AN EXAMINATION OF PRECEDENTS AND PRINCIPLES;

FROM WHICH IT APPEARS

That an IMPEACHMENT is determined by a DISSOLUTION of PARLIAMENT:

WITH AN

APPENDIX,

In which all the PRECEDENTS are collected.

The SECOND EDITION, much enlarged.

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ERRATA.

Page	12,	*line* 1,	*for* at laſt parliament, *read* at the laſt parliament.
——	16,	—— 4,	*for* eut, *read* ent.
——	17,	—— 1,	*for* parliaments, *read* parliament.
——	30,	*Note,*	*for* Vide Appendix, *read* Vide Appendix, p. xviii.
——	36,	*Note,**	*for* Appendix, *read* Appendix, p. xxxviii.
——	—,	Ibid.†	*for* Appendix, *read* Appendix, p. xxxix.
——	44,	*line* 9,	*for* Earl's, *read* Earls'.
——	47,	*Note,*	*for* Appendix, p. xxviii, *read* Appendix, p. xxviii and xxxv.
——	54,	*line* 21,	*for* reſolved not to diſmiſs, *read* reſolved to diſmiſs.
——	87,	—— 18,	*for* function, *read* functions.
——	94,	*Note,*	*for* p. 79, *read* n. 79.
——	97,	*line* 23,	*for* Brooks's, *read* Brook's.
——	100,	—— 23,	*for* plants, *read* planets.
——	104,	—— 13,	*for* at end, *read* at an end.
——	112,	*Note,*	*for* p. 167, *read* p. 168.
——	120,	*line* 17,	*for* 1785, *read* 1685.

INTRODUCTION.

FROM my ſituation in the Univerſity of Cambridge, I think it my duty not to be uninformed upon any queſtion which concerns the Conſtitution of this country. That conſideration alone impelled me to inſtitute the preſent Examination. Many gentlemen of late have deprecated the diſcuſſion of abſtract queſtions, and have declared that ſuch ſpeculations are miſchievous and dangerous; but I have never heard any reaſon aſſigned for their alarms. It certainly would be inconſiſtent with their dignity, and a waſte of that time which might be more profitably employed, if the two Houſes of Parliament or Courts of Juſtice ſhould be occupied in the ſolution of problems and ſubtleties which were not neceſſary for the deciſion of any particular caſe.

A But

But all ſcience conſiſts of abſtract queſtions. There are many who are perfectly acquainted with aſtronomy, who never made an obſervation with a quadrant or a teleſcope: and there are many who have a profound knowledge of the Conſtitution and the Laws of England, who never had the honour of a ſeat in the Senate, or the misfortune to be engaged in a law-ſuit. It happens to be peculiarly my occupation to inveſtigate abſtract queſtions; and it certainly ought to be conſidered immaterial to the extenſion of ſcience, whether a queſtion is propoſed with the name of Warren Haſtings, or with that of Titius or Sempronius. Thoſe who have moſt examined the Engliſh government, will be the moſt convinced, allowing for a few defects incident to every human inſtitution, that it preſerves inviolate all the RIGHTS OF MEN, which men in ſociety ought to enjoy, or, if they are wiſe, would deſire to enjoy; that it is ſuch a ſyſtem of liberty and juſtice, that the communication of its principles muſt neceſſarily give ſtability to its exiſtence.

It

It is a common obſervation, that the preſent important queſtion depends upon the principles of the Conſtitution, and not upon the principles of law; and that we lawyers have narrow and contracted habits of reaſoning, which diſqualify us from forming a correct judgment upon ſubjects of ſuch magnitude: and we find, that when a precedent, or a rule of law, is ſuggeſted by a profeſſional gentleman, as an impediment to the proſecution of certain favourite meaſures, the impatience which is felt from the reſtraint, is dignified with the name of a liberal way of thinking. But perhaps the country owes much to this *illiberality* of the lawyers, as it prevents, in no inconſiderable degree, both *Reaſons of State*, and the *Quod placuit* of politicians, from introducing a chaos into our government. From our employment, unaccuſtomed to yield our aſſent without examination, we are not eaſily ſeduced by eloquence, nor frightened by the anathemas of combined power, into acquieſcence, where no arguments have been brought to convince. It is rather

 remarkable,

remarkable, that though the *conſtitution* is the moſt favourite term in the Engliſh language, yet no word has been leſs honoured by explanation. I have never ſeen, in any book of ſcience, either ancient or modern, any attempt to give a definition of it, except in Mr. Paley's Principles of Moral and Political Philoſophy. Nothing that flows from his pen can be undeſerving of attention and reſpect. "By the conſtitution of a coun-
" try is meant, ſays he, ſo much of its law as
" relates to the deſignation and form of the
" legiſlature; the rights and functions of the
" ſeveral parts of the legiſlative body; the
" conſtruction, office, and juriſdiction of
" courts of juſtice. The conſtitution is
" one principal diviſion, ſection, or title of
" the code of public laws; diſtinguiſhed
" from the reſt only by the ſuperior im-
" portance of the ſubject of which it
" treats. Therefore the terms *conſtitu-*
" *tional* and *unconſtitutional*, mean *legal* and
" *illegal*. The diſtinction and the ideas,
" which theſe terms denote, are founded
" in the ſame authority with the law of
" the

" the land upon any other ſubject, and
" to be aſcertained by the ſame inquiries.
" In England the ſyſtem of public juriſ-
" prudence is made up of acts of parlia-
" ment, of deciſions of courts of law,
" and of immemorial uſages: conſe-
" quently theſe are the principles of
" which the Engliſh Conſtitution itſelf
" conſiſts; the ſources from which all our
" knowledge of its nature and limitations
" is to be deduced, and the authorities
" to which all appeal ought to be made,
" and by which every conſtitutional doubt
" and queſtion can alone be decided. This
" plain and intelligible definition is the
" more neceſſary to be preſerved in our
" thoughts, as ſome writers upon the ſub-
" ject *abſurdly confound what is conſtitutio-*
" *nal with what is expedient*; pronouncing
" forthwith a meaſure to be unconſtitu-
" tional, which they adjudge in any
" reſpect to be detrimental or dangerous;
" whilſt others again aſcribe a kind of a
" tranſcendent authority, or myſterious
" ſanctity, to the conſtitution, as if it
" were

" were founded in ſome higher original
" than that which gives force and obli-
" gation to the ordinary laws and ſtatutes
" of the realm, or were inviolable on any
" other account than its intrinſic uti-
" lity."*

In proof of this excellent definition, we uſe the word Conſtitution, when we ſpeak of the King, Parliament, Courts of Juſtice, Juries, and the Magiſtracy of the Country; but the rules relative to private or inferior ſubjects, as wills, promiſſory notes, and bills of exchange, are included under the more general denomination of Law: but we may always ſubſtitute law for the conſtitution, being only a more comprehenſive term; for the law controls every member of the government: even the King himſelf is a ſubject to the Law—*Rex eſt ſub lege, quia lex facit Regem*, is one of our ſacred maxims. Every conſtitutional queſtion is neceſſarily a legal queſtion: who, then, are the beſt qualified to afford information

* Vol. II. p. 190.

mation upon conſtitutional ſubjects; thoſe who have traced the Nile to its ſource, and who have ſpent years in travelling along its ſtream, or thoſe who in general have only ſkimmed acroſs its ſurface, and have contented themſelves with a tranſient admiration of its beauties?

We have lately, from a general concurrence in opinion, been charged with a combination, and an *eſprit de Corps*. Whatever may be the truth of our principles, the coincidence of our concluſions proves the conſiſtency of our reaſoning. With regard to myſelf, I can declare that I ſent the firſt edition of this pamphlet to the preſs without any communication or conſultation with any perſon whatever but my bookſeller, and without knowing the opinion of any individual from the higheſt to the loweſt of the profeſſion. But I now think it no mean honour to have entered a volunteer, and to have lent my feeble aid to that independent phalanx of veterans in the profeſſion,

feſſion, who, upon this occaſion, have ſtood firm in the defence of what they are convinced is the Conſtitution and the Law of England.

AN

AN EXAMINATION OF PRECEDENTS, &c.

AN important Conſtitutional Queſtion at preſent engages the attention and expectation of the Public, in which the intereſts of an Individual, and the privileges of both Houſes of Parliament, are materially concerned; viz. Whether an Impeachment abates, and is determined, by a diſſolution of the Parliament in which it was commenced; or, whether the proceedings in the Houſe of Lords remain ſo unaltered and undiſturbed, that the Trial can be continued after the diſſolution, juſt as it could have been after an adjournment or prorogation in the laſt Parliament. This is a point which, ſolely

for his own information, and the gratification of his curioſity, the author of this Examination was induced to inveſtigate; and the reſult of his reſearches, he conceives, will not be unuſeful or uninſtructive to his Profeſſion, or to the Public.

With regard to that Gentleman who has been charged by the Commons of Great-Britain with high crimes and miſdemeanors, the author proteſts that he has been ſo incurious to the circumſtances of the trial, that his mind has not the leaſt bias or inclination to induce him to pronounce, like the Peers, Guilty or Not guilty, upon his honour. But, even if the defendant were guilty of the charges exhibited againſt him, in the fulleſt extent, no one, who has a due regard and proper veneration for the Engliſh Conſtitution, would wiſh to ſee the two Houſes of Parliament tranſgreſs the bounds of their juriſdiction preſcribed by the Law, in order to inflict a puniſhment commenſurate to his crimes.

The

The firſt object of the laws, is the protection of the innocent; and the beſt way to ſecure this, is by the puniſhment of the guilty. For this end, judicatures have been eſtabliſhed, and magiſtrates appointed; but where theſe magiſtrates diſregard the authority delegated to them, ſuch confuſion muſt be the conſequence, that the innocent will ſuffer, and the guilty eſcape unpuniſhed.

It is the tranſcendent excellence of the Britiſh government, that the whole is comprehended and embraced by the Law. Thoſe bleſſings of liberty which we enjoy, we owe to that Law, which accurately defines the prerogatives of the King, the extent of the privileges of the two Houſes of Parliament, and the power and authority of every ſubordinate magiſtrate in the kingdom.

Theſe prerogatives, privileges, and powers, conſtitute no inconſiderable portion of the Rights of Engliſhmen: from a

due exerciſe of theſe, the ſecurity and tranquillity of the whole are produced: and though caſes of great delinquency may perhaps ſometimes exiſt, which the arm of the Law cannot reach, which it can neither puniſh nor prevent; yet I ſhould ſay, in the ſtrong and ſenſible language of Sir Martin Wright, " * That theſe " are particular and ſingle inconveniences; " and the policy of the law of England, " and indeed the true principles of all " government, will rather ſuffer many " private inconveniences than introduce " one public miſchief."

Since the commencement of the preſent Impeachment, a monſtrous doctrine has been urged, which, if eſtabliſhed, would arm the Houſe of Lords with a deſpotic power, and might eventually prove fatal to our liberty and conſtitution; which is, that they are not bound, like inferior courts, by the rigid and inflexible rules of evidence, but that they might admit, at their diſcretion,

* Foſter, 29.

eretion, any ſpecies of information which they might think neceſſary for the inveſtigation of truth.

But I truſt that the Lords will always have wiſdom and virtue to reject ſuch pernicious propoſitions, and will remember that, in their character of judges, it is their province *jus dicere*, and not *jus dare*.*

The rules of evidence, like the rules of morality, are preſumed to be founded in the beſt ſenſe poſſible, in reaſon and wiſdom matured and confirmed by the experience of ages; and, in all criminal proceedings, both in the higheſt and loweſt

* This may be thought to be expreſſed with an unbecoming vehemence. It is a doctrine which I have frequently been obliged to reprobate among the circle of my friends; and I introduce it here, to enforce that univerſal principle, that the ſpirit and ſubſtance of Engliſh liberty conſiſts in the ſtrict adherence to rules and the letter of the law; and the more we introduce of arbitrary diſcretion, the more we ſhall approximate to the deteſtable maxims of the Eaſtern Governments.

loweſt courts, whether at the Quarter-ſeſſions, or in the High Court of Parliament, and in the Court of the Lord High Steward, are, and ought to be preciſely the ſame.

And my Lord Coke ſolemnly cautions Parliaments "* to leave all cauſes to be "meaſured by the golden and ſtreight "metwand of the Law, and not by the "uncertain and crooked cord of diſcre-"tion."

But though each of the two Houſes of Parliament may do many acts, from which there is no remedy or appeal, yet I truſt that they will always have ſuch a conſcientious regard to the extent of their privileges and juriſdiction, that they will never adopt the maxim, That they can do no wrong,—becauſe they can do wrong with impunity.

Indeed, ever ſince the Revolution, the two Houſes of Parliament have been ſcru-

* 4 Inſt. 41.

pulouſly anxious to keep within the limits of their authority; and if we did not perceive this ſolicitude in the two Houſes, "to meaſure their conduct by the golden "metwand of the Law," the people of England would have much more to apprehend from the improper exerciſe of the privilege of Parliament, than of the prerogative of the Crown.

We hear much of the *Lex et Conſuetudo Parliamenti*; and it has always been repreſented as a myſtery beyond the comprehenſion of vulgar, uninitiated minds: that it is "* *ab omnibus quærenda, à "multis ignorata, à paucis cognita*;" and that there is a "‡ particular cunning in "it, which even our Judges are unac-"quainted with." But, as the judicature of the Houſe of Lords is always open, and as all the proceedings which are in exiſtence, of both Houſes, have been publiſhed, I have never been able to ſee any reaſon

* 1 Inſt. 11 b.
‡ Mr. J. Powell, 2 Lord Raymond, 944.

reaſon why the Law of Parliament ſhould be more unintelligible than the *Lex Coronæ*, which has been ſo freely and amply diſcuſſed, or more inexplicable than the proceedings of the inferior courts. The uſage and cuſtom of Parliament conſtitutes the Law of Parliament, which is part of the common law of the land, or part of the *Lex et Conſuetudo Angliæ*.

Many of the proceedings of Parliament have been introduced by modern ſtatutes, as by Grenville's act, the Septennial act, &c. and where they depend only upon uſage, this uſage, like all the common law, may be preſumed to have had as valid and as reſpectable an origin.

But this *Lex et Conſuetudo Parliamenti* is beſt underſtood, as my Lord Coke declares, " * by reading the Judgments and " Records of Parliament at large, and the " Journals of the Houſe of Lords, and " the book of the Clerk of the Houſe of " Commons."

* 4 Inſt. 23.

In

In addition to the orders and precedents which may be found there, concluſions, in doubtful caſes, may be drawn from principles; viz. by conſidering the nature of the original conſtitution of Parliaments, their hiſtory and progreſs, their relation and analogy to other parts of the Law, and the convenience and inconvenience of the different determinations propoſed; for, as all Law muſt be ſuppoſed to have general convenience for its object, where there is no other conſideration to guide the judgment, that determination muſt be preſumed to be the beſt law, which is the moſt convenient.

Upon this Queſtion reſpecting the Impeachment, both Precedents and Principles compel me to conclude that the Impeachment is determined by the diſſolution.

It is not now a queſtion of the firſt impreſſion; but it has been frequently agitated, upon the moſt ſolemn occaſions, in the two Houſes of Parliament.

No leſs than four Committees in the Houſe of Lords have been appointed within the ſpace of forty years, to ſearch for precedents upon this ſubject. Theſe Committees made their inquiries in times of great anxiety and expectation, and have given abundant proofs of their attention and induſtry.

But I ſhall here briefly ſtate, in chronological arrangement, the ſubſtance of theſe * Orders and Precedents; and ſhall afterwards make a few obſervations upon each of them.

† 11 *March*, 1672.—It was referred, by the Houſe of Lords, to a Committee, to conſider whether writs of error and appeals continued in *ſtatu*

* Vide thoſe Precedents at length, in the Appendix.

† *Nota.*—At that time the legal year begun on the 25th of March; ſo that when December and March, till the 25th, &c. are mentioned of the ſame year, December will precede March.

ſtatu quo unto the next ſeſſion of Parliament.

29 *March*, 1673.—The Lords Committees produce ſeveral precedents from the time of Edward I, and report 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 have remained in the ſame ſtate in which they were left, when laſt in agitation.

11 *March*, 1678.—It is referred to the Lords Committees, whether appeals can be proceeded upon after the diſſolution.

17 *March*, 1678.—It is referred to the Committee to conſider appeals as in the preceding Order; and alſo to conſider the ſtate of Impeachments

 brought

brought up at laſt Parliament (a diſſolution having intervened).

19 *March*, 1678.—The Lords Committees report that appeals and writs of error continue in *ſtatu quo*, and that the *diſſolution does not alter the ſtate of the Impeachments*; and it was ordered accordingly.

22 *May* 1685.—It was reſolved, that the preceding Order, of the 19 *March* 1678, ſhould be *reverſed and annulled as to Impeachments*.

5 *April*, 1690.—An Order was made to take into conſideration, whether Impeachments continue from Parliament to Parliament.

7 *July*, 1690.—The Parliament prorogued, and no report made.

2 *October*, 1690.—The Parliament met after prorogation.

6 *October*,

6 *October*, 1690.—A Committee was appointed to inſpect and conſider precedents whether Impeachments continue in *ſtatu quo* from Parliament to Parliament.

30 *October*, 1690.—The Committee report various precedents (vide the Appendix, p. xiii); upon conſideration of which, and former Orders, the Houſe of Lords diſcharged Lord Peterborough, and Lord Saliſbury, who had been impeached before the diſſolution, from their bail.

22 *May*, 1717.—It was ordered, that all the Lords ſhould be a Committee to ſearch for and report ſuch precedents as relate to the continuance of Impeachments from Seſſion to Seſſion, or from Parliament to Parliament.

25 *May*,

25 *May*, 1717.—The Lords Committees make a very full report of precedents, from the year 1660; which being read, it was propoſed to reſolve, That the Impeachment of the Commons, againſt the Earl of Oxford, is determined by the intervening *prorogation*.

It was reſolved in the negative.

So here are the Reports of four Committees in the Houſe of Lords, beſides the important vote of that Houſe, on the 22d of May, 1685, when no Committee had been previouſly appointed; and it appears that for forty years this Queſtion muſt have ſeriouſly engaged the attention of that Houſe; and if a material caſe, upon the ſubject, could have been diſcovered by any of the Lords, it would certainly have been conſidered a valuable prize.

The inſtructions to the firſt Committee, on the 11th of *March*, 1672, relate only to appeals and writs of error. But in the Report

Report, the Lords Committees ſtate various precedents from the time of Edward I. from which it appears, that they had not confined their inquiries to appeals and writs of error, but had extended them to every ſpecies of judicial proceeding before Parliament; for they cite two inſtances of criminal proceedings, of which that of the Archbiſhop of Canterbury is one of the moſt important caſes which I have ſeen referred to, or have found, in the Rolls of Parliament in ancient times.

* In the 15th year of Edward the Third, the Archbiſhop of Canterbury had, of his own accord, ſtated in Parliament, that he had been defamed throughout the kingdom and elſewhere, and prayed the King that he might be arraigned before the Peers, which the King granted. Afterwards, certain of the Lords were appointed to hear the anſwers of the Archbiſhop; and if the anſwers ſhould be *convenables*, the King of his good grace would excuſe him. "Et "en cas qu'il ſemble au Roi & à ſon Con- "ſeil,

* Vide Appendix, p. xxxvii.

" ſeil, que meiſmes les reſpons ne ſont mye
" ſuffiſantz, adonques les ditz reſpons ſer-
" ront *débatuz en preſchein Parlement*, &
" *illoques eut juggement rendu*."

And in a Parliament or Seſſion held two years afterwards, 17 Ed. III. every thing touching the arraignment of the Archbiſhop is annulled and cancelled, as not being reaſonable or true. From this, it certainly appears, that the arraignment and anſwer might be made in one *Parlement*, and that judgment might be given in the next.

But I ſhall ſhew by and by, that the word *Parlement*, or Parliament, was applied always to a Seſſion, and not confined to a Parliament, according to the modern acceptation of the word. But upon looking into Prynne's Brevia Parliamentaria Rediviva, I find there is a ſtrong preſumption, that the whole of the proceedings in the Archbiſhop's caſe were tranſacted in what we

we call the ſame Parliaments, or that the proceedings were not continued after a diſſolution. When Mr. Prynne informs us that there was a new writ of ſummons, we are ſure that there has been a diſſolution; but where no writ is found in his collection, it certainly is not equally concluſive that no diſſolution or new election has intervened, becauſe all the writs of that year may have been loſt:—he tells us, that part of many of the bundles of writs, as for inſtance the writs for Cornwall or Cambridgeſhire, are decayed or wanting; but if he found any writs remaining for any other county, it is clear that there had been a new election. I do not know, (though perhaps it may be very well known by others) that it appears either from parliamentary records, or from any general or local hiſtory, that in fact there were elections in ancient times, of which the writs of ſummons do not appear in Prynne's Catalogues. It appears from Prynne, that writs iſſued for a new Parliament teſted;

An. 15. *Edw. III. apud Woodſtock,* 3 *die Martii*; that his next writ is teſted; *An.* 17. *Edw. III. 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 15 days after Eaſter; the Archbiſhop's arraignment is concluded in a Parliament held at Weſtminſter 15 days after Eaſter, in the 17th of Edw. III. the new writ does not iſſue till the 26th of December in that year: ſo that the proceedings with reſpect to the Archbiſhop may have been in one Parliament prorogued, or in different ſeſſions of the ſame Parliament: and, from theſe dates, as nothing appears to the contrary, it is fair to preſume it. And before the reader has got to the end of this pamphlet, I truſt he will have ſome reaſon to ſuppoſe, that the Parliament was prorogued and not diſſolved, becauſe the Archbiſhop's arraignment was pending and unfiniſhed *.

The

* Vide the Archbiſhop's caſe at length. Appendix, xxxvi.

The caſe of Hugh Suffolk, called Hugh Faſtolf in the Roll of Parliament, 51 Ed. III. is this:—The Record ſtates, that *ſur le fyn du darrein Parlement,* he had been impeached by the malice and hatred of ſome of his neighbours, his enemies, of extortion, and other miſconduct; that ſpecial commiſſioners had been appointed to try him, and that by ſeventeen inqueſts he had been acquitted: the Commons, therefore, pray the Lords, that the ſaid Hugh might be reſtored to his good fame and name. This Parliament ſat at Weſtminſter 15 days after St. Hilary; and, according to Prynne, the writ of ſummons is teſted Ann. 50, E. III. apud Havering, 1 die Decembris. But the darrein Parlement, which this Roll in the 51 Ed. III. perpetually refers to, was held in the 50 Ed. III. in April, and which, by the Roll itſelf, appears to have been diſſolved: and this correſponds with Prynne's writs. So this proceeding was unqueſtionably in a new Parliament. But it cannot be conſidered as a continuation of the former extraordi-

nary profecution; but it is an original petition: "q'il ent fuſt ore en ceſt Parlement, "reſtorez à ſa bone fame et bone loos par "meſme, la manere come il eſt trovez "devante les Juſtices."

