it ineffectual? I ſay the *beſt ground*, becauſe at this time of day, and under a conſtitution ſo happily aſcertained and defined as Engliſhmen enjoy, and with that pure adminiſtration of juſtice, which ſuch a conſtitution ſecures in all its courts, it is not too much to ſay, that, when the fact *can* be tried before a Jury, it had better, and ought to be ſo tried.—As the reaſons which are ſometimes given for proceeding by way of impeachments, "That the Court before "whom the proceeding is had, is above "the reach of influence, from the autho-

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" rity of thoſe who proſecute, and inti-
" midation from the power and greatneſs
" of the accuſed."—Theſe reaſons how-
ever ſtrong they might have been in the infancy of our conſtitution, when the boundaries of power were not ſufficiently marked out, and the danger of reſiſting it not ſufficiently provided againſt—at this time of day they have no application to our Courts of law. We know that Juries acquit perſons who are accuſed, though the proſecution is directed by the Houſe of Commons; and we know alſo that they proceed to give their verdict againſt the greateſt ſubjects of the country, with as much indifference and unconcern, and with as little repugnance or heſitation, as againſt the meaneſt man that can be dragged into a Court—if then the proceeding, by way of impeachment, is mainly grounded on the impoſſibility of the trial being concluded, and the fact aſcertained under thoſe forms and limitations, which properly circumſcribe the length of trials by Jury; and yet the hardſhip ariſing from the *length* of ſuch a trial, be objected to the trial

trial itſelf, it amounts to this, that a complicated and extenſive act of criminality, ought not to be tried at all—and this argument, let me obſerve, applies to almoſt every objection which has been advanced upon any part of the proceedings.

But let us turn a little to the other ſide of this ſubject; and would there be no hardſhip, no cruelty, no injuſtice produced by this mode of proſecution, if the doctrine contended for upon the other ſide was to prevail? Or rather, would not that doctrine turn impeachments in the hands of an exaſperated body of men, into the moſt envenomed inſtruments of power, into the moſt irreſiſtible engines of perſecution and oppreſſion, which can well exiſt under any form of government whatever? Would it be nothing to arm a body of men with the means of delaying the commencement of a trial till a period when only the accuſation could be heard? Would it be nothing to ſhut the mouth of the accuſed, when juſt opening in his own vindication? Would it be nothing to leave

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a character loaded with all the opprobrium, and diſgrace which great talents, by falſe aſſertions, and miſrepreſentations unanſwered and unanſwerable, might heap upon the pureſt innocence? Would this be nothing? or would it be any alleviation of the miſery of a man in ſuch a ſituation, or any conſolation to his innocence, to be given over to that charitable preſumption of law, "that every man is innocent till "he is convicted?" Is there any one, (I will not ſay of delicate ſenſibility of character, and who has been uſed to look for his higheſt worldly gratification, in the applauſe and good opinion of his fellow creatures) but is there any man with more ſenſe than a ſtock or a ſtone, who would feel the leniency of this technical conſolation; or imagine the pangs of a lacerated reputation, the throbbings of a wounded honour to be lulled or appeaſed by the balmy anodyne of ſuch a reflection?

Indeed every one muſt be ſenſible, whatever doubt there may be upon any other part of the argument, that as far as relates to

to the intereſt of the accuſed, there is no hardſhip to which the doctrine of continuance expoſes him, which he is not equally and more than equally expoſed to by that of abatement. But the public may ſuffer inconveniencies by the latter, which they avoid by the former—If an impeachment abates, the Commons have clearly the power of renewing it, and the option whether they will renew it or not —if it does not abate, they ſtill have the ſame option as to continuing it. In both caſes the proſecution of the accuſed depends upon their diſcretion—If they do not proſecute, it is much the ſame to him upon *either* doctrine; but if they do (ſuppoſing the impeachment to have abated) he *muſt* neceſſarily have a longer trial, becauſe all the time already ſpent in it is loſt; and he *may* have a *more diſadvantageous one*, becauſe his defence may have been opened, and his proſecutors enabled, by the diſcovery of that defence, to direct their attack more forcibly againſt thoſe parts of his caſe, of which they find him prepared to take advantage—As to the public, if