There are many inſtances in the Rolls of Parliament, where the ſame perſons are named in different records. But we muſt always conſider whether they are continuations of the original proceedings, or whether they are not freſh impeachments, bills of attainder, or reverſals of attainder, or original proceedings of themſelves; and from what I have ſeen in every inſtance where the ſame perſon is named after a diſſolution, it is a freſh or original proceeding (except writs of error, which I ſhall ſhortly take notice of), as in this Roll of Parliament there are a number of petitions to the King to pardon ſeveral perſons therein ſpecified, who, as they ſtate, had been impeached wrongfully, and of great malice, in the laſt Parliament. Theſe petitions are certainly as diſtinct proceedings, from the petitions

petitions of impeachment in the former Parliament, as the bill to reverſe Lord Stafford's attainder was diſtinct from his impeachment.

But before we proceed farther, it will be abſolutely neceſſary to enquire into the original ſignification of the word *Parliament*.—I will not trouble the reader with the fooliſh and ridiculous etymologies which have been given of this word. It ſimply means a council, or conference, without any regard to the manner by which the members of that conference are convened.

* My Lord Coke, ſomehow or other, had become poſſeſſed of a manuſcript, entitled, "Modus tenendi Parliamentum, "tempore regis Edwardi, filii regis Ethel-"dredi, &c." which he boaſted of, as if he had found the philoſopher's ſtone. It pretended to give a deſcription of the conſtitution of Parliaments before the Conqueſt; which Selden, Spelman, and Prynne, both from

* Vide 4 Inſt. 12.

from feudal principles, and from facts, were convinced did not exiſt till long after the Conqueſt; and from an attentive examination, they diſcovered it to be ſpurious from the word *Parliament*, which, they prove, was not in uſe till near two hundred years after the Conqueſt.—Sir Henry Spelman ſays *, "Johannes Rex, haud dicam "Parliamentum, nam hoc nomen non "tum emicuit, ſed communis concilii "regni, formam et coactionem perſpicuam "dedit."

And Prynne, in his animadverſions upon the 4th Inſtitute of my Lord Coke, proves, that this word was not uſed in England till the time of Henry the Third.

But, after its introduction, it uniformly, for many centuries, ſignified a Seſſion of what we now call a Parliament.—In all the prorogations, from the firſt records of Parliament, till at leaſt the time of Henry the Seventh, the former Seſſion is always called

* Gloſſ. Voc. *Parliamentum.*

called the laſt Parliament, or a Parliament held at ſuch a time and place. In the ſtatute of 4th Edward III. c. 14, which enacts, that a Parliament ſhould be held once every year, or oftener if need be, the word Parliament has always been conſtrued a Seſſion; for no one ever ſuppoſed there was any limit to the duration of Parliament, till the Triennial act, in the time of King William *. The firſt Parliament, after the convention, at the Reſtoration, ſat 17 years, and its length was never complained of as unconſtitutional. After the word *Seſſion* was introduced, and Parliament began to be applied to the duration of the writ of ſummons, ſtill the uſe of it was very unſteady and unſettled, as, in this very report, it has both ſignifications. When it is declared, that "buſineſſes in "one *Parliament*, or Seſſion of *Parliament*, "have been continued to the next *Seſſion* "of the ſame *Parliament*," the firſt word *Parliament* can ſignify nothing but a Seſſion. Many other inſtances of this uncertainty, if it were neceſſary, might be adduced.

Hence

* 6 W and M. c. 2.

Hence we ſee the abſurdity of that argument, which has been frequently uſed, *viz.* That, upon a writ of error, the *ſcire facias* is generally ſaid to be returnable *ad proximum Parliamentum*, or the next Parliament. For the word Parliament, in this caſe, muſt neceſſarily ſignify the next Seſſion, and not a Parliament, after a diſſolution. For it would be the groſſeſt folly to ſuppoſe, that the plaintiff in error might aſſign his errors in this Seſſion, and have a *ſcire facias* to give notice to the defendant to appear in the next Parliament, which may now be after ſeven years, and might have been, we have ſeen formerly, after 17, or even 70 years.

* A learned friend of mine has ſuggeſted to me, in converſation, that the vulgar phraſe, a *ſcire facias*, returnable in the next Parliament, though uſed in all times, is inaccurate, and, in fact, expreſſes a non-entity; that no *ſcire facias* could be ſued out till the day

* I have ſince found, that this ſuggeſtion of my friend is confirmed by a MSS. of my Lord Hale's, who ſays expreſsly, that the *ſcire facias* muſt be returnable on a day certain.—P. 151.

day and place for the meeting of the next Seſſion or Parliament were fixed, and that it muſt be made returnable on a certain day; as far as I have been able to conſider the nature of writs, and to examine the particular inſtances, one of which is in the Regiſter, p. 17, this obſervation is well founded.—Beſides, it would be abſurd, and would defeat the purpoſe of the writ, if the Sheriff might return at his pleaſure the execution of the writ at any time, even upon the laſt day of the next Seſſion.—From whence it follows, that this writ cannot be ſued out till after a prorogation or diſſolution, and till the time of the next Seſſion or Parliament is fixed by the King.

I have examined, with ſome degree of attention, all the caſes of writs of error referred to by the report of 1673.

In thoſe in the time of Ed. I. I can find nothing to lead me to declare whether they were pending after a prorogation or a diſſo-

lution: but as there ſeems only to be a ceſſation of buſineſs during the holidays of Chriſtmas, Eaſter, and Michaelmas, it affords ſome preſumption that the vacations were only prorogations. But, upon examining the reſt, with Prynne's catalogues before me, I find that three of thoſe writs of error were proceeded on in new Parliaments: theſe are the caſes in 1 R. II. 7 R. II. and 1 Hen. V. * The firſt is very remarkable, and proves that the record in a writ of error was not preſerved in Parliament after a diſſolution. The Earl of Saliſbury is the plaintiff in error; he aſſigns his errors, and prays a *ſcire facias* to ſummon the defendant to appear in the next Parliament; and the Record proceeds—

" Et celle brief lui eſtoit grantez illoeques,
" & commandez eſtre fait retournable en
" dit proche Parlement: et puis après, ſur
" *le fin du dit Parlement*, le dit Monſieur
" Johan de Cavendiſh, par comandement
" des Prelatz, & Seig'rs du Parlement, ent
" a lui fait portaſt mêmes les record & pro-
" ces

* Vide Appendix, v. and vii.

" ces en le Bank le Roi, pur y demurer,
" comme en garde, tan qu'au dit proſch'
" Parlement; et eſt ordonnez et accordez,
" que meſmes les records et proces ſoient
" en dit proſch' Parlement, par la cauſe
" avant dite."

Here it is clearly ordered at the end of the Parliament, that the record and proceſs ſhould be carried back to the King's Bench, and that the whole ſhould be brought up again in the new Parliament. In that of 7 R. II. n. 20, it is awarded only that the record and proceſs ſhall be in the next Parliament, and in that of 1. Hen. V. n. 19, the *ſcire facias* only is awarded: though theſe two latter caſes are not ſo full as the firſt, yet they are conſiſtent with it. But every authority of law concurred, that a writ of error was determined by a diſſolution, till the order of the Lords in 1678; and from a conſideration of the precedents which they produce, the Committee, in 1673, confine their report to prorogations, when they conclude that

 " buſineſſes

" buſineſſes depending in one Parliament, " or Seſſion of Parliament, have been con- " tinued to the *next Seſſion* of the *ſame* Par- " liament; and whatever they had found in point, in the caſe of a diſſolution, they would unqueſtionably have ſtated, becauſe whatever proceeding would ſurvive a diſſolution, would *à fortiori* ſurvive a prorogation.

But the references to the Committee, on the 11th of March and 17th of March, 1678, are extended to the effect of a diſſolution; and the order of the Houſe, upon the report of this Committee, with the caſes which followed, would have been concluſive and deciſive at preſent, that a diſſolution did not diſturb an Impeachment, if this order had not, a few years afterwards, been reverſed and annulled.

It is remarkable, that no precedent, authority, or principle whatever, is cited or referred to by the Committee, for this precipitate and confident report.

But

But let us conſider under what circumſtances this order of the Houſe was made.

On the 5th of December preceding, Lord Stafford and four other Lords had been impeached for being concerned in the Popiſh Plot; Lord Danby had been impeached alſo ſome time afterwards in that month; and articles had been exhibited againſt him by the Commons, charging him with high treaſon. In January following, the Parliament was diſſolved, and the new Parliament met again in March; and one cannot but ſuppoſe, that the Lords were infected with the madneſs of the times, or were ſtruck with the general panic, when the Committee report within two days, and the Houſe order, without any precedent, or ſemblance of authority, that the impeachments were not affected by the previous diſſolution.

But, in conſequence of this order, the proceedings were continued in the next Parliaments againſt Lord Danby and Lord Stafford

Stafford. The courſe of the proceedings againſt Lord Stafford was as fol lows:

* Anno 1678.
December 5, Impeached by the Commons.
December 28, Examined.

In the next Parliament, Anno 1679.
April 9, Heard his accuſation read.
April 26, Put his anſwer in.

In another Parliament, Anno 1680.
November 12, His trial appointed.
December 7, Condemned.

From whence it appears, that this Impeechment was pending in three different Parliaments. After he was pronounced guilty, he urged this in arreſt of judgment, and prayed that he might have counſel to argue it, which moſt unreaſonably and unjuſtly was denied him; ſo that the priſoner, who, from his fears, or the natural imbecillity of his mind, ſeems to have been in a ſtate of confuſion and ſtupidity during

* Vide Appendix.

during the whole of his trial, was left to ſuggeſt feebly to the Court, that there was no precedent to ſupport the proceedings *.

Sir Francis Winnington, one of the Managers, replies, that at a conference between the two Houſes in 1678, it had been ſettled to be the law of Parliament, upon a *ſearch of precedents* in all ages (it would have been better if it had been a diſcovery or production of precedents from all ages).

Sir William Jones, another Manager, ſimply and candidly refers to the order of 1678. But Serjeant Maynard, a third, ſays, " that which is moſt inſiſted upon, is, that " this charge that is made againſt this Lord " was preſented in another Parliament. It " is true; but under favour, what is once " upon record in Parliament may at any " time afterwards be proceeded upon.—It " is

* Vide Harg. State Trials, 3 vol. p. 201. &c.—Mr. Hume ſays, he was ſelected as the firſt victim, from his age, infirmities, and narrow capacity. 8 vol. p. 139.

" is a *ſudden objection*, but I conceive it " hath been done.—However, in a caſe of " this nature, where the life of the King, " when our own lives, and our nation, " and our religion lies at ſtake, if there " were not, I hope you would make a " precedent."

The learned Serjeant ſays it is a *ſudden objection*; as if he had not been in parliament in the year 1678, and had never heard of it before. This proves how ill prepared the moſt learned men were at that time to ſupport the order of 1678 by precedent or argument. We are told that this Gentleman was afterwards very active in bringing about the Revolution: if we knew nothing of him but what we ſee here, notwithſtanding the ſolemnity with which he concludes, we ſhould have reaſon to execrate his memory. That the Lords ſhould make a precedent to deprive a Peer, or the meaneſt ſubject, whether innocent or guilty, of his life, but a Peer whom all the world now believe to have been innocent, is

is a propoſition which every Engliſhman muſt ſhudder at.

But Parliaments deſerve little credit for the correctneſs of their proceedings, in times when the Houſe of Commons could contend that the King had no power to pardon a perſon impeached, and that the Biſhops had no right to vote upon any preliminary queſtion, in capital caſes, in the High Court of Parliament. I ſhall only obſerve, upon theſe points, that no principle or authority can be found in which the King's prerogative to pardon (the equity of our criminal law) has ever been reſtrained, but by the united concurrence of the Legiſlature *.

It is true, that it does not extend to the barbarous and ſavage proceeding of appeal, which ſtill remains a diſgrace to the Eng-

 liſh

* The Rolls of Parliament abound with inſtances of pardons, in caſes of impeachment. But now, by 12 and 13 W. III. c. 2. the King cannot pardon a perſon impeached before conviction.

liſh Law; a proſecution which has not for its object the purpoſes of public juſtice, but the gratification of private revenge, that the miſery and death of the criminal *ſint ſolatio cognatis interemptorum*.

With regard to the other point, the Biſhops retain their ſeat and voice in Parliament by a more ancient title than perhaps any of the Temporal Peers can produce at preſent, except the Duke of Norfolk, from his poſſeſſion of the Caſtle of Arundel. The trifling quaint obſervation tranſmitted even by my Lord Coke, that they are not noble by blood, can ſignify nothing more than that their iſſue will not inherit their rank and dignity: ſo that to ſay a Biſhop is not entitled to all the privileges of Peerage, becauſe his blood is not noble, communicates no more intelligence to the mind, than to aſſert that a Biſhop is not entitled, becauſe he is a Biſhop; for it will hardly be contended, that his Majeſty cannot by his patent make a Peer for life, who ſhould in every inſtance

ſtance be entitled to the rights of Nobility. And I ſhould think that a doubt will never again be entertained, that the Biſhops have every right and privilege of Peerage, which is conſiſtent with the Canons of the Church, or which they have not voluntarily relinquiſhed or loſt by deſuetude.

I make theſe ſhort obſervations upon thoſe important ſubjects, which I conceive are now well underſtood, in order to remark, that in times when ſuch illegal and unconſtitutional poſitions were advanced, and when the Houſe of Commons, however animated with a ſpirit of liberty and juſtice, were unqueſtionably wrong in two grand points, there is a poſſibility, that even in conjunction with the Lords, they might be miſtaken in a third; and that no great reſpect ought to be ſhewn to the reſolutions of either Houſe, when unſupported by principle or authority.

It appears that ſome of the Lords themſelves conſidered the order of 1678 as an

 innovation;

innovation; even that very Lord Angleſea*, Lord Privy Seal, who afterwards was one of the three who proteſted againſt the reverſal of it. He ſays it was *a great point gained to the Commons*:—but, when points are gained, points are loſt; and, if either Houſe of Parliament can gain a point, without an act of the Legiſlature, from the miſchievous conſequences of the precedent, many points may be loſt to the Conſtitution and People of England.—The Commons certainly deny that they had gained a point; but, notwithſtanding that, it is evident that it was Lord Angleſea's opinion that they had.

In 1682, Lord Danby moved the Court of King's-Bench, that he might be admitted to bail; and he argued his own cauſe with great learning and ability†: he aſſerted that the impeachment was at end by the diſſolution; otherwiſe, as it was uncertain

* Vide Appendix.

† Vide his Speech, Harg. State Trials, Vol. 2, p. 746, and his caſe in the Appendix.

uncertain when another Parliament would be aſſembled, his impriſonment might be indefinite, or for life, which was repugnant to the ſpirit of the Engliſh Law and Conſtitution. The Court declared that his arguments had great force, but that they muſt remand him till the reſt of the Judges were conſulted upon a queſtion of ſuch magnitude. In February 1683, he and the other Lords were bailed to appear the firſt day of the next Parliament, he having been in priſon near five years, and the other Lords more than that time.

No Parliament ſat from 1681 till the 19th of May, 1685; upon which day, the firſt and only Parliament of James II. aſſembled, when Lord Danby and the other four Lords appeared, agreeably to their recogniſance, and preſented petitions ſtating the circumſtances of their reſpective caſes, and prayed that the Lords would bring them to a ſpeedy trial, or do whatever they might think juſt: upon which, the queſtion was put, on the 22d of May, Whether

Whether the Order of the 19th of March, 1678, ſhall be reverſed and annulled as to Impeachments?—It was reſolved in the affirmative, three Lords only proteſting againſt it: and upon this, Lord Danby and the four Lords were diſcharged, with their ſureties, from their recogniſance. It muſt be obſerved, that there is another caſe, which happened after the Order of the 19th of March, 1678, and before its reverſal; in which an Impeachment was continued after a diſſolution; that is the caſe of Sir William Scroggs, Chief Juſtice of the King's-Bench: on the 7th of January, 1680, he was impeached, and articles were then exhibited. On the 18th, Parliament was diſſolved; on the 21ſt of March, the new Parliament met; on the 24th of March, the anſwer of the Chief Juſtice was read; but nothing farther was done in it.*

It has generally been argued as if this vote

* Vide Appendix, the Report on the 25th of May, 1717. p. xxiv.

vote of 1685, and the diſcharge of Lord Danby and the four other Lords in conſequence of it, merely cancelled the order of 1678, and deſtroyed the effect of the caſes ſubſequent to it; ſo that the Law upon the ſubject ought to be conſidered and collected, as if all theſe orders and caſes were expunged, or had never exiſted. I cannot but think that this conceſſion is more extenſive than is neceſſary to grant; and that, when the order of 1678, and the ſubſequent caſes, are fairly weighed againſt the vote of 1685, and the proceedings in conſequence, there is a conſiderable balance in favour of the latter. I ſhall not lay any ſtreſs upon the general fury in 1678 againſt the Roman Catholics, from an idle apprehenſion of univerſal deſtruction: but it clearly appears, that the Lords came to the reſolution, after an inquiry of two days only, that in conſequence of this order one venerable Peer loſt his life, and five others remained in priſon ſix years with conſtant apprehenſions of ſharing the ſame fate. From theſe circumſtances,

cumſtances, the legality of the order in 1678 muſt have been perpetually under contemplation: when therefore the Lords came to the vote in 1685, they had the benefit of the mature conſideration and reflection of the laſt ſeven years. But, beſides this diſadvantage, the very terms and nature of the vote prove, beyond all controverſy, their real and ſincere opinion of the order of 1678. I ſhall now ſuppoſe, for a moment, that it was the only object of the Lords in 1685 to protect the impeached Peers in defiance of all law and precedents, and conſequently were determined to remove every obſtacle to their deſign. If they had thought there had been any authorities in corroboration of the order of the year 1678, they would have reſolved generally that Impeachments abated by a diſſolution, which would have over-reached every principle and precedent to the contrary; but when they ſimply reſcind the order of 1678, they muſt have been convinced that there was no further enemy to encounter, or that this ſolitary order

order was unſupported by any allies or auxiliaries. If the order of 1678 had been merely declaratory of the former law, the reverſal would have been ineffectual and nugatory.

But it is ſaid that the Parliament in that year was very profligate and corrupt. I confeſs I know no reaſon why theſe aſperſions ſhould be thrown upon the Houſe of Peers at that time; for, before the end of the year, they made ſuch oppoſition to the meaſures of the King, that he was determined never to meet them again: and the Biſhops, who are generally ſuppoſed not to be the leaſt obſequious of the Lords, throughout the whole of this reign conducted themſelves with extraordinary ſpirit and firmneſs. And it is chiefly to the exertions of this Houſe of Lords that we are indebted for the bleſſings of the Revolution.

We hear nothing more of this Queſtion till the 5th of April 1690; when an Order was made, that a Committee ſhould in-

quire, " Whether Impeachments continue " from Parliament to Parliament;" but, on the 7th of July, 1690, the Parliament was prorogued, and no report had been made: but, on the 2d of October, 1690, the Parliament met, after the prorogation, when Lord Peterborough and Lord Salisbury, who had been impeached on the 26th of October, 1688, in a former Parliament, of high treason, presented petitions to the House of Lords, stating they had been prisoners in the Tower near two years, and prayed the House to take their case into consideration. On the 6th of October they are bailed; and on the same day a Committee is appointed to inspect and examine precedents, whether Impeachments continue in *statu quo* from Parliament to Parliament. On the 30th of October, the Lords Committees produce the cases in the Appendix; upon a consideration of which, by the House, Lord Peterborough and Lord Salisbury were discharged from their recognizances.

This

This is a most important precedent; for it is resolved upon, after a full and solemn investigation of all the preceding cases; and it ought not to pass unnoticed, that this Committee called in the assistance of one of the most learned antiquarians of the age, Mr. Pettyt, that champion for the antiquity and dignity of the House of Commons, that *asserter of the ancient rights of the Commons of England*, who would have been in raptures, if he could have produced authorities to have extended their power and jurisdiction.*

* At the end of this Report of the Committee, it is stated that Mr. Pettyt's Clerk read three records to the House, the dates and numbers of which are given, but no abridgment of them.—(Vide Appendix, p. xviii). That in the 15th Ed. III. is the case of the Archbishop of Canterbury, which has already been noticed. The Record, 4 Ed. III. No. 16, is given at length in Foster's Fourth Discourse, p. 387; from which it appears, that Thomas de Berkele was tried in full Parliament by a jury of Knights, for being concerned in the murder of Ed. II. of which charge the jury completely acquitted him; but, because he had appointed those persons his servants who had murdered the King,

It has been ſaid that there is another point in this caſe, upon which the Lords may have diſcharged Lord Saliſbury and Lord Peterborough, and not becauſe they thought the impeachment determined by the diſſolution. It is true they had conſulted the Judges upon the effect of an act of general pardon, who delivered their opinions, That if the ſaid Earl's crimes and offences were committed before the 13th of February 1768, and not in Ireland, nor beyond the ſeas, they were pardoned by the ſaid act.

Two things, I think, in this caſe, are clear:

1ſt, That they did not diſcharge theſe Lords upon this act of pardon.

2d, That they could not poſſibly in point of law.

They

he was committed till the next Parliament, to hear his judgment, &c.—This was in the 4th of Ed. III; there are no new writs in the 5th of Ed. III; ſo that, on the day of this trial, probably a long adjournment (perhaps over Chriſtmas) had been expected. The third Record referred to, I have not been able to find in the Collection of the printed Records.

They certainly thought there was ſuch a probability of their being pardoned, that they might mitigate the rigour of their impriſonment, or, as is ſaid in Lord Danby's caſe, might lengthen their chain, by admitting them to bail. But afterwards moſt conſiſtently they proceed to inquire whether they ought to retain them under bail, which is only a gentler ſpecies of impriſonment, or whether their proſecution was not wholly at an end by the diſſolution. Was Mr. Petyt called in to aſſiſt them in finding caſes of pardons? The proteſting Lords ſpeak incoherently of pardons; but what they alledge beſides the precedents produced, proves inconteſtably that the whole of this moſt induſtrious and ſolemn inveſtigation was confined to this queſtion ſolely, viz. Whether impeachments were determined by a diſſolution?

But it was impoſſible, in point of law, that the Lords could give the Earls the benefit of this act, and diſcharge them without

without putting them upon their trial. The crime of which they were accuſed, viz. of being reconciled to the Church of Rome, might be, and moſt probably was committed, if committed at all, ſince the 13th of February 1688, or in parts abroad. Theſe exceptions were ſuch, whether the parties muſt plead the act ſpecially, or might have the advantage of it from a proviſion in the act itſelf upon the general iſſue, that no Judge or Court whatever could take notice of it but upon a trial, or upon hearing what the proſecutor had to anſwer to it.

It is certainly true that Mr. Juſtice Foſter takes no notice of the queſtion reſpecting the effect of a diſſolution: but he ſays, the only uſe which he makes of this caſe is, " that the Lords exerciſed a " right of judicature without a High " Steward;"* which they indiſputably did when they inquired into the effect of a

* Vide an extract from Mr. Juſtice Foſter. Appendix, xliv.

a diſſolution, and in conſequence of that inquiry diſcharged the priſoners.

The next caſe is that of the Duke of Leeds in 1701.* This is repreſented as the laſt deciſion upon the ſubject, and as that gigantic precedent which has ſwallowed up all the reſt. I confeſs, when I firſt ſaw it, I thought it ſuch a pigmy that I had almoſt paſſed it over without obſervation: and notwithſtanding all that I have heard of it, I am not inclined to think more highly of it at preſent than I did at the firſt. In the Lords Journals of the 24th of June, 1701, we find this Order:——" The Houſe " of Commons having impeached Thomas " Duke of Leeds of high crimes and miſ- " demeanours, on the ſeven and twentieth " of April 1695, and on the nine and " twentieth of the ſaid April exhibited " articles againſt him, to which he an- " ſwered; but the Commons not proſe- " cuting,

* Vide Appendix, p. xxviii.—This Duke of Leeds is the ſame Lord Danby, who has ſo often been upon the ſtage before.

" cuting, It is ordered, by the Lords Spi-
" ritual and Temporal in Parliament aſſem-
" bled, That the ſaid Impeachment and
" the Articles exhibited againſt him ſhall
" be, and they are hereby diſmiſſed."

The inactivity of the Commons for ſix years would afford a preſumption that they had acquieſced in the deciſion of 1790:— but we are told they were obliged to adver-tiſe for a witneſs; but from the length of time, it ſhould ſeem, with no degree of ſucceſs. But the argument drawn from this caſe is this, viz. That the Lords muſt neceſ-ſarily have thought the Impeachment con-tinued beyond the diſſolution, and that it was not extinguiſhed by that event; or they would not have given themſelves the trouble of diſmiſſing it. This muſt be admitted to be a fair argument; but the force and effect of it will depend entirely upon circumſtances. There is not a ſingle word expreſſed upon the queſtion, in the Order; but after our declarations it is true that our actions are the next beſt witneſſes of

of our thoughts. But when an action is produced as evidence of intention, the whole chain of previous actions from which that action originated, ought to be taken into conſideration, or we ſhall be apt to pronounce an erroneous verdict from its teſtimony alone.

And if this diſmiſſion of the impeach-ment does not prove, in the Lords, an act of deliberation upon the effect of a diſſolu-tion, it proves nothing more than any other order in their journals.

In the beginning of May 1701, there was a plentiful harveſt of impeachments. The Earl of Portland, Lord Somers, the Earl of Orford, and Lord Halifax, had all been impeached in the courſe of that ſeſſion; the Duke of Leeds had been im-peached above ſix years before, and more than one diſſolution muſt have intervened.*

On the 5th of May 1701, the Lords ap-point a Committee " to draw a meſſage to

* The Triennial Act paſſed 6 W. and M.

" be ſent to the Commons, to put them in
" mind of the Impeachments brought up
" by them againſt the Earl of Portland, the
" Earl of Orford, the Lord Somers, and
" the Lord Halifax:" and a meſſage was ſent in conſequence to the Commons, " to ac-
" quaint them, that they having, on the firſt
" day of April laſt, ſent up to their Lord-
" ſhips an Impeachment againſt William,
" Earl of Portland, of high crimes and
" miſdemeanors; and having alſo on the
" fifteenth day of the ſame month ſeveral-
" ly impeached John Lord Somers, Ed-
" ward Earl of Orford, and Charles Lord
" Halifax, of high crimes and miſde-
" meanors; their Lordſhips think them-
" ſelves obliged to put them in mind, that
" as yet no particular articles have been
" exhibited againſt the ſaid Lords, which,
" after *Impeachments have been ſo long de-*
" *pending*, is due in juſtice to the perſons
" concerned, and agreeable to the methods
" of Parliament in ſuch caſes." This produced from the Commons, on the 9th of May, articles againſt Lord Orford. On the 15th

15th of May, the Lords ſend again the ſame meſſage verbatim, only omitting Lord Orford. On the 19th of May, the Commons exhibited articles againſt Lord Somers. On the 21ſt of May, the Lords ſend again the ſame meſſage, including only the Earl of Portland, and Lord Hallifax, but vary the concluſion, thus, " which, after *Im-*
" *peachments have ſo long depended, is a*
" *hardſhip to the perſons concerned*, and not
" agreeable to the uſual methods and pro-
" ceedings of Parliament." On the 30th of May they ſend again the ſame meſſage verbatim. The Commons anſwer, " As
" to your Lordſhips' meſſage, the Com-
" mons take it to be without precedent,
" and unparliamentary; they, as proſecu-
" tors, having a liberty to exhibit their Ar-
" ticles of Impeachment in any time, of
" which they, who are to prepare them,
" are the proper Judges: and therefore,
" for your Lordſhips to aſſert, they having
" not yet exhibited particular articles
" againſt William Earl of Portland, and
" Charles Lord Hallifax, is a hardſhip to

" them, and not agreeable to the uſual me-
" thods and proceedings in Parliament in
" ſuch caſes, does, as they conceive, tend
" to the breach of that good correſpon-
" dence betwixt the two Houſes, which
" ought to be mutually preſerved."

And in another anſwer, the Commons complain of the frequent repetition of theſe meſſages.—On the 2d of June, the Lords reply, and conclude thus: " The Lords hope the Commons, on their " part, will be as careful not to do any " thing that may tend to the interruption of " good correſpondence between the two " Houſes, as the Lords ſhall ever be on " their part; and the beſt way to preſerve " that is, for neither of the two Houſes to " exceed thoſe limits, which the law and " cuſtom of Parliament have already eſta- " bliſhed."

The Commons afterwards exhibited articles againſt Lord Halifax; and the Lords, after that, remind them again of the Earl of

of Portland's impeachment.—The reader will ſee why I have given ſo full a narrative of theſe proceedings; for in all theſe meſſages, in which Lord Portland's name is ſent to the Commons five times, the name of the Duke of Leeds is never once mentioned.

From the 5th of May till the 24th of June, there are daily meſſages between the two Houſes relative to the Impeachments; and within that time there are the moſt angry reſolutions, which are to be found in the Journals of the two Houſes. Lord Haverſham, at a conference, told the Commons, " That their Lordſhips cannot but " look upon it as a great hardſhip, that " any ſhould lie under long delays in im- " peachments: perſons may be incapable, " facts may be forgotten, evidences may " be laid out of the way, witneſſes may die, " and many the like accidents may hap- " pen; and proceeded to ſay, that it was a " demonſtration to him, that the Com- " mons thought the Lords impeached in- " nocent."

'nocent.'—This, of courſe, they reſented, and complained to the Houſe of Lords againſt Lord Haverſham, for theſe ſcandalous words.

But, when the Lords were bringing charges againſt the Commons for the hardſhip in keeping impeachments ſo long depending, none of which had depended three months, would they not have reminded them, and upbraided them with the impeachment of the Duke of Leeds, if they had not thought it was totally terminated and extinct? And, when they were at open war with the Commons, for two months delay, in the caſe of the reſt of the Lords, would they not have inſinuated that the Duke of Leeds had experienced ſome degree of hardſhip for the ſpace of ſix years?

But the Commons were reſolved not to proſecute, and the Lords were reſolved not to diſmiſs. Lord Orford and Lord Somers had been put to the bar; and no proſecutors appearing, they were acquitted.

On

On the laſt day of the ſeſſion, the charge againſt Lord Haverſham, and the impeachments againſt Lord Portland and Lord Halifax, are diſmiſſed; and that of the Duke of Leeds, who had never appeared, or had been heard of for ſix years before, is added to the liſt. From this account of the caſe, is it poſſible, that any candid man can conſider the Duke of Leeds's Impeachment like that of the Earl of Portland's or Lord Halifax's? and will he not think it a ſtrong confirmation of Lord Peterborough's caſe; and that the Lords, from their zeal to reſiſt (and perhaps to inſult) the Houſe of Commons, added the Duke of Leeds to the liſt, merely that he might make a figure upon paper, though they were convinced, in fact, he was a perfect ſhadow and non-entity? And is it within the ſcope of human credulity to ſuppoſe, that this was a deliberate determination and an unanimous reſolution, that this was neceſſary to the abolition of the Impeachment of the Duke of Leeds, when they had given no previous notice to

the

the Commons, which they had done repeatedly in every other caſe; and when, a few years before, they had declared, almoſt *una voce*, that a diſſolution determined an impeachment; and when, a few years afterwards, there was a moſt ſerious debate whether a prorogation had not the ſame effect?

The next and laſt time that this queſtion came into diſcuſſion, was in the year 1717. The Earl of Oxford and Mortimer had been impeached of high treaſon, and of high crimes and miſdemeanors, on the 9th of July, 1715, when he was committed. In September afterwards, he anſwered, and the Commons replied and joined iſſue. On the 26th of June, 1716, the Parliament was prorogued. On the 20th of February afterwards, the Parliament met after the prorogation, on which day the Earl of Oxford preſented a petition to the Houſe of Lords, praying their Lordſhips to take his caſe under conſideration, and that his impriſonment might not be

indefinite: upon which it was ordered, that all the Lords ſhould be a Committée, to ſearch for and report ſuch precedents as relate to the continuance of Impeachments from ſeſſion to ſeſſion, or from Parliament to Parliament.

On the 25th of May, 1717, they report as in the Appendix; and it is reſolved by the Houſe, that the Impeachment of the Commons againſt the Earl of Oxford was not determined by the intervening prorogation of the Parliament.

From the Lords Debates, it appears that the diviſion upon this queſtion was 87 to 45; ſo that 45 Lords at that time were of opinion that an Impeachment abated by a prorogation. Ten Lords proteſted againſt the reſolution; and the mode of reaſoning, in the proteſt of the diſſentients, is a ſtrong authority with regard to a diſſolution.

" Diſſentient,

" Becauſe there ſeems to be no diffe-
" rence in Law between a prorogation
" and a diſſolution of a Parliament, which,
" in conſtant practice, have had the ſame
" effect, as to determination, both of ju-
" dicial and legiſlative proceedings; and
" conſequently the vote may tend to
" weaken the reſolution of this Houſe,
" May 22, 1685, which was founded
" upon the law and practice of Parlia-
" ment in all ages, without one precedent
" to the contrary, except in the caſes
" which happened after the Order made
" the 19th of March, 1678; and, in pur-
" ſuance hereof, the Earl of Saliſbury was
" diſcharged in 1690."

It is manifeſt, from this proteſt, that it muſt have been the decided and unanimous opinion of the Houſe of Lords, that it would have been determined by a diſſolution; for it is here aſſumed, as a firſt and uncontrovertible principle; and if the next ſtep were true, viz. that there was no difference

ference between a prorogation and a diſſolution, the concluſion of the diſſentients would have been a ſtrictly mathematical demonſtration.

This argument has been greatly miſunderſtood, and therefore I muſt endeavour to make my meaning more intelligible. I aſſert, that it appears from this proteſt, that it is manifeſt, in the opinion of the diſſenting Lords, that the reſt admitted that a diſſolution would determine an Impeachment; for they argue thus:—You admit, or it cannot be denied, that a diſſolution determines it; but a prorogation is equivalent to a diſſolution; *ergo* a prorogation determines it. I care not, whether the ſecond ſtep and the concluſion are right or wrong; but the argument inconteſtably proves, that the diſſentients thought that none in their Houſe could controvert the firſt ſtep or major of their ſyllogiſm.

Though I were ignorant of every propoſition of Euclid's Elements, or were con-

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vinced that every one of his concluſions was falſe; yet, if I ſaw that he began with aſſerting, that "things which are equal "to one and the ſame thing, are equal to "each other;" and that the whole of his geometry was built upon it; I ſhould conclude that Euclid was convinced, that every man in his time, who had a clear underſtanding, aſſented to that ſimple propoſition.—But, ſay the Gentlemen, who deny the inference drawn from this proteſt, it even proves our caſe; for we can make as good an argument as the diſſentients. We ſay that it is decided, that a prorogation does not put an end to it; and your proteſt affirms there is no difference between a diſſolution and a prorogation; *ergo*, a diſſolution does not put an end to it: but they muſt remember, when the intermediate ſtep was advanced, there were 87 to 45 againſt it; ſo it is near 2 to 1 againſt their concluſion.

I confeſs, that none of the caſes produced by this Committee, appear to me to prove much, except the firſt, with reſpect

ſpect to the preſent inquiry: but Drake's* caſe, in my mind, is a very ſtrong inſtance to ſhew the prevailing opinion of the Houſe of Lords, in the year 1660; for, after his conviction, by his pleading guilty, the Lords muſt neceſſarily have thought that the Impeachment would be determined by the diſſolution, and that they could not give judgment in the next Parliament without a freſh trial; for, if that had not been their opinion, it is highly probable they would have wiſhed to have given judgment themſelves; and beſides, if it had not been at an end, I apprehend the Attorney-General cold not have proſecuted for the ſame offence, in the inferior Courts.

† Fitzharris, who, though a Commoner, was impeached by the Houſe of Commons, in 1681, for high treaſon (another inſtance of the wild unconſtitutional experiments of thoſe times), was indicted, and pleaded to the indictment, that there was an impeachment pending againſt him for the ſame

* Vide Appendix, 25 May, 1717.

† Harg. State Trials, Vol. III. p. 226

ſame crime. This plea was over-ruled by the Court of Kings-Bench for defect in form. But as the Lords afterwards rejected the Impeachment of Fitzharris, the inferior Courts would now be juſtified in declaring ſuch a plea bad, from the inefficacy or nullity of the Impeachment: but where a perſon is impeached, before the Houſe of Lords, of crimes of which they legally and conſtitutionally have cognizance, the pendency of the Impeachment, I apprehend, might be pleaded in abatement to an indictment; otherwiſe this ſoleciſm would be the conſequence, that a perſon might be puniſhed in two different Courts for the ſame offence. I am aware that it has been held*, that the pendency of one indictment cannot be pleaded in abatement to another, for the ſame offence; but I ſhould think that this muſt be confined to indictments in the ſame Court.

But, upon this ſubject, as I find nothing certain, I ſpeak with diffidence: but it is ſurely

* R. v. Stratton Doug. 228. Hawk. c. 34. ſect. 1. &c.

ſurely not unreaſonable to ſuppoſe that the Lords thought their juriſdiction at an end, when they directed the Attorney-General to commence a freſh proſecution.

Peter Longueville* had been impeached, but was never proſecuted after the diſſolution: but eight of his aſſociates had been convicted, and heavily fined: ſo the Commons might reaſonably think that preventive juſtice had been ſufficiently ſatisfied.

It is remarkable, that Lord Stamford's ſeems to be the only caſe of an indictment which was not proſecuted with effect, in the ſame Parliament to which the indictment was ſent; but, as it does not appear that he ever was arraigned, or pleaded to the indictment, I can hardly think that any inference can be drawn from it. I ſhould ſuppoſe, that an indictment, properly found by an inqueſt of 12 men, can never diſcharge its office till it is quaſhed by an act of the court, or the party has pleaded to it. The words of the *certiorari* are,

* Vide Appendix, 25 May, 1717.

are, that " We * do command you (the " Juſtices of Oyer and Terminer), that you " do ſend, under your ſeals, before us, *in* " *our preſent Parliament*, all and ſingular " indictments, &c." Upon the return of this writ, the indictment muſt be in the cuſtody of the Clerk or *cuſtos rotulorum* of the Houſe of Lords; and I ſhould think that, without further *certiorari* or mandate, the next or any Parliament might proceed upon it, like a commiſſioner of goal-delivery, when the defendant is in cuſtody, upon the Coroner's inqueſt, or an indictment found at Quarter-Seſſions; and I ſhould imagine, that there could be little doubt but the Clerk of Parliament might be directed, by *certiorari*, to ſend this indictment to the Court of the Lord High Steward.

I ſhall now conſider ſome caſes in the Courts of Law, which are ſuppoſed to be authorities upon this ſubject. I have given the

* Vide the caſe of the Dutcheſs of Kingſton, Vol. XI. Harg. State Trials.

the caſe of Lord Danby at full length in the Appendix; but I do not ſee what inference on either ſide can be collected from it. The Court of King's Bench, it is agreed, have a diſcretionary power of bailing, even in caſes of treaſon or felony, perſons committed by the Houſe of Lords, when Parliament is not ſitting; for circumſtances may appear, which may render it a debt of juſtice, that they ſhould be liberated from confinement; and there would be a failure in the diſcharge of that juſtice, if ſuch a power were not veſted in the Court of King's Bench. The next caſe is that of Lord Saliſbury, who had been committed in a former Parliament upon an impeachment for high treaſon: his impriſonment had been continued; and, upon an adjournment for two months, he applied to the Court of King's Bench, to be bailed. His counſel argued, that he ought to be bailed, becauſe he was entitled to the benefit of an act of pardon. The Court declared they could take no notice of that act, becauſe there were many exceptions in it.—And

with reſpect to the other ground, the Court of King's Bench had never diſcharged any perſon committed by the Peers for treaſon or felony. And this queſtion reſpecting the effect of a diſſolution at that time, was certainly a doubtful point; as appears from the ſubſequent inquiry and determination in the Houſe of Lords, in this very caſe of Lord Saliſbury. And it was impoſſible for the Court of King's Bench to declare, that the Lords juriſdiction was at an end, when the proceedings in conſequence of the order of 1678, had made it ſuch a ſubject of debate and controverſy. But whatever might have been the opinion of the Court, every perſon muſt think they acted with great propriety; as Lord Saliſbury's impriſonment had been continued by the Houſe after the diſſolution, and as they had only adjourned for two months, when they remand his Lordſhip, and recommend him to make an application to thoſe by whom he had been committed *.

The

* Vide Lord Saliſbury's caſe at length, in the Appendix, p. xlii.

The next caſe is that of Peters and Benning, which was a queſtion, whether a writ of error, under particular circumſtances, abated by a diſſolution; in which it is ſtated, that Lord Holt advanced that impeachments continued after a diſſolution. From the internal evidence of the caſe, one would conclude, that Lord Holt muſt have ſaid directly the reverſe, and that the reporter muſt have omitted the negative particle. This may be thought an eaſy way of diſpoſing of this extrajudicial dictum of my Lord Holt. But I appeal to the candid or to the moſt uncandid reader, if there is any conſiſtency in this, viz. "And per "Holt, If an impeachment be in one Par-"liament, and ſome proceedings thereon, "and then the Parliament is diſſolved, and "a new one called, there may be a conti-"nuance upon the impeachment; and he "quoted the caſe of James and Bertly," &c. in which a writ of error was determined by a prorogation.—And the whole tenor of this caſe is to prove that writs of error determine by a diſſolution, and that,

in the year 1701, the Court of King's Bench were not bound by the extrajudicial order of the Lords in 1678. This incoherent and heterogeneous report is given at full length in the Appendix, p. xlvi.

Comyns's Digeſt has been cited, where this propoſition is found, viz. "When a "Parliament is diſſolved, appeals or writs "of error pending in Parliament do not "abate by the diſſolution, but the next "Parliament ſhall proceed upon them in "the ſtate which they were in at the diſ-"ſolution, without beginning *de novo*." Ray. 383*. "So an impeachment by the "Commons is not altered by a diſſolution." Ray. 383.

In Sir Thomas Raymond's Reports, to which Comyns refers, it is ſhortly ſtated, that Lord Stafford applied to the Court of King's Bench to be bailed; and Mr. Juſtice Raymond ſays, "we did not think fit, in "diſcretion, to bail him, and we alledged "likewiſe

* Parliament, p. 2.

"likewiſe the orders of the Houſe of "Lords, *though we did not rely thereon*," which are as followeth: and then the order of 1678, &c. is ſtated as in the Appendix.

So Comyns refers here to an author, who ſays the Court did not rely upon what they alledged; and at beſt, it is but an abridgment of the order of 1678. Chief Baron Comyns's Digeſt is a moſt valuable dictionary; but as every dictionary of language contains many words which no good writer or perſon of delicacy would adopt, ſo every dictionary of law contains many propoſitions which no experienced or judicious lawyer would rely upon.—Lawyers would make ſtrange confuſion in the affairs of their clients, if they gave them advice from Comyns's Digeſt, though it is the beſt book extant of its ſort. It is intended only to facilitate labour, by directing us where we may find more information upon the ſubject; and our concluſions muſt be drawn from a comprehenſive and comparative view of the authorities at length.

Chief

Chief Baron Comyns is always regarded as very high authority, when he gives his own opinion, and refers to no other book; but otherwiſe, his Digeſt is nothing but an alphabetical abridgment of the authors he has read, without taking any reſponſibility upon himſelf. But it may be aſked, why does he not refer to the order of 1685? Becauſe it is clear, that he had never undertaken the arduous taſk of reading over the Journals of the Houſe of Commons and Houſe of Lords, with an intent to make an index or abridgment of them; and moſt probably we ſhould have had no abſtract of the order of 1678, if he had not found it in Sir Thomas Raymond's Reports; and even here, he makes no reference to the Lords Journals. But notwithſtanding this abridgement, in direct contradiction to it, two or three paragraphs afterwards, he tells us, that "a writ of error is determined by "a diſſolution, and there ſhall be another "writ of error at the next Parliament, "2 Cro. 342." And in the preceding page, he informs us, "That all orders, "and

"and *every thing before Parliament*, deter-"mine by a prorogation, except a *ſcire* "*facias* and a writ of error."

But in oppoſition to theſe fragments of caſes, I might cite the authority of a very learned author, who profeſſes to give you what he thinks, upon mature and profound deliberation, the beſt law upon every ſubject he inveſtigates, and who did not intend his work merely as an aſſiſtant to ſtudents and practiſers, but a rule of action for Judges and Magiſtrates; I mean, Mr. Serjeant Hawkins *. He ſays, "All the or-"ders of Parliament are determined by a "diſſolution or prorogation; and *all mat-*"*ters* before either Houſe muſt be *com-*"*menced anew at the next Parliament*, ex-"cept only in the caſe of a writ of error."