the delinquent *is* forthcoming, they then only ſuffer the additional loſs of time ariſing from the renewal, which would have been ſaved by the continuance—but that he *will* be forthcoming they can have no ſecurity at all; becauſe, whatever may have been the caſe while it was doubtful, whether impeachments did or did not abate—it is impoſſible but that the bail muſt be diſcharged, or the priſon doors thrown open the moment the Parliament is diſſolved, when once it is eſtabliſhed as law, that both the Proſecutors and the Court are annihilated by a diſſolution—And now that we are upon arguments of expediency, let me aſk if there can be conceived any thing more inexpedient for the public, more diſadvantageous to the accuſed, or more inconſiſtent with reaſon, than that a diſſolution produced either by the expiration of a Parliament, or by ſome political reaſon perfectly unconnected with the impeachment, ſhould incidentally put an end to a trial once commenced. And either afford opportunity of eſcape to a perſon who ought to be convicted, or expoſe

poſe to the certain vexation and peculiar diſadvantages of a new trial, one who ought to have been acquitted.

I have now conſidered the objections to the continuance of impeachments after a diſſolution; which apply to the ſtate of the Court, of the proceeding itſelf, of the proſecutor, of the accuſed, and of the public. I am not aware of any other quarter from whence a topic of objection can ariſe, nor am I conſcious of any argument that has been offered on any of theſe, which I have not here conſidered and endeavoured to anſwer—but if there ſhould be any which have eſcaped me, I might ſafely undertake to aſſert, that they are either ſuch as would equally apply to other judicial proceedings in the ſame Court, or to the ſame proceeding upon a prorogation.

And let me now look a little into the nature of theſe objections, in general, and the object which would be advanced by them, ſuppoſing they were held to be valid.

The firſt object of all enquiry, and of all trial, is the diſcovery of truth. Every regulation, then, which has not in view this diſcovery, and the aſcertainment of it by the judgment of thoſe who are to try the queſtion, muſt neceſſarily be in violation of the leading principle, which pervades all ſpecies, orders, and degrees of judicial proceedings. In impeachments, too, this principle is further enforced by taking peculiar caution, that if obſtructions to this diſcovery ſhould come from any quarter, it ſhould not be from the Crown; this principle it is that prevailed with the Commons invariably to maintain the doctrine, that a pardon was not pleadable to an impeachment—a doctrine, let me add, in which they conſtantly perſevered till they got it recognized to be law by an Act of the Legiſlature. Now the abatement of impeachments, upon a diſſolution, violates moſt *directly* both theſe principles, both the general principle of avoiding all means of impeding the judgment, and the particular one of guarding againſt thoſe which might flow from the exerciſe of any prerogative of the Crown.

It is by ſome indeed conſidered as the greateſt merit in the adminiſtration of the criminal laws of this country, and the greateſt which can exiſt in any, that there ſhould be ſuch tenderneſs and mercy for criminals, always alive in the hearts of Judges, as to make them curious and inquiſitive to diſcover ſome error in the proceedings, which may entitle them to their acquittal—that criminals have an indefeaſible intereſt and right to all the crannies of the law, by which any former criminal has however abſurdly been permitted to eſcape, and "God forbid, it is exclaimed, that "what has once been allowed to one, "ſhould ever be denied to another." This is, I muſt confeſs, perfectly inexplicable to me. I can underſtand indeed, (and feel the ſenſe of it moſt forcibly) that the public have an intereſt, that the innocent have a right to the inviolate preſervation of all thoſe rules of evidence and law, which the wiſdom of ages has found neceſſary for the protection of innocence, from falſe and artful accuſation; and that theſe fences of innocence ſhould not be broken down from any

any zeal for juſtice, in the proſecution and purſuit of a particular malefactor.—But how the ſtopping of a proſecution *before* the *accuſation* can be *anſwered*, can be for the intereſt of innocence *falſely accuſed*; or how impeding the courſe of juſtice can be forwarding thoſe ends of juſtice which the public are intereſted to advance, requires a very enlarged penetration to diſcover.