In my opinion, all theſe caſes and quotations prove exactly nothing at all; but, upon a general review of the Precedents, it appears that there never was a caſe in which the

* Bk. 2. c. 15. ſect. 74.

the proceedings of an Impeachment were continued after a diſſolution, before the Lords made the Order of the 19th of March, 1678; and that the caſes of Lord Stafford and the other four Popiſh Lords, Lord Danby, and Sir William Scroggs, were legalized by no authority but that Order. The caſe of Lord Peterborough and Lord Saliſbury was decided, after a full inveſtigation and mature conſideration of principles and precedents anterior to 1678, and from a conviction that the three ſubſequent caſes had no legal and conſtitutional foundation: the authority alſo of this precedent derives ſuch ſtrength from the proceedings in my Lord Oxford's caſe, as to bid defiance to every attack which induſtry or ingenuity can make againſt it *.

But

* I ſay nothing here of the Duke of Leeds's caſe; though, from the account I have given of it, I ſhould ſuppoſe that it will be thought rather to corroborate, than to weaken the authority of the deciſion in 1690.

But I ſhall endeavour to prove that this caſe is ſtrongly fortified both by ancient authorities, and by general principles.

I have already obſerved, that in our reſearches into the records of Parliament, we muſt be cautious in diſtinguiſhing, when we find the ſame perſon mentioned in different Parliaments, whether it is a continuation of the firſt proceeding, or whether in the ſubſequent Parliament it is not an original tranſaction. No one can be ſuppoſed to have read the rolls of Parliament from the beginning to the end; and therefore it is impoſſible to pronounce with certainty what does not exiſt, or may not be found there. But, among all the caſes which I have examined, the Archbiſhop's arraignment is the only one, where there is a clear continuation of the ſame proceeding or proſecution. In all the reſt which I have ſeen, where the name is repeated in a ſubſequent Parliament, a new and original proceeding is inſtituted. And from the time of Edward I.

to the reign of Henry VIII.* I have not ſeen one petition which was preſented in one Parliament, and anſwered in another; and through all the rolls of Parliament, till that time, every Impeachment is in the form of a Petition.

In the 50th of Edward III. ſeveral perſons had been impeached, and various judgments pronounced, according to the offence or prayer of the petition.

In the new Parliament, in the 51ſt of Edward III. after the petitions of the Commons were read and anſwered, the Speaker of the Commons informed the King and the Lords, that ſeveral perſons had been impeached in the laſt Parliament without due proceſs, and adjudged to undergo various puniſhments; and therefore he prayed, that in this Jubilee Year they might be reſtored to their former eſtate and degree, notwithſtanding their judgments. The King aſked if

* The printed records of Parliament extend no farther.

if his requeſt extended to all who had been impeached; and having declared, to all, the King ordered the Commons to make a bill for each perſon, that he might extend his grace to which he pleaſed. Upon which ſeven petitions or bills are preſented, in moſt of which it is ſtated, that the perſon was impeached in the laſt Parliament wrongfully and of great malice, and the bill prays that he may be included in the pardon.—After theſe petitions, there is this remarkable memorandum:

Fait a remembrer que en ceſt Parlement nulle reſponce eſtoit faite par les ditz Seign'rs a les dites ſept Billes cy deſſus proſcheinement eſcritz, *ne poet eſtre a cauſe que le dit Parlement s'eſtoit departiz & finiz* a meſme le jour, devant que rienz ne fuſt pluis fait a ycelles. Here is a clear declaration that no anſwer can be given to a petition but in the Parliament in which it is preſented. Though theſe petitions are here called bills, yet they begin, like all the other petitions, with Prie le Commune, or les Communes priont, *&c.*

In the 7th of R. II. n. 3. this entry is made in the margin: "Reſponſio vacat, "quia ſic non placuit Domino Regi *pro* "*tunc* illud concedere. Et *ideo* cancellatur "& damnatur."—This proves, that if parliamentary petitions were not anſwered in the ſame Parliament, they were cancelled and void. In the 8th year of Henry V. (Rot. Parl. n. 16.) we find a very remarkable inſtance, which proves, that the Commons thought this an eſtabliſhed part of the conſtitution, and they feel great jealouſy and apprehenſions that an innovation might be introduced in conſequence of an extraordinary circumſtance. While Henry was in France, the Duke of Glouceſter was appointed his Lieutenant, and Guardian of the kingdom, and a Parliament had been ſummoned by writs under the teſte of the Guardian. In this Parliament ſeveral of the petitions are anſwered, "Soit faite comme eſt deſiré, ſi le pleſt au Roi," and "Soit adviſée par le Roi."

From

From theſe conditional anſwers the Commons ſaw that it might introduce the cuſtom of anſwering petitions out of Parliament, or of reſuming them in another Parliament; and therefore to prevent this innovation they preſent a petition, in which they ſtate, that they are informed by ſeveral of the Lords, that their petitions preſented in this preſent Parliament were not to be engroſſed before they are ſent into France to the King for his royal aſſent: they therefore pray that it may be ordained in this *preſent* Parliament, that all the petitions preſented *in this preſent* Parliament may be anſwered within the kingdom of England during this *ſame Parliament*; and if any petitions remain not anſwered, and not terminated during this *ſame* Parliament, that they ſhould be void, and of no effect; and that this ordinance may be obſerved in every future Parliament.—Reſponſio. Soit adviſée par le Roi.*—Here the Commons pray that their own petitions, if they are not abſolutely

* This petition is ſo deſerving of attention, that I have given it verbatim in the Appendix, xlviii.

lutely concluded in the ſame Parliament, may never be reſumed, but may be perfectly void. And it clearly appears from the former authorities, and from the nature of this caſe, that this is a petition for the preſervation of the ancient law, and not for the introduction of any new regulation.—This anſwer ſeems to import the ſame as "Le Roi s'adviſera," which has always been conſidered a negative. But as this ordinance was intended to prevent, and not to produce an alteration, of courſe the law and uſage of Parliament remained as it was before.

I have not obſerved more than one prorogation recorded in the Rolls of Parliament, before the time of Henry the VIth; but from the beginning of his reign, till the end of the reign of Henry the VIIth, there is a prorogation recorded in almoſt every Parliament, in Latin; except in the 2d of Henry VI. it is in French.

But

But what is moſt extraordinary, and what is a "confirmation ſtrong as proofs of holy writ," of this doctrine, that impeachments and all buſineſs in Parliament end with a diſſolution: in every prorogation, one reaſon aſſigned for the prorogation is, that the buſineſſes before Parliament, on account of their *arduouſneſs, cannot be diſcuſſed and finally terminated,* before Chriſtmas, or ſome other time, when it becomes neceſſary for the Members to return home; therefore the King prorogues them to a future day, when they ſhall re-aſſemble, for the *final concluſion and determination* of the ſaid buſineſſes.

For what poſſible purpoſe can this reaſon be aſſigned for a prorogation, but becauſe every buſineſs muſt be recommenced after a diſſolution. It might be conjectured, perhaps, that this was done to ſave time, as they might be prorogued to a day before which they could not be convened after a diſſolution; as, by the Magna Charta of King John, it was provided, there

there ſhould be 40 days between the teſte and the return of the writ of ſummons. But that reaſon fails, as in moſt inſtances they are prorogued for more than 40 days; ſometimes for two or three days more or leſs than 40; but often for two, three, or four months. In the firſt caſe which I have met with, 21 R. II. c. 36. this reaſon is aſſigned thus:—The King, conſidering that great cauſes and matters moved and pending in this Parliament, could not be terminated at that time, and for other reaſons, adjourned the Parliament. Sometimes thus:—"Quod diverſis petitionibus "in eodem Parliamento exhibitis, minime "reſponſum fuerit, nec adtunc commode "fieri potuerit, Rex, &c. dictum Parlia-"mentum prorogavit." 31 Hen. VI. n. 20. But in general, with very little variation of expreſſion, the Chancellor declares: "qua-"liter negotia Parliamenti, propter ipſo-"rum negotiorum arduitatem diſcuti non "poterant nec finaliter terminari, Dominus "Rex preſens Parliamentum duxit pro-"rogandum, et prorogavit to a time and "place,

"place, when and where, pro finali con-"cluſione negotiorum Parliamenti predicti "convenirent." That there may be no doubt that a prorogation was preferred to a diſſolution, to prevent the deſtructive effects of the latter; in three inſtances, at the leaſt, it is expreſsly declared:—"qualiter "negotia per Communes, *ante diſſolutionem* "*ejuſdem Parliamenti providend' ordinand'* "*& notificand'* adoptata, diſcuti non pote-"rant, nec finaliter terminari," the Parliament is prorogued. 8 Hen. VI. n. 16; 27 Hen. VI. n. 10; 12 & 13 E. IV. n. 11.

There is generally a reaſon aſſigned, why the Parliament ſhould be diſmiſſed, as that the Noblemen might have leiſure to enjoy their recreations, and the Commons, "circa congregationem frugum," to collect their crops; or on account of the approach of Chriſtmas or Eaſter, &c. but the reaſon why they are diſmiſſed by a prorogation, and not by a diſſolution, is always this, that buſineſs is unfiniſhed.

In one caſe, a particular buſineſs unfiniſhed is ſpecified; the record of which prorogation I have given at length in the Appendix, p. xlix.

The reader will now ſee what ſtrong ground I had to intimate, that it was probable that the Parliament might be prorogued and not diſſolved, on account of the pendency of the arraignment of the Archbiſhop of Canterbury. But no diſtinction which I have been able to diſcover, in the Rolls of Parliament, is made in the *petitio & negotium* of an impeachment; and the other *negotia & petitiones* before Parliament; and it will be incumbent upon thoſe who maintain that an impeachment can ſurvive a diſſolution, to point out when and how that diſtinction originated. My Lord Coke cites his manuſcript,—Modus tenendi Parliamentum, &c. which declares "The Parliament ought not to be ended, "while any petition dependeth undiſcuſſed, "or

"or at the leaſt, to which a determinate "anſwer is not made."*

† Prynne, with his accuſtomed hoſtility to this manuſcript, declares, "that though "this is an uſual, it is no general binding "law or cuſtom; many Parliaments having "been ended before all petitions in them "have been anſwered; yea, certain Lords "and other Commiſſioners, or the King's "Council, have been appointed to anſwer "after Parliaments ended; and refers to "various inſtances:" but in all thoſe inſtances, theſe Commiſſioners were appointed by the authority of Parliament itſelf.

After theſe authorities, we ſhould be a little ſurpriſed, if the proceedings in the Duke of Suffolk's caſe, in the 28th year of Hen. VI. were a contradiction to them.—

 But,

* 4 Inſt. 11.

† Prynne's Animadv. 15.

But, upon a minute examination of that caſe, I find, in every inſtance, it is ſtrictly conformable to this general doctrine.

In the 28th year of Hen. VI. * the Commons, by their Speaker, *accuſaverunt et impetiti fuerunt Willielmum De la Pole Ducem de Suffolk, de quibuſdam proditionibus, &c. prout in quadam* BILLA *certos articulos continente magis evidenter apparebit*: and they beſeech,—*ut dicta billa in præſenti Parliamento inactitaretur*; and that it might be proceeded againſt the Duke *in eodem Parliamento*, according to the law and cuſtom of England.—And after ſtating the articles, they conclude,—"And of all the treaſons in theſe articles "contained, we accuſe and *empeche* the ſaid "Duke of Suffolk,—and pray, that this "be *enact*, in this your High Court of "Parliament, and thereupon to proceed, "in this your *preſent Parliament*, as the "matters aforeſaid require, &c."

They

* N. 18.

They afterwards prefer additional articles, which they conclude as before.—The Duke anſwered the articles, but did not afterwards put himſelf upon his *Parage*, but ſubmitted himſelf to the King's *rule & gouvernaunce*. And the King ordered him to be baniſhed the kingdom for five years; upon which ſeveral of the Lords requeſted to enter a proteſt, that this was not done by their advice and concurrence, and that it might not afterwards be conſidered as a precedent.

In the next year, the 29th of Henry VI. a new Parliament after a diſſolution was ſummoned. The new Commons were diſſatisfied with the proceedings of the King with reſpect to the Duke of Suffolk in the laſt Parliament. But they do not demand that he ſhould be put upon his Peerage, according to the articles of impeachment exhibited in the former Parliament, and that he ſhould be proceeded againſt according to the law and cuſtom of Parliament, and that a proper judgment ſhould be pronounced

upon

upon that impeachment; but they carry up a petition, in which they ſtate at length all the former articles, and the proceſs thereon, and requeſt that it may be granted, ordained, and eſtabliſhed, that the ſaid Duke ſhould be deemed and declared a traitor. The King anſwers, "Le Roi s'adviſera."*

This is clearly a bill of attainder, and as much a new and original proceeding as Lord Strafford's bill of attainder was ſeparate and diſtinct from his impeachment.—So far I wiſhed to conſider this caſe upon the authority of the records of Parliament ſolely; but if we can give credit to the chroniclers of the times, this could not poſſibly be a continuation of the impeachment: for at this time the Duke had not only been baniſhed, but had been beheaded; and this conſequently muſt have been a bill of attainder after his death.

Moſt

* I have given the firſt part of this petition or bill verbatim in the Appendix, p. 1.; the remainder only ſtates at large the conſequences of the attainder—as forfeiture, corruption of blood, &c.

Moſt of my readers will remember the Duke of Suffolk and Captain Whitmore, in Shakeſpeare's Henry the VIth.

But I ſhall now examine how far the deciſion of 1690, and theſe ancient authorities, are ſupported by general principles.

Impeachment is a kind of criminal proſecution, which modern times have reduced to ſyſtem and conſiſtency. It is certainly *ſui generis*, and in many great points diſſimilar and unanalogous to every other ſpecies of criminal procedure. The Houſe of Commons, when they impeach, have been denominated, by high authority, the * *ſolemn Grand Inqueſt of the Nation*; but this muſt be regarded rather as a compliment to exalt their dignity, than an aſſertion that, in reality, they exerciſe the function of a Grand Jury, and are to be governed by the ſame rules. If we purſue the allegory (and in truth it is nothing more), we ſhould degrade the Lords to the leſs dignified character of the *Petty Jury of the Nation*.

With

* Lord Hale, P. C. 150.

With the ſame propriety, the Attorney-General, who *ex officio* can file an information for a miſdemeanour committed in any part of England, upon which the defendant may be tried, without the intervention of a Grand Jury, might be called a Grand Inqueſt of the Nation. The Commons, in one caſe, like the Attorney-General in the other, are, in every ſtage of the proceeding, merely proſecutors; but, as they proſecute in the name of themſelves and all the Commons of Great-Britain, they need not require a more honourable appellation.

When they inquire whether there are grounds to impeach, they do nothing more than what is done by every conſcientious proſecutor, who, with ſcrupulous caution, will convince himſelf that there is a juſt reaſon, or *probable cauſe*, to prefer the accuſation; and both from principles of juſtice, and the current of authorities, the Houſe of Commons are bound to admit the party to go as far into his defence as he may think proper, or be adviſed.

But

But though the Houſe of Commons are the proſecutors who have joined iſſue with the defendant in an impeachment, I ſhould think it but a puerile argument, that the impeachment is at an end by the extinction of that Houſe, as an action or an appeal abates by the death of the plaintiff. *All the Commons of Great Britain*, whether the expreſſion may be taken in the ancient ſenſe of the *electors*, or in the modern vulgar acceptation of *the people at large*, may be preſumed, like the King,* never to die; but, as the new Houſe of Commons, and the new Managers, may be ſuppoſed to be perfect ſtrangers to the party, and to the progreſs of the ſuit, one would be apt to ſuſpect that the proſecution would be an unconnected and incoherent performance, unleſs the new Houſe adopted the ſame means to obtain information as the preceding Houſe; that is, by an

* Though, if one be indicted in the time of one King, and plead to iſſue, and afterwards the King dies, he ſhall plead *de novo*. 7 Co. 31. but now *contra*, by 1 Ann. c. 8.

original inquiry: and how is it poſſible that theſe ſtrangers can be convinced of the juſtice and propriety of the continuation of the trial, but by an examination of the whole Houſe, or a report from their Committees, or, in ſhort, but by the ſame means by which the juſtice and propriety of its commencement at firſt were manifeſted?

Whatever is true when part of the Houſe is changed, will alſo be true if the whole were changed. The Members of the Houſe of Commons have a right to inſpect the Journals of the Houſe of Lords; but that is a right which will not aſſiſt them upon this occaſion; for the evidence upon trials before the High Court of Parliament is never recorded. The Lords, upon the preſent trial, have ordered it to be taken down by clerks, and afterwards to be printed for their own benefit. But they were not bound to make ſuch an order; nor can the Houſe of Commons claim any advantage from that circumſtance; and therefore it is

is poſſible that a new Houſe of Commons may know nothing more, and have no better means of procuring information, of the progreſs of an impeachment unfiniſhed in a former Parliament, than they would have of being acquainted with the circumſtances of a trial conducted before the Court of Seſſion in Scotland. If it ſhould be alledged, that the former Managers might inform the new Houſe by affidavits, I can only ſay that the Conſtitution has provided no power to compel ſuch affidavits, or to give authenticity to them; for even if they were ſworn before the Chancellor and the Houſe of Lords, they would only be waſte paper, and have no more validity than a common letter: nor is there any power to compel the former Managers to undergo an examination *vivâ voce* at the bar of the Houſe. But this certainly is only an argument *ab inconvenienti* or *ex abſurdo*.

When we look back to ancient times, we behold much confuſion and obſcurity; but yet there are certain objects which

antiquarians can diſtinctly delineate: in general they agree, that when the Commons, or a certain number of the minor Barons, or free tenants of the Crown, were compelled by the King to attend the High Court of Parliament (a duty from which they had before been exempted, and a right which they ſeldom had had an inclination to aſſert), being too numerous, or too diffident, to ſit in the ſame Houſe with the Lords or greater Barons, they became humble petitioners to the King and to the Lords, to redreſs the grievances with which they and the country were oppreſſed*. Their petitions, either by ſtating general complaints, contained a prayer to provide meaſures to prevent, or, by deſcribing particular offenders, a requeſt to puniſh and correct; and the grant of the petition with *Soit droit fait comme il eſt deſiré*, or *Le Roi le veut*, became the judgment of the Court, or the law of the land.

The

* *Les Communes prient à noſtre Seigneur Roi, & à ſon Conſeil, &c.* in the old Statutes and Records, *paſſim*.

The one ſpecies of petitions was the origin of Impeachments; the other, of Acts of Parliament. Theſe are coëval, and ſo nearly related to each other, that they ſtill bear a ſtriking reſemblance. Selden, in his Judicature of Parliament, ſays, that in ancient times the King expreſſed his aſſent to the judgment in an Impeachment for treaſon or felony. The conviction had then the declared concurrence of the Three Eſtates of the Legiſlature.* In treaſon and felony, the judgment is defined by the Law; but that judgment, as in other Courts, cannot be pronounced by the Lords till it is demanded by the Commons; and therefore, as they poſſeſs this tranſcendent power of pardoning immediately after the verdict, it would be injuſtice to the party, if the Commons were not acquainted with thoſe circumſtances which might recommend him to

that

* In all the old authorities, it is the King and the Three Eſtates: but I know no uſe in ſeparating the Lords Spiritual from the Lords Temporal; it ſimplifies both the ideas and expreſſion to call the King, Lords, and Commons, *the three Eſtates*.

that benefit. In other caſes, the extent of the judgment within certain limits is in the diſcretion of the Court; but it muſt be previouſly demanded by the Commons. This ſeems to have been well underſtood between the two Houſes ſo long ago as the 1ſt Hen. IV,* when the Commons declare that the judgments of Parliament appertain ſolely to the King and to the Lords; and the King replies: "Meſmes les Com-" munes ſont *petitioners & demandours*, & " que le Roi & les Seigneurs de tout temps " ont eues, & averont de droit les juge-" ments en Parlement en manere come " meſmes les Communes ount monſtrez." So, though the judgment is pronounced by the Lords, the Commons are *demandours*; and if the execution of it is not arreſted by the pardon of the King, it ſtill has the aſſent of the three Eſtates of the Legiſlature, or ſupreme power of the Nation.

The Impeachment of a Commoner frequently contains a conſiderable portion of

* Rot. Parl. p. 79.

of legiſlation; and it is generally underſtood, that the two Houſes of Parliament may create both a crime and juriſdiction unknown to the Common Law, as adminiſtered by the inferior Courts;* for, till the 13th of Geo. III. c. 63†, no offences what-

* The Houſe of Lords, in Fitzharris's caſe, rejected the Impeachment for treaſon, in conformity with the declaration of the Barons, in the caſe of Simon Bereford, 4 Ed. III. 4 Bl. Com. p. 259; becauſe he was not their peer, and other Courts were competent to bring him to juſtice: but they have never declared that they will not receive an Impeachment for a miſdemeanor cognizable in the inferior Courts by indictment or information. Indeed, there ſeem to be ſeveral caſes to the contrary. Drake's caſe clearly proves that the libel was ſuch, that the Lords thought that the Attorney-General might proſecute: Dr. Sacheverell, I apprehend, might alſo have been proceeded againſt by indictment or information. This difference of conduct in caſes of felony and miſdemeanor, is not, I think, eaſy to reconcile.

† This act contains a ſection which provides, that, when the Chancellor, or Speaker of the Houſe of Commons, ſhall ſend to India for evidence, no bill, or other proceeding depending in Parliament, ſhall be determined by a prorogation or diſſolution,

whatever, except murder, committed in India, were cognizable in the ordinary Courts of Juſtice in England; but, if any atrocious or ruinous act had been committed there by a Britiſh ſubject, the perpetrator, I conceive, might, in all times, have been compelled to anſwer for it as a *high crime and miſdemeanor*, in an Impeachment before Parliament.

I premiſe this parity in the origin, and ſimilarity in the exercíſe, of the legiſlature and judicature of Parliament, to ſuggeſt, that, in doubtful caſes, we may fairly draw an inference from the one to the other, and conclude, that if the two Houſes, after a diſſolution, have not power to complete an imperfect Act of Parliament, they have not juriſdiction to continue an unfiniſhed Impeachment.

This

till the evidence arrives: but the clauſe is drawn with great caution, to prevent Parliament from expreſſing any opinion relative to an Impeachment. So, from this act, no argument can be raiſed.

This may be thought to prove nothing, by proving too much, as it would make Impeachments either determine by a prorogation, or an unfiniſhed ſtatute continue in *ſtatu quo* after a prorogation. There can be little doubt but this uſed to be the caſe with public ſtatutes; and it is only altered by a reſolution of each Houſe not to aſſent before the King to a bill which had not paſſed the other Houſe in the ſame ſeſſion. And, that the Houſe of Commons may not be ſurpriſed when the King convenes the two Houſes in full Parliament, the Lords always previouſly ſend a meſſage to the Commons, to inform them that a bill ſent from them has paſſed through the ceremonies of their Houſe; and it afterwards receives the joint aſſent in the Aſſembly of all the Eſtates. That the King could have given his aſſent to a bill paſſed the two Houſes any number of ſeſſions before, provided it was in the ſame Parliament, is clear from Brooks's Abridgment,* where this is laid down:

"If

* Title Parlement, pl. 86, 33 Hen. VIII.

" If there be divers ſeſſions in one Par-
" liament, and the *King ſigns not a bill till*
" *the laſt*, then all is but one and the ſame
" day, and all ſhall have relation to the
" firſt day of the firſt ſeſſion; and the firſt
" day and the laſt are but one Parliament,
" and one and the ſame day, unleſs ſpecial
" mention be made in the act when it
" ſhall take its force; but every ſeſſion
" wherein the King ſigns bills is a day by
" itſelf, and one *Parliament* by itſelf, and
" ſhall have no other relation but to the
" ſame ſeſſion."

But ſo late as the 38th Hen. VI* we find an impeachment anſwered by the King preciſely in the ſame words by which he gives his negative to a public ſtatute.

The Commons impeach Lord Stanley for not bringing his tenants to ſupport the King, and becauſe his brother had joined the Earl of Saliſbury at the battle of Bloreheath. The Impeachment begins thus: " To

* N. 38.

" To the Kyng our Soveraigne Lord.
" Shewen the Commons in this preſent
" Parliament aſſembled;" and then it ſtates the articles, and concludes: " Of all which
" matters doon and commytted by the ſaid
" Lord Stanley, we youre ſaid Commons
" accuſe and empeche hym, and pray your
" mooſt high Regalie that the ſame Lord
" be commytted to priſon, there to abide
" after the fourme of lawe."—To which the King immediately anſwers, *Le Roi s'adviſera.*

Some gentlemen have thought that perhaps the record may remain in force, like the record of an indictment, or of an inqueſt; but they will ſee that it has never been treated as ſuch, except between the years 1678 and 1685: but it has always been conſidered a parliamentary record, or like the record of a ſtatute, which, unleſs determined in the ſame Parliament, acording to the words cited before, *cancellatur & damnatur.*

But the great principle upon which all proceedings depending in Parliament are or were determined by a diſſolution, is this, viz. that the writ or commiſſion by which the Court ſat and exerciſed juriſdiction, is at an end. It cannot but be obſerved with what reluctance the two Houſes of Parliament acknowledge any kindred or connection with the inferior Courts. They conſider it an humiliating circumſtance to have any principle in common with a quarter-ſeſſions: but there are certain principles which pervade the whole ſyſtem of law, like certain principles in nature which extend throughout the univerſe. It is no diminution to the ſplendor of a diamond, that it owes its weight to that principle which gives a proportionate degree of gravity to a pebble; and we are told that the father of our philoſophy, by obſerving that an apple was drawn to the earth, juſtly concluded that, by the ſame principle, the plants muſt be drawn towards the ſun. But as it is generally ſuppoſed that the Courts at Weſtminſter were originally only

only committees from the Aula Regis, or the High Court of Parliament, the two Houſes need not be aſhamed if they find there preſerved entire thoſe principles, which were at firſt derived from themſelves. The Barons of the Exchequer ſtill retain their primæval title. It has been a common obſervation in every company, that, as the Houſe of Lords is a Court of Record, their proceedings muſt continue in *ſtatu quo*, like the proceedings of the Courts at Weſtminſter, and the Court of Quarter-Seſſions.

I am inclined to think, too, that the continuation of the proceedings in all Courts ought to be preciſely the ſame, unleſs a ſatisfactory reaſon can be aſſigned for the difference; and, by the Common Law, I apprehend, the High Court of Parliament, the Courts at Weſtminſter, the Court of Quarter-Seſſions, and perhaps all other Courts, were ſubject to the ſame rules, with regard to the commencement and termination of their juriſdiction: but

ſeveral

ſeveral Acts of Parliament have made regulations in the Courts of Weſtminſter and Quarter-Seſſions, which have not extended to the Court of Parliament itſelf.

It is a general principle in the Engliſh Law, that the King is the fountain of all juriſdiction, and that all Judges derive their authority from him by commiſſion or writ; which words are frequently, upon this ſubject, ſynonymous*: and it is alſo another general principle, that, upon a revocation or diſſolution of that commiſſion, all cauſes and proceedings before the Judges appointed by it, were determined, and muſt be commenced *de novo* before their ſucceſſors. This latter principle ſeems to be grounded upon a fundamental rule of juſtice, that no Judge ſhall condemn whom he has not heard, or whom he has but partially heard; and the proceedings before his predeceſſor muſt, with reſpect to him, be conſidered *coram non judice*. Upon the death of the King, all commiſſions were diſ-

* 2 Hawk. 20.

diſſolved; and conſequently, all writs and cauſes pending before the commiſſioners abated, and muſt have been inſtituted afreſh. Chief Baron Comyns ſays, "At "Common Law, all actions abated by the "demiſe of the King, and the defendant "went without day."* Much learning upon this ſubject, may be ſeen in the firſt chapters of 2 Hawkins's Pleas of the Crown; 7 Coke's Reports 30, where there is a chapter upon the diſcontinuance of proceſs, by the death of Queen Elizabeth; and the ſtatute of 1 Ed. VI, c. 7, which, by its proviſion for the future, will give the reader a perfect idea of the effect of the diſſolution of a commiſſion, in the inferior Courts, by the Common Law. By virtue of commiſſions from the King, the Judges of the different Benches at Weſtminſter

* And therefore diſcharged. Theſe are Chief Baron Comyns's own words. Com. Dig. Abatement, H. 38. It is remarkable that all judgments of acquittal do not ſay the defendant is innocent, or diſcharged, but *quod eat ſine die*, or ſhall go without a day; *i. e.* any further time fixed for his re-appearance in Court.

minſter, and the Juſtices of the Peace, exerciſe their authority. The Terms at Weſtminſter, and Quarter-Seſſions in the country, are only preſcriptive or ſtatutable times, from which and to which they continue and adjourn their juriſdiction; but, whenever their commiſſions expired, all cauſes before them were determined. By the Common Law, a new commiſſion of the peace was a *ſuperſedeas* to, or a diſſolution of, the former commiſſion, and all buſineſſes pending before the Juſtices muſt have been at end; for it is expreſsly provided, by 1 Ed. VI. c. 7, that no proceſs ſhall be diſcontinued by the grant of a new commiſſion.* The ſame is alſo provided with reſpect to ſeveral other commmiſſions.

In conſequence of ſeveral acts of parliament, intended to ſecure the independence of the Judges, and the permanence of their proceedings, the commiſſions of the four Judges of any one Bench can

* See alſo 11 Hen. VI, c. 6.

can hardly ever be annulled at once, and the act of any one of them is effectual†; but, if all the Judges, for inſtance, of the Court of King's-Bench, ſhould die before a new patent was granted, I apprehend, that all actions and proſecutions would be as much determined as they were by the demiſe of the King, before 1 Ed. VI. c. 7. Commiſſioners of Oyer and Terminer muſt both hear and determine the whole of a proſecution before them; and conſequently the Commiſſioners, under one commiſſion, can have no cognizance whatever of what paſſed under thoſe appointed by a former commiſſion. Commiſſioners of Gaol-Delivery can try a priſoner upon the Coroner's Inqueſt, or upon an Indictment found by the Grand Jury at the Quarter-Seſſions; but, by the Common Law, if a priſoner had been tried by a Commiſſioner of Gaol-Delivery, and had been found guilty by the jury, but no ſentence had been paſſed upon him, the next Commiſſioner of Gaol-delivery had no authority to pronounce

† 2 Hawk. 3.

nounce judgment; and, if he had been put again upon his trial, he might, it ſeems, have pleaded *autrefoits convict*; for the " plea * of *autrefoits convict*, or a former " conviction for the ſame identical crime, " though no judgment was ever given, or " perhaps will be (being ſuſpended by the " benefit of clergy, or other cauſes,) is a " good plea in bar to an indictment; and " this depends upon this principle—that " no man ought to be twice brought in " danger of his life for one and the ſame " crime."

Therefore, when a felon had been convicted by a verdict, if the Judge had neglected to pronounce judgment upon him before his commiſſion expired, the convict muſt afterwards have been diſcharged, for he could neither be ſentenced nor re-tried by another Judge; and therefore, to provide againſt this caſe (probably ſome remarkable inſtance had occurred), it is expreſsly

* 4 Bl. Com. 336.

preſsly enacted by 1 Ed. VI. c. vii, ſ. 5, " that the Juſtices of Gaol-Delivery ſhall " have full power and authority to give " judgment of death againſt ſuch perſon " ſo found guilty:" and My Lord Coke ſays, " Before this act, at the Common " Law, if a man had been indicted and " convicted by verdict or confeſſion, before " any Commiſſioners, and, before judg- " ment, the King died, in that caſe no " judgment could have been given; for " the King, for whom the judgment " ſhould have been given, was dead; and " the *authority of the Judges who ſhould* " *give judgment, was determined*; and this " act doth remedy thoſe ſpecial caſes.*"

The reader's mind cannot but anticipate the application of theſe general and extenſive principles to the writ, or commiſſion, by virtue of which the High Court of Parliament is conſtituted. When the King has

* 7 Co. 30.

has ordered * *quoddam parliamentum noſtrum teneri*, or, *a certain Parliament to be holden*, each Peer has a right *ex debito juſtitiæ* to a writ of ſummons; but he has no inherent legiſlative, or judicial capacity annexed to his perſon; and till he has received his writ of ſummons, or commiſſion, he has no right either to a voice or ſeat in Parliament: to this commiſſion, he owes his authority; and that power which can create, can at any time deſtroy; ſo the juriſdiction of the Lords, like the juriſdiction of all Judges and Juſtices by the Common Law, can, at any time, be determined by the act, or the death of the King†; and before the triennial act, like all other commiſſions by the common law, it had no other limit. From the hereditary right of each Lord to a writ of ſummons when a Parliament is convened, many imagine that it muſt be an hereditary, or rather an

* Theſe have been the words, in all times, both in the Lords' writs and Commons' writs.

† By 6 Ann. c. 7. continued ſix months afterwards.

an eternal court. But from this it would follow, that they might be a court independent of the Commons, or independent of any commiſſion. This is a right which may be waved, and an obligation which may be diſpenſed with. And no Lord can exerciſe any judicial or legiſlative act but when he is poſſeſſed of his commiſſion, or writ of ſummons. It is no argument, to ſay that their proceedings ought to continue in *ſtatu quo*, becauſe they are the ſame perſons; for the ſame Judges might, upon a vacancy of their commiſſions, have been reappointed to the ſame bench: yet we have ſeen, by the Common Law, every cauſe muſt have been re-heard.

And, in fact, the preſent Houſe of Lords may conſiſt of entirely different members from the next Houſe of Lords; for, one half might either not inſiſt upon having their writs of ſummons, or might be excuſed their attendance in one Parliament, and the other half in another.

With

With regard to the probable change among the Scotch Peers, no argument can be drawn from that circumſtance, becauſe, whatever was the law upon the ſubject, before the year 1707, it was not intended to be altered by the Act of Union with Scotland.

If the queſtion was nearly *in equilibrio*, perhaps the convenience or inconvenience of preſent circumſtances, might cauſe one ſide or the other to preponderate.

From theſe principles, we ſee the difference of the effect of a prorogation and diſſolution; for, after a prorogation, the Lords and Parliament ſtill ſit under the ſame commiſſion, and a prorogation is exactly ſimilar to an adjournment from term to term, and from quarter-ſeſſions to quarter-ſeſſions*.

The

* 1 Lord Raymond, 343. Treby, Chief Juſtice, and the Court, declare, that the principal of the Parliament is the King; and when he comes to meet

The diſſolution of Parliament imports the ſame as the diſſolution of every other Court, by the abrogation of the commiſſion. We have ſeen before, from an authority out of Brook, that a Seſſion of Parliament is, in law, conſidered all one day. So the term at Weſtminſter, from the beginning to the end, is all reckoned but one day.

Hence alſo, we may form a reaſonable conjecture, how the words "Le Roi s'aviſera" came to imply a negative, which are preciſely the ſame in their primary ſignification, as the words which have been always uſed by all the Courts at Weſtminſter, when they took time to conſider of their deciſion,

meet the two Houſes, then the Parliament begins. And this reſembles the holding of other Courts, viz. when the Judges come, the Court is ſaid to be held. The adjournment of the Houſes is the act of each Houſe: but when the Parliament is adjourned by the King, they call it a prorogation. Heretofore adjournments and prorogations were looked upon as the ſame thing, but the effects of them are very different at this day.

decision, viz. *curia advisare vult.—Le Roi s'advisera* import nothing more; and it is probable, that originally they only became an absolute negative, when the King had deprived himself of the power of assenting, by annihilating the Court and all its unfinished proceedings.

It is true, that writs of error, and the Scotch and other appeals, now remain in *statu quo*, after a dissolution; but I conceive this practice has no other foundation, but the extraordinary Order of the 19th of March, 1678, which was only *reversed and annulled as to Impeachments*; for, in the case of Heydon v. Godsalve, Cro. Jac. 342. Croke says expressly, that the "Court all "held (of whom Lord Coke was one), that "a writ of error in Parliament is, by the "dissolution of the Parliament, deter-"mined."*

Before

* Lord Hale says, If the Parliament be dissolved before judgment affirmed or reversed, then the writ of error is wholly discontinued and abated. MSS. p. 167.

Before the Lords made this order in 1678, every Writer, Lawyer, Judge, Commoner, and Peer, concurred, without a single dissenting voice, that a writ of error was determined by a dissolution of Parliament.

It is said, that there is a principle established in this order of 1678, respecting writs of error, which may now be extended to any other species of judicial proceeding. The only principle I can discover in it, is that of encroachment and usurpation; and because you have done one uncontrovertible and flagrant act of usurpation, you may safely venture to do another.

But had the order of 1678 been as consonant, as it is manifestly repugnant, to every authority with regard to writs of error, I should hardly think that any conclusion can be drawn, applicable to an impeachment, from the practice in a writ of error, merely because they are both *judicial*; for not only in those parts in which they are supposed to correspond, but in every other

circumſtance, they are ſo totally diſſimilar, that no two things in nature are ſo unlike. And you might with the ſame propriety pronounce upon the elegance and ſymmetry of a fine lady, from the form and proportions of a whale, becauſe naturaliſts have placed them together in the ſame claſs of *Mammalia*.

This practice, with reſpect to appeals and writs of error, may be very uſeful and convenient; but it ought to have been introduced by an act of the Legiſlature, and not by the arbitrary *fiat* of the Lords themſelves. It would be highly conſiſtent with the dignity of the Houſe of Commons, and conducive to the general intereſts of the kingdom, that they ſhould examine witneſſes upon oath; but it is to be hoped, that no oath will ever be adminiſtered there without the ſanction of an Act of Parliament. That ſingle inſtance might be wholeſome and ſalutary; but, if they could do one lawleſs act for our benefit, they

they might do ten thouſand for our deſtruction.

No one, I think, can doubt that the Court of the Lord High Steward begins and ends with the High Steward's commiſſion, and therefore, if the commiſſion ſhould be diſſolved before the concluſion of the trial, that it would be completely terminated; and I ſhould even think that the indictment would be ſo annulled, that, if the trial of the Peer could be re-commenced, a freſh indictment muſt be found by a Grand Jury. This is a caſe which might eaſily happen, either by the death of the High Steward, or by the death of the King; for the continuation of this commiſſion is not provided for by any Act of Parliament. And if the High Steward had proceeded with the trial till the Lords triers had pronounced a verdict of *guilty*, and then the commiſſion had become vacated by death, if *autrefoits convict* is a good plea in bar, I ſhould conclude that the convicted Peer could not afterwards receive judgment, nor conſequently exe-

 cution;

cution; and it would be preciſely the caſe already mentioned before a Commiſſioner of Gaol-delivery. And what difference can be pointed out between a conviction before the High Court of Parliament, if their commiſſion ſhould ceaſe before judgment is pronounced, and this caſe, I confeſs, I am unable to form a conjecture.

Mr. Juſtice Foſter* has clearly ſhown, that in time of full Parliament the commiſſion of a High Steward does not conſtitute any eſſential ingredient of the the juriſdiction of the Court, and that the Steward is appointed merely to add dignity and ſolemnity to the occaſion.

But ſtill it muſt be preſumed, that his commiſſion will be conſiſtent with the writ or commiſſion of the Peers; and therefore what is clear in the one, may fairly be admitted to explain what is doubtful in the other. Now the commiſſion of the High Steward, both in caſes of impeachments and in-

* 141, &c.

indictments before the High Court of Parliament, is expreſsly confined to the preſent Parliament; and the indiſputable intent and meaning is, that the party muſt be *heard, examined, ſentenced,* and *adjudged,* in one and the ſame Parliament. The words of part of his commiſſion are theſe: "We, "conſidering that juſtice is an excellent "virtue, and pleaſing to the Moſt High, "and being willing that the ſaid Eliza-"beth,* of and for the felony whereof "ſhe is indicted as aforeſaid, *before us in* "*our preſent Parliament,* according to the "law and cuſtom of our kingdom of "Great-Britain, may be *heard, examined,* "*ſentenced,* and *adjudged,* and that all other "things neceſſary may be executed, &c. "we have ordained and conſtituted you "Steward of Great-Britain, &c. to execute "*for this time* the ſaid office."

The ſame words of *coram nobis in præſenti Parliamento audiatur, ſententietur, & adju-*

* Ducheſs of Kingſton, State Trials, Vol. XI. p. 198.

adjudicetur, are uſed in every High Steward's commiſſion when a Peer has been impeached in the High Court of Parliament.

The words "for this time," or *pro hac vice*, certainly import that the High Steward ſhall execute his office during the whole of the trial; but the words *in præſenti Parliamento adjudicetur* reſtrain it to the preſent Parliament: ſo, if the impeachment or trial could continue beyond the preſent Parliament, this dilemma would enſue—either the Steward does not execute his office *pro hac vice*, or the party is not *in præſenti Parliamento adjudicatus*; and therefore a repugnancy would ariſe in the commiſſion, and one part of the King's will muſt neceſſarily be fruſtrated.*

Theſe ſolemn and ancient records have been held, by all Judges, in all times, the ſtrongeſt evidence of what the law is; and it

* The reader would obſerve, in the Duke of Suffolk's impeachment, that the Commons requeſt, over and over again, that the proceedings, &c. may be in the *preſent Parliament*, and *this ſame Parliament*, &c.

it can hardly be ſuppoſed that a commiſſion which has iſſued upon the moſt awful occaſions, when every iöta has been weighed, a commiſſion which has always been executed by men of the moſt profound learning and ſplendid talents in the State, a commiſſion too tranſcendent in its powers ever to be entruſted to a ſubject, but when the juſtice of the nation calls for it, ſhould be compoſed in ſuch a manner that any event ſhould render it incongruous and abſurd; and therefore it is not too much to conclude that no ſuch event can exiſt.

There is one argument more which has been adopted upon this occaſion, which I think it neceſſary to take notice of before I conclude, which is, that when the Parliament* took away the King's power to protect his favourites by granting them a pardon in the firſt inſtance, it virtually took away the King's prerogative of putting an end to the trial by a diſſolution; for it is ſaid, the abolition of one is to no purpoſe, if the other remains.

* 12 & 13 W. c. 2.

But

But it is an invariable rule in the conſtruction of acts of Parliament, that the rights and prerogatives of the King cannot be altered or abridged by any ſtatute, but where the King and thoſe rights are expreſsly and ſpecifically named. All the prerogatives of the King are ſacred truſts repoſed in him by the people, to be exerciſed for their benefit; and that the two Houſes of Parliament may never ſteal from the King thoſe valuable depoſits by an inference or a ſtratagem, the Conſtitution has wiſely pronounced, that they ſhall never, in any degree, be affected, but when they are fully and clearly deſcribed.

And after the recent proceedings in the year 1785, and the deliberate and almoſt unanimous deciſion of Lord Saliſbury's caſe, this ſtatute cannot poſſibly be produced as evidence that, as this prerogative was not removed at the ſame time, no one could entertain an opinion that the King poſſeſſed it.

It

It has been argued with much vehemence, that it is ſo dangerous a prerogative, that it is impoſſible ſuch a monſter can exiſt; but many monſters have had exiſtence in our government; and it is only from their extirpation, by the arm of the legiſlature, that we enjoy our preſent happineſs and ſecurity.

It has been deſcribed with all the force and energy of eloquence, what a lamentable and dreadful condition this country would be in, if the King poſſeſſed the power of preventing the impeachments of his Miniſters by a diſſolution; yet it is an unqueſtionable and indiſputable truth, that if his Miniſter ſhould be convicted of the moſt nefarious treaſons againſt his Sovereign, and horrid machinations againſt the liberties of his country, the King can the next moment reſtore him to credit, and to his ſituation, as a public Miniſter of that country which he has irreparably injured, or attempted to injure. The King can ruin the

country, and ſave the greateſt criminal from impeachment, by never calling a Parliament but once in three years; and then, only for the purpoſe of proroguing them for another three years: he can cancel all the criminal laws, by pardoning all crimes; he can debaſe the public money; he can put his negative upon the moſt ſalutary laws; he can appoint to public offices the worſt and moſt ignorant of his ſubjects: but, notwithſtanding the horrible conſequences of theſe infinite powers, they not only exiſt, but they are peculiarly the favourites of the People of England. With perfect ſecurity they have repoſed in the hands of the King, theſe ſovereign prerogatives, theſe deareſt of their own rights; convinced that a good King will exerciſe them for their happineſs, and that a bad King dare not exert them for their deſtruction. The principle of ſelf-preſervation is a fundamental doctrine in the law of England; and that law which cautiouſly reſtrains me from brandiſhing my ſword over the head of my Sovereign, or of the meaneſt of his

his ſubjects, permits me to wear it peaceably by my ſide, and, when the occaſion requires it, to draw it for my defence.

However we may feel at the rude doctrine of caſhiering Governors, or be charmed with brilliant diſquiſitions upon the abdication of Kings, I have always thought it a fact, too plain to be made clearer by argument, that the people of this country did dethrone James the Second, and did elect another King in his room; and that afterwards, to provide a ſucceſſor to Queen Anne, they elected again one who had no right by inheritance, who had no right by previous election, and therefore who had no more right than any other man.