Thoſe who have argued for the abatement of impeachments have, it muſt be allowed, one and all of them profeſſed the ſincereſt regard to the privileges of Parliament, and this particular privilege of impeachment—but notwithſtanding theſe profeſſions, many of their arguments have been grounded upon objections, and ſuppoſed inconveniencies, which muſt neceſſarily exiſt in almoſt every ſtage of ſuch a proceeding, and conſequently they have a direct and immediate tendency to ſhew in general the injuſtice and inexpediency of this mode of trial—it cannot therefore be foreign to the preſent purpoſe if I annex to the anſwers already given to thoſe objections,

objections, a remark or two upon the benefit the country and conſtitution derive from this trial by impeachment. The advantage it affords as a check and terror to bad miniſters, is ſo obvious and ſo great, that it almoſt ſolely engroſſes the attention, and is conſidered as the principal, if not only recommendation; but it is not to be cheriſhed by Engliſhmen merely becauſe,

Auratis pendens laquearibus—
Purpureas ſubter cervices terreat,

Not only becauſe it keeps them in their elevated ſtations awake and attentive to their duties, but becauſe by furniſhing the moſt certain mode of puniſhing corrupt Judges, it affords the moſt effectual preſervative againſt the corrupt adminiſtration of Juſtice; and it ought perhaps upon experience to be dearer to us on this ground than upon any other, as it has been employed with leſs mixture of vindictive, or unwarrantable motives when directed to this object, than when its terrors have been levelled againſt Favorites and Miniſters.

That

That miniſters are not now violating the principles of the conſtitution, and infringing upon the liberty of the ſubject, or that the adminiſtration of juſtice is now free from the ſlighteſt ſtain, or ſuſpicion of corruption, furniſhes no reaſon for aboliſhing this mode of trial—for it is impoſſible to know, how much of the ſecurity with which we enjoy our conſtitution and liberties, and how much of the ſatisfaction with which we confide in thoſe unſuſpected characters, which now grace the ſeats of juſtice, may be derived from the exiſtence of this very inſtitution, the benefit of which (ſince prevention is more deſirable than puniſhment) cannot be more concluſively proved by any means, than by the few occaſions there have of late been for exerting it.

Not however to puſh this more pernicious tendency of theſe objections, againſt thoſe who diſclaim it, let us ſhortly ſee what is the obvious and undeniable effect and object of them.—It is to ſet up a rule of

of law which violates the principle of all judicial proceedings, and more particularly the principle of that very proceeding to which it is applied, and which is contrary to the practice of this very Court in all other judicial proceedings. For what purpoſe is this irregularity and inconſiſtency to be admitted? For the purpoſe of impeding juſtice—either by ſcreening guilt from its merited puniſhment, or by preventing the elucidation of innocence. Is this a purpoſe worth purchaſing at the price of uniformity, conſiſtency, and principle?

This view of the ſubject gives riſe to the only doubts I entertain of the truth of the opinion here ſupported; for when I think of the men from whom theſe objections have principally come, and feel (as I do feel) thoroughly ſatisfied in the integrity of their intentions, and fully convinced of the ſtrength of their underſtandings; when I further think how painful a diſcharge of their duties it muſt have

been, to have contended againſt the inclinations of thoſe friends, with whom they generally act, and againſt the weight of the moſt tranſcendent abilities, for what, to common underſtandings, appears inconſiſtent with every deſirable end of juſtice; I cannot but acknowledge an apprehenſion, that they muſt have proceeded upon ſome grounds, which were beyond the reach of my comprehenſion.

But in doing juſtice to their characters for integrity and underſtanding, we muſt remember that juſtice is alſo due to the cauſe—and that the authority of the man ſhould not be ſuffered to ſupply the deficiency of his arguments.

And upon the review of theſe obſervations, when it appears that a fair examination of the precedents affords deciſive authority for the continuance, or if there is a doubt upon them, that upon analogy and principle it is moſt clear, and that the arguments to the contrary are unſound and defective;

defective; the public will probably concur with the Houſe of Commons in concluding, that it is a moſt indiſputable propoſition of clear, conſtitutional, parliamentary law, that Impeachments do not abate upon a Diſſolution of Parliament.

FINIS.