But they elected *him and his heirs*, I hope, I may add, *for ever*.—The People of England have experiencedtoo much happineſs from that choice, ever to admit the idea of another election, but as the laſt melancholy effort of deſperation.

But the whole hiſtory of their anceſtors will inform our Kings, that it can never conduce to their happineſs or to their ſafety, to outrage the feelings of their people.

Theſe I have always regarded as firſt and fundamental principles, which are only dangerous when they are treated with wantonneſs and levity.—The Majeſty of the People (a grand expreſſion, but brought into contempt by familiarity) ought never to be introduced but when the ſolemnity of the occaſion demands it,—" Nec Deus in-
" terſit, niſi dignus vindice nodus inciderit." This awful attribute of the people ought to be mentioned with a reverence, little leſs than that with which we ſpeak of the attributes of the Deity: but there is a doctrine which cannot be too familiar to our minds, and which we cannot too much cheriſh, *viz.* that, by the aid of the King, we can at any time caſhier and elect our Houſe of Commons.—It is this change which gives a perpetual motion to our Government, and preſerves it incorruptible and immortal. If the Commons were

were impiouſly to attempt to repeal Magna Charta, the *Habeas Corpus* Act, the Bill of Rights, and all that is dear to an Engliſhman, we ſhould find it a much more arduous undertaking to compel a Houſe of Commons, than to compel a King, to abdicate. But we are ſafe, while the King can liſten to the voice of his people, and can, in an inſtant, annihilate thoſe in whom they can no longer confide.

Charles the Firſt never violated the Conſtitution more, by his oppoſition to Parliaments, than by his compliance, when he aſſented to an act that the two Houſes of Parliament ſhould diſſolve themſelves.

Theſe are all the authorities and arguments which have occurred to the Author of this Examination in the courſe of his inquiry: and he can aſſure the Reader that he has ſuppreſſed nothing which he has thought material or relevant on either ſide; and however erroneous his own obſervations and conſtructions may be, he has ſtated nothing with an

an intent to miſlead. The only prejudice which he feels upon the ſubject, is in favour of an opinion which he has collected with ſome degree of labour, and what ariſes from a natural anxiety to ſupport that opinion, and to convince others of what he has convinced himſelf. And he cannot but indulge a hope, however deluſive, that when this ſubject is better underſtood, the opinions of lawyers will be treated with more attention and reſpect, or rather, he ſhould ſay, with leſs ſcorn and contempt: but he can affirm, of himſelf, that he is one who is ſolicitouſly deſirous of being always thought a ſtrenuous aſſerter of the dignity and privilege of Parliament, and a zealous advocate for the public juſtice of the Nation, but who, from ſome attention to the Engliſh Conſtitution, has taught himſelf that in this Country nothing can be *public Juſtice*, which is not adminiſtered by the hand of the *Law*.

APPENDIX.

APPENDIX.

Extracts from the Journals of the HOUSE *of* LORDS.

Die Martis, 11° *die Martii*, 1672.

ORDERED, by the Lords Spiritual and Temporal, in Parliament aſſembled, That it be referred to the Lords Committees for Privileges, to conſider whether an appeal unto this Houſe (either by writ of error, or by petition) from the proceedings of any other court, being depending and not determined in one ſeſſion of Parliament, continue in *ſtatu quo* unto the next ſeſſion of Parliament, without renewing the writ of error, or petition; and report their opinion unto the Houſe.

Die Sabbati, 29° *die Martii*, 1673.

Upon report made by the Lord Widdrington, from the Lords Committees for Privileges, &c. 'That, in 'purſuance of the matter referred to their Lordſhips 'by order of the 11th inſtant (videlicet), whether an 'appeal unto this Houſe (either by writ of error or 'petition), or any other buſineſs wherein their Lord-

 ſhips

ſhips act as in a court of judicature, 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 Parliament, without renewing the writ of error or petition, or beginning all anew, their Lordſhips conſidered ſeveral proceedings, both ancient and modern (which were produced to their Lordſhips at the Committee), *videlicet*:

1. In general: Crompton, Parliament 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: 18 E. I. *Placita Parliamentaria*, p. 44 and 49, the caſe of William de Valentia and Iſabell Mareſchall. William de Valentia had been impleaded, and put to anſwer, the Parliament before, which was preſently after Chriſtmas, at the ſuit of Iſabell le Mareſchall, for exerciſing the office of a Sheriff in the Hundred of Hoſtereſlegh, he pleaded, he did it in the right of his wife, and that he ought not to be put to anſwer without her: whereupon he had time given for him and his wife to appear as this day, at this Parliament, beginning three weeks after Eaſter; and Iſabell le Mareſchall had the ſame time given to proſecute.

The ſame year, p. 43, Hugh de Louther's caſe; there being a queſtion concerning lands held *in capite*, that had been formerly belonging to one Henry

Henry de Edelyngthorp, then in the poſſeſſion of Henry de Louther as his heir; of which Thomas de Normanvill, the eſcheator, was to give an account this Parliament, for recovering of the King's right upon that deſcent; and one Adom coming and laying claim to thoſe lands, ſaying that he was right heir, the eſcheator is ordered to make inquiſition into it by a Jury, *ita quod ad proximum Parliamentum poſt feſtum S'ti Michaelis diſtincte et aperte inde reſpondeat.*

21° E. I. p. 160. Magdulphus Earl of Fife had made his complaint, that John King of Scotland had unjuſtly taken from him certain lands in the county of Fife. A writ of *ſcire facias* was thereupon directed to the Sheriff of Northumberland, to warn the King of Scotland to appear before the King in Parliament ſuch a day. The King of Scotland appeared, and made ſome defence, which did not ſatisfy; ſo they were pronouncing judgment againſt him: but, before it was pronounced, he deſired reſpite till the next Parliament after Eaſter, to adviſe with his Council in Scotland; and that then he would come (as he ſaid) *et feray ce que faire devray*, do what in duty he was to do. Upon which, day is given him till the next Parliament, which was to be after Eaſter, *in omnibus eodem ſtatu quo nunc.*

30 E. I. p. 234, the caſe of William de Breouſe and Walter de Pederton, conſtable of Kermerdyn, touching the manor of Gower, for which William 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 Par- ‘ liament: and then it was not determined, but re- ‘ ferred to a further hearing at the following Parlia- ‘ ment, which was to be held at Lyncolne, in *Octabis* ‘ *Hillarii*; and from thence, after ſome debatings and ‘ arguings, put off again to this Parliament, in the ‘ 30th of the King, in *Octabis S'ti Johannis Baptiſtæ*, ‘ where the buſineſs was more fully heard, and courſe ‘ taken in it.

‘ The ſame year, p. 605, ſome merchants petition ‘ in Parliament for ſome debts owing to them, for ‘ which they have no other ſhewings but the court- ‘ rolls, which are in the keeping of the ſtewards and ‘ marſhals, officers to the King, before whom thoſe ‘ recognizances were taken, who refuſe to ſhew them ‘ without ſpecial warrant; whereupon they are or- ‘ dered to bring all their court-rolls to the next Par- ‘ liament.

‘ 15 E. III. N. 8, 43, 49. The Archbiſhop of Can- ‘ terbury being arraigned in Parliament (according to ‘ his own deſire) before his peers; the Biſhops of Dur- ‘ ham and Sarum, and the Earls of Northumberland, ‘ Arundell, Warwick and Saliſbury, were appointed ‘ to hear his anſwer, the ſame to be debated the next ‘ Parliament; and all things touching his arraign- ‘ ment to remain with Sir William of Keldeſby, ‘ keeper of the privy ſeal.

‘ 51 E. III.

‘ 51 E. III. N. 96. Hugh Scaffolk, of Yarmouth, ‘ had been accuſed, the Parliament before, of divers ‘ extortions; whereupon commiſſion had been granted ‘ to the Earl of Suffolk and Sir John Cavendiſh, chief ‘ juſtice, to examine the buſineſs; and Sir John Ca- ‘ vendiſh gave account in open Parliament, that by ‘ eighteen inqueſts he had been found guiltleſs.

‘ 1 R. II. N. 28. The Earl of Saliſbury, William ‘ de Mountacute, brings his writ of error upon a ‘ judgment in the King's Bench, by which Roger ‘ de Mortimer Earl of March, father to Edmond, had ‘ recovered from him ſome lands in Wales. The ‘ record is brought into the Houſe by the Chief Juſ- ‘ tice, there to remain; and a *ſcire facias* awarded, to ‘ warn Edmond Earl of March to appear the next ‘ Parliament. The next Parliament, 2 R. II. N. 21, ‘ 22, 23, 24, the Earl of March appears; ſaith, the ‘ writ was not duly ſerved, for that there was an ‘ error in the Sheriff's return; Edmond Mortimer, ‘ his grandfather, being there ſaid to be an Earl, ‘ which he never was. The Earl of Saliſbury, on the ‘ other ſide, affirmed it to be a good return. So, there ‘ being difficulty in the matter, and the Parliament ‘ drawing towards an end, day was given to both par- ‘ ties till next Parliament, with all advantages; and ‘ the matter to ſtand as now it doth.

‘ 7 R. II. N. 20. The Prior and Convent of Mon- ‘ tague complain of a judgement given in the King's ‘ Bench, in behalf of Sir Richard Seymor, in which ‘ due form had not been obſerved, and obtains to have ‘ them

'them amended: then prays the whole judgment to 'be reverſed, for certain errors; and a *ſcire facias*, for 'Sir Richard to appear the next Parliament. All 'which was ordered; and the old proceſs and record 'to be at the ſame next Parliament.

'13 R. II. N. 15. Sir Thomas Metham brings a 'writ of error upon a judgment in the King's Bench, 'by which he was to pay five hundred marks to John 'Aſke; and prays for a *ſcire facias*, returnable the 'next Parliament, for Aſke then to appear. Which 'was granted.

'15 R. II. N. 22. John Sheppy brings his writ of 'error for a judgment in the King's Bench, given in 'the behalf of the Prior of Huntington: ordered a '*ſcire facias*, to warn the Prior to appear next Parlia-'ment, to abide the order therein to be taken; and 'the whole record and proceſs to be then there.

'N. 24. Edmond Boſſett prays a *ſcire facias*, for a 'judgment given in the King's Bench, for ſeveral 'lands in the county of Sommerſett, between the King 'demandant, and the ſaid Edmond deforcient. Upon 'this petition, the *ſcire facias* is granted; and it is 'likewiſe ordered, that the matter ſhall continue in 'the ſame ſtate until the next Parliament.

'5 H. IV. N. 40. Roger Deyncourt complains of 'an erroneous judgment given againſt him in the 'King's Bench, for Ralph de Alderley; aſſigns the 'errors; then a *ſcire facias* is granted, for Alderley to

'appear next Parliament. The next Parliament, '6 H. IV. N. 31. this *ſcire facias* is returned *tarde 'venit*; ſo a new one is granted, returnable the Par-'liament after that, and the proceſs to be continued.

'1 H. V. N. 19. Gunwardby complains of a judg-'ment in the King's Bench, in behalf of John Wind-'ſor, for ſeveral lands in Cambridgeſhire; aſſigns the 'errors; hath a *ſcire facias* granted, to warn Windſor 'to appear at the next Parliament, to hear the record 'and proceſs.

'3 H. V. N. 19. Cathermaine prays a *ſcire facias* 'againſt William Hore and John Hore, executors of 'Thomas Hore, for an erroneous judgment given in 'the King's Bench, on the behalf of Thomas, upon 'an action of treſpaſs: it is granted, returnable the 'next Parliament.

'21 Jac. 28° *Maii*. The Lord Chief Juſtice brings 'into the Houſe the record of judgment given here 'in the King's Bench, *in placito tranſgreſſionis et ejectio-'nis firmæ*, between William Macdonnagh plaintiff, 'and John Farrar defendant, for lands in Ireland. 'Macdonnagh makes Thomas Stafford his attorney, 'by a letter there produced, and proved by two wit-'neſſes. Stafford aſſigns the errors; whereupon a 'writ is ordered, to go to the Chief Juſtice of Ireland, 'requiring him to iſſue out a writ of *ſcire facias* to 'the Sheriff of Wexford, to warn Farrar to appear 'before their Lordſhips at the next ſeſſion of Parlia-

'ment,

‘ment, to hear the record and proceſs of error in the ‘judgment given in the King’s Bench in that cauſe.

‘The ſame day, the Earl of Bridgwater reports from ‘the Committee for Petitions, the opinion of that ‘Committee upon divers petitions, of which his Lord‘ſhip did then give an account unto the Houſe; and ‘it was, That they ſhould be retained in *ſtatu quo* ‘until the next ſeſſion of Parliament, which was or‘dered accordingly.

‘Firſt Parliament of King Charles the Second, ‘28 December, ſeveral petitions of Awbrey de Vere, ‘Earl of Oxon, Charles Earl of Derby, and Thomas ‘Lord Windſor, were read, concerning the office of ‘the Great Chamberlain of England; and the Lords ‘ordered, That the conſideration of the ſaid petitions ‘ſhould be adjourned to the fourth day of the ſitting ‘of the next Parliament.

‘The caſe of Dame Aliſimon Reade, the 4th of ‘April, 1671, wife of Sir John Reade, praying to be ‘relieved againſt the hard uſage of her huſband: it ‘was ordered, that counſel on both parts ſhould be ‘heard, on Thurſday the 6th of the ſame April, on ‘which day the Lords ordered, That the further de‘bate of that buſineſs ſhould be adjourned to the firſt ‘Tueſday of the next ſitting of the Parliament, after ‘the receſs then at hand.

‘The caſe of the Lord Delawarr, and the Lord ‘Berkeley of Berkeley, concerning precedency, the ‘14th

‘14th of April, 1671. It was ordered, that they ‘ſhould be heard on the ſecond Monday of the next ‘meeting of the Parliament after the receſs.”

Upon the conſideration of theſe precedents, 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 Parliament, 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 into their conſideration, do approve thereof, and order it accordingly.

Die Martis, 11° *die Martii*, 1678.

It being moved, ‘That this Houſe would declare ‘whether Petitions of Appeal, which were preſented ‘to this Houſe in the laſt Parliament, be ſtill in force ‘to be proceeded on:’

It is 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 thereof, and report their opinion thereupon, unto this Houſe; and that the ſaid Lords Committees do meet on Thurſday next, at three of the clock in the afternoon, for that purpoſe.

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 from the Houſe of Commons laſt Parliament, and all incidents relating thereunto; and make report thereof unto the Houſe.

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, which were preſented to this Houſe in the laſt Parliament, be ſtill in force to be proceeded on, and for conſidering of the ſtate of the impeachments brought up from the Houſe of Commons the laſt Parliament, and all the incidents relating thereunto; 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 on, 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 impeachments brought up by the Commons in that Parliament.

After

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.

Die Veneris, 22° *die Maii*, 1685.

Upon conſideration of the caſes of the Earl of Powis, Lord Arundell of Warder, the Lord Belaſis, and the Earl of Danby, contained in their petitions.

After ſome debate,

This queſtion was propoſed, Whether the order of the 19th of March, $167\frac{8}{9}$, ſhall be reverſed and annulled, as to impeachments?

The queſtion being put, 'Whether this queſtion 'ſhould be now put?

It was reſolved in the affirmative.

Then the queſtion was put, 'Whether the order of 'the 19th of March, $167\frac{8}{9}$, ſhall be reverſed and an-'nulled, as to impeachments?'

It was reſolved in the affirmative.

Diſſentiente, John Earl of Radnor.

The Earl of Angleſey, before the putting of the above-ſaid queſtion, deſired leave of the Houſe to enter his diſſent, if the queſtion were carried in the affirmative; which was granted.

Several other Lords desired leave to enter their dissents.

'According to the right of peers to enter their 'dissent and protestation against any vote propounded 'and resolved upon any question in Parliament, we 'do enter our dissent and protestation to the aforesaid 'vote or resolution; for these reasons, among many 'others:

'1. Because it doth, as we conceive, extra-judicially, 'and without a particular cause before us, endeavour 'an alteration 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 consideration, debate, report 'of committees, 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 conceive, appearing for the same, and 'contrary to the practice of former times.

'3. Because it is inherent in every court of judica-'ture, to assert and preserve the former rules of pro-'ceedings before them, which therefore must be steady 'and certain, especially in this High Court; 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 stand-'ing orders, from which there is no variation.

Anglesey
Clare
Stamford.

Die Sabbati, 5° *die Aprilis*, 1690.

Ordered, That on Wednesday next this House will take into consideration, 'Whether impeachments con-'tinue from Parliament to Parliament?'

Die Lunæ, 6° *die Octobris*, 1690.

Lords Committees appointed by the House to inspect and consider precedents, whether impeachments continue in *statu quo* from Parliament to Parliament; whose Lordships having considered thereof, are to report their opinions to this House.

Die Jovis, 30° *die Octobris*, 1690.

The Earl of Mulgrave reported from the Lords Committees appointed to inspect and consider precedents, whether impeachments continue in *statu quo* from Parliament to Parliament, several precedents concerning impeachments, brought to the Committee by Mr. Petyt from the Tower, as followeth:

Edw. III. A° 4. 'Num. 1. Roger de Mortimer
'Num. 2. Symon de Berryford
'Num. 3. John Matravers
'Num. 4. Bogo de Bayons, Jn° Deverall
'Num. 5. Tho. Gurny, Will. Ogle
} All condemned the same Parliament.

'Num. 16. Berkly, accused by the King, 'found not guilty by twelve Knights; 'yet, because the King was murdered 'by

‘ by perſons under his command, was
‘ kept under bail till the next Parlia-
‘ ment, which was A° 5; then he was
‘ diſcharged from his bail; and, A° 11,
‘ he is adjudged innocent; wherein alſo
‘ there is ſome mention made of proceed-
‘ ings about him A° 9, of which pro-
‘ ceedings there is no record.

A° 15. ‘ Num. 8. 43. Archbiſhop of Cant. deſires
‘ to be examined in Parliament; who is
‘ taken notice of again A° 17. Num. 22,
‘ where it is called an arraignment; but
‘ it is not plain that it was an impeach-
‘ ment, either from the King or the
‘ Commons.

A° 42. ‘ Num. 20. Jn° de la Lee, Steward of the
‘ Houſehold.

A° 50. ‘ Num. 17. Rich. Lyons, merchant of Lon-
‘ don, impeached by the Commons,
‘ judged to priſon till he paid a fine to
‘ the King.
‘ On further enquiry, it was found, that
‘ he was awarded to priſon at the will
‘ of the King, and put to fine and ran-
‘ ſom according to the horribility of his
‘ offence, and to loſe his franchiſe of the
‘ city of London.

A° 51. ‘ Memb. 27. Rot. Par. Afterwards he was
‘ pardoned in part by the Jubilee Par-
‘ don;

‘ don; but pardoned fully by a particu-
‘ lar pardon, for the procuring of which,
‘ Alice Pierce is accuſed in the firſt year
‘ of Rich. the Second.

A° 50. ‘ Num. 21. Lord Latimer, impeached by
‘ the Commons, had then judgment
‘ given on him; but not expreſſed what.
‘ Num. 31. 33. 34. William Ellis, Jn°
‘ Peachy, Lord Nevill, impeached by
‘ the Commons.
‘ Numb. 47. Adam de Bury impeached.

A° 51. ‘ Num. 91. The Commons deſired he might
‘ be pardoned; and he had a particular
‘ pardon under the Great Seal.
‘ John Leſter's was the ſame caſe.
‘ Num. 87. 89. 90. 92. Alice Pierce, Jn°
‘ de Leſter, Walter Spurrier, were all
‘ condemned.

A° 50. ‘ Num. 95. 96. Hugh Farſtaffs was ac-
‘ cuſed and acquitted, in A° 51: Rich.
‘ IId Par. deſired he might be reſtored
‘ to his favour, without any effect.

A° 1. ‘ Nu. 38. William de Weſton, Jn° Sier de
‘ Gomine, condemned.
‘ Nu. 41. Alice Pierce accuſed and ba-
‘ niſhed.

A° 4. ‘ Num. 17. Sir Ra. Ferrers, accuſed by the
‘ King, acquitted; but put under bail
‘ to

‘ to appear before the King any time
‘ between that and the next Parliament.

A° 7. ‘ Par. 1. Num. 15. 23. 24. Biſhop of Norwich, Sir Wm. Ellemhan, Sir Tho. Tryvet, Sir Hen. de Ferrers, Sir William de Farringdon, Rob't Fits Ralph Eſquire, arraigned by the Commons, and condemned.

‘ Pars 2d. Nu. 11. Mich. De la Pool accuſed of bribery by Jn° Cavendiſh, and acquitted.

A° 10. ‘ Nu. 6. Accuſed by the Commons, condemned to be fined and impriſoned at the will of the King.

‘ Pars 1ª, Lords Appellants accuſed ſeveral Lords and Commoners, whom the Commons it ſeems themſelves had a mind to impeach; which therefore they repreſent to the Lords, that proceedings might be ſtayed, who notwithſtanding proceeded ſtill in their own way.

‘ The Commons then impeach Sir Rob't Belknap Lord Chief Juſtice, Sir Jn° Cary Chief Baron, and other Judges, who were condemned the ſame Parliament.

‘ Memb. 10. Sir Symon De Burly, Sir Jn° Beauchamp, Sir Jn° Saliſbury, Sir James Barners, impeached by the Commons, and adjudged.

A° 21.

A° 21. Placita Coronæ. ‘ Rot. Par. Duke of Glouceſter, Earls of Arundell and Warwicke, appealed by the Earl of Rutland, before the King at Nottingham, and the proceedings brought into Parliament.

‘ Nu. 15. 19. Thomas Arundell, Archbiſhop of Cant., Sir Tho. De Mortimer, accuſed by the Commons.

Hen. VI. A° 28. ‘ Nu. 14. De la Pool Duke of Suffolke deſired to have his fame vindicated in open Parliament, then impeached by the Commons, but not committed by the Lords, becauſe it was a general accuſation. At laſt there came a ſpecial accuſation, upon which he was committed by the Lords, and baniſhed by the King; againſt which proceeding and baniſhment all the Lords, Spiritual and Temporal, proteſted.

‘ The Committee ſent for the Clerk of the Rolls, in order to find more precedents; the records in the Tower reaching no further, the Clerk accordingly attended, but ſaid there was nothing regiſtered there beſides Acts of Parliament.

‘ Then the Committee examined the Journals of the Houſe, which reach from the 12th of Hen. VII. and all the precedents of impeachments ſince that time are 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.

'The proceedings againſt the Lord Stafford were 'as follows:

CHARLES the IId.

A° 1678, Dec. 5. 'Impeached by the Commons.
Dec. 28. 'Examined.

In the next Parl. 1679. 'April 9. Heard his accuſation read.
'April 26. Put his anſwer in.

In another Parl. 1680. 'Nov. 12. His trial appointed.
'Dec. 7. Condemned.

'The Committee alſo, in obedience to the Houſe, 'ſent for the late proceedings in the King's Bench in 'caſes of impeachments, which are ready to be laid 'before the Houſe, as well as all the extracts out of 'the records produced by Mr. Petyt.

'Then Mr. Petyt's Clerk, who attended by order, 'being called in, read the precedents following:

'Rot. Par. 4 E. III. N. 16. Thomas de Berkeley's 'caſe.

'Rot. Par. 15 E. III. N. 8. The Archbiſhop of 'Cant. caſe.

'And Rot. Clauſ. 15 E. III. P. 3. M. 25. Dorſ. 'prohibitio pro Rege.'

After the conſideration of which precedents, &c. &c. *(as in the two laſt pages of this Appendix.)*

Die

Die Mercurii, 22° *Maii*, 1717.

Ordered, That all the Lords be a Committee to ſearch for and report precedents.

Ordered, That it be an inſtruction to the ſaid Committee, in the firſt place, to ſearch for and report ſuch precedents as relate to the continuance of impeachments from ſeſſion to ſeſſion, or from Parliament to Parliament.

Die Sabbati, 25° *Maii*, 1717.

The Lord Trevor (according to order) reported from the Committee, appointed 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, 'That, purſuant to the inſtruction given them, in the 'firſt place, to ſearch for and report ſuch precedents 'as relate to the continuance of impeachments from 'ſeſſion to ſeſſion, or from Parliament to Parliament, 'they had ſearched ſeveral precedents; and find,

'That, on the 6th of December 1660, an impeach-'ment againſt William Drake, citizen and merchant 'of London, was brought from the Commons, and 'read; charging him with printing a ſeditious pam-'phlet: and he was ordered to be apprehended as a 'delinquent.

'12th December 1660, he was brought to the bar; 'and confeſſed he wrote the book mentioned in the 'articles.

'19th December, the ſaid impeachment conſidered, 'it was ordered and declared, That, if this Parlia-'ment be diſſolved before this Houſe have time to give 'judgment, the Attorney General ſhould proceed 'againſt him at Law, upon the ſaid offence.

'3d Jan'y 1666, articles of impeachment, of high 'crimes, &c. were delivered, at a conference, againſt 'the Lord Viſcount Mordaunt.

'10th Jan'y, he was ordered to put in his anſwer.

'17th Jan'y, he accordingly preſented it.

'7th Feb'y, a conference and free conference were 'had, concerning this impeachment.

'8th Feb'y 1666, the Parliament was prorogued; 'and no further proceeding on that impeachment 'after the prorogation.

'24th April 1668, articles of impeachment, for high 'crimes, &c. againſt Sir William Penn, were delivered 'by the Commons, at a conference.

'27th April, he was ordered to anſwer.

'29th April, he delivered his anſwer, at the bar; 'and a copy of it was ſent to the Commons.

'After two adjournments, by His Majeſty's deſire; 'the Parliament was, on the firſt of March 1668, pro-'rogued, by commiſſion, to the 19th of October fol-'lowing;

'lowing; and no more proceedings were had con-'cerning the ſaid impeachment.

'5th Dec'r 1678, Lord Arundell of Wardour, Earl 'of Powys, Lord Bellaſis, Lord Petre, and Lord Viſ-'count Stafford, were impeached of high treaſon, &c.

'23d Dec'r, Earl of Danby was impeached of high 'treaſon; and articles were brought up.

'27th Dec'r, he was ordered to anſwer.

'The Parliament was diſſolved by proclamation, 'dated 24th of January 1678.

'6th March 1678, a new Parliament met.

'13th of the ſame month, the Parliament was pro-'rogued to the 15th of that month.

'17th of March, the Houſe, conſidering whether 'the laſt prorogation made a ſeſſion, were of opinion, 'That it was a ſeſſion in relation to the acts of judi-'cature, but not as to the determining laws deter-'minable upon the end of a ſeſſion. And the ſame 'day it was referred to the Committee for Privileges 'to conſider, Whether petitions of appeal, preſented 'laſt Parliament, be ſtill in force to be proceeded on; 'and alſo to conſider of the ſtate of the impeachments 'brought up from the Commons laſt Parliament, and 'all the incidents relating thereto.

'18th

'18th March, report was made from the ſaid Committee for Privileges, That, upon peruſal of the 'Journal of the 29th of March 1673, they were of 'opinion, That, in all caſes of appeals and writs of 'error, they continue and were to be proceeded on '*in ſtatu quo*, as they ſtood at the diſſolution of the 'laſt Parliament, without beginning *de novo*; and alſo 'were of opinion, That the diſſolution of the laſt 'Parliament did not alter the ſtate of the impeachments brought up by the Commons in that Parliament.

'19th March, that report was conſidered; and, 'upon the queſtion, was agreed to.

'20th of March 1678, the Earl of Danby was ordered to anſwer; and divers further proceedings 'were had upon the ſaid impeachments, in that and 'ſubſequent Parliaments.

'12th Nov'r 1680, the Commons, by meſſage, acquaint the Lords with their reſolution to proceed to 'the trial of the Lords in the Tower, and forthwith 'to begin with Viſcount Stafford; and to deſire a day 'for his trial.

'Whereupon his trial was appointed on the 30th 'inſtant.

'30th of the ſame Nov'r, his Lordſhip's trial began 'in Weſtm'r Hall.

'4th

'4th Dec'r following, the Lord High Steward gave 'the Houſe an account, That, after Viſcount Stafford 'had ſummed up his evidence, and the Managers had 'replied, his Lordſhip propounded ſeveral points in 'law, ariſing out of the matter of fact, to which he 'deſired to be heard by his counſel; one of which 'points was,

'Whether proceedings ought to be continued from 'Parliament to Parliament upon impeachments?

'To which the Houſe, upon conſideration, refuſed to 'hear his counſel.

'7th Dec'r, judgment upon him was pronounced, 'as uſual in caſes of high treaſon.

'21ſt of the ſame month, Mr. Seymour was impeached of high crimes, &c.; and articles were 'brought up, and read; and he was ordered to anſwer.

'23d of the ſame December, he put in his anſwer; 'and the ſame was read, while he was at the bar; 'and a copy of it to be ſent to the Commons.

'3d Jan'y following, which was the next day the 'Houſe ſat, he petitioned for a ſpeedy trial. And a 'meſſage was ſent to the Commons, to give them notice of it; their Lordſhips finding no iſſue joined by 'replication. And counſel were aſſigned him.

'8th Jan'y, his trial was ordered to be on the 15th 'of the ſame January; and a meſſage was ſent to the 'Commons,

‘ Commons, to acquaint them with it, that they might ‘ reply if they thought fit. No further proceeding ‘ was had on that impeachment.

‘ 7th of the ſame January, Sir William Scroggs ‘ was impeached of high treaſon; and articles of im- ‘ peachment were brought up. He was bailed; and ‘ ordered to anſwer the 14th of the ſame month.

‘ The ſaid 7th of January, the Earl of Tyrone was ‘ impeached of high treaſon.

‘ 10th of Jan'y 1680, the Parliament was pro- ‘ rogued; and diſſolved by proclamation the 18th of ‘ that month.

‘ 21ſt March 1680, a new Parliament met.

‘ 24th of the ſame March, Earl of Danby petitioned ‘ to be bailed: and the ſame day Sir William 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 Com- ‘ mons.

‘ No further proceedings were had againſt Sir Wil- ‘ liam Scroggs.

‘ 26th March 1681, meſſage from the Commons, ‘ That they, having formerly demanded judgment ‘ againſt the Earl of Danby, deſire now a day may be ‘ appointed to give it.

‘ The

‘ The ſaid meſſage was ordered to be conſidered on ‘ Monday next.

‘ 28th of the ſame month, the Parliament was diſ- ‘ ſolved.

‘ 19th May 1685, the Houſe was acquainted, That ‘ the Lords committed to the Tower upon impeach- ‘ ment had entered into recognizances, in the King's ‘ Bench, to appear the firſt day of next Parliament; ‘ which was that day. Accordingly they were called ‘ to the bar, and their appearances recorded; and ‘ they petitioned for relief.

‘ 22d May 1685, upon conſideration of the caſes of ‘ the Earl of Powys, Lord Arundell, Lord Bellaſis, ‘ and Earl of Danby, contained in their petitions, it ‘ was reſolved, upon the queſtion, That the order of ‘ the 19th of March $167\frac{8}{9}$ ſhould be annulled and re- ‘ verſed as to impeachments.

‘ 25th May 1685, an order made, for the Attorney ‘ General to have recourſe to the indictments againſt ‘ the Earl of Powys, Lord Arundell, and Lord Bel- ‘ laſis, in order to the entering a *noli proſequi* thereon, ‘ according to His Majeſty's warrant; and it was fur- ‘ ther ordered, that their bail ſhould be diſcharged.

‘ 1ſt June 1685, upon motion on behalf of ſeveral ‘ Peers, who were bail for the appearance of the Earl ‘ of Powys, Earl of Danby, Lord Arundell, Lord ‘ Bellaſis, and Earl of Tyrone in the Kingdom of

‘ Ireland, the firſt day of this Parliament, whoſe re-
‘ cognizances were entered into in the King's Bench;
‘ it was ordered, That the ſaid Lords, as alſo all per-
‘ ſons, Peers or others, that were bailed for their ap-
‘ pearance, ſhould be diſcharged.

‘ 26th October 1689, the Earl of Saliſbury and Earl
‘ of Peterborow were impeached of high treaſon, in
‘ departing from their allegiance, and being recon-
‘ ciled to the Church of Rome, by meſſage from the
‘ Commons. And the Earl of Peterborow being, by
‘ the Black Rod, brought to the bar, was ordered to
‘ be committed to the Tower; and the Earl of Saliſ-
‘ bury to be brought to the bar, by the Chief Gover-
‘ nor of the Tower, on Monday.

‘ 28th October, the Earl of Saliſbury accordingly
‘ was brought to the bar; and the ſaid Governor of
‘ the Tower was ordered to take him into his cuſtody.

‘ 27th Jan'y following, the Parliament was pro-
‘ rogued; and diſſolved by proclamation the 6th of
‘ February following.

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

‘ 5th April 1690, an order was made, to take into
‘ conſideration, whether impeachments continue from
‘ Parliament to Parliament, on the Wedneſday fol-
‘ lowing.

‘ 8th and 10th of the ſame month, conſideration of
‘ that matter was adjourned.

‘ 7th

‘ 7th July 1690, the Parliament was prorogued.

‘ 2d October 1690, the Earl of Peterborow peti-
‘ tioned to be diſcharged, having 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: where-
‘ upon 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 matter, upon the Earl of Saliſbury's petition,
‘ praying likewiſe to be diſcharged.

‘ 6th of the ſame month, the Judges, according to
‘ order, delivered their opinions, as follow; viz. That,
‘ if the ſaid Earls crimes and offences were committed
‘ before the 13th of February 1688, and not in Ire-
‘ land, nor beyond the 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, whe-
‘ ther impeachments continue *in ſtatu quo* from Parlia-
‘ ment to Parliament.

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

‘ 30th of the ſame October, report was made from
‘ the Committee, appointed the 6th of the ſame Octo-
‘ ber, of ſeveral precedents brought to their Lordſhips
‘ by Mr. Petyt from the Tower; and alſo that they

‘ had examined the Journals of this Houſe, which ‘ reach from the 12th of Henry the VIIth; and all ‘ the precedents of impeachments 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 the 19th of March $167\frac{8}{9}$, and the ‘ 22d of May 1685, concerning impeachments; and ‘ long debate thereupon; it was reſolved, That the ‘ Earl of Saliſbury and Earl of Peterborow ſhould be ‘ diſcharged from their bail; and accordingly they and ‘ their ſureties were ordered to be diſcharged from ‘ their ſaid recognizances.

‘ A liſt has been produced before the Committee, ‘ which to them ſeems to be the liſt referred to in the ‘ ſaid report; which is ready to be produced, if the ‘ Houſe ſhall think the ſame neceſſary.

‘ 12th Nov'r 1690, upon motion, ‘ That a day be ‘ appointed, for the explanation of the votes of the ‘ 30th of October laſt;' it was ordered to take the ‘ ſame into conſideration on the 18th of the ſame No- ‘ vember, and all the Lords to be ſummoned; on ‘ which day the Houſe ſat: but it doth not appear by ‘ the Journal that any thing was done in purſuance of ‘ that order.

‘ 27th April 1695, the Duke of Leeds was im- ‘ peached of high crimes and miſdemeanors; and arti- ‘ cles

‘ cles 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.

‘ 1ſt May following, a meſſage was ſent to the ‘ Commons, to put them in mind of the ſaid impeach- ‘ ment; the Lords conceiving the ſeſſion could not ‘ continue much longer.

‘ 3d of the ſame May, the Parliament was pro- ‘ rogued; and diſſolved by proclamation, dated the ‘ 11th of October 1695.

‘ 24th of June 1701, the Houſe of Commons hav- ‘ ing 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 im- ‘ peachment and articles were ordered to be diſmiſſed.

‘ 17th May 1698, Peter Longueville was, amongſt ‘ others, impeached of high crimes, &c.; and articles ‘ were brought up.

‘ 27th of the ſame May, he put in his anſwer, and ‘ pleaded Not Guilty.

‘ 28th June, the trial of Goudet and others, upon ‘ the impeachments againſt them, was appointed on ‘ the 4th of July next.

‘ The ſame day, the ſaid Goudet, Barrau, Seignoret, ‘ Baudowin, Santiny, Diharce, and Pearſe, relin- ‘ quiſhed

‘ quiſhed their pleas, and pleaded Guilty; and the
‘ Black Rod ordered to take them into cuſtody.

‘ 30th June, Dumaiſtre put in his anſwer, and
‘ pleaded Guilty; and the Black Rod ordered to take
‘ him into cuſtody.

‘ 4th July 1698, judgment was pronounced againſt
‘ the eight perſons above mentioned; and no further
‘ proceedings concerning Longueville.

‘ The next day the Parliament was prorogued; and
‘ diſſolved by proclamation, dated the 7th of July
‘ 1698.

‘ The Committee have alſo inquired of precedents
‘ of indictments againſt Peers, which have been re-
‘ moved into the Houſe of Lords by *Certiorari*, and
‘ the proceedings thereupon; and find, that, on the
‘ 19th of March 1677, the proceedings againſt the
‘ Earl of Pembroke, upon an indictment, for the death
‘ of Nathaniel Cony, had before the commiſſioners of
‘ Oyer and Terminer at Hicks' Hall, upon which his
‘ Lordſhip was found guilty of felony and murder,
‘ was brought into this Houſe, in order to his trial.

‘ 4th April 1678, the ſaid Earl was tried, and found
‘ guilty of manſlaughter.

‘ 15th July following the Parliament was prorogued.

‘ 11th Nov'r 1685, the Lord Mayor and the reſt
‘ of the Juſtices of Oyer and Terminer and General
‘ Gaol

‘ Gaol Delivery for London and Middleſex were or-
‘ dered to return, by virtue of His Majeſty's writ of
‘ *Certiorari*, the indictment of high treaſon, found
‘ before them, againſt the Earl of Stamford, then
‘ priſoner in the Tower.

‘ 14th Nov'r, the indictment was delivered.

‘ 16th Nov'r, the ſaid Earl was ordered to be
‘ brought to the bar.

‘ 17th Nov'r, his Lordſhip was brought accordingly,
‘ examined, and his trial appointed on the 1ſt of
‘ December following; and an addreſs to His Ma-
‘ jeſty, That a place be prepared in Weſtm'r Hall for
‘ his trial.

‘ 18th Nov'r, the King's anſwer was reported,
‘ That He had given order accordingly.

‘ 20th Nov'r 1685, the Parliament was prorogued;
‘ and, after ſeveral prorogations, was diſſolved the
‘ 2d of July 1687.

‘ And there doth not appear any further proceeding
‘ on the ſaid indictment.

‘ 4th Jan'y 1692, the Coroner's Inqueſt was brought
‘ in, concerning the death and murder of William
‘ Mountfort, wherein the Lord Mohun was found
‘ to be aiding and aſſiſting.

‘ 4th Feb'y following, his Lordſhip was tried; and
‘ found Not Guilty, and diſcharged.

‘ 14th

'14th March following, the Parliament was pro-
'rogued.

'13th Dec'r 1697, a writ of *Certiorari* was ordered,
'for removing the indictment found againſt the Lord
'Mohun, concerning the death of William Hill.

'10th Jan'y 1697, reſolved to proceed to his trial.

'4th July 1698, the Clerk of the Crown read the
'indictment to his Lordſhip; and he pleaded His
'Majeſty's pardon: which was allowed by the Houſe;
'and he was diſcharged.

'13th March 1698, an indictment againſt the Earl
'of Warwick, for the murder of Coote, was brought
'by *Certiorari*.

'25th March 1699, Lord Mohun allowed a copy
'of his indictment.

'28th March, the Earl of Warwick was tried, and
'found guilty of manſlaughter.

'29th of the ſame month, the Lord Mohun was
'tried, and found Not Guilty.

'4th May 1699, the Parliament was prorogued.'

Which report being read by the Clerk:

It was propoſed, 'To reſolve, That the impeach-
'ment of the Commons againſt the Earl of Oxford
'is determined by the intervening prorogation.'

'And,

And, after debate thereupon,

The queſtion was put, 'That it is the opinion
'of this Houſe, that the impeachment exhi-
'bited by the Commons of Great Britain,
'againſt Robert Earl of Oxford and Earl Mor-
'timer, for high treaſon and other high crimes
'and miſdemeanors, is determined by the in-
'tervening prorogation.'

It was reſolved in the negative.

Diſſentient,

'1. Becauſe there ſeems to be no difference in law
'between a prorogation and a diſſolution of a Parlia-
'ment, which, in conſtant practice, have had the
'ſame effect, as to determination both of judicial and
'legiſlative proceedings; and conſequently this vote
'may tend to weaken the reſolution of this Houſe,
'May the 22d, 1685, which was founded upon the
'law and practice of Parliament in all ages, without
'one precedent to the contrary; except in the caſes
'which happened after the order made the 19th of
'March 1678, which was reverſed and annulled in
'1685; and in purſuance hereof the Earl of Saliſbury
'was diſcharged in 1690.

'2. Becauſe this can never be extended to any but
'Peers; for, by the ſtatute 4° Ed. III^ti, no Commoner
'can be impeached for any capital crime: and it is
'hard to conceive why the Peers ſhould be diſtin-
'guiſhed, and deprived of the benefit of all the laws
'of liberty to which the meaneſt Commoner in Britain

'is entitled; and this ſeems the more extraordinary, 'becauſe it is done unaſked by the Commons, who, 'as it is conceived, never can aſk it with any colour 'of law, precedent, reaſon, or juſtice.

'NOTTINGHAM.
'ABINGDON.
'FR. ROFFEN.
'NORTH & GREY.
'BRUCE.
'DARTMOUTH.
'BATHURST.
'GUILFORD.
'MANSEL. HAY.
'FOLEY.'

Die Martis, 24° Junii, 1701.

Then the Houſe, taking into conſideration that there were ſeveral Lords charged and impeached by the Commons, and no proſecution againſt them, ordered as followeth (videlicet).

The Houſe of Commons not having proſecuted their charge which they brought up againſt John Lord Haverſham, for words ſpoken by him at a free conference the thirteenth inſtant;

It is this day ordered, by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid charge

charge againſt John Lord Haverſham ſhall be, and is hereby, diſmiſſed.

The Earl of Portland being impeached, by the Houſe of Commons, of high crimes and miſdemeanors, the firſt day of April laſt:

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the impeachment againſt William Earl of Portland ſhall be, and is hereby, diſmiſſed, there being no articles exhibited againſt him.

The Houſe of Commons having impeached Charles Lord Hallifax, of high crimes and miſdemeanors, on the fifteenth day of April laſt, and on the fourteenth day of this inſtant June exhibited articles againſt him; to which he having anſwered, and no further proſecution thereupon:

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid impeachment and the articles exhibited againſt him ſhall be, and they are hereby, diſmiſſed.

The Houſe of Commons having impeached Thomas Duke of Leeds of high crimes and miſdemeanors on the ſeven and twentieth of April, one thouſand ſix hundred ninety-five, and on the nine and twentieth of the ſaid April exhibited articles againſt him; to which he anſwered: but the Commons not proſecuting,

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said impeachment and the articles exhibited against him shall be, and they are hereby, dismissed.

Rotul. Parl. XV. Edw. III.

Le Parlement tenuz a Westm' le Lundy en la Quinzeyne de Pasch', l'an du regne n're Seignur le Roi, c'est assaver d'Engleterre Quinzisme, et de France Second.

8. ET meisme cesti jour vient nostre Seignur le Roi en la Chaumbre de Peynte, & illocques vient l'Erceveſque de Cantirburs, & les autres Prelatz, & Grantz, & Communes; & le dit Erceveſque se humilia a n're Seignur le Roi, enquerant sa bone Seignurie & sa bienvoilliance; et n're Seignur le Roi lui resceut a sa bone Seignurie: dont les Prelatz & autres Grantz lui mercierent tant come ils savoient ou purroient. Et puis pria l'Erceveſque au Roi, q'il pleust a sa Seignurie, que desicome il est diffamez notoirement par tut le Roialme & aillours, q'il puisse estre aresnez en pleyn Parlement devant les Pieres, & illocques respoundre, issint, q'il soit overtement tenuz pur tiel come il est. Queu chose le Roi ottreia. Mes il dit, q'il voleit que les busoignes touchantes l'estat du Roialme & commune profit fussent primes mys en exploit, & puis il feroit exploiter les autres.

43. ET

43. ET fait remembrer, que le Samady, en la Veille de Pentecouſt, feurent acordez & assentuz en dit Parlement les choses souzescrites, c'est assaver.

44. Primerement, que les Eveſques de Duresme, & Sarum, les Countes de Norht', Arundell, Warr', & Sarum, oient les Respons l'Erceveſque, des choses qui lui sont surmys par le Roi; issint que si ses dites Respons soient covenables, adonques le Roi de sa bone grace lui tendra pur excuse. Et en cas q'il semble au Roi & a son Conseil, que meismes les Respons ne sont mye suffisantz, adonques les ditz Respons serront debatuz en preschein Parlement, & illocques ent juggement rendu.

49. ET fait a remembrer, que totes les choses touchantes l'Aresnement l'Erceveſque de Cantirburs, demurent devers S. William de Hyldesby, Gardeyn du Prive Seal notre Seignur le Roi.

Rotul. Par. XVII. Edw. III.

Le Parlement le tenuz a Westm'r, a la Quinzeyne de Pask, l'an du Regne n're Seign' le Roi Edward tiercz apres le Conqueſt, c'est assaver d'Enleterre dys & septisme, & de France quart,

22. FAIT a remembrer, que notre Seign' le Roi ad commandez, que totes les choses touchantes l'arreynement . . . . . l'Erceveſque de Cantirbirs, lesqueux choses demurerent devers Seign' William de Kyldesby,

Kyldeſby, au Parlement tenuz a Weſtm' a la quinzeyne de Paſke lan quinziſme pur aver ent aviſement tan que ne ſont pas reſonables ne veritables. Par quoi comande ſu a Meſtre Johan de Ufford, de porter meiſmes les choſes en Parlement pur anienter illoeques.

COMMONS' JOURNALS.

Die Sabbati, 12° *die Aprilis*, 1679.

Sir Francis Winnington reports from a conference.—

The Lord Privy Seal ſaid, that in the tranſaction of this affair, there were two great points gained by this Houſe of Commons.

The firſt was, that impeachments made by the Commons in one Parliament, continued from ſeſſion to ſeſſion, and from Parliament to Parliament, notwithſtanding prorogations or diſſolutions.

The other point was, that in caſes of impeachments upon ſpecial matter ſhewn, if the modeſty of the party impeached directs him not to withdraw, the Lords admit that of right they ought to order him to withdraw; and that afterwards he muſt be committed.

The Commons replied, that they hoped their Lordſhips did not think the Commons did take it, as if they had now gained any point: for that the points which their Lordſhips mentioned as gained, were nothing but what was agreeable to the ancient courſe and methods of Parliament.

My

My Lord of Danby's Caſe, Skinner's Reports, p. 56, 34 *Car.* II. R. B.

The *Earl of Danby* having been twice before in Court, upon his *Habeas Corpus*, came again this term, and made a very long harangue; but the Court would not bail him, his caſe being the ſame with my Lord *Stafford*'s and the Earl of *Tyrone*'s, ſcil. he was committed by the *Lords* Houſe, and there was an impeachment by the *Commons* pending in the Lords Houſe againſt him; but it was taken clearly by the *Court*, that where the party is committed by an order of the *Lords* Houſe, as in Pritchard's caſe, remembered by *Raymond* Juſtice, 17 Car. II. that upon a *prorogation* he may be bailed. And ſo *Pemberton*, Chief Juſtice, ſaid it was his caſe, he was committed by the Commons: he ſaid the *King* was willing to bail him, and ſo were the Lords; but he was fain to lie, till the King prorogued the Parliament; and then he came out, and he ſaid, that if any one be detained after a *prorogation*, an *action of falſe impriſonment* lies; moreover, 'twas ſaid, that no man could come into that *Court* and demand to be bailed *de jure*, in caſe of *high treaſon*; nay, that in murder ſometimes they take bail, and ſometimes refuſe it.

My Lord Danby's Caſe, Skinner's Reports, p. 162, 35 *and* 36 *Car.* II. R. B.

Things chiefly inſiſted on by the *Counſel* and *Judges* in my Lord *Danby*'s caſe.—Wallop, That this was a caſe of great neceſſity, and if there ſhould be no relief

relief here, there would be a failure of juſtice, which, rather than the law will ſuffer, it will allow things to be done contrary to the expreſs words of an Act of Parliament; and cited the 2 Inſt. 25.

That bailing would not affect the impeachment; but only modify the confinement; for they ſhould not deliver him out of cuſtody, but only lengthen his chain; for his bail, if they pleaſe, may keep him, and confine him: that all impriſonment is either in *cuſtodiam*, or in *pœnam*; where 'tis the former, this Court may give eaſe by bailment; but in ſo doing, they determine not *de re* but *de modo rei* or *de modo modi*: that this Court is the Supreme Court of ordinary Judicature, to which no ſubject can come but he finds relief, and that *Curia regis ne deficeret in juſtitia exhibenda*; the King being the fountain of juſtice, no one ſhall come to this fountain and die for thirſt. He cited the caſes where the Court hath bailed in caſe of extreme old-age, though the party was in execution; and ſo of a woman near her time of travail: Which caſes are in the 1ſt Inſt.

Pollexfen inſiſted that it was a caſe judicially in the Houſe of Lords; and then by diſſolution of Parliament the proceeding is determined, like caſes of writs of error out of the King's Bench. Holt cited the caſe of Okey and Baxter, who were attainted by Act of Parliament, and the records of Parliament removed by *certiorari* in Chancery, thence by *mittimus* into R. B. where the parties were oppoſed, wherefore they ſhould not

not be executed, and were executed accordingly; and after, by the unanimous opinion of the Court, the Lord *Danby* was bailed.

For, *Firſt*, Treaſon cannot be committed but againſt the King.

Secondly, That the Court has power to bail in all caſes of treaſon. *Zachary Crofton*'s caſe, the opinion of the Judges, in the Lords Houſe, 1678.

Thirdly, That when the Lords Houſe is ſitting, the power of this Court is ſuſpended, as to perſons and cauſes before them; but when the Lords Houſe is diſſolved, their original power reverts back to this Court.

Fourthly, This Court may bail, in caſes where they cannot try the party bailed; as perſons taken here for offences committed in Ireland, are bailed here, to appear in Ireland, though they cannot be tried here: ſo any *Lord of Parliament* committed for high treaſon by a Juſtice of Peace, or Secretary of State, may be bailed in R. B. though he cannot be tried there.

Fifthly, For a man committed of high treaſon to be bailed by law, and yet no Court in being that hath power to bail him, is an abſurdity.

Sixthly, That in caſes of writs of error depending in Parliament, upon a *long prorogation*, they ceaſe to

be a *ſuperſedeas*, but the party may have execution in R. B. and if it be ſo, but where the property is concerned, it ought much more to be ſo, where the liberty is concerned, which is ſo much dearer; that in one caſe or the other, the Parliament, when it meets, may go on; and, if they reverſe the judgment, the party will be reſtored to all that he has loſt, and ſo they may proceed to the trial of my Lord Danby, &c.

As to the power of the King's pardoning treaſon, though the perſon was impeached by the *Commons in England* in the Lords Houſe, many records were cited by the Lord *Danby*; and *Pollexfen*, and *Jefferies*, *Chief Juſtice*, cited *Elſing* of *Parliaments*, and inſiſted that the *Habeas Corpus Act* ſhews the intent of the Parliament, and their ſentiments in ſuch caſes.

Lord Saliſbury's Caſe, *Carthew*, *p.* 131. 2 *Wil.* and *Mary*, B. R.

He was brought from the Tower by Habeas Corpus, and being at the bar, his caſe was thus:

He was by the convention which was afterwards turned into a Parliament, Anno 1 W. and M. impeached by the Commons for high treaſon, for being reconciled to the Church of Rome, contrary to the ſtatute in that caſe made and provided, and upon this impeachment he was committed to the Tower by the Houſe of Peers, and there continued till the Parliament was diſſolved, and a new Parliament called, and

and now (after a long ſeſſions) adjourned for two months.

The Counſel for the Earl moved, that he might be diſcharged upon the new Act of Oblivion, which paſſed in the laſt ſeſſions of Parliament, wherein neither his crime nor his perſon were excepted, but clearly within the Act of Pardon. But *per curiam:* notice cannot be taken of this Act of Pardon, unleſs 'tis pleaded with the averments, becauſe there are ſeveral exceptions in it, both as to crimes and perſons; therefore it is neceſſary that the party who would have the benefit thereof, ſhould aver himſelf by plea capable of ſuch benefit; and not excepted therein, as 'tis ruled in Plowden, and other books; and here the Lord at the bar cannot plead this pardon, becauſe there is nothing before the Court, upon which to ground ſuch plea.

Then it was moved, that he might be bailed, and for that purpoſe the Lord Danby's caſe was cited, who was bailed, though committed by the Peers in Parliament, as in this caſe; and the Earl of Shafteſbury's caſe was likewiſe mentioned.

Sed per curiam: The Earl of Saliſbury 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 the Lord Danby was, becauſe the then Parliament were prorogued,

and the time uncertain for their meeting again; and ſo no proſpect of an opportunity to apply himſelf that way: beſides, he was denied to be bailed, by ſeveral Judges of the Court of B. R. until the Chief Juſtice Jefferies came in.

And the Court cited the Lord Stafford's caſe, who was committed by the Houſe of Peers; and notwithſtanding that Parliament was diſſolved, by which he was committed, yet he was continued a priſoner, and afterwards tried upon the ſame impeachment, convicted, and executed; which fully proves that commitments 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 commitment was not avoided or diſcharged by the prorogation of the Parliament.

And for theſe reaſons, the Lord Saliſbury was remanded to the Tower.

Extract from Mr. Juſtice Foſter's *Crown Law, p.* 157.

In the caſe of Lord Saliſbury, who had been impeached by the Commons for high treaſon, the Lords, upon his petition, allowed him the benefit of the act of general pardon, paſſed in the ſecond year of William

liam and Mary, ſo far as to diſcharge him from his impriſonment, upon a conſtruction they put upon that act; *no High Steward ever having been appointed in that caſe.*

On the 2d of October, 1690, upon reading the Earl's petition, ſetting forth, that he had been a priſoner for a year and nine months in the Tower, notwithſtanding the late act of free and general pardon, and praying to be diſcharged; the Lords ordered the Judges to attend on the Monday following, to give their opinions, Whether the ſaid Earl be pardoned by the act. On the 6th, the Judges delivered their opinions, that if his offence was committed before the 13th of February 1688, and not in Ireland, or beyond the ſeas, he is pardoned. Whereupon it was ordered, that he be admitted to bail; and the next day he and his ſureties entered into a recognizance of bail, himſelf in 10,000l. and two ſureties in 5000l. each; and on the 30th, he and his ſureties were, after a long debate, diſcharged from their recognizance.

It will not be material to inquire, whether the Houſe did right in diſcharging the Earl without giving the Commons an opportunity of being heard; ſince, in fact, they claimed and exerciſed a right of judicature without an High Steward, *which is the only uſe I make of this caſe.*

MODERN REPORTS, Vol. XII. p. 604, 13 W. III. B. R.

Peters verſus *Benning*.

A writ of error *ad proximam ſeſſionem* in Parliament, and before that time the Parliament by proclamation was diſſolved, and day fixed for the meeting of a new one; and upon motion, the queſtion was, Whether this writ were a ſuperſedeas of execution, or even could be a warrant to ſend up the record to the new Parliament, there being no term intervening between the return of the writ and the time fixed for the Parliament's meeting. And, 1ſt, it was agreed on, that the Court can take no notice of any extrajudicial determination or order of the Lords. And, *per Holt*, If an impeachment be in one Parliament, and ſome proceedings thereon, and then the Parliament be diſſolved, and a new one called, there may be a continuance upon the impeachment; and he quoted the caſe of *James and Bertly*, *Paſch.* 5 *W. and M.* where a writ of error was teſted the fourth of May, returnable the nineteenth of November following, to which time the Parliament was prorogued, ſo that a whole term intervened; and he ſaid it was his opinion, they might ſue out execution, notwithſtanding that writ. And he remembered to have known it ruled in *Keeling* and *Hale*'s time, that a writ of error was no *ſuperſedeas*, after a prorogation, if a term intervened. *Vide* 3 *Keb.* 416. 1 *Vent.* 266. And the caſe in 2 *Cro.* 341. was ſaid to be in point, that a writ of error, and all the proceed-

proceedings thereon, are determined by the diſſolution of a Parliament. *Vide* Lane, 57. 1 H. VII. 19, 20. pl. 50. Br. Err. pl. 25. That plaintiff in error is not bailable in Parliament for two reaſons; one, That if the judgment ſhould be affirmed, they could not award execution on the recognizance; Secondly, If the Parliament ſhould be diſſolved before any thing done, all matter depending before the Parliament would be thereby determined. Likewiſe a tranſcript of the record, and not the very record itſelf, is before the Lords upon a writ of error; and in that it differs from a writ of error from Ireland, or from the C. B. into this Court, where, in the one caſe, the execution is to be awarded here; but in the other caſe, it is not ſo, for the neceſſity of the thing, becauſe the King's writ runs not into Ireland; the courſe is to ſend a mandate to the Chief Juſtice of Ireland to grant execution. *Vide Jo.* 66. That diſſolution determines error actually depending, *Ray.* 5. That a prorogation and a whole term intervening, is a *ſuperſedeas* of a writ of error in Parliament; and ſo of a diſſolution, though the errors had been aſſigned. If, before the tranſcript be left above, the Parliament was diſſolved, the writ was no *ſuperſedeas* of execution; but if it had been left above, the diſſolution would be a *ſuperſedeas* of it: but the writ of error would not be diſcontinued, there being a day certain for the meeting of a new Parliament, by the very act of diſſolution.

It may be a queſtion, if a writ of error *ad proximum Parliamentum*, when a Parliament is to meet at a day certain, be a *ſuperſedeas*, though a term does not

not interpoſe between the teſte of the writ and the time fixed for the meeting of the Parliament by the diſſolution of the former Parliament; but the Chief Juſtice ſaid, that as the preſent caſe was, the writ in queſtion could not be an authority to carry up the record, neither could the Lords be legally poſſeſſed of it, by virtue of that writ. And he ſaid, in caſe of prorogation, the writ of error was returnable *ad præſens Parliamentum*; but in caſe of adjournment, it was *ad præſentem ſeſſionem*. And after all, here the Court left them to do what they could by law.

Rot. Parl. 8 Hen. VI. n. 27.

ITEM priount les Communes, pur tant que lour fuſt declarre en ceſt preſent Parlement, par diverſes Seigneurs de meſme le Parlement, que lez petitions a baillers par les ditz Communes a tres noble & puiſſant Prince le Duc de Glouceſter, Gardeyn d'Engleterre, en ceſt preſent Parlement, ne ſerroient mye engroſſes avaunt ceo q'ils ſerrount envoiez de par delà le Myer, a no're Soverayne Seignur le Roy, pur ent avoir ſoun aſſent Roiall & advys; que pleaſe a dit tres haut & puiſſant Prince le Duc de Glouc', Gardeyn d'Engleterre, de ordeiner par auctorite de ceſt preſent Parlent, que toutz lez petitions baillez par lez ditz Communes, a dit tres haut & tres puiſſant Prince le Duc de Glouceſtre, Gardeyn d'Engleterre, en ceſt preſent Parlement, ſoient reſponduz & terminez dedeins ceſt Roialme d'Engleterre, durant meſme cell' Parlement. Et ſi aſcuns petitions remaignount nient reſponduz & determinez, duraunt meſme cell Parlement, q'ils ſoient tenuz pur voides & de null effect; & que ceſt ordenaunce ſoit de force & tiegne lieux en cheſcun Parlement à tenir en ceſt Roialme d'Engleterre en temps a venir.—

Reſponſio. Soit adviſée par le Roi.

Rotul. Parl. 4 Hen. VII. n. 25.

ITEM, die Veneris, Quarto die Decembris, anno ſupradicto, predictus Archiepiſcopus declaravit, qualit' Ambaſſiatores Francie, intelligentes Dominum Regem & tres Status hujus Regni, cum ipſorum Ambaſſiatorum a rege noſtro deſideratis minime fore contentos, pecierunt a Rege licenciam animadvertendi Dominum ſuum Francor' Regem per unum ipſorum, ſperantes, in bri' ſufficienciorem & largiorem auctoritatem a dicto Francorum Rege habitur', qua poſſent ad noſtri Regis complacentiam & utriuſque Regnorum Anglie & Francorum commodum firmius concordare. Et quia appropinquante Feſto Natalis Domini, ante quod feſtum, dictum negotium & alia quam plura bonum publicum hujus regni concernentia, in Parliamento predicto mota & deſiderata, finiri & concludi minime poterant; idem Dominus Rex Anglie, preſens Parliamentum ſuum uſque viceſimum quintum diem Januarii tunc prox' futur' duxit prorogand', & illud realiter prorogavit: premuniens omnibus quorum interfuit in hac parte

e'endi apud Weſtm', ad diem predictum, locis conſuetis, quavis poſtpoſita excuſacionem, ad convocand' ſuper negociis ante dictis, & aliis quæ ex eor' co'ini aſſenſu pro bono publico, Domino concedente, contigérint ordinari.

Rot. Parl. 29 Hen. VI. Pars 2.

Soit as baille as Seigneurs.

To the Kyng our Soverain Lord.

PRAYEN the Commons, that where in your Parlement laſt holden at Weſtminſter, the Communaulte of this your Roialme in the ſame Parlement aſſembled, accuſed and empeched, William De la Pole, thenne Duke of Suffolk, as well of divers grete, heynous, and deteſtable treaſons, as of many other fauxtees, deceites, and other untrue meſpriſions, by him doon and commyted: unto which accuſements and empechements, he being put to anſwere therto, gaue not anſwere ſufficient after the lawes of this your lande, as in the actes and proceſſe hadde upon the ſaid accuſement and empechement, the tenour whereof herto is annexed more pleynly it appeareth; by cauſe whereof, jugement of atteyndre of the ſeid treaſons ought to have been given agenſt him, and he convict of the ſeid meſpriſions after the cours of youre ſeid lawes; and foraſmuche as ſuch jugement agenſt him than was nought hadde, as juſtice after his merites

ites required.—Pleaſe hit your Highneſſe to graunte, ordeyne and eſtabliſh, by the avyſe and aſſent of the Lordes Spirituelx and Temporelx, in this preſent Parlement aſſembled, that by authorite of this *ſame Parlement*, the ſaid William De la Pole be adjuged, demed, declared, publiſhed, and reputed as a traytor to your, &c.

Dorſo. Le Roi s'adviſera.

Addenda to Page xviii. *of this Appendix.*

After the conſideration of which precedents, and others mentioned in the debate, and reading the orders made nineteenth of March, $167\frac{8}{9}$, and two and twentieth of May, one thouſand ſix hundred eighty-five, concerning impeachments; and after long debate thereupon, and ſeveral things moved:

This 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.

'Leave having been given to any Lords, to enter 'their diſſents, if the queſtion was carried in 'the affirmative;

'And theſe Lords following do enter their 'diſſents, in theſe reaſons:

'1. Be-

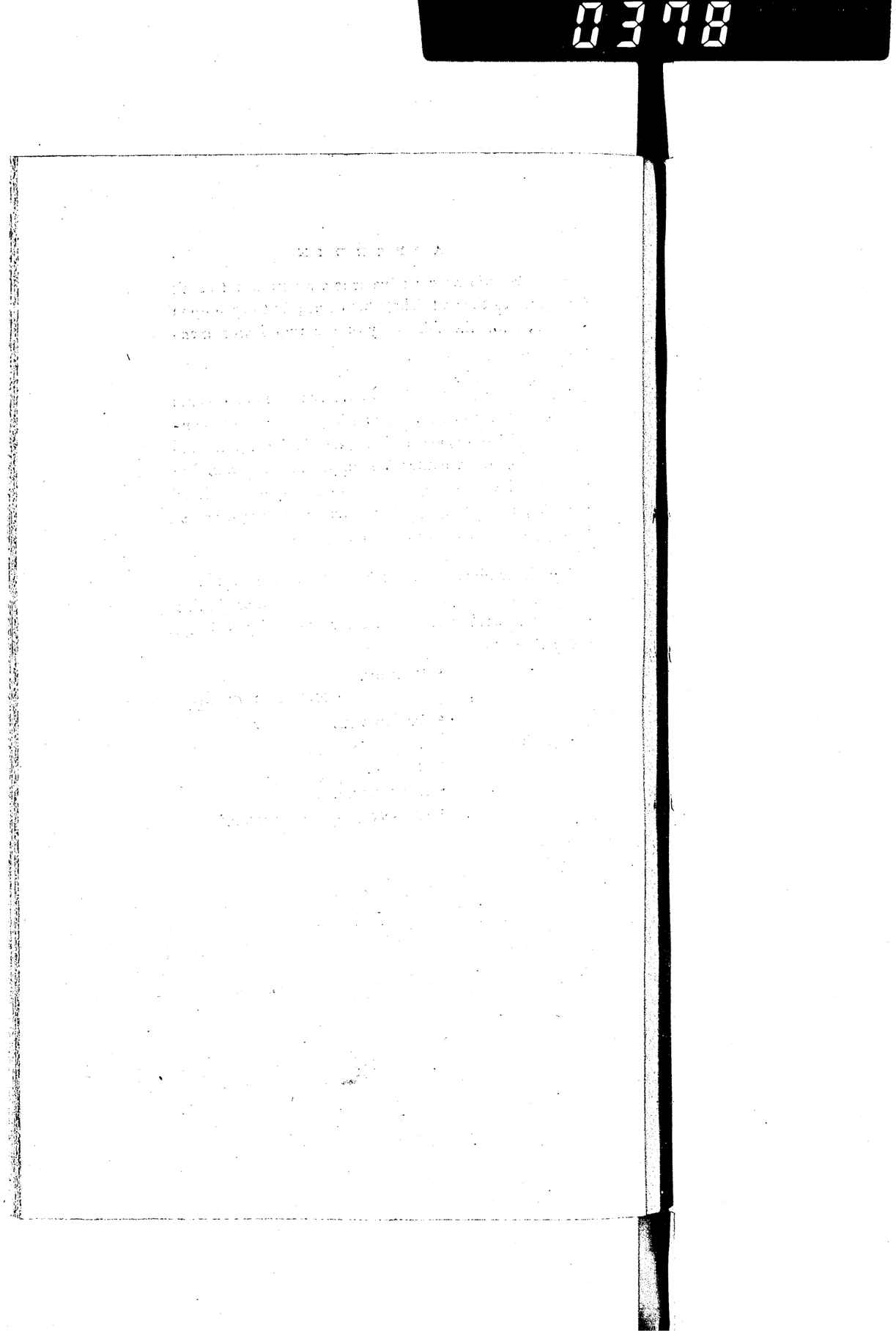
'1. Becauſe we conceive it is a queſtion not at all 'relating to the real debate before us; but urged upon 'us, not for the ſake only of the two Lords men-'tioned.

'2. Becauſe we ought to have examined precedents 'of pardons, to ſee how far an impeachment was con-'cerned, before we had adjudged the Lords diſ-'charged; or whether an impeachment could be 'pardoned without particular mention in 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 Com-'mons, who are parties, and who in common juſtice 'ought to have been heard before we had paſſed this 'vote.'

'BOLTON.
'NORTH & GREY.
'STAMFORD.
'J. BRIDGWATER.
'BATHE.
'MACLESFELD.
'GRANVILLE. HERBERT.'

THE END.